



## Breach of domestic violence orders when encouraged by the aggrieved

Author: [Craig Pratt](#)

Email: [cpratt@gnl.com.au](mailto:cpratt@gnl.com.au)

Phone: 0413 593 401

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Whilst final [domestic violence orders](#) or temporary protection orders are not criminal matters in the State of Queensland, prosecution for a contravention of either of those is a criminal offence. At times, persons subject to a domestic violence order may be invited or encouraged to visit aggrieved parties to the order, for example, an ex-partner. In this article, we pose the question, “Is it a defence if the aggrieved invites me to breach a domestic violence order?”

### Breach of domestic violence orders is a serious criminal offence

[Breaches of domestic violence orders](#) are charged by the Queensland Police Service and are offences that can carry terms of imprisonment. All breaches, no matter how minor they may seem, are treated particularly seriously by the police and Courts in Queensland.

Often, police officers will tell persons involved in a breach that this is a “technical breach”. This means that the breach is of a limited nature, for example, around text messaging or inadvertent contact with the person in contravention of the order. Despite this seemingly technical nature of the breach, those breaches will still nonetheless be pursued and brought before the court.

It is in very rare circumstances where matters will be negotiated between defence solicitors and the police prosecution successfully resulting in some form of reduction or withdrawal of the charge.

### What if an aggrieved party encourages a breach of domestic violence orders?

An interesting provision under the domestic violence legislation is section 180 of the *Domestic Violence Act* ("the Act"), which allows an aggrieved person to be involved in or encourage the contravention of a domestic violence order but not to be pursued for criminal charges themselves.

Section 180 creates an immunity against prosecution for an aggrieved if they have involved themselves in enabling the contravention to occur. This is at odds with many other criminal law circumstances where being an accessory to a crime ("aiding and abetting") can result in criminal charges.

## Consider this scenario

- There is a domestic violence order in place which prevents a respondent from approaching a location where the aggrieved or named persons live.
- In this scenario, the aggrieved person is the former partner of the respondent and mother of their children.
- Despite the order, the former partner invites the respondent to the home to visit the children, and the respondent attends.
- As soon as the respondent enters the home, they are in breach of the domestic violence order despite having been invited to the property by the aggrieved.
- Under s180 of the Act, there is, in this situation, no punishment or sanction for the aggrieved (the former partner) in what could be thought to be coercion of the other person to breach the order.

This breach scenario commonly occurs in circumstances where a respondent has been ousted from the family home, and the children are named persons on the order and they remain living as the residence with the aggrieved.

Understandably, a respondent who has been ousted from their former family home and stopped from interacting with their former partner and their children will readily accept an invitation from their former partner to return to the home to see the children despite that being a contravention of the domestic violence order. This type of visit, to see the children, is not permitted unless exceptions to the conditions on the order permit such attendance.

Section 180 is acknowledged as being a means of encouraging victims of domestic violence to report breaches without the intent of being pursued themselves for procuring, aiding, or counselling a breach (DFVP Bill 2011, p25). The stated intent of the law was that where a person is prosecuted for a breach in circumstances where the aggrieved has encouraged the conduct, "*The complicity of the aggrieved in the breach could be used to mitigate their sentence*" (DVFP Bill, p26) or provide a defence for the respondent to the order.

The reality, however, is that such complicity is rarely reflected in police facts or accepted by the Courts as mitigation when sentencing. The position is that respondents are told not to breach and when they do, the police frequently charge them regardless of the actions of the aggrieved.

Respondents should be sure that, when domestic violence orders are made which include "no contact conditions", they seek exceptions enabling contact with written consent of the aggrieved or ensuring that Court orders permit such contact or attendance. Without such exceptions, breaches, even those encouraged by the aggrieved, are more than likely to be prosecuted in Queensland

Courts.

## Get help from a domestic violence lawyer

If you have domestic violence orders in place and you're looking to make contact with parties to the order where the order prohibits such contact, it is crucial you seek legal advice from a lawyer experienced in domestic violence matters. We can advise you on all aspects of seeking amendments to your domestic violence orders.

### Contacting Gilshenan &Luton

[07 3361 0222](tel:0733610222) (24/7)

[gnl@gnl.com.au](mailto:gnl@gnl.com.au)

## *Important information about Queensland's domestic violence legislation*

*Queensland's domestic violence legislation has been undertaking a period of significant change recently, and we expect that to continue for the foreseeable future. The contents of this article were current at the time it was prepared and will be monitored and updated from time to time in the future. If you have a domestic violence matter however, you should contact an experienced domestic violence lawyer, rather than rely on the contents of this article.*

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*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*