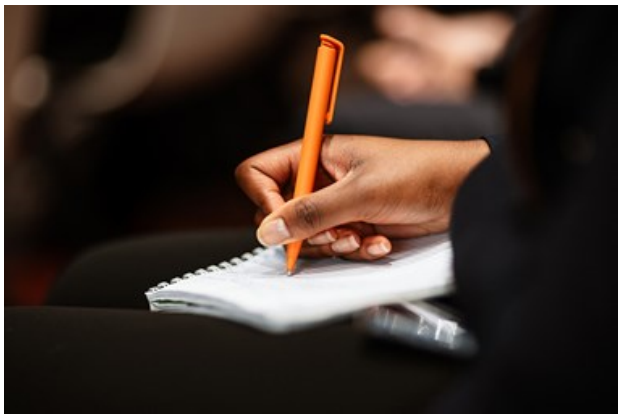
GILSHENAN & LUTON
LEGAL PRACTICE



Are my domestic violence proceedings confidential?

Date: Monday June 12, 2023

Many people are surprised to hear that domestic violence proceedings in Queensland are conducted in a strikingly different manner to criminal proceedings. Domestic violence proceedings are civil matters, not criminal matters (although a breach of a domestic violence order is a criminal offence and is dealt with criminally).

Domestic violence proceedings have a real focus on confidentiality of the parties. This is in recognition that domestic violence proceedings usually contain highly sensitive and personal information.

There are many ways that this confidentiality manifests. We outline some of those protective measures below.

Domestic violence matters are held in closed court

As a general rule, courts must be open to the public to ensure transparency and accountability. The majority of criminal and civil courts in Queensland, for example, are open and accessible to the public at any time.

Domestic violence courts, however, are strictly closed to the public. Whilst some courts will allow legal practitioners to be present in the public gallery whilst domestic violence matters are being heard, no members of the public (including media and journalists) can be in the courtroom unless they are a party to the proceeding.

If you find yourself before a domestic violence courtroom, the only people present will be:

- the Magistrate or judicial officer;
- the aggrieved, respondent and applicant;
- legal representatives for each party; and

- a support person for each party, if applicable.

In fact, when a criminal matter is heard that involves domestic violence allegations, the criminal court will often be closed to the public. Often this extends to the publication of criminal caselaw with pseudonyms so as to not identify the parties.

Non-publication obligations in domestic violence proceedings

Consistent with the principles outlined above, the *Domestic and Family Violence Protection Act 2012* ("the Act") contains a number of prohibitions on sharing information.

Section 159 of the Act prohibits publishing information given in a proceeding under the Act or information that identifies or is likely to identify a person who is:

- a party to a domestic violence proceeding;
- a witness in such a proceeding; or
- a child concerned in such a proceeding.

To *publish* means to publish **to the public** by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

This definition was worded in this way to ensure that the necessary communication of information related to proceedings is not hampered and to effectively balance the need to protect individuals from publication of highly sensitive and personal information and the need to facilitate the openness and accountability of the court. This definition was refined in the 2012 iteration of the Act; previously, the definition of "publish" was far broader.

There are a number of specific exceptions to this rule. However, they are not applicable in a practical sense to the individual party themselves. They deal mainly with the police and courts. There is also a prohibition on obtaining copies of any documents used or tendered in domestic violence proceedings, which is again caveated by the exceptions for police and courts, amongst others.

The maximum penalty for this offence is 100 penalty units or two years imprisonment for an individual or 1,000 penalty units for a corporation.

What to be wary of when discussing domestic violence proceedings

Previously, telling a friend about your domestic violence proceedings could conceivably be a breach of the Act. The new definition of publishing (meaning to publish to the public) provides some leeway.

However, parties to domestic violence proceedings, whether you are the aggrieved or respondent, should still be wary of these provisions and ensure that they are not, or are not seen to be, publishing information to the public.

Examples of this could include, but are not limited to:

- distributing documents from, or anecdotes of, your domestic violence proceedings in an email to friends or associates;
- publishing a document from, or anecdotes of, your domestic violence proceedings on social media; and
- circulating a copy of your domestic violence order or related documents in your workplace or other public space.

Respondents to domestic violence orders should also be wary that any of the above may also be considered a breach of the order itself, in that it may constitute you not being of good behaviour and not committing domestic violence against the aggrieved (as is the standard condition in all domestic violence orders).

However, it is important to note that these non-publication provisions do not prohibit parties to domestic violence proceedings (whether the aggrieved or respondent) seeking professional assistance, including medical treatment like counselling or trauma assistance.

If you think that you or a party to your domestic violence proceeding may have breached the Act or breached an order, you should seek urgent legal advice.

Speak with a criminal lawyer: 07 3361 0222 (24/7)

Domestic violence orders against you are not disclosable

Another facet of confidentiality in domestic violence proceedings is that a domestic violence order against you is usually not disclosable. There are a few instances in which you are compelled to disclose that an order has been made against you.

There is a common misconception that it forms part of your criminal history. In fact, domestic violence proceedings are civil in nature.

Instances where you may be required to disclose an order against you include, but are not limited to:

- applications for a visa;
- applications for a weapons licence;
- applications for a blue card; and
- some employment applications, depending on the specific wording.

If you have any questions about your obligation to disclose an order against you, you should seek legal advice.

Speak with a criminal lawyer: 07 3361 0222 (24/7)

Get help from a domestic violence lawyer

Domestic violence proceedings are heard in a manner designed to protect the interests of parties involved whilst still facilitating the accountability of Queensland courts.

You should seek urgent legal advice if you are concerned about:

- your privacy in domestic violence proceedings;
- publication of information or documents related to your domestic violence proceedings; and/or
- your obligation to disclose information related to your domestic violence proceedings.

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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.