

August 2018

Safe at home

How to get a family violence intervention order



This booklet is about family violence intervention orders. It can help you, or someone you know who has experienced violence at home

Produced by Victoria Legal Aid

570 Bourke Street Melbourne 3000

For help with legal problems, call Legal Help on 1300 792 387

For business queries, call (03) 9269 0234

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Disclaimer: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

Changes to the law

The law changes all the time. To check for changes you can:

- call Victoria Legal Aid's Legal Help 1300 792 387
- visit Victoria Legal Aid's website at www.legalaid.vic.gov.au.

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Victoria Legal Aid

Victoria Legal Aid is a government-funded agency set up to ensure that people who cannot afford to pay for a private lawyer can get help with their legal problems. We provide free information for all Victorians, family dispute resolution for disadvantaged families, provide lawyers on duty in most courts and tribunals in Victoria, and fund legal representation for people who meet our eligibility criteria. We help Victorian people with legal problems about criminal matters, family breakdown, child protection, family violence, child support, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

About this booklet

There are steps you can take to make sure you are safe in your family.

You might have heard about intervention orders. These orders can help protect you if you feel unsafe. This booklet is about **family violence intervention orders**, which cover **affected family members** and **family members**. It can help you, or can help you support someone you know who has experienced violence at home.

It explains what intervention orders are and how they work. It also explains what the law says about **family violence**. It will help you understand what your options are.

It looks at:

- how to apply for an intervention order at the Magistrates' Court of Victoria
- how to get ready for a court hearing
- what happens at court.

This booklet does not cover intervention orders where there is no family relationship.

You can get free help.

Get legal help before you go to court

Getting an intervention order is a legal process, so legal advice will help you understand your options. It is best to get legal advice before you go to court.

A lawyer can:

- give you advice about applying for an intervention order
- explain the law and your options
- help you prepare for the hearing
- speak for you at court
- help you understand what an order means
- help sort out any other legal issues, like family law.

Victoria Legal Aid can help you with free information and advice about family violence. You can speak to someone in English or ask for an interpreter. We have offices across Victoria that are open Monday to Friday from 8.45 am to 5.15 pm. Call 1300 792 387.

You can also go to your local community legal centre for free legal advice. Call the Federation of Community Legal Centres on (03) 9652 1500 to find the centre closest to you.

You can get more information about family violence intervention orders at the Victoria Legal Aid website.

See our other family violence and family law publications on our website. Some of these are in other languages.

Getting other help

Getting an intervention order can be stressful. Getting support makes a difference. See 'Where to get help' at page 27 for contact details for many services that can help you.

What do these words mean?

Court officials and lawyers use legal words when they talk. Some of these legal words are also used in this booklet. This is what they mean.

affected family member – this is you, and other family members named in the application for an intervention order or family violence safety notice. If an intervention order is made to protect you, you are then called a protected person

applicant – the person asking for the order. It can be you or someone else, like a police officer or parent

application – the form asking the court to make an intervention order. It will have information about you, your family member, your relationship, if you have any children, the family violence incident(s) and how you want to be protected

contested hearing – when your family member does not agree to an order and the court hears evidence from both sides and then makes a decision

contravention – when the court order or safety notice is not followed, when it is broken

criminal record – a police record of the crimes a person has been found guilty of

duty lawyer – a lawyer from Victoria Legal Aid or a community legal centre who can give people free legal advice at court. They can help explain your choices, give you information and refer you to other help

evidence – information used in court to support your story and help the magistrate make a decision

exclusion order – a part of an intervention order that stops your family member from being at your home

family violence – behaviour by your family member that includes being violent, abusive or causing you fear. It includes physical, sexual, emotional, verbal, social and/or financial violence. It can also include damage to property, and harassment. For your children, it includes seeing, hearing and being exposed to the violent behaviours

family member – anyone you have a family relationship with, including your partner, children, relatives and anyone you treat as family

family violence intervention order – a court order to protect you, your children and property that has rules about how your family member can behave. 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

magistrate – the name for the judge in the Magistrates' Court

registrar – a person who works at the court to support the magistrate

respondent – this is your family member, the person who has used family violence against you

serve – delivery of a court document to someone

summons – a court form that tells a person they must go to court

warrant – a court document authorising the police to arrest a person and hold them in custody. The police use this form to arrest your family member

Family violence and intervention orders

Introduction

In Australia the law says that everyone has the right to feel safe. You have the right not to be hurt, threatened, harassed or intimidated by anyone. This includes people in your family.

It does not matter how old you are, where you were born, live or what kind of relationship or family you are in.

If you do not feel safe you can get protection. Find someone you can trust, to talk to. This might be someone in your family, a friend, your doctor or someone in your community. You can get help to make a plan to keep you safe. This can include someone to call or somewhere to go if something goes wrong.

You can also go to the Magistrates' Court and ask for an order to protect you from violence by a **family member**. If the police are involved they can ask for an order for you. In Victoria this order is called a **family violence intervention order**.

Family violence affects everyone, including children. They have a right to feel safe too. You can take action to stop it. You can get free help.

What the law says about family violence

What is family violence?

Family violence is when your **family member** makes you feel unsafe and afraid. It can start with small things and get worse over time.

It includes:

- hitting you or pushing you around (physical abuse)
- threatening to hurt you, someone close to you, or your pet, or to damage your property
- forcing you to have sex (sexual abuse)
- calling you names, putting you down or stopping you from seeing family or friends (emotional or psychological abuse)
- controlling your money (financial abuse).

Children are badly affected by family violence. The law says that a child also suffers family violence if they:

- hear or see violence by a family member
- help a family member who has been hurt
- see damaged property in the family home
- are present when the police arrive after family violence has been reported.

The law says family violence is wrong and should stop.

Family violence may make you feel many different emotions: fear, shame, worry about the future, or confusion. You may also still love or care about the person who is being violent or threatening you. You might feel a sense of duty towards them.

Often these feelings make it hard to act to stop violence, but the most important thing is that you feel safe.

He has never hit me, but gets really angry and says he's going to hurt me. It's really scary. I don't feel safe in my own home.

You do not have to have a physical injury to be a victim of family violence. No one has the right to hurt or threaten you, not even if they are in your family.

What is a family violence intervention order?

A **family violence intervention order** helps to protect you from a family member who is violent to you. It is a court order, made by a **magistrate** in the Magistrates' Court. It is a tool you can use to help you stay safe.

It has conditions to stop the family member from behaving in a way that makes you feel unsafe. An order can also protect your children, your property or people supporting you. You have a say in what conditions will help you.

The two types of family violence intervention orders are:

- an interim order – a short-term order made until a magistrate can hear all the **evidence** and make a final decision
- a final order – a longer-term order made if a magistrate believes a family member has used family violence and is likely to do so again.

But I feel too ashamed to take out an intervention order. I don't want to embarrass my family.

There is no shame in protecting you and your family from violence. You have the right to do this. Remember it is violence that breaks up families, not your action to try to stop it.

What is a family member?

Under the family violence law, family member has a special meaning. A family member can be:

- someone you have an intimate personal relationship with, for example, your husband or your partner. Intimate means close, not whether you have sex
- your child or the child of a person you have a close personal relationship with
- a relative by birth, marriage or adoption, for example, your brother-in-law
- someone you treat like a family member, for example, a carer, guardian or someone related to you in your culture.

What should I think about before going to court?

Intervention orders are serious. Getting an order means going through a legal process and going to court. There are rules about what information the court must have before it can make a decision. Knowing this can help you prepare. You can get legal and other support to help get your order.

See 'Where to get help' at page 27.

If you are thinking about an intervention order, gather information. Keep a diary. Keep text, Facebook and voicemail messages, emails and letters. Take photos of injuries. This can help you remember what happened when you are telling people your story.

Other people may be able to support your story too. You may have witnesses who saw the family violence. The police may have been involved. You may have seen a doctor, who can tell the court about your injuries. You may have talked about the family violence with a social or community worker, friends or family.

How intervention orders work

How does an intervention order work?

The court makes an intervention order if it accepts that you need protection. The order has conditions that your **family member** must follow. If the order is followed, and is working, the court may not get involved again. Your family member will not get a **criminal record** because an order is made.

The police must investigate if your family member:

- breaks the conditions of the order
- acts violently towards you or damages your property, even if you do not have an order.

Your family member can get into serious trouble and be charged.

These are crimes, so if they are found guilty they could get a criminal record.

What does the intervention order say?

The order sets out conditions and things that your family member cannot do.

You can ask for the court to fit an intervention order to your situation. The court can also decide to add its own conditions.

The intervention order can also set out how your family member can have contact with your children. The order can protect your children, see 'How can children be protected' the next page.

A condition may also remove your family member from your home. This is called an **exclusion order**.

An intervention order can stop your family member from:

- hurting or threatening to hurt you
- behaving in an offensive manner towards you
- harassing, stalking or intimidating you
- coming near you, your home, school or where you work
- telephoning or contacting you
- damaging or threatening to damage your property
- getting someone else to hurt or threaten you or do any of the things in the order
- having a gun or other weapons.

What if I disagree with an order being made?

You may not be happy if the police apply for an order against your wishes, but they must put your safety or the safety of your children first. Your family member will be told that this is a police decision.

The **magistrate** will look at whether you agree or not, but can still make an intervention order. If you disagree, there are limits on the order the court can make. For example, the court can make an order that your family member not be violent towards you, but it cannot make an order that they be excluded from your home.

How can children be protected?

Intervention orders can also be made to protect your children. You can ask for them to be protected by your order or you can apply for a separate order.

If you have not included your children in your **application**, the magistrate may still ask you if your children have:

- heard
- seen, or
- been exposed to family violence.

If they have, the magistrate may decide to include them on your order or make a separate order, even if you do not agree.

It is the magistrate's job to make sure children are safe.

The court will try to make sure your children are not involved in the hearings.

I still love him, but I want what's best for my daughter, so I had to do something.

What if the family member using violence is my child?

Some young people may use violence against their siblings, parents or other adults in the home. This can be a difficult situation if you are their caregiver because you may be worried about consequences for them if you ring the police or ask for help. You may also feel that your parenting is responsible for the violence.

The most important thing is that you and other people in the home feel safe. There are specialist services that work with young people who use violence and their families. If a family member who is under 18 uses violence, you can apply for an intervention order at any Children's Court in Victoria. Before making an intervention order that says a young person must leave home, the court must ensure they have appropriate accommodation, care and supervision.

Who can help with family violence?

Although it can be hard to talk about, if you feel unsafe there are many services that can help you.

See 'Where to get help' at page 27 for contact details.

Victoria Police

If you are in danger and need urgent help, call the emergency number 000 and ask for the police.

Tell the police if you have trouble understanding or speaking English, so they can get an interpreter as quickly as possible. In an emergency, police may ask someone else in your family or a neighbour to translate.

If it is not an emergency, you can call or go to your local police station.

If the police get a report of **family violence**, they must investigate. They will look at the risk to your safety and act to protect you. They can do this even if you do not want them to, but must listen to what you want.

The police can:

- arrest or hold your **family member** in custody
- give them a family violence safety notice
- remove guns and other weapons.

If the police get involved, and believe your safety is in danger, they may apply for an intervention order for you and handle the case at court.

A family violence safety notice

If the police get a report of violence at any time they can use a safety notice to protect you. They will give a copy to you and to your family member. It has conditions about how your family member can behave. For example, it might say they cannot come near you, or threaten you. It might also say your family member must leave your home immediately.

A safety notice can only be used where the family member is 18 years or older.

It works like an intervention order. Your family member must follow the conditions and come to court on the date in the notice (which must be within 14 days of the safety notice being issued by police). If your family member does not follow the conditions they are breaking the law and they can be arrested.

If you get a safety notice you must go to court to tell your story.

If the police have used a family violence safety notice they will come to court to apply for an order.

The police are also responsible for giving the family member the court forms (such as the **application** and any orders) and explaining they are serious. This is called 'serving' them.

Family violence and other community services

Family violence services can help you if you are suffering from violence at home. These are sometimes called domestic violence services. These services are confidential. They can give you practical, emotional and financial help, to find a way to be safe.

These services can help you find a safe place to live for you and your children if you need to leave your family home.

I can't leave him. I don't have anywhere to go. I don't know anyone. He says he'll find me.

Only you can make the decision to leave, but if you have nowhere to stay, a family violence service may be able to put you in touch with a secure shelter or refuge. Most shelters and refuges cannot be contacted directly, so your family member will not be able to find you.

If you need medical treatment, visit your doctor or local hospital.

Legal help

Lawyers understand the court process and can help you through it. Getting legal advice is very important, especially if you have children. A lawyer can also give you advice about how intervention orders affect your property, your home and other parts of your life.

See 'Where to get help' at page 27.

You may be able to see a **duty lawyer** at court. A duty lawyer is a lawyer from Victoria Legal Aid, a community legal service or a private practitioner who can give you free legal help. It is best to get help from a lawyer before you go to court, if possible.

Court staff and services

This includes **magistrates**, who make the orders; **registrars**, who help them; and other staff. Some courts have specialist family violence workers. You may also be able to get support at court from Court Network volunteers. Court Network volunteers support people at court. They are not lawyers and cannot give legal advice, but they can tell you about how court works. They can also refer you to other community agencies for help.

Steps to get a family violence intervention order

Step 1: You decide to ask for an order. Call your local Magistrates' Court and ask if you need an appointment. When you go there, ask to see the registrar. It can help to have someone there to support you.

Step 2: The registrar gives you an intervention order application form to fill in.

Application

Step 3: Application. You have an interview with the registrar. Tell them as much as you can. The registrar can also tell you about legal and support services that can help you. Get legal advice as soon as possible.

Step 4: The registrar types up your application and a summons to go to court.

This will have the date to come back to court for the first hearing. Check the details are correct, sign it and get a copy.

If you have been hurt or your property damaged, the registrar can make a **warrant** to arrest the violence family member.

If you do not feel safe, you can get protection straight away through an interim order. Ask the registrar. You will need to give **evidence** to the magistrate.

Your family member is served

Step 5: Your family member is served – The registrar faxes the forms to the police. The police will **serve** your family member with your application and any other court forms. They will also arrest them if there is a warrant.

Court hearing

Step 6: Court hearing. You need to go to court on the date on the **summons**. What happens next depends on whether the **respondent** agrees.

Note: This is a general guide. It might be slightly different for you, as each situation is different.

Applying for a family violence intervention order

You can decide to apply for an order. Or the police may apply if they are called to a report of **family violence**. Whoever applies, there are a few steps to take and you may have to come back to court more than once.

Where can I get an order?

You can apply for an order at any Magistrates' Court in Victoria if you are over 18. You may need an appointment to do this. Call the Magistrates' Court and ask to apply for a **family violence intervention order**. You can go to your nearest court to do this.

If you are under 18 you can apply for an order at any Children's Court in Victoria.

Can I get help when I am at court?

Going to court can be stressful. Many courts have people who can help by explaining what will happen or going into court with you, such as volunteers from Court Network. Some courts have special family violence workers. Ask the court staff what help there is.

What do I need to take with me when I apply for an order?

When you apply for an intervention order, it helps to have **evidence** to show why you need an order. Evidence is information used in court to support your story and help the **magistrate** make a decision. This evidence can also help you remember and explain what happened.

Evidence may include:

- photos of injuries or damage to property
- people who saw the family violence
- police statements
- any court orders
- a doctor's report
- a diary
- text, Facebook, Twitter or voicemail messages, emails or letters.

Keep gathering evidence even after an order is made. This will help you if the order is broken.

He was always very careful to never leave a mark on me and always made sure no-one saw what happened. He said without evidence I couldn't do anything.

It does not matter if no-one saw the violence towards you. You can still apply for an intervention order. The magistrate will listen to your story about what happened to you. Evidence makes your story stronger, but you may get an intervention order just by telling the court your side of the story.

How do I apply?

To apply for an order:

1. Ask for the form and fill it in
2. Have an interview with the **registrar**
3. Get a court date to come back. You may also get an interim intervention order. To do this, you will need to speak to the magistrate.

At the counter say you want to apply for a family violence intervention order. You will be asked to fill in an information form. This form helps the registrar prepare your **application**.

If you are not comfortable speaking, writing or reading English, tell the court staff straight away. They will get an interpreter for you.

Court staff are busy, but they understand the court process and will try to help you as much as they can. Tell them if you are worried about your safety while you are at court, now or for next time.

It can be stressful, and take a while, so bring a friend, relative or someone who can support you. They can also help you tell your story clearly.

What will the court ask me?

Once you have filled in the form, the court registrar interviews you. The registrar is a person who works for the court and helps you apply for the intervention order.

Give the registrar details about what happened, including dates, times and places. Start with the most recent event. Explain why you are afraid it might happen again. Tell the registrar if your **family member** has used or threatened to use a weapon.

You will be asked about:

- your relationship with your family member
- whether you have children with the family member, and details about them
- what happened, including dates, times, and places
- how the family violence has affected you
- why you are afraid it will happen again
- whether the police were involved and what they did
- previous court orders, such as parenting or intervention orders, and if you want them changed
- how to contact your family member, including home and work addresses
- whether your family member has a gun and permit and where the gun is kept.

The registrar may ask personal questions about what happened to you. It can be stressful remembering the details. See 'Where to get help' at page 27, for services that can help you.

You will also be asked about associates. You can ask for protection of someone who supports you, for example, an extended family member. If you want someone else protected, ask for this now. You can also ask for an order against an associate of your family member. This is someone whom your family member might ask to help break the order in some way, for example, by passing a message to you.

If you do not feel safe and want immediate protection tell the registrar. If the court believes your safety or property is at risk it can make an interim order and a **warrant**.

Can I get an order straight away?

You may. You can get a temporary order, called an interim order. This is so you can be safe until a date is made for you and the person who hurt you, to go to court. Once your family member has been **serviced**, they have to follow the order conditions. If they do not, and they break the order, the police can take action.

If you want an interim order, tell the registrar that you are in immediate need of protection and what you will need to feel safe, for example, for your family member to stay away.

Sometimes, in urgent cases, the magistrate will look at your paperwork on the same day, and may decide to:

- make a temporary order if they believe you need protection straight away
- not make a temporary order, and decide later.

Either way, you will need to come back to court on another day to:

- make your temporary order final, or
- get a final order if you do not have a temporary order.

What can I ask for in the application so that I feel safe?

There is a question on the information form that will ask you what conditions you want in the order. Conditions are rules set by the magistrate that tell your family member how to behave. There are examples of common conditions on the form to help you, but you can ask for any conditions that make you feel safe.

The standard conditions include:

- stopping your family member from using family violence against you
- making your family member move out of your home (an **exclusion order**)
- being able to keep your personal property or get it back from your family member
- stopping your family member telephoning, texting, emailing or contacting you in any way
- stopping your family member coming near you, where you live or work or any other place you tell the court
- stopping your family member having a gun or other weapon.

Orders can also cover an associate of your family member (a person your family member might use to do certain things).

You can ask for other conditions to make sure you are safe – you do have a say. If you have children with the family member, the order does not stop them having contact, unless the children are at risk of harm. Make sure the conditions are right for you and your children.

What happens after the interview?

After the interview, the registrar types up your application. Check the details are correct and the conditions are what you want. Once you agree with the application, you will be asked to sign it.

The registrar will give you a copy of the application and the **summons**. A summons is a court form that tells you and your family member the date of the court hearing.

See ‘Coming back to court for the hearing’ at page 18.

You will also get a copy of all your court documents. This may include an interim order or a warrant. A warrant is a form that asks the police to arrest your family member. The court faxes it to the police.

If you do not understand what the documents mean, ask the court registrar to explain them to you. You need to know how they work to help protect you.

How does my family member get told about the order?

The court registrar will fax a copy of the application, summons and any other court forms to the police. The police find and then give your family member the documents. If there is a warrant they will be arrested.

To see what the information form looks like, see *Application for a Family Violence Intervention Order FVIO1* on the Magistrates’ Court website.

This is what the first page of the information form looks like:

		Form FVIO1	
Magistrates' Court of Victoria		INFORMATION FOR APPLICATION FOR AN INTERVENTION ORDER	
<i>Family Violence Protection Act 2008 Sections 42-47 & 49- 51</i>			
<p>The information in this form assists the Court Registrar to prepare your application for an intervention order. Answers to questions marked with ★ will not be included in the Application for an Intervention order that will be given to the respondent</p>			
Please specify application sought			
<input type="checkbox"/> Summons for a family violence intervention order <input type="checkbox"/> Warrant for a family violence intervention order <input type="checkbox"/> Summons and interim family violence intervention order			
Court reference no. <input type="text"/>		Date of hearing <input type="text"/>	
APPLICANT (To be completed by person making application on behalf of the Affected Family Member)			
Family name	<input type="text"/>		
Given name	<input type="text"/>		
Title	Dr Mr Ms Mrs Miss Other <input type="text"/> <i>(Select the appropriate title)</i>		
Current address	<input type="text"/>		
Do you wish to disclose this address?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Phone numbers	Home <input type="text"/>	Work <input type="text"/>	
	Mobile <input type="text"/>		
Date of birth	<input type="text"/>		
Police Registered No	<input type="text"/>		
	Phone <input type="text"/>	Fax <input type="text"/>	
The Applicant is:	<input type="checkbox"/> a police officer <input type="checkbox"/> an affected family member <input type="checkbox"/> an adult (over 18) with the written consent of an affected family member <input type="checkbox"/> a parent of an affected family member who is a child <input type="checkbox"/> a person with the written consent of a parent of the child <input type="checkbox"/> an affected family member of or about the age of 14 years with leave of the court <input type="checkbox"/> the guardian of an affected family member <input type="checkbox"/> a person who seeks to make the application with the leave of the court		
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Applying for a family violence intervention order

Coming back to court for the hearing

What is the hearing?

The hearing is when a **magistrate** listens to the **application** for a **family violence intervention order**. The **summons** that comes with the application form will tell you the date of your court hearing. You may have to come back to court more than once.

The hearing is usually several weeks after the application form is first filled in. It may be sooner if your **family member** has been arrested.

If you have not received legal help yet, now is a good time to talk to a lawyer. If you or your family member has not had independent legal advice, the hearing may be delayed until this happens. It is important to talk to a lawyer before court. You can get free legal help.

Before the hearing date, contact the court to see what time you need to be there. It's best to get there about half an hour before the first court hearing. Plan to be there for the whole day.

What do I need to take to court?

Take all your **evidence** and paperwork with you. Bring a support person if you can. You can organise witnesses to come, but the court may not be able to hear from them on the first hearing date.

What do I do when I get to court?

When you get to court, go to the counter and tell the court **registrar** you are there. The registrar sorts out the order of the hearings on the day. Your case may not be heard straight away.

You can ask the court registrar if you would like help from a **duty lawyer** or another service.

Do not go too far away. You need to be able to hear your name being called when the magistrate is ready for you.

If your family member wants to argue against the order, the hearing may be put off to another day. Ask the court staff about this.

I was too scared to face him at court. I wasn't sure what he'd do.

If you do not feel safe going to court for the hearing tell the court registrar so they can organise:

- court security or police to keep an eye on you
- a separate area for you to wait in
- help from Court Network or another support agency.

Do I have to talk to my family member or their lawyer?

Even though your family member has the right to argue against the order, they have no right to hassle you at court, or to try to scare you out of asking for the order. You should not be pressured into stopping or changing the order.

Tell the court registrar, court security or the police if you get approached or hassled by your family member or other people.

If your family member has a lawyer they may want to talk to you before you go into court. They may be able to tell you whether your family member is agreeing to the order or not.

Going into court at the hearing

Because everyone's situation is different, different things can happen at court.

What happens in the court room?

When your name is called, go into the courtroom. Stand behind the table at the front of the court, facing the **magistrate**. The magistrate or clerk will tell you what to do.

Speak clearly and answer all questions you are asked. Try to stay calm even if the other person behaves badly.

What may happen next depends on what your **family member** has decided to do.

They can:

- agree to an intervention order being made
- ask for an undertaking instead of an order
- argue against the order (contest it)
- ignore the **summons** or bail and not go to court.

What if my family member does not come to court?

If your family member does not show up at the first court hearing, the magistrate can still make an order.

The magistrate will have your **application**, but they may still ask you to tell them in your own words why you need an order. You may then have to go into the witness box and swear an oath (or make an affirmation) to tell the truth.

Say why you are afraid your family member will continue to be a threat to you. You can give the court any written **evidence** you have, for example, a doctor's report.

If you already have an interim order the magistrate may just ask you if anything has changed since the order was made.

What if my family member agrees to the order?

If your family member comes to court the magistrate will ask if they agree to the intervention order being made.

They can agree to:

- everything in the application
- the conditions in the application, but not with what was said about them in the application (this is called 'consenting without admissions')
- an order being made, but ask the magistrate to change the conditions so they are not at risk of breaking the order when trying to follow the conditions.

The magistrate will ask you what you think about any changes before they make a final decision.

What is an undertaking?

An undertaking is a formal written promise given by your family member to you and the court that they will follow certain conditions. Your family member may ask whether you would agree. You do not have to. It is your choice. Get legal advice before you agree. It does not offer you as much protection as an intervention order can.

If you both agree to an undertaking, and the court allows it, the court marks the application as withdrawn, which means stopped. If your family member breaks the conditions on the undertaking you or the police can still take the application back to court to ask for an intervention order, using the application you started with. You need to tell the court how the conditions of the undertaking were broken.

Unlike breaking an order, breaking an undertaking is not a crime. This means the police may not be involved if it is broken.

What if they want to fight the order?

Your family member has a right to argue against an order being made. If they disagree the magistrate can only make an order after hearing evidence. The magistrate will not hear their arguments at the first hearing, called the first mention date, or the second hearing, called the directions hearing.

You will need to go back to court for a **contested hearing**. This is when the magistrate hears all the evidence from both sides, including witnesses.

A magistrate might not set a date for a contested hearing until both of you:

- have had a chance to get a lawyer
- are ready for the contested hearing
- agree to the date of the contested hearing.

The court can order Victoria Legal Aid to arrange a lawyer for you or your family member for the contested hearing. This might mean having to fill in a Victoria Legal Aid form.

At the contested hearing the magistrate will listen to you first, then your family member.

Contested hearings

How do I prepare for a contested hearing?

Usually you need to prepare to tell your story in court. You may need to organise **evidence**, including witnesses, to support your story.

If you have not spoken to a lawyer yet, you need to now. Ask them what you need to prepare for the **contested hearing**.

You and your **family member** can each find your own lawyer, or the court can make an order asking Victoria Legal Aid to find a lawyer.

Can my family member ask me questions in court?

If your family member has a lawyer, this lawyer can ask you questions in court. This is called cross-examination. If you have a lawyer, they can question your family member for you. Your lawyer can explain how this will work, and can 'object' (try to stop) any inappropriate questions. You may also be able to give evidence by video or in other ways.

If your family member does not have a lawyer, and has refused a lawyer organised by Victoria Legal Aid, they are not usually able to ask you, your child or any other protected person questions in court themselves. They may not be able to tell their story.

You can agree to them asking you questions directly, however the **magistrate** may not let them do this.

The court makes an intervention order

When can the magistrate make an order?

The **magistrate** will make an order if both you and your **family member** agree to it. If your family member contests, 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 your family member towards you and
- it is likely to continue.

The magistrate can make an order if you disagree, but there are limits on the conditions it can include.

What conditions can the magistrate put in the order?

When deciding which conditions to put on an order the magistrate will want to be clear about all of the details about:

- any children you have
- your living arrangements.

The magistrate can ask many questions and can make orders about things that are not even in your **application**.

The magistrate will stop your family member seeing the children if it would not be safe for the children. But the court will allow them to see the children if this can be done safely, for both you and the children. These arrangements must be written down.

Because this can affect family law court orders, get legal advice before agreeing to these types of conditions. A lawyer can also talk to you about other family law issues.

The court must also decide if it is safe for your family member to stay in the home. They can also make an **exclusion order**. This means your family member cannot come to or be at the home while this order lasts.

If your family member is under 18, and the court is considering excluding them, it must also look at what housing and other support they will get.

What should I do if an intervention order is made?

When the magistrate makes a decision, make sure you understand what it means. Ask the court or your lawyer to explain. Read the paperwork you are given.

Be clear about the conditions of your intervention order. Make sure you know what your family member is not allowed to do.

What if I disagree with the decision?

If you or your family member is unhappy with the magistrate's decision, or with conditions on the order, either of you can appeal to the County Court. You can appeal by filling in forms from the court.

An appeal must be lodged within 30 days of the decision. Get legal advice first.

Living with your intervention order

Do I need to keep it with me?

Yes. Carry a copy of your order with you. Keep a copy in the places where you regularly go, such as work. If you have children, also give a copy to their kindergarten, child care or school.

What if my family member disobeys the order?

If a person does not follow the conditions of an intervention or interim order it is called a **contravention**. Breaking a court order is a crime.

A piece of paper is not going to stop him. He won't listen to what the court says. Once other people know he'll just get more angry.

Breaking a court order is serious. Keep a diary about what happened and gather evidence. Call or tell the police every time the court order is broken. The police must investigate. The police will take a statement from you. Then they will interview your **family member** and any witnesses.

If the police decide to charge your family member with a contravention of the intervention order or family violence safety notice, they have to go to court. If they are found guilty they can get a large fine or they could go to jail.

What do I do when the order is due to finish?

If you still believe that you are not safe, you can ask for the intervention order to be extended. You need to apply to the court before the order finishes. You will not be reminded that your order is about to end. It is up to you to check this.

Can the order be changed or cancelled?

Intervention orders can be changed or cancelled, but only the **magistrate** can make these decisions. Anyone named in an intervention order can apply to change the order at any time. **Respondents** must get the court's permission to vary the order. If your family member applies to change the order you will be told.

If you are not happy with the conditions of the order, contact the court **registrar**. The registrar will fill in the forms for you and tell your family member. You will then have to go back to court.

The magistrate must ask if any children named in the order still need protection. The magistrate may not agree to cancel an order if there are children involved.

Can I move interstate or overseas?

Yes you can. Where you live is your decision. However, if you have children and plan to take them with you, you need to get legal advice first.

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. There is no need to register the order interstate however it is best if you keep a copy of the order with you.

The police in that state must enforce the order. The respondent can be charged if they break the order.

For the court, making the order might be the final step. For you, it might be the start of a different life. Take control by knowing how the order can work for you.

Where to get help

Victoria Legal Aid

Legal Help

For free information about the law and how we can help you, call Legal Help on 1300 792 387

Monday to Friday, between 8.45 am and 5.15 pm

More information

More information is on our website at www.legalaid.vic.gov.au

Do you need help calling us?



Translating and Interpreting Service

Tel: 131 450



National Relay Service

TTY users: Call 133 677

Speak and Listen users: Call 1300 555 727

Internet relay users: See www.relayservice.gov.au

Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45 am to 5.15 pm.

See the back cover for office locations.

All offices are accessible to people with a disability.

Other legal services

Federation of Community Legal Centres

Call to find a community legal centre near you.

Tel: (03) 9652 1500

www.fclc.org.au

Women's Legal Service Victoria

Free confidential legal information, advice, representation and referral for women in Victoria.

Tel: 1800 133 302 or 8622 0600

Aboriginal Family Violence Prevention and Legal Service Victoria

Help for victims of family violence and sexual assault.

Tel: 1800 105 303 or (03) 9244 3333 (Monday to Friday 9 am to 5 pm)

Victorian Aboriginal Legal Service

24 hour free legal help for Aboriginal and Torres Strait Islander people.

Tel: 1800 064 865 or (03) 9418 5999

Court

Magistrates' Court of Victoria

Tel: (03) 9628 7777 to find your nearest court.

www.magistratescourt.vic.gov.au

Family violence services

Centres Against Sexual Assault (CASA)

24 hour confidential telephone crisis counselling, information and support for people who have been sexually assaulted.

Tel: 1800 806 292

Court Network

Information and support for people going to court.

Tel: (03) 9603 7433 or 1800 681 614 (country callers)

Domestic Violence Resource Centre Victoria

Information and referral to local services and support groups. Country callers can reverse the charges.

Tel: (03) 9486 9866

www.dvrcv.org.au

inTouch Multicultural Centre Against Family Violence

Culturally sensitive information and other help for women and children from culturally and linguistically diverse backgrounds.

Tel: 1800 755 988 or (03) 9413 6500

Safe Steps Family Violence Response Centre

24 hour crisis support and safe accommodation (refuges) for women and their children.

Tel: (03) 9322 3555 or 1800 015 188 (country callers)

Women's Information and Referral Exchange

Telephone counselling, advice and referral for women.

Tel: 1300 134 130

Other support services

Child Protection Crisis Line

24-hour telephone service to help anyone who is worried about the immediate safety of a child.

Tel: 131 278

Kids Helpline

24-hour telephone support for children and young people.

Tel: 1800 551 800

Men's Referral Service

Free and anonymous telephone counselling, information and referral service for men, including those served with an intervention order.

Tel: 1300 766 491

Victims of Crime Helpline

Free Victorian Government service that provides information, support and advice to people affected by crime.

Tel: 1800 819 817

www.victimsofcrime.vic.gov.au

Useful Victoria Legal Aid resources

Victoria Legal Aid has free booklets with legal information on topics such as dealing with family violence, family law and going to court.

Visit the Victoria Legal Aid website to order or download booklets or call (03) 9269 0223 to find out more.

[Our public law library](#)

Open Monday to Friday, 9 am to 5 pm.



Family violence intervention orders:

- for affected family members
- for respondents



Family law in Australia fact sheets

Watch me on 

Watch our community legal education videos.

Safe at home

How to get a family violence intervention order

Victoria Legal Aid

For help with legal problems, call Legal Help on 1300 792 387

For business queries, call (03) 9269 0234

Offices

Melbourne

Suburban offices

Broadmeadows

Dandenong

Frankston

Ringwood

Sunshine

Regional offices

Bairnsdale

Ballarat

Bendigo

Geelong

Horsham

Mildura

Morwell

Shepparton

Warrnambool



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