

## FACT SHEET

- ▶ Where there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their own protection, the person who is most in need of protection in the relationship should be identified by the Court and only 1 domestic violence order protecting that person should be in force unless, in exceptional circumstances, there is clear evidence that each of the persons in the relationship is in need of protection from the other.
- ▶ When the court is determining who is most in need of protection (see new s22A of DFVPA) they will consider if one of the party's behaviour towards the second person is, more likely than not—
  - ▷ for the first person's self-protection or the protection of a child of the first person, another person or an animal (including a pet); or
  - ▷ in retaliation to the second person's behaviour towards the first person, a child of the first person, another person or an animal (including a pet); or
  - ▷ attributable to the cumulative effect of the second person's domestic violence towards the first person.
- ▶ When there are two applications before the Court and they determine who is most in need of protection, the Court must dismiss the other application, or if it is an application to vary the protection order against the person most in need of protection, the Court must vary the order to end immediately.
- ▶ Domestic violence is now recognised as not only a discrete act but can be a pattern that:
  - ▷ may occur over a period of time; and
  - ▷ may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and
  - ▷ is to be considered in the context of the relationship between the first person and the second person as a whole.
- ▶ Stalking in both the DFVPA and the Criminal Code is now recognized as 'stalking, intimidation, harassment or abuse'
- ▶ The Police must now file or hand up copies of a respondent's criminal and domestic violence histories, or let the Court know if that person does not have history.

- ▶ The Court must consider the criminal and DV histories when deciding if a final protection order is necessary or desirable to protect the aggrieved from DV and may consider the histories when deciding whether to make a temporary protection order.
- ▶ The Court can make an order restricting an aggrieved's access to all or some of the criminal/DV histories.
- ▶ Engaging in systems abuse by bringing an application in which a person intentionally misuses the legal system as a further act or pattern of domestic violence is another reason that a Court can dismiss the application and make a costs order against that party - this includes by starting court proceedings based on false allegations against another person, as a way to intentionally exert control or dominance over the other person or to torment, intimidate or harass the other person
- ▶ The Court can make a substituted service order for a document that must be personally served on a respondent by a police officer (such as an application or order) and the Court is satisfied that—
  - ▷ reasonable attempts have been made to personally serve the document on the respondent; and
  - ▷ serving the document in another way is—
    - > necessary or desirable to protect the aggrieved; and
    - > reasonably likely to bring the document to the attention of the respondent.
- ▶ A respondent has 28 days to apply to reopen a proceeding if an order was made against them and the application was served on the respondent under a substituted service order; and the application was not, and could not reasonably have been, brought to the respondent's attention, despite being served in a way stated in the substituted service order; and the respondent was not present in court when the application was heard and decided.

**If you have any questions about the new amendments, call the North Queensland Women's Legal Service for more information.**