



Hervey Bay  
**Neighbourhood Centre**  
*The Heart Of Our Community*

# Domestic Violence

Understanding your orders



Wide Bay Burnett  
Community Legal Service



Hervey Bay  
Neighbourhood Centre  
*The Heart Of Our Community*

# Acknowledgment to Country

We acknowledge the Butchulla people, the Traditional Custodians of the land on which we meet and recognise their continuing connection to land, water and community. We pay respect to Elders past, present and emerging. We extend that respect to Aboriginal and Torres Strait Islander's today.



# Disclaimer

The material contained throughout this presentation is provided for general information and educative purposes. The content does not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice regarding your personal and specific circumstances ought to be obtained.

The information contained in this presentation is current as at May 2022.



# Overview



1. What type of conditions are in a protection order?
2. What are exceptions? What are the difference types and what do they mean?
3. What if I need to change my order?

Note – reference to ‘DV order’ in this presentation includes a Final Protection Order and a Temporary Protection Order. Reference to ‘DV’ includes Domestic and Family Violence.



# Types of Conditions

## 'Standard Condition'

- The respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.
- This standard condition for any named person includes that the respondent must be of good behaviour and not commit associated DV against the named person.
- In relation to children, the standard condition prohibits associated DV and children from being exposed to DV.
- It means you have to be of good behaviour and cannot commit DV.
  - For this reason, it is important you understand what DV is (see over).





# What is DV?



Behaviour from one person to another that is:

- Physically and/or sexually abusive
- Emotionally or psychologically abusive (examples):
  - following a person when the person is out in public, including by vehicle or on foot;
  - remaining outside a person's residence or place of work;
  - repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent;
  - repeated derogatory taunts, including racial taunts;
  - threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent;
  - threatening to withhold a person's medication;
  - preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity.



# Definition of DV Cont....

- Financial abuse
  - coercing a person to give up control of their assets and income;
  - removing or keeping a person's property without the person's consent, or threatening to do so;
  - disposing of property owned by a person, or owned jointly with a person, against the person's wishes and without lawful excuse;
  - without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses;
  - preventing a person from seeking or keeping employment;
  - coercing a person to claim social security payments (single parent);
  - coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person;
  - coercing a person to sign a contract for: the purchase of goods or services, for the provision of finance, a loan or credit or guarantee;
  - coercing a person to sign any legal document for the establishment or operation of a business.
- Behaviour that is threatening, coercive and/or controlling.
- Behaviour that in any way controls or dominates the other person and causes that person to fear for their safety or wellbeing.

*Domestic and Family Violence Protection Act 2012 (Qld) s12 and s8.*

# Definition of DV Cont....

- Other DV behaviour;
  - causing personal injury to a person or threatening to do so;
  - coercing a person to engage in sexual activity or attempting to do so;
  - damaging a person's property or threatening to do so;
  - depriving a person of the person's liberty or threatening to do so;
  - threatening a person with the death or injury of the person, a child of the person, or someone else;
  - threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
  - 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;
  - unauthorised surveillance of a person;
  - unlawfully stalking a person.



# Definition of DV Cont....



- Examples of surveillance;
  - 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
- What's this all mean for you?
  - Every DV order includes the condition that the respondent must be of good behaviour and must not commit domestic violence. That means you cannot do any of the things that would constitute domestic violence. If you do any of these things you are in breach of the order.



# Other conditions

**No Contact:** *The respondent is prohibited from contacting or attempting to contact or asking someone else to contact the aggrieved and named children.*

- This means you CANNOT contact the person the order is protecting WHATSOEVER unless you have some exception. You should check your order very closely – it may include prohibition from contacting the named persons and children.
- Example breaches: wishing a Happy Birthday, receiving an appointment reminder on your phone and forwarding it to them, leaving a note, asking your Mum or Dad to wish a Happy Birthday on your behalf.

**No Locate:** *The respondent is prohibited from locating, attempting to locate, or asking someone else to locate the aggrieved and named children and named person.*

- Example breaches: asking around if anyone knows where aggrieved lives or works, trying to locate aggrieved using find my phone app etc.

# Other conditions

**Social Media Condition:** *The respondent is prohibited from using the internet or any other communication device (including social networking sites) to communicate with, publish picture or make adverse comments concerning the aggrieved and named children and named person.*

- Example breaches: posting last year's photo of you with the child and stating something like 'Daddy loves you but Mummy won't let Daddy see you, Daddy will see you soon' etc. Sharing a meme and referring to the aggrieved.

**Monitor/Tracking Condition:** *The respondent must not electronically monitor or track or attempt to electronically monitor or track the movements or communications of the aggrieved and named person and named children by any means.*

- Example breaches: Find my phone app, going through GPS history etc.

# Other Conditions – No approach

## No Approach – General

- *The respondent is prohibited from following or approaching within 100m of the aggrieved and named child when at any place.*
  - This applies even if they approach you.
  - If you see the aggrieved at a place you need to walk the other way and leave.
  - Example breaches: You go to the pub every Friday. All of a sudden aggrieved shows up at the pub. You finish your drink before leaving – breach! You should leave as soon as you see the aggrieved. Out grocery shopping and see aggrieved and child, haven't seen the child for some time and can't help but approach just to see child.

## No Approach – School

- *The Respondent is prohibited from attending at or going to within 100m of the school or other premises where the named child lives or attends for the purpose of education and care*
  - Example breaches: Aggrieved asking you to collect children from school, attending the school for some other reason.

# Other Conditions- property

**No Approach – Home ('Ouster')**: The Respondent is prohibited from remaining at, entering or attempting to enter or approaching within 100m of the aggrieved, named person and child's usual place of residence at 123 Sesame Street, Hervey Bay.

## **Property issues:** What if I have property I need?

- Return condition: *The Respondent can return to the premises within 14 days in the company of police and on notice to the aggrieved to recover agreed property.* If you have this condition you need to contact the police for assistance – you cannot simply attend the premises.
- This allows the Respondent to return to the property with the assistance of police to collect essential personal property.
- It does NOT allow the Respondent to remove property that is required to meet the daily needs of the aggrieved for example household furniture or kitchen appliances. It DOES NOT include disputed property. For example, if the aggrieved says 'no that's mine' you cannot take the property.
- What if I have other property I need to collect and will need a truck to assist?
  - Property Settlement (police have limited resources)
  - Mediation providers: Family Relationship Centre (07) 4130 7500 and Wide Bay Dispute Resolution Centre (07) 4120 6708





# Example

## TEMPORARY PROTECTION ORDER

Court: MAGISTRATES COURT  
Place: HERVEY BAY  
Date Order Made: 01/01/2022

**Applicant (Police):** Lisa Mary LEE  
**Respondent:** Rob John WILLIAMS  
**Aggrieved:** Mary Sally WILLIAMS

### Named Person/s Protected by this Order:

CHILD OF THE AGGRIEVED: Johnny John Williams  
NAMED PERSON: Lenny WILLS

Nationally Recognised DVO

It is ordered that:

- (1) The respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.
- (2) The respondent must be of good behaviour towards the named person and not commit domestic violence against the named person.
- (3) The respondent must be of good behaviour towards the child, must not commit associated domestic violence against the child and must not expose the child to domestic violence.
- (4) The respondent is prohibited  
-from remaining at;  
-entering or attempting to enter;  
the aggrieved's usual place of residence.
- (5) The respondent is prohibited from contacting or attempting to contact or asking someone else to contact the aggrieved
- (6) The respondent is prohibited from following, approaching, or approaching within 100 m of the aggrieved and named child when at any place.
- (7) The respondent is prohibited from using internet or any other communication device (including social networking sites) to communicate with, publish pictures or make adverse comments concerning the aggrieved and named person.
- (8) The respondent must not electronically monitor or track or attempt to electronically monitor or track the movement's or communications of the aggrieved, named person and named child, by any means.
- (9) The respondent is prohibited from attending at or going to within 100m of Torquay State School or other premises where a child of the aggrieved usually attends for the purpose of education or child care.

The respondent was present in Court when this order was made.

UNLESS OTHERWISE ORDERED THIS ORDER CONTINUES IN FORCE TO AND INCLUDING UNTIL A FURTHER ORDER IS MADE IN THE PRESENCE OF THE RESPONDENT OR THE RESPONDENT IS SERVED WITH OR THE RESPONDENT IS TOLD BY A POLICE OFFICER ABOUT THE EXISTENCE OF SUCH FURTHER ORDER OR THE APPLICATION FOR A PROTECTION ORDER IS WITHDRAWN OR DISMISSED BY THE COURT.

- Rob must be of good behaviour and not commit Domestic Violence against Mary, Lenny (Mary's new boyfriend) and the child Johnny.
- Rob must not expose Johnny to Domestic Violence (e.g. degrade Mary, yell at Mary or assault Mary in front of Johnny).
- Rob cannot go to Mary's house.
- Rob cannot contact Mary, Lenny or Johnny.
- Rob cannot approach within 100m of Mary or Johnny. If he sees them he has to walk the other way.
- Rob cannot use the internet to communicate or post about Mary or Lenny (e.g. Facebook)
- Rob cannot track Mary, Lenny or Johnny for example using Find my Phone.
- Rob cannot go to Johnny's school or childcare.

# Exceptions

- What are they?
  - They provide an 'exception' for a particular order (NOT all the orders).
- Example exceptions
  - Except for the purposes of attending the premises to spend time with a child or children as agreed between the parties in writing or pursuant to a Court Order.
  - Except for the purpose of spending time with a child or children as agreed between the parties in writing or pursuant to a court order.
  - Except when appearing before a court or tribunal.
  - Except for the parties to attend an agreed conference, counselling or mediation session, including a legal aid conference.
  - Except in writing (including via text or email) but only in relation to parenting or financial issues.
  - Except to the extent that the adult named person agrees in writing including by text or email.
  - Except with the prior written consent of the aggrieved.
- Exceptions only apply to certain orders (see example in next slide).



## TEMPORARY PROTECTION ORDER

Court: MAGISTRATES COURT  
Place: HERVEY BAY  
Date Order Made: 01/01/2022

**Applicant (Police):** Lisa Mary LEE  
**Respondent:** Rob John WILLIAMS  
**Aggrieved:** Mary Sally WILLIAMS

**Named Person/s Protected by this Order:**  
CHILD OF THE AGGRIEVED Johnny John Williams  
NAMED PERSON Lenny WILLS

Nationally Recognised DVO

It is ordered that:

- Rob can only attend Mary's residence if there is a Court Order or written agreement (Parenting Plan) that says that he can collect the child from the residence. For example 'the Father collect the child from the Mother's residence each alternative Friday at 05:00 pm'. This order or parenting plan would then operate under the DV exception so Rob can only attend Mary's at 05:00 pm on the alternate Friday.
- It does not mean that Rob can attend at any other time – even if agreed by Mary.

( 4 ) The respondent is prohibited  
-from remaining at;  
-entering or attempting to enter;  
the aggrieved's usual place of residence.

Except for the purposes of attending the premises to spend time with a child or children as agreed between the parties in writing or pursuant to a Court Order.

Except with the prior written consent of the aggrieved.

- With this exception Rob can only attend if Mary gives consent. For example, Mary can send Rob a message stating that she gives him consent to come to her home at any time until withdrawn by her.
- Mary may give consent that Rob only attend on one occasion.
- Mary can withdraw her consent in which case Rob cannot attend and must leave immediately.
- Rob CANNOT contact Mary and ask for her to give consent – if the same exception applies to the contact order.

## TEMPORARY PROTECTION ORDER

Court: MAGISTRATES COURT  
Place: HERVEY BAY  
Date Order Made: 01/01/2022

**Applicant (Police):** Lisa Mary LEE  
**Respondent:** Rob John WILLIAMS  
**Aggrieved:** Mary Sally WILLIAMS

**Named Person/s Protected by this Order:**  
CHILD OF THE AGGRIEVED: Johnny John Williams  
NAMED PERSON: Lenny WILLS

Nationally Recognised DVO

It is ordered that:

( 5 ) The respondent is prohibited from contacting or attempting to contact or asking someone else to contact the aggrieved

Except for the parties to attend an agreed conference, counselling or mediation session, including a legal aid conference.

Except in writing (including via text or email) but only in relation to parenting or financial issues.

Except with the prior written consent of the aggrieved.

- This exception allows Rob to contact for example a mediation provider like Wide Bay Dispute Resolution Centre or Family Relationship Centre who will then contact Mary to see whether she would like to participate in mediation.
- Rob cannot contact Mary and ask her if she would like to go to mediation.

- Rob can send an email or text to Mary about parenting – e.g. confirming a changeover location for time with the child.
- Rob cannot discuss other issues in the text or email that fall outside parenting or financial issues (e.g. getting back together).

- Mary can text Rob and give her consent that Rob can contact her by any means at any time. This would allow Rob to contact her.
- Mary can withdraw her consent – STOP.
- Mary can text Rob and say I consent to you contacting me about our dog Bluey but only by email. This would allow Rob to email Mary about their pet dog Bluey.
- Rob cannot ask Mary for her written consent.



## TEMPORARY PROTECTION ORDER

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**Applicant (Police):** Lisa Mary LEE  
**Respondent:** Rob John WILLIAMS  
**Aggrieved:** Mary Sally WILLIAMS

**Named Person/s Protected by this Order:**  
CHILD OF THE AGGRIEVED Johnny John Williams  
NAMED PERSON Lenny WILLS

Nationally Recognised DVO

It is ordered that:

( 6 ) The respondent is prohibited from following, approaching, or approaching within 100 m of the aggrieved and named child when at any place.

Except when appearing before a court or tribunal.

Except for the parties to attend an agreed conference, counselling or mediation session, including a legal aid conference.

Except for the purpose of spending time with a child or children as agreed between the parties in writing or pursuant to a court order.



- If Rob has a Court date and attends Court and Mary is at Court Rob will not be in breach of the order
- If Rob stands very close to Mary to try to scare her or whispers something to her then he will be in breach of the order.

- If Rob contacts mediation and they arrange a mediation date then Rob can attend the mediation without breaching the order.
- If Rob starts yelling at Mary and calling her names at the mediation then Rob WILL be in breach of the order.

- If Rob and Mary have a Court Order or Parenting Plan that says that the child can spend time with Rob from 05:00 pm each alternate Friday to Wednesday at 09:00 am, then Rob can approach the child Johnny to spend time with him.
- Rob cannot approach Mary or the child Johnny any other time.





# Exceptions

- You can only rely on the exception that applies to the specific order.
- In this example if Mary texts Rob and the message states: I consent to you contacting me by any means until withdrawn by me then Rob can contact Mary.
- Mary cannot ask Rob to meet her for coffee – as the only exceptions for the approach order are: when attending Court, attending counselling, mediation or a legal aid conference or when spending time with the child in accordance with a written agreement or Court Order.
- Mary can only provide consent for Rob to contact her.

Court: MAGISTRATES COURT  
 Place: HERVEY BAY  
 Date Order Made: 01/01/2022

**Applicant (Police):** Lisa Mary LEE  
**Respondent:** Rob John WILLIAMS  
**Aggrieved:** Mary Sally WILLIAMS

**Named Person/s Protected by this Order:**  
 CHILD OF THE AGGRIEVED Johnny John Williams  
 NAMED PERSON Lenny WILLS

Nationally Recognised DVO

It is ordered that:

- ( 5 ) The respondent is prohibited from contacting or attempting to contact or asking someone else to contact the aggrieved  
 Except with the prior written consent of the aggrieved.
- ( 6 ) The respondent is prohibited from following, approaching, or approaching within 100 m of the aggrieved and named child when at any place.  
 Except when appearing before a court or tribunal.  
 Except for the parties to attend an agreed conference, counselling or mediation session, including a legal aid conference.  
 Except for the purpose of spending time with a child or children as agreed between the parties in writing or pursuant to a court order.

So, you may have some exceptions for some orders but not all. Here Mary can provide written consent for contact but she cannot provide written consent for Rob to approach her or the child.

# What about parenting arrangements?

- If there are Family Court Orders in place that haven't been provided to the Court then you need to provide them to the Court.
- If there are no Family Court Orders in place then you should seek exceptions.
- You should ask for the 'family law exceptions' as well as the exception '*Except in writing (including via text or email) but only in relation to parenting or financial issues*'.
- If the Court only grants the family law exception – '*except when attending an agreed mediation or conference*' and '*except for the purpose of spending time with a child or children as agreed between the parties in writing or pursuant to a court order*' then you can only spend time if there are already current Court orders in place, that set out time arrangements.
- If there are no Family Court orders in place and you have the exception relating to attending an agreed mediation or conference then you should make contact with the Family Relationship Centre (07) 4130 7500 to arrange for a mediation for parenting arrangements.

# What if I need to change the order?

- You can lodge an application to vary.
- What does the Court consider?
  - The grounds in the original application;
  - Any findings the Court made (if you contested it);
  - If you had an intervention order (an order that you complete a program) whether you complied with that;
  - Wishes of the aggrieved and any named persons;
  - Any current contact between the aggrieved and respondent;
  - Whether any pressure has been applied, or threat made to the aggrieved;
  - The need to protect the safety and wellbeing of people who experience DV including children – paramount;
  - Any other relevant matter.
- If the application originally was a Police Application then Police may oppose the variation – trial
- You shouldn't vary the DV order if you have current conflicting bail conditions.

# Bail conditions

- If your bail conditions conflict with your DV order (are stricter) then you must follow your bail conditions.
- E.g. If you have bail conditions that state that you cannot contact the aggrieved but a DV protection order that says that you are prohibited from contacting the aggrieved except with prior written consent, and the aggrieved contacts you and provides written consent, you still CANNOT contact the aggrieved. YOU MUST FOLLOW YOUR BAIL CONDITIONS.
- If your bail conditions state that you have to appear at Court and there are no other conditions then you follow your bail condition (attend Court) as well as your DV order (e.g. if it says no contact).
- You cannot vary your DV protection order until you have dealt with your criminal matter and the bail conditions no longer apply (or don't conflict with the variation you seek).
- You can vary your bail conditions. Usually this will require you to go back to the Court that granted the bail. Sometimes, your bail conditions will include a provision that allows you to seek the approval of the Police Prosecutions to vary – it will depend on the terms. If you have multiple charges, you may have bail in more than one Court. In those circumstances any changes will need to be made to all of your bail undertakings.



# Summary

- (1) What type of conditions are in a DV order?
  - As shown there are a number of conditions that can be made. It is important that you understand what conditions apply to your order. It is very important that you understand what DV is as every order has a condition that you must be of good behavior and not commit domestic violence.
- (2) What type of exceptions are in a DV order? (family law)
  - As shown there are a number of exceptions. You may have some exceptions, no exceptions or all exceptions. It is important that you look at your exceptions and the order they apply to.
  - Importantly, just because you fall within an exception doesn't mean that you are completely fine – for example, you have an exception you follow it but in the process you start degrading the aggrieved. Here, you would still be in breach.
- (2) How can an order be changed?
  - You can lodge an application to vary BUT if you have bail conditions that otherwise conflict (e.g. no contact) the Court will be reluctant to hear the application.





# Important takeaways

- Read and understand your order and any exceptions. Any breach is a criminal offence: 3 years imprisonment for first offence or 120 penalty units and 5 years imprisonment or 240 penalty units for any additional breach within a 5 year period.
- The mandatory condition – to be of good behaviour and not commit domestic violence is very wide. Make sure you understand what DV is.
- If you have parenting orders let the Court know.
- If you don't have parenting orders, ask for the family law exceptions and make contact with the local mediation provider.
- Do not under any circumstances breach the DV even if the Aggrieved tells you they are withdrawing, provide their consent, that it's an emergency etc etc.



# Questions

If you would like specific advice you may contact our Reception for an appointment:

- Wide Bay Burnett Community Legal Service (07) 4194 2663

