

A SNAPSHOT OF DOMESTIC VIOLENCE IN QUEENSLAND

Applications before the Magistrates Court for the making of Protection Orders are commonly sought, particularly in the context of the breakdown of a marriage or defacto relationship.

Meaning of Domestic Violence

The meaning of domestic violence is defined in section 8 of the *Domestic and Family Violence Protection Act 2012* (QLD) (“the Act”).

Section 8(1) states that:

(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that:

- (a) is physically or sexually abusive; or*
- (b) is emotionally or psychologically abusive; or*
- (c) is economically abusive; or*
- (d) is threatening; or*
- (e) is coercive; or*
- (f) in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else.*

Section 8(2) then goes on to state that:

Without limiting subsection (1), domestic violence includes the following behaviour:

- (a) causing personal injury to a person or threatening to do so;*
- (b) coercing a person to engage in sexual activity or attempting to do so;*
- (c) damaging a person's property or threatening to do so;*
- (d) depriving a person of the person's liberty or threatening to do so;*
- (e) threatening a person with the death or injury of the person, a child of the person, or someone else;*
- (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;*
- (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;*
- (h) unauthorised surveillance of a person;*
- (i) unlawfully stalking a person.*

Section 37 – When the Court May Make a Protection Order

Section 37 states that:

(1) A court may make a protection order against a person (the respondent) for the benefit of another person (the aggrieved) if the court is satisfied that-

- (a) a relevant relationship exists between the aggrieved and the respondent; and*
- (b) the respondent has committed domestic violence against the aggrieved; and*
- (c) the protection order is necessary or desirable to protect the aggrieved from domestic violence.*

Conclusion

The biggest mistake litigants make in Protection Order proceedings is assuming that all they have to prove to obtain a Final Protection Order (usually in place for two years), is that domestic violence has taken place. That is incorrect. The aggrieved must also convince the Magistrate pursuant to section 37(1)(c), that it is necessary or desirable for the Protection Order to be made on a final basis. It is not uncommon for an aggrieved to be successful in obtaining a Temporary Protection Order at the first mention date of the matter, but then fail to obtain a Final Protection Order at a final hearing, because the aggrieved was unable to convince the Magistrate that it was necessary or desirable for the Protection Order to be made on a final basis. Proving that domestic violence has happened is not enough. You must meet the requirements of section 37(1)(c) also. To ensure the best possible chance of obtaining a Final Protection Order, or indeed to defend the making of a Final Protection Order if you are the respondent, you should seek family law specialist advice so as to ensure your affidavit material and strategy going into a final hearing cover all relevant bases, so as to give you the best possible chance of success at hearing, whether you are the aggrieved or the respondent.