



Violence and Criminal Charges

A criminal charge is where a person is charged with committing a criminal offence. The only people who can charge a person with a criminal offence are the police. If you are the victim of a criminal offence, you can make a complaint to the police and request that charges be laid. The police will require a statement from you and any witness about what has happened. The police are sometimes more willing to press charges if there is physical evidence and/or witnesses, that is, people who are prepared to come forward and give evidence about what happened.

From the time of making your complaint, you will not have control over the steps the police may take. If the police do not consider that they can gather enough evidence to prove that the offence took place, they may not proceed with the charges (although this does not mean they do not believe you). Even if you wish to withdraw your complaint at a later stage, the police can still decide to proceed with charging and prosecuting the perpetrator. If police proceed with the charges, you are likely to be required to give evidence in court at the hearing. In this event, you should seek legal advice.

What types of charges can be made?

BREACH OF A PROTECTION ORDER

While the existence of a Protection Order (also known as a domestic violence order or DVO) is not a criminal charge, if a person who is the respondent to a DVO disobeys the conditions of the DVO (called breaching the order) they can be charged with the criminal offence of Breach of a Protection Order. Police have a duty to investigate if a report of a breach is made. For more information on DVOs see our Domestic Violence Information Sheet.

ASSAULT

There are a number of different types of offences that fall into the category of assault. Common assault is any actual or *threatened* force used against another person without their consent. Assault occasioning bodily harm is any assault that causes your injury even if it is minor or superficial, or psychiatric.

RAPE

The legal definition of rape is complex. The starting definition of rape is the committing of carnal knowledge of another person without their consent.

The definition of carnal knowledge is penetration, with a penis, of the vagina, vulva, anus or any other part of a person's body including the mouth. Rape also includes if the penetration occurs using any other part of a person's body (i.e. fingers) and/or a foreign object. For a person to be charged with rape it must be established that the act occurred without consent.

Consent must be freely and voluntarily given, and the person consenting must be able to understand the nature and effect of consent. It is not considered consent if it is obtained by force, intimidation or deception. A husband or wife (as well as de facto partners) can be charged with raping his spouse (or partner, as the case may be).

SEXUAL OFFENCES OTHER THAN RAPE

There are a number of different offences of a sexual nature with which a person can be charged other than rape. These include attempt to commit rape, assault with intent to commit rape and sexual assault offences. Sexual assault offences are offences where someone might unlawfully or indecently assault a person or commit an act of gross indecency without the person's consent. Seek advice if you feel you may have been assaulted in this way.

The types of behaviours covered include indecent assault which can include touching of a sexual nature without consent.

NON-LETHAL STRANGULATION

In May 2016 a new offence of non-lethal strangulation in a domestic setting was introduced in Queensland. If you have been choked, suffocated or strangled by someone who you are or have been in a domestic relationship with, police can charge with this offence. It is very important to note that if you have been choked, strangled or suffocated you should seek IMMEDIATE medical treatment, as it can cause long term damage to the brain, including blood clots and stroke.

SHARING INTIMATE IMAGES WITHOUT CONSENT

It is a crime in Queensland to share an intimate image of someone without their consent in a way that could cause distress to the other person.

Even if you consented to the image being taken, if you did not consent to it being shared, the act of sharing is illegal. Threats to share an intimate image without consent are also illegal, even if the image doesn't actually exist. The threat can be made to the person who the image is of, or to another person. A person under 16 cannot legally give consent.

STALKING

If you are being harassed, followed, spied upon, intimidated or threatened by someone even if you have never met them or dated them, then you are being stalked. In Queensland stalking is a criminal offence and it is therefore a matter for the police to investigate and lay charges of unlawful stalking where appropriate.

Stalking covers a whole range of behaviours not limited to, but including: following someone; contacting someone persistently by telephone/mail/fax or e-mail; loitering near, watching, approaching or entering a place where someone lives, works or visits; any intimidating, harassing or threatening act (whether or not it involves violence or a threat of violence), and/or an actual act of violence or a threat of violence against the person being stalked (or against their property).

For the behaviour to be considered unlawful stalking:

- The stalking behaviour must have occurred on at least two separate occasions or on one occasion for a prolonged period of time.
- The acts of stalking must be intentionally directed at the person who is being stalked.
- The stalker's behaviour causes apprehension fear or harm, and the victim believes that an act of violence could occur against them, their property or someone close to them such as a child, friend or relative; or the stalker's behaviour causes detriment to the person being stalked or to another person.
- Detriment includes serious mental, psychological or emotional harm. It also includes serious impacts on your life such as being prevented or hindered from doing something you normally do, for example, changing your route to work.
- If convicted of stalking a person can face up to seven years in jail. It is also possible for the police to ask the court to grant a restraining order against the accused person, whether they are found guilty of stalking or not.
- If you are or have been in a relationship with the stalker (or the stalker is a family member or someone that you have an informal care relationship with) then you may be able to get a domestic violence protection order under the Domestic and Family Violence Protection Act 2012.
 - See our *Domestic violence* information sheet for further details.
 - Stalking is a matter to report to the police for investigation. You should report the matter to police as soon as you become aware that you are being stalked. If you face difficulties in getting the police to take action for stalking, ask to speak to a more senior police officer or contact a solicitor or community legal centre for advice.

Can I get compensation for my injuries?

If you have been a victim of a crime, including domestic and family violence, you may be able to access financial assistance as well as coordinated support services from Victims Assist Queensland and associated services.

The scheme focuses on victim recovery by paying for, or reimbursing the costs of goods and services that the victim requires to help them recover from the physical and psychological effects of an act of violence. In most cases the act of violence needs to be reported to the police.

Financial assistance can be provided to eligible victims to cover:

- Counselling expenses.
- Medical and dental expenses.
- Reasonable incidental travel expenses.
- Immediate expenses related to the act of violence, called interim assistance.
- Loss of earnings.
- Damage to clothing.
- Funeral expenses.
- Up to \$500 for legal assistance when submitting your application.
- In exceptional circumstances, other reasonable costs related to the recovery of the victim.

There are different categories of victims and a range of assistance available. More information can be provided by Victims Assist: (www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/financial-assistance),
Phone: 1300 546 587.

There are time limits for applying for assistance and in most cases this will be three years from the act of violence occurring.

The scheme does not replace personal injuries claims for damages in relation to a physical or sexual assault. The time limit for bringing a personal injury claim in Queensland is three years from the date of the injury, or in some cases, when the extent of the injuries sustained become apparent. If you were under 18 years of age at the time of the injury, the time limit for bringing a claim is three years from when you turn 18. If the three-year period has already passed, a claim may still be made in very limited circumstances. If you have a potential claim, it is strongly advisable that you seek legal advice from a personal injuries specialist as soon as possible.

If you have suffered injuries as a result of domestic violence in limited circumstances it may be relevant in proceedings for a property settlement in the family law context. Please consult a lawyer at either a community legal centre, Legal Aid or a private solicitor.