

# Family Violence

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## **What is a Family Violence Intervention Order?**

A Family Violence Intervention Order (FVIO or intervention order) is a court order to protect you and your children from a family member who is behaving, and is likely to continue to behave, in a way that is violent, abusive or threatening.

You may have heard this type of order called a “restraining” order.

## **Who is a “family member”?**

The phrase “family member” means anyone with whom you have a family relationship, including your partner, ex-partner, children, parents or other relatives.

As we don’t know which applies in your case, we call the family member in your case the “other party” in this legal information fact sheet.

At court the other party will be called the “Respondent”.

## **Do threats and verbal abuse count as “violence”?**

Yes.

“Family violence” includes hitting you or pushing you, threatening to hurt you, forcing you to have sex, calling you names or making you feel worthless. It includes controlling your access to money, who you see and what you do. It also includes making you feel scared or unsafe.

## **What if no one has seen how the other party is behaving towards me?**

You do not have to be able to produce evidence from other people about what has been happening to you.

If you have received abusive or threatening SMS or emails from the other party, or have photos of your injuries, bring copies to court to show the magistrate.

You will be able to tell your own story in court. You will give sworn evidence to the magistrate about what has been going on.

## **Can I stay in the house or do I have to leave?**

If you apply for an intervention order, the magistrate can include an order that the other party leaves the house, so that you can stay there. This order can be made even if the other party is the legal owner or tenant of the house.

The most important thing is to make sure that you, and your children, are safe. If you do not feel safe staying in the same house as the other party, even if he has left, then you should consider leaving, at least temporarily. You may be able to stay with family or friends, at least until an intervention order has been made.

If you do not feel safe to stay in your home, and have nowhere else to go, you may be able to go to a refuge. You should call the Women’s Domestic Violence Crisis Service which offers a 24 hour crisis support service and can assist with a referral to safe accommodation.

## **I need protection straight away. What should I do?**

Call 000 for police assistance. The police should help to resolve the immediate problem, and may apply for an intervention order on your behalf. The police may advise you to apply for an intervention order yourself.

If the police attend at an incident outside of normal work hours, and believe you need immediate protection, they can issue a “family violence safety notice” (similar to an intervention order) which tells the other party to stay away from you. This operates as an application for an intervention order which will be dealt with by the court in normal work hours.

If you do not feel safe, you may need to leave your home, even if it is only for a short time.

You can call the Women’s Domestic Violence Crisis Service for assistance with finding emergency accommodation.

If the police do not apply for an intervention order for you, you can still go to your nearest Magistrates’ Court to apply for an intervention order to give you protection from the other party (see below).

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## **How do I apply for an intervention order?**

Telephone your nearest Magistrates' Court, and tell them that you need to apply for an intervention order. Your local Magistrates Court may require you to make an appointment or they may tell you that you can just come in straight away.

When you go to the Magistrates' Court, you will be given an application form to complete.

You will then have an interview with a registrar of the court – this is someone who works at the court and assists the magistrates. The registrar will go through the details of your application with you, and will type up your application for you. You must then sign your application.

When your application is complete, you may go into court to apply for an interim (temporary) intervention order. If not, you will be given a court date for when you have to come back to court.

You are known as the "Applicant" in the court proceedings. You may also be referred to as the "protected person" or an "affected family member".

## **What happens after I apply for an intervention order?**

If you need immediate protection, the magistrate may make an interim intervention order which lasts until your next court date.

A copy of your application (and any interim intervention order) will be "served on" (given to) the other party by the police. The other party will be told when they have to come to court.

You need to attend court on the date you were given when you filed your application. The first time you come back to court (after you have made your application) is usually for a "mention". This means that the magistrate will read through your application, may ask you some questions and will ask the other party if they agree to an order being made or not.

If the other party agrees, the magistrate can make a family violence intervention order on that day. If the other party does not agree, and wants to contest your application, a hearing or "contest" will be arranged at the court on a later date.

## **Does the other party need to know about my application?**

Yes.

When you make an application to court for an intervention order, the other party has to be given ("served with") a copy of your application. They have to know what you are saying about how they are behaving and the reasons why you need protection.

If you are worried about the other party's reaction to being served with your application, you should ask the magistrate to make an interim order when you apply for the intervention order. The interim order will then be in force at the time the other party receives a copy of your application.

## **Is the other party going to be at court?**

If the other party has been served with a copy of your application, then they should attend court on the "mention" hearing.

If the other party has not been served with your application by the date of the "mention" hearing, they may not know that they are supposed to attend court. In this case, the hearing may have to be put back to a later date.

## **What if I do not feel safe going to court when I know the other party will be there too?**

Tell the court beforehand if you do not feel safe when you attend court. They can arrange for you to wait in a separate area from the other party.

The court may also be able to organise court security to be in the court room with you. In some courts, you may be able to give evidence by video link so that you do not have to be in the courtroom with the other party. This needs to be arranged in advance.

## **Do I need a lawyer when I go to court?**

You do not have to have a lawyer to represent you on the first court date after you have made your application. At many courts there are duty lawyers available who can give you free legal advice at court. The duty lawyer may also be able to talk to the other

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party about your application and see if they will agree to an intervention order being made. They may also be able to assist you in court.

If you have to go back to court at a later date for a contested hearing, you may want to arrange for a lawyer to represent you at the hearing. Depending on your financial situation, this could be a lawyer paid for by Victoria Legal Aid or a lawyer to whom you will need to pay fees.

## **Can I have an interpreter at court?**

Yes.

Call the court in advance if you need an interpreter to assist you with your application for an intervention order. You should also tell the court registrar that you would like an interpreter for your court hearing.

## **How do I protect my child?**

Your child can be named on your family violence intervention order as an “affected family member”. Even if the other party has not been violent or abusive to them directly, they may still need protection if they have been exposed to the effects of the other party’s behaviour.

If your child is named on the intervention order, then they have the same level of protection as you do.

## **I have Family Court orders saying that my child has to spend time with the other party. What do I do?**

Orders made by the Family Court or the Federal Magistrates Court override a family violence intervention order made by the Magistrates’ Court. If you do not allow your children to spend time with the other party, then you may be in breach of the Family Court orders.

If possible, get some legal advice about how your Family Court orders will work if a family violence intervention order is in place or whether you need to vary your Family Court orders. This can happen at the same time as you apply for your intervention order.

You should bring a copy of your Family Court orders with you when you come to the Magistrates’ Court to apply for an intervention order.

## **The Police have applied for an intervention order for me. Do I have to have one?**

If the police came to assist you during or after an incident of family violence, they may apply for an intervention order on your behalf. If they do, it is because they believe that you need protection from the other party. It is then a police application and not your own application.

When the police have made an application for an intervention order, it is likely that the magistrate will make an order for your protection. You may be able to have only limited conditions in your order, which enable you to continue to have contact with the other party. You should obtain legal advice about the conditions included in your order.

## **Will the other party get a criminal record if I apply for an intervention order?**

No.

An intervention order is a civil order and the other party does not get a criminal record if an intervention order is made against them.

However, if the other party breaches an intervention order, that is a criminal offence. They may be arrested and charged for the breach. The maximum penalty for breaching an intervention order is up to two years jail and/or a fine of up to \$30,535.00.

## **How long does the intervention order last?**

The magistrate will decide how long your intervention order should last. Intervention orders commonly last 12 months but the magistrate may make it for a longer period if they think you need it.

If your intervention order is about to end, and you are concerned that the other party’s abusive or threatening behaviour will continue, you can go back to the Magistrates’ Court, and ask for your intervention order to be extended. You will have to tell (give evidence to) the magistrate about why you still need protection from the other party.

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## **Can I change my intervention order?**

While your intervention order is in force, you can apply to “vary” (change) the conditions of your order. There may be conditions in your order, which you no longer need, or you may need your order to contain more conditions so that you are properly protected.

## **I have got my intervention order. What do I do if the other party ignores it?**

If the other party does not keep to the terms of the order they will be in “breach” of the order.

For example, your order may say that the other party must not “contact you or communicate with you by any means”. If they then send you an SMS, email or call you on the telephone, they are in breach of the order.

You should report any and every breach of your intervention order to the police. The order will only protect you if you report breaches of the order to the police. The police will decide whether to charge the other party for breaching the order. The other party can be sent to prison or fined for breaching the conditions of an intervention order.

## **What support will I have at court?**

It will depend which court you are in. There may be a duty lawyer at court, and an interpreter (if you have notified the court that you need one).

There may also be a support worker who specialises in family violence, or a representative from the “Court Network”, a group which works at the court and provides information and support.

You may wish to bring a friend or family member with you for support.