

# Family violence intervention order applications – seeing a lawyer

## For affected family members

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** – this is you, and other 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 you or someone else, like a police officer

**contested hearing** – when the respondent does 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 the respondent can behave, to protect you, your children and property. For example, it might say that they are not to threaten you. They must follow the rules exactly. If they break the order it is serious and the police can charge them

**respondent** – this is the person who has used family violence

### Why do I need to go to court?

You might be at or going to court because there has been a report that your family member has used **family violence** against you. The law says family violence is wrong and everyone has a right to feel safe. You 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 the **respondent** a family violence safety notice. Or they 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 may the police be involved?

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

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 lawyer?

Family violence is serious, and so are intervention orders. You have the right to have a say about the order, and the conditions in the order, and to get legal and other help. The respondent may disagree with an order being made or ask for different conditions. It is important that you understand what your options are. This is a legal process. Legal advice will help. The court will ask if you have seen a lawyer. Court may be delayed until both you and the respondent 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.

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### 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 should I tell the lawyer?

You should tell the court and the lawyer:

- if you feel unsafe or afraid at court, as special arrangements can be made
- if there are children involved, because the order can say how the respondent sees or cares for them
- what you need to happen to make you feel safe, for example, that the respondent is kept out of the home
- if you believe that the respondent may have a gun or another weapon because orders can be made that stop them having it.

### What can the respondent do about the intervention order application?

They 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. Your lawyer may be able to talk to the respondent or their lawyer for you.

### What happens if the respondent agrees to an order?

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

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

If an order is made it affects their behaviour, but not all of their rights. It does not change any rights they have to ask for family law orders about children and property. The lawyer can often help you negotiate with the respondent.

### What if the respondent wants to fight the order?

**Talk to the lawyer about what will happen and what to organise, such as legal help.**

If the respondent wants 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 the respondent says about it. If they do not agree with the application the court will list it for a **contested hearing**. You have to come back to court for the contested hearing. Ask the duty lawyer if you need to come back on any other dates.

It is very likely that any temporary (interim) order or safety notice will continue until the next court date. If the respondent breaks this order or notice this is a crime and the police can charge them. The court treats breaking a temporary order or safety notice as seriously as breaking a final order.

### What happens at a contested hearing?

If the respondent disagrees with the order, the court cannot make a final decision without hearing evidence. The court has to accept that there has been violence and that it is likely to continue. Usually this means you telling your story in court. This can be difficult, so you can ask for legal help and have other support.

The court can stop the respondent questioning you in court directly, unless you agree. If they have a lawyer, their lawyer can ask you questions.

The magistrate can order Victoria Legal Aid to pay for a lawyer for the respondent, and for you. If the respondent refuses a lawyer they may not be able to tell their side of what happened or call witnesses. You can have a lawyer too. You may be able to get a lawyer through Victoria Legal Aid. The lawyer you are seeing can help you fill in a Legal Aid form.

**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](http://www.legalaid.vic.gov.au)

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