

Protection Orders: What you need to Prove to get an Order



Article by Townsville Family Lawyer, [Courtney Aitken](#)

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What is a Protection Order?

Recent years have seen domestic violence and abuse under the spotlight. There have been various government inquiries, recommendations, and greater funding for services and community education aimed at preventing domestic violence, and supporting victims. Despite this, domestic abuse and violence remain ever prevalent in our community.

People going through a separation may need assistance to help prevent further acts of domestic abuse and violence. The legal pathway for this is to file an Application for a Protection Order.

A Protection Order is a Court Order that imposes restrictions on the respondent, for the protection of the applicant (aggrieved).

Conditions of a Protection Order

Every Protection Order includes a condition that the respondent be of good behaviour and must not commit domestic violence against the aggrieved. The Court can impose further conditions. Some examples are:

- a) The respondent must vacate the premises where they are residing, so the aggrieved may reside there without the respondent (this is known as an ouster order);
- b) The respondent must not contact the aggrieved in any way;
- c) The respondent must not approach the aggrieved in any place;
- d) The respondent must not locate, or attempt to locate the aggrieved; and/or
- e) The respondent must not attend the aggrieved's usual place of residence or work.

The conditions included in the order are decided by the Magistrate of the Court. To make this decision, the Magistrate takes into account the evidence available in:

- a) The Application for Protection Order;
 - b) Documents produced under subpoena (for example, police records or medical records); and
 - c) Any Affidavits filed in the Court by the aggrieved, respondent, or any persons in support of either party's case.
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What needs to be Proven to get an Order?

If making a final order at a hearing, the Magistrate will also hear evidence from the parties, and anyone else that has filed an Affidavit in support, from that witness in the witness box in the Courtroom.

The law requires the Magistrate to be satisfied of specific things before making an order.

Temporary Protection Orders

If the applicant is asking the Court to make a Temporary Protection Order, the Magistrate must be satisfied that:

1. A relevant relationship exists between the aggrieved and the respondent. A relevant relationship is an intimate personal relationship, a family relationship, or an informal care relationship. For example, a current or former spouse or partner, a sibling, parent, child, or grandparent.
2. The respondent has committed domestic violence against the aggrieved. Domestic violence is defined in Section 8 of the Domestic and Family Violence Protection Act 2012 (Qld) ("the Act") as conduct that is:
 - a. Physically or sexually abusive;
 - b. Emotionally or psychologically abusive;
 - c. Economically abusive;
 - d. Threatening;
 - e. 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 well-being or that of someone else.

Final Protection Orders

If the applicant is asking the Court to make a final Protection Order, the Magistrate must be satisfied of the above two elements and that:

3. The protection order is necessary or desirable to protect the aggrieved from domestic violence. The Magistrate will determine this based on the evidence available, and consider things such as whether the parties will need to communicate in the future regarding their children and the risk to the aggrieved without an order.
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The Court Process

The Court process can be daunting for everyone, and even more so for people who are victims of domestic abuse or violence. Our team of experienced family lawyers can support and represent you. It is important that the Application for a Protection Order and all other evidence is prepared carefully, to give the application the best chance of success.

O'Shea Dyer Townsville has experienced lawyers who practice exclusively in Family Law

Everyone's situation is unique.

We always recommend seeing an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.

We offer first appointments with experienced family lawyers for \$220 - a low fixed fee so that everyone can afford to obtain advice about their situation.

We are here to help you.

Call us on 4772 5155 to make an appointment.