

HARRINGTON FAMILY LAWYERS



Domestic Violence

Obtaining a Protection Order

“Each time we face our fear, we gain strength, courage, and confidence in the doing.”

Obtaining a protection order is not a means in itself, but one of a series of steps to increase safety. It should **never** be considered on its own- as this may put your safety and that of your children in jeopardy. In the right type of case, it can be obtained urgently. Ordinarily a final order lasts for two years, but can be made in special cases for a greater period. An urgent variation of an existing order can also be made in the right type of case.

There are 3 elements to prove:

I. THE RELATIONSHIP

You need to show that your relationship with the respondent was one of the following four relationships. If it was not one of these, then you cannot obtain a protection order.

They are:

Spousal

This includes married, de facto, divorced and parents of a child. It includes gay and lesbian relationships if the parties lived in a de facto relationship.

Intimate personal

This includes some dating relationships. The key here is that the parties must by some means have been “enmeshed”. If there were no enmeshment then that is insufficient.

Family

If you are related to someone you may be covered. However, this one can be tricky. For example, there is an exemption against children by their parents when the children are under 18.

Informal care

When one party is providing informal care to the other, for example, their aging parent or an incapacitated friend, then the relationship is covered. However, again this can be tricky.

2. ACTS OF DOMESTIC VIOLENCE

You then need to show that there has been at least one act or a series of acts of domestic violence. "Domestic violence" is by the respondent towards you (in other words not your children or others) of the following behaviour:

- Wilful injury
- Wilful damage to your property
- Harassment or intimidation
- Indecent act without consent

Threat to commit any of these

It is vitally important that your application for a protection order, together with any supporting affidavit, details as much as possible of the domestic violence. To do otherwise could mean not obtaining the protection order, and any possible impact on other court proceedings, such as the Family Court.

It is also essential that any witnesses be interviewed, and those who may be in a position to produce documents (such as doctors, hospitals, police, Department of Child Safety, Telstra etc) then produce those documents, so as to assist your case.

If you do not show that there has been domestic violence, or sufficient domestic violence, you will not obtain an order.

3. FURTHER ACTS OF DOMESTIC VIOLENCE LIKELY

It then has to be shown that further acts are likely, or in the case of a threat, that the threat is likely to be carried out.

Only once this step has been established can a protection order be made. All of these steps are proven on the civil standard of balance of probabilities i.e it is more probable than not that these events occurred, as opposed to the criminal standard of beyond reasonable doubt.

ADDING PEOPLE

You have an obligation to tell the court about any other court proceedings in place between you and the respondent or that may impact on these court proceedings, for example as to children's matters.

To have others named on the order and therefore the subject of protection, you need to show (and therefore lead evidence to prove) that they have been subject to **or** are likely to be subject to associated domestic violence from the respondent. This means:

- Wilful injury
- Wilful damage to their property
- Harassment or intimidation

Threat to commit any of the above

ADDING CONDITIONS

Usually you will need more conditions than the standard ones. We will discuss with you as to what conditions best suit you. The court can order that the respondent be ousted from the home, and can order **anything** that it considers *necessary* and *desirable*. This gives it huge power to make an appropriate order.

COSTS

If your application is dismissed because it is:

- Malicious;
 - Vexatious;
 - Frivolous; or
- Deliberately false;

then the court can make an order for costs against you.

COMMON MISTAKES

People assume that protection orders are easy to obtain. They may be – if the other side do not turn up or agree. However, in an increasing number of cases they are disputed, and in those cases, if there is a skilful opponent (either the respondent or a lawyer) they may be quite difficult to obtain if the groundwork in preparation of the application for court and in going to court has not been laid.

Harrington Family Lawyers pride ourselves on our accurate advice to clients. This brochure is of a general nature only, and may not reflect your specific needs. For specific advice in your matter, you should contact us, so as to ensure that the advice for you is accurate.

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