

LEGAL GUIDE TO DOMESTIC VIOLENCE PROTECTION ORDERS IN QUEENSLAND

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, Whatsapp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of three guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Domestic Violence Protection Orders

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In Queensland these protection orders are called **domestic violence protection orders (DVOs)**.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in Queensland

This guide looks at what the law says about **surveillance devices** – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Relevant Criminal Offences in Queensland

This guide looks at the various **criminal offences** that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

DISCLAIMER: The use of technology-facilitated violence is a developing area of the law. The legal information, examples and scenarios contained in the guide are intended to explain the law in general terms only and are not legal advice. They cannot be relied upon or applied by readers in their own cases. Each set of circumstances needs to be looked at individually. You should seek legal advice about your own particular circumstances.

Terminology

Language of 'Victim' vs 'Survivor'

Some women who are experiencing, or who have experienced, domestic violence use the term 'victim' of domestic violence to describe themselves. Others believe the term 'survivor' of domestic violence more accurately reflects their experience.

Whilst acknowledging that each woman's experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as 'victims' of domestic violence.

Gender and Language

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims.

For this reason these guides use 'he' to refer to perpetrators and 'she' to refer to victims. This is not intended to exclude other situations.

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as 'breaking the law'.

Summary offence

Less serious offences (such as parking violations), are known as summary offences. Summary offences normally have a maximum penalty of no more than 12 months imprisonment or are not punishable but imprisonment at all.

Indictable (serious) offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences. Indictable offences are punishable by imprisonment exceeding 12 months.

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

Penalty unit

A penalty unit describes the amount payable for a fine.

For example, some offences have a maximum penalty of a fine of 100 penalty units, others have a maximum penalty of a fine of 50 penalty units.

Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may therefore change from time to time.

The Penalties and Sentences Regulation 2005 (Qld) states the dollar amount for one penalty unit. As of 1 July 2015: **one penalty unit = \$117.80.**

Therefore, an offence with a maximum penalty of a fine of 50 penalty units will have a maximum fine of \$5,890.00.

DOMESTIC VIOLENCE PROTECTION ORDERS

The *Domestic and Family Violence Protection Act 2012* (Qld) (**'the Act'**) is the piece of legislation (law) in Queensland that allows the courts to make orders protecting people from domestic and family violence.

A person who is experiencing domestic violence (**'aggrieved'**) may apply to the Magistrates Court of for a Domestic Violence Protection Order (**'DVO'**) or have a DVO made by the police. A DVO can protect a person by ordering the person against whom the DVO is made (**'respondent'**) not to commit further acts of domestic violence against the aggrieved.

It is important to note that a DVO is a *civil order*, meaning it is not a criminal charge. However, an application for a DVO may be accompanied by related criminal charges and criminal penalties may apply if a DVO is breached.

The Magistrates Court may grant a DVO against the respondent for the benefit of the aggrieved if it is satisfied that:

- a relevant relationship exists between the aggrieved and the respondent; and
- the respondent has committed domestic violence against the aggrieved; and
- the DVO is necessary or desirable to protect the aggrieved from domestic violence.

Where can I find this information in the Act?

See section 37 of the Act

1. Can technology-facilitated stalking and abuse be a form of domestic violence?

The short answer is **yes**, technology-facilitated stalking and abuse may be a form of domestic violence.

Technology-facilitated stalking and abuse can be a form of domestic violence if there is a *relevant relationship* between the respondent and aggrieved, and the respondent's behaviour is *emotionally or psychologically abusive*, threatening, coercive, or in any other way controls or dominates the aggrieved and causes the aggrieved to fear for her safety or wellbeing or that of someone else. A relevant relationship exists where there is, or has been, an intimate personal relationship, or a family relationship, or an informal care relationship between the respondent and aggrieved (see section 1.2 below for more information).

Emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person. A relevant example provided by the *Act* is **repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent**. See section 11 of the Act for further examples.

The *Act* includes some examples of technology-facilitated domestic violence:

- threatening to: cause personal injury to a person; damage a person's property; deprive a person of their liberty; commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed; cause the death or injury of an animal
- threatening a person with the death or injury of the person or someone else
- unauthorised surveillance of a person
- unlawfully stalking a person

Of key importance – domestic violence includes the **unauthorised surveillance** or the **unlawful stalking** of a person.

Unauthorised Surveillance

The unauthorised surveillance of a person means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.

Examples provided in the Act of surveillance by using technology:

- reading a person's SMS messages
- monitoring a person's email account or internet browser history
- monitoring a person's account with a social networking internet site
- using a GPS device to track a person's movements
- checking the recorded history in a person's GPS device

See section 8(5) of the Act for more information.

Unlawful Stalking

Unlawful stalking has a specific meaning, defined in section 359B of the *Criminal Code Act 1899* (Qld).

Four elements make up the conduct of *unlawful stalking*:

1. It is intentionally directed at a person ('stalked person' / 'aggrieved').
2. It is engaged in on more than one occasion. Or, if the conduct lasts for a long time, it is engaged in on any one occasion.
3. It consists of one or more particular behaviours (see below).
4. it causes actual detriment to the aggrieved and it is reasonable in all the circumstances for the detriment to arise.

Particular behaviours related to technology-facilitated stalking:

- contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology
- leaving offensive material where it will be found by, given to or brought to the attention of, a person (eg, posting offensive material on the aggrieved person's Facebook wall)
- giving offensive material to a person, directly or indirectly (eg, emailing offensive pictures to the aggrieved person)
- an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence
- an act of violence, or a threat of violence, against, or against property of, anyone, including the respondent

Detriment may include the following:

- apprehension or fear of violence to, or against property of, the aggrieved or another person
- serious mental, psychological or emotional harm
- prevention or hindrance from doing an act a person is lawfully entitled to do
 - eg, a person no longer walks outside the person's place of residence or employment or a person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places
- compulsion to do an act a person is lawfully entitled to abstain from doing
 - eg, a person sells a property the person would not otherwise sell

Where can I find this information in the Act?

See sections 5, 8, 9, 10, 11 and 12 of the Act for more information about what behaviour constitutes domestic violence. Also see sections 359A and 359B of the *Criminal Code Act 1899* (Qld) for more information on unlawful stalking.

2. When is there a *relevant relationship* between the aggrieved and respondent?

A *relevant relationship* is defined as:

- an intimate relationship
- a family relationship
- an informal care relationship

An *intimate relationship* is a spousal, engagement, or couple relationship.

A *family relationship* exists between two relatives. A *relative* of a person is someone who is ordinarily understood to be, or to have been, connected to the person by blood or marriage. Relative includes a spouse, child (including a child 18 years or more), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law.

The Act also recognises that certain groups of people may have a wider concept of a relative – eg, Aboriginal people, Torres Strait Islanders, members of certain communities with non-English speaking backgrounds, and people with particular religious beliefs.

An *informal care relationship* exists between two people if one of them is, or was, dependent on the other person (the carer) for help in an activity of daily living (eg: dressing or personal grooming, preparing meals, etc). It does not include commercial arrangements, whether paid or unpaid.

See the Act for a comprehensive definition of:

- *spousal relationship* (section 15)
- *parent* (section 16)
- *engagement relationship* (section 17)
- *couple relationship* (section 18)
- *family relationship and relative* (section 19)
- *informal care relationship* (section 20)

Where can I find this information in the Act?

Please see sections 13–20 of the Act.

3. Who can apply for a Domestic Violence Protection Order?

An application for a DVO may be made by the **aggrieved** or a **police officer** who, after investigation, reasonably believes that domestic violence has been committed against the aggrieved.

The Act also allows for certain other people to make an application on behalf of the aggrieved. See section 25 of the Act for more information.

Where can I find this information in the Act?

See sections 25 and 32 of the Act.

4. How can a Domestic Violence Protection Order protect a person from technology-facilitated stalking or abuse?

All DVOs contain the standard condition that the **respondent must be of good behaviour** towards the aggrieved and **not commit domestic violence** against the aggrieved ('the **standard conditions**')

Other than the standard conditions, the court may also impose other conditions that it considers **necessary in the circumstances** and **desirable in the interests of the aggrieved** (or any other named person on the DVO or the respondent).

Some conditions that the court may impose on the respondent, which relates to technology-facilitated stalking and abuse are conditions that:

- prohibits stated behaviour of the respondent
 - that would constitute domestic violence against the aggrieved
 - that is likely to lead to domestic violence against the aggrieved
- prohibits the respondent from
 - contacting, attempting to contact or asking someone else to contact the aggrieved
 - locating, attempting to locate or asking someone else to locate the aggrieved if the aggrieved's whereabouts are not known to the respondent

A respondent **must** follow the conditions of a DVO. If the respondent breaks any of the DVO conditions (called contravening the DVO), it is an offence and the police can investigate and lay charges against the respondent (see section 1.7 below).

The applicant for the DVO can also ask the court to include conditions that are specific to the aggrieved's situation and which will make the aggrieved feel safe. For example:

Suggested wording to cover 'revenge porn' situations

The respondent must not directly or indirectly publish, share or threaten to publish or share images or videos of the aggrieved person that are of an intimate nature

Suggested wording to cover 'tracking/surveillance device' situations

The respondent must not attempt to locate, ask someone else to locate, follow or keep the aggrieved person under surveillance.

Where can I find this information in the Act?

See section 56, 57 and 58 of the Act.

5. How long does an Domestic Violence Protection Order last?

An DVO continues in force for a period specified by the court, or for two years from after the day the DVO is made, whichever is earliest.

However, the court can order that a DVO continues in force for a period of more than two years if it is satisfied that there are special reasons for doing so.

Where can I find this information in the Act?

See section 97 of the Act.

6. What if a person is in urgent need of protection?

Temporary protection orders

If the aggrieved is in urgent need of protection, at the time she applies for a DVO she may also ask the court to make a temporary protection order for her benefit.

A temporary protection order takes effect immediately. A DVO may contain the same conditions as in a final DVO. It usually lasts until the court can hear more evidence and decide whether to make a final order for a DVO or not. A DVO is not enforceable unless the respondent was present in court, or has been served with a copy of the DVO, or told by a police officer about the DVO.

Where can I find this information in the Act?

See sections 23, 36, 47, 50 and 98 of the Act.

Police protection notice

If a police officer attends a domestic violence incident and the respondent is present and the officer reasonably believes that the respondent has committed domestic violence, the officer may issue a notice against the respondent (**'a police protection notice'**) if the officer reasonably believes that it is necessary or desirable to protect the aggrieved from domestic violence.

A police protection notice contains the standard condition that the respondent must be of good behaviour towards the aggrieved and must not commit domestic violence against the aggrieved. It may also include other additional conditions – e.g., the respondent may not contact, or attempt to contact, the aggrieved.

A police protection notice is taken to be an application for a DVO by a police officer. It continues in force until:

- the court has made a DVO against the respondent; or
- the court hearing an application for a DVO adjourns the hearing with making an order for a DVO; or
- the application for a final DVO is dismissed

Where can I find this information in the Act?

See sections 101, 105, 106, 107, 112 and 113 of the Act.

7. What if a person breaks the conditions of a DVO by engaging in technology-facilitated stalking or abuse?

When a person does not obey the conditions of a DVO, this is called a **breach** or **contravention** of the DVO.

It is an offence to contravene a DVO or a police protection notice. The penalty is a maximum of two years imprisonment or a maximum fine of 60 penalty units.

If a respondent has been convicted of contravening a DVO and, within five years, is convicted of contravening a DVO again, the penalty increases to a maximum of three years imprisonment or a maximum fine of 120 penalty units.

If the aggrieved aids, abets, counsels, or procures the respondent to engage in behaviour that contravenes the DVO, the protected person will not have committed an offence.

Where can I find this information in the Act?

See sections 30, 177, 178 and 180 of the Act.

8. How can a person apply for a DVO?

A person can apply for a DVO in person at their local Magistrates Court or online through the Queensland Courts website.

Alternatively, a person may report the domestic violence to their local police and ask for a DVO to be applied for on their behalf. If after investigation the police officer reasonably believes that domestic violence has been committed, the police officer may apply to the court for a DVO on behalf of that person. See section 100 of the Act for more information.

9. Gathering evidence to prove a technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show a DVO is necessary or a DVO has been contravened include:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated

10. Further help and information

LEGAL ADVICE – At any stage, it is important for a person to obtain legal advice about their situation and the options available to them. Please see the legal services directory on the support page of www.smartsafe.org.au for referrals to the nearest legal service.

Note: certain conduct in relation to technology-facilitated stalking or abuse may constitute a criminal offence. Please see the Legal Guide on Relevant Criminal Offences and Legal Guide to Surveillance Legislation for further information.