

Responding to an Application for a Protection Order

Responding to an Application for a Protection Order under the Domestic and Family Violence Protection Act 2012 (QLD)(DFVPA)

Have you have been served an application for a Protection Order? What is next?

1. Contents of the application

The Protection Order application will generally contain details of the parties; namely the Aggrieved (the person seeking protection) and the Respondent (the person whom the Protection Order is sought against) and other named persons, including children.

When a Magistrate decides to make a Protection Order, he or she will consider three (3) things:-

- whether the relationship is one prescribed under the DFVPA;
- whether or not an act of domestic violence has been committed (the definition of domestic violence is found in the DFVPA, and covers a wide range of conduct and behaviour); and
- whether or not it is necessary or desirable for a Protection Order to be made in certain terms.

The application should also provide reasons why the Magistrate should grant a Protection Order and what condition/s should be included. There are two (2) mandatory conditions:

- that the Respondent does not commit any acts of domestic violence towards the Aggrieved; and
- that the Respondent is of good behaviour to the Aggrieved

2. Responding to an application

The application will first be heard at what is referred to as a 'mention'. You must attend the mention, as the Magistrate may grant the Protection Order in the absence of the Respondent. The application may also be dismissed if the Aggrieved or the police do not attend.

At the mention you will have the opportunity to advise the Magistrate what you intend to do with your application (see 'Your options'). It is unlikely that you will have an opportunity to argue your case at this time.

The Magistrate will also consider whether to make a Temporary Protection Order while proceedings are ongoing. This lasts until either a final Protection Order is made or the application is withdrawn or dismissed.

3. Options

There are three options in responding to an application:

- consent to a Protection Order being made;
- consent to a Protection Order 'without admissions;' which means you agree to a Protection Order being made but do not admit to any allegations in the application;
- contest the application.

If you decide to contest the application, the Magistrate will likely direct that parties file and serve an affidavit and set the matter for final hearing. There may be a number of mentions in the interim to ensure the matter is ready to proceed to a final hearing.

Some things to note:

- A Protection Order application under the DVFPA is a civil matter. This will not result in a criminal record, unless you are convicted of contravening an existing Protection Order;
- At a final hearing, the Magistrate will make 'findings' as to whether or not alleged incidents of domestic violence occurred. This is on the balance of probabilities or what is 'more likely than not' to have happened. If you consent to a Protection Order without making admissions then the Magistrate does not make any findings as to the allegations;
- If a Protection Order is made and parties have children together and dependent on whether or not there are existing Parenting Orders, the Magistrate can make certain exceptions to facilitate time between parents.

You should always seek legal advice as to your own particular circumstances. Contact TASC to make an appointment to see a solicitor.

This factsheet is for general information purposes only. You should seek independent legal advice in respect to your specific circumstances.

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