

## Domestic & Family Violence Protection Act 2012

### ***Preamble***

A preamble describes the context in which a law is enacted. In this case, the preamble (Table 1) provides an opportunity for the Queensland Parliament to make a clear statement that domestic and family violence is a violation of human rights and is not acceptable in Queensland communities.

The preamble recognises the approach to domestic and family violence in Queensland in the context of the State's relevant international obligations, contemporary social values and human rights. It identifies the nature, dynamics and impacts of domestic and family violence and makes it clear that the civil responses set out in the Act should operate with (and not instead of) the criminal law responses.

The preamble also recognises that domestic violence is predominantly perpetrated by men against women although anyone (regardless of their gender) can be a victim or perpetrator of domestic violence. The provisions of the legislation are gender-neutral and will be applied on a case-by-case basis where a court determines that there is a need for protection.

### *Domestic and Family Violence Protection Act 2012, Preamble*

In enacting this Act, the Parliament of Queensland recognises the following -

1. Australia is a party to the following instruments -
  - Universal Declaration of Human Rights
  - United Nations Declaration on the Elimination of Violence Against Women
  - United Nations Convention on the Rights of the Child
  - United Nations Principles for Older Persons.
2. Living free from violence is a human right and fundamental social value.
3. Domestic violence is a violation of human rights that is not acceptable in any community or culture and traditional or cultural practices cannot be relied upon to minimise or excuse domestic violence.
4. Domestic violence is often an overt or subtle expression of a power imbalance, resulting in one person living in fear of another, and usually involves an ongoing pattern of abuse over a period of time.
5. Domestic violence can have serious impacts on people who experience it, including physical, emotional and psychological harm, and can result in death.
6. Perpetrators of domestic violence are solely responsible for their use of violence and its impacts on other people.
7. Domestic violence is most often perpetrated by men against women with whom they are in an intimate partner relationship and their children; however, anyone can be a victim or perpetrator of domestic violence.
8. Domestic violence is a leading cause of homelessness for women and children.
9. Children who are exposed to domestic violence can experience serious physical, psychological and emotional harm.
10. Behaviour that constitutes domestic violence can also constitute a criminal offence.

## **Principles**

Section 4 of the Act sets out a number of principles to guide those who are involved in the administration of the legislation – including the courts, police officers, and lawyers.

The principles are also referred to in some of the operational provisions in the Act. For example, section 37 provides that a court must consider the principles in section 4 when it is deciding whether a protection order is necessary or desirable to protect an aggrieved from domestic violence. The principles therefore play an important role in assisting courts in their determinations. However, the principles are not intended to set out additional evidentiary matters that must be established by the parties to proceedings.

The principles also provide that any response to domestic violence should take account of any characteristics that may make a person more vulnerable to domestic violence. A list of examples of people who may be particularly vulnerable to domestic violence is provided within the legislation and includes women, children, and people with a disability. This section is intended to recognise that some people are more likely to be victims of domestic violence. This should be borne in mind when (for example) police officers are investigating an incident, or courts are considering an application.

This section also aims to ensure that any processes under the legislation which involve a person mentioned in this sub-section should take into account their particular vulnerability. For example, where a person from a culturally or linguistically diverse background is involved in proceedings, a court should consider its obligations under section 84 (Court to ensure respondent and aggrieved understand Domestic Violence Order). This may include arranging for an interpreter or providing explanatory notes to assist the person during proceedings if the court considers this appropriate.

### *Domestic and Family Violence Protection Act 2012, Section 4: Principles for administering Act*

1. This Act is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.
2. Subject to subsection (1), this Act is also to be administered under the following principles –
  - a. people who fear or experience domestic violence, including children, should be **treated with respect** and disruption to their lives minimised;
  - b. perpetrators of domestic violence should be **held accountable** for their use of violence and its impact on other people and, if possible, provided with an opportunity to change;
  - c. if people have **characteristics that may make them particularly vulnerable** to domestic violence, any response to the domestic violence should take account of those characteristics; Examples of people who may be particularly vulnerable to domestic violence: women; children; Aboriginal people and Torres Strait Islanders; people from a culturally or linguistically diverse background; people with a disability; people who are lesbian, gay, bisexual, transgender or intersex; elderly people.
  - d. in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, **the person who is most in need of protection should be identified**;
  - e. a civil response under this Act should operate **in conjunction with**, not instead of, the **criminal law**.



DOMESTIC  
VIOLENCE  
ACTION  
CENTRE