

Family violence intervention order applications – seeing a lawyer

For respondents

July 2009

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 don't understand the forms you were given, or anything about your situation, ask your lawyer. Lawyers understand that court can be stressful.

What 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

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 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. If there was a report after hours 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.

Why do I need to see a duty lawyer?

Family violence is serious, and so are intervention orders. You do have the right to have a say about the order. You might not agree with all of the conditions, or you might not want an order at all. It is important that you understand what your options are. This is a legal process. Legal advice will help. You can also find out what other steps you might need to take, such as getting family law advice.

The court expects you to see a duty lawyer and will ask if you have had independent legal advice about the family violence application. Court may be delayed until both you and your family member have had independent legal advice.

If you cannot afford your own lawyer, you may be able to see a lawyer from Victoria Legal Aid or a community legal centre.

What is a conflict of interests?

A lawyer cannot represent you or give you legal advice if they have a conflict of interests. This might happen, for example, if another lawyer from the same organisation or firm has given legal advice to your family member before.

A lawyer, such as a duty lawyer, may still be able to give you general legal information and help you get legal services from another lawyer.

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.

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 respondent 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 five years or more.

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. But the court may have a directions hearing on this date. This hearing is where the court asks for more details about the application and what you say about it. If you do not agree with the application the court will list it for a **contested hearing**. 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 or safety notice will continue until then. If you break this order or notice this is a crime and the police can charge you. The court treats breaking a temporary order or safety notice as seriously as breaking a final order.

What happens at a contested hearing?

If you do not agree to the order, the magistrate can only make an 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 usually 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 tell your side of what happened or call witnesses.

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.

For legal help and more information call Victoria Legal Aid on 9269 0120 or 1800 677 402 (country callers) or visit your nearest office

www.legalaid.vic.gov.au

You can also order family violence publications online or call 9269 0223.