



Family violence intervention order applications

For respondents

August 2018

This fact sheet will help you understand:

- what an intervention order is
- why you need to see a lawyer, and how they can help
- what might happen at court.

You might be at an appointment or seeing a **duty lawyer** at court. At times you have to wait to speak to a lawyer, because they are helping other people, but they will see you as soon as they can.

If you do not understand the forms you were given, or anything about your situation, ask your lawyer. Lawyers understand that court can be stressful.

What do these words mean?

affected family member – these are the family members named in the application or safety notice. Also called a protected person, if an order is made

applicant – the person asking for the order. It can be your family member or someone else, like a police officer

contested hearing – when you do not agree to an order and the court hears evidence from both sides and then decides

duty lawyer – a lawyer from Victoria Legal Aid or a community legal centre who can give people free legal advice at court

family violence – this is behaviour by someone to a family member that includes being violent, abusive and causing fear. It includes physical, sexual, emotional, verbal, social and/or financial violence. It can also include damage to property, and harassment

family violence intervention order – a court order that has rules about how you can behave, to protect your family members and their property. For example, it might say that you are not to threaten them. You must follow the rules exactly. If you break the order it is serious and the police can charge you

respondent – this is you

protection, or the police can apply. The court gives protection by making a **family violence intervention order**.

How you got here depends on your situation. Every situation is different. The police may have given you a family violence safety notice. Or you might have been given:

- a summons or bail undertaking (these are notices to come to court)
- an application (which sets out what the violence was and the order the **applicant** wants)
- an interim (temporary) intervention order.

Why might the police be involved?

If a report of family violence is made to police, they must investigate and look at the risk to your family member's safety. If there is a risk the police must act, even if the family member does not want them to. It is a police decision. Whether an intervention order is made is the court's decision.

The police have a duty to protect people if they are at risk of physical and emotional harm from family violence, especially children.

What are my choices?

You can:

- agree to an intervention order being made
- argue against all or parts (conditions) of the order
- in some situations, offer an undertaking instead of an order.

Why do I need to go to court?

You might be at court or going to court because there has been a report of **family violence** by you against your family member. The law says family violence is wrong and everyone has a right to feel safe. Your family member can ask the court for

You can ask your lawyer what all of these things mean. It is important to be clear about what you are agreeing to. So, even if you want court to be over and do not want to argue against the order you should talk to your lawyer. Your lawyer may be able to talk to the applicant or their lawyer for you.

What happens if I agree to an order?

You can tell the court that you agree to an intervention order being made, but do not agree with what is said about you in the application. This is called consent without admissions. The court can still make an order without deciding whether you did those things or not. Depending on which court you are at, the magistrate may also order you to have counselling.

An intervention order does not give you a criminal record but being found guilty of breaking the order can. If you are found guilty you could pay a heavy fine or even go to jail.

If an order is made it affects your behaviour, but not all of your rights. You can still ask for family law orders about children and property.

Because an order does affect some of your rights **you should really see a lawyer** if:

- there are children involved, because the order can have rules about how you see or care for them
- you disagree with any of the conditions, for example, one that stops you from living at your home
- you have any reason for having a gun or other weapon, for example you carry one in your work, because the order can ban you from having one for the term of the order and for five years after that.

What if I'm under 18?

If you are under 18, the court must make sure you have appropriate accommodation, care and supervision before making a condition that you must leave your home.

It is very important you get legal advice if someone applies for an intervention order against you. You can ask to speak with a free lawyer when you go to court.

What if I don't agree with an order?

If you want to argue against the order this will not happen on the first date at court. If you do not agree with the application the court will list it for a **contested hearing**. The court may hold a directions hearing on a different date. This hearing is where the court asks for more details about the application and what you say about it. You must go to court on any date your case is listed.

If the application is listed on another court date it is very likely that any temporary (interim) order the court makes will continue until the next court date. It is a crime if you break this order or a safety notice and the police can charge you with a criminal offence. The court treats breaking a temporary order or safety notice as seriously as breaking a final order. If you are found guilty of breaking an order or safety notice, the court could give you a large fine or time in jail.

As of 25 November 2017, any current intervention order made in Victoria (even if it was made before 25 November 2017) is recognised in all other states and territories in Australia. If you or your affected family member move interstate, the police in that state must enforce the order. You can be charged if you break an order, regardless of where it was made.

What happens at a contested hearing?

If you do not agree to the order, the magistrate can only make a final order if they have heard evidence and believe it is more likely than not that:

- there has been family violence by you towards your family member and
- it is likely to continue, so an order is needed to protect your family member.

Usually this means the **affected family member** telling their story in court.

Your family member may have a lawyer. If you want to be able to test your family member's story you will need a lawyer too. If you do not have a lawyer, the court can order Victoria Legal Aid to arrange a lawyer for you for the hearing. You need to fill out a Legal Aid form. You may not have to pay. If you refuse a lawyer you may not be able to ask questions of your family member about what they say in their application and you may not be able to tell your side of what happened or call witnesses.

Can an order be changed or cancelled?

An intervention order is a court order. Only a magistrate can change or end the order. Your family member cannot end or change the order and they cannot give you permission to break a condition. If you want to change or end your order, you must get permission from a magistrate first.

A lawyer can give you more information about your options and help you work out what you need to organise. If you are not sure, just ask.

Victoria Legal Aid

Legal Help

Tel: 1300 792 387

Monday to Friday, 8.45 am to 5.15 pm

www.legalaid.vic.gov.au

Federation of Community Legal Centres

Call to find a community legal centre near you

Tel: (03) 9652 1500

www.fclc.org.au

Law Institute of Victoria

Referral to a private lawyer

Tel: (03) 9607 9550

www.liv.asn.au/referral

Men's Referral Service

Tel: 1300 766 491

www.ntv.org.au

Translating and Interpreting Service

Tel: 131 450

National Relay Service

TTY: 133 677 or Speak and listen: 1300 555 727

See www.relayservice.com.au for more information.