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Personal safety intervention orders - how to apply or respond to an order

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What do these words mean?

These words are highlighted in **bold** the first time they appear.

affected person – the person named in the application for an intervention order as needing protection. If an order is made, they are called the protected person

applicant – the person asking for the order

criminal record – a formal record that shows findings of guilt and convictions for past offences

evidence – information used in court to prove something

interim order – a short-term order made to protect the affected person until a magistrate hears evidence and makes a decision

mediation – where a neutral third party (mediator) helps people meet to discuss their issues and work towards an agreement

offence – something the law says is wrong

respondent – the person the application for an intervention order has been made against

stalking – when a person repeatedly does things that cause another person harm or make them feel unsafe. This could include following them or contacting them repeatedly

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

Who should use this fact sheet?

Use this fact sheet if you are applying for or responding to a personal safety intervention order. This fact sheet can help you understand what happens at court.

What is a personal safety intervention order?

A magistrate can make this order to protect a person from physical or mental harm caused by someone who is not a family member.

The order has rules (called 'conditions') about how the **respondent** can behave towards the **affected person**. For example, it might say the respondent is not to contact the affected person or go to their house. The respondent must follow the conditions of the order.

If the affected person and respondent are family members, a family violence intervention order will be more appropriate. See the Victoria Legal Aid website for more information on these orders.

When might an order be made?

The magistrate may make a personal safety intervention order if the respondent has done any of the following things to the affected person:

- assault
- sexual assault
- harassment
- property damage or interference
- serious threats
- **stalking**.

The magistrate will consider if the respondent is likely to do these things again and if the affected person fears for their safety. The magistrate will make a decision after considering what both parties want to do.

How do you apply for an order?

Who can apply?

The affected person or someone else, like a police officer or parent.

Police can apply for personal safety intervention orders for people they believe are in need of protection. They can apply even if the affected person does not want an order to be made.

What are the first steps?

The applicant fills out an *Information for application for a personal safety intervention order* form. They can get this from the Magistrates' Court website or a local court. They then have an interview with the registrar at court.

What happens next?

The applicant will sign the application to say it is correct. They will get a copy of the **summons**, which has the date of the court hearing.

An **interim order** can be made to protect the affected person until the court hearing. The magistrate can make an interim order even if the respondent is not there.

Any interim orders can continue until the next court date. It is a crime for the respondent to break an interim order.

How do you respond to an order?

What are the first steps?

The police will send the respondent copies of the application, summons and any interim orders made.

Option one: agree to an order

The respondent can agree to an order being made while disagreeing with what is said about them in the application. This is called 'consenting without admissions'.

Option two: argue all or parts of the order

If the respondent wants to argue against the order this will not happen at the first hearing. The applicant and the respondent will need to come back to court for a contested hearing.

Option three: offer an undertaking

An undertaking is a written promise made to the court to do or not do certain things. If the respondent breaks the rules of an undertaking, they cannot be charged by the police unless they have committed an **offence**.

The applicant must agree to an undertaking.

Option four: sort out the dispute in mediation

If both parties agree, they can try and resolve the dispute by mediation. See 'What is mediation?' below.

What happens at court?

General tips

When you get to court, tell the registrar you are there. When your name is called, go into the courtroom. Stand behind the bar table at the front of the court. The magistrate or clerk will ask you questions and tell you what to do. Refer to the magistrate as 'Your Honour', 'Sir' or 'Madam'.

First mention hearing

This is when the affected person and respondent first come to court.

The following things can happen at a first mention hearing:

- agreement that an intervention order will be made
- agreement that an undertaking will be made
- the application is adjourned (delayed) for mediation
- the case cannot be resolved, so it may be adjourned to a contested hearing (see below).

If the respondent does not come to court the magistrate might make an intervention order without them there. If the applicant does not come to court the magistrate might cancel the application.

Contested hearing

A contested hearing happens when the respondent disagrees with an order. The court can hear **evidence** from the applicant's and respondent's witnesses about things they have seen or heard. After hearing evidence the magistrate can decide whether to make an intervention order or not.

The respondent should see a lawyer before the contested hearing. Duty lawyers cannot help them at this hearing.

What happens after an order is made?

The affected person will get a copy of the order. It will explain what the respondent can and cannot do and how long the order will last for. It is important the affected person understands the order.

The respondent must follow the conditions of the order. An intervention order does not give the respondent a **criminal record**, but being found guilty of breaking the order can. If the respondent is found guilty of breaking the conditions of the order they may have to pay a heavy fine or even go to jail.

What is mediation?

Mediation can be used to resolve some disputes instead of going to court. Both the affected person and respondent have to agree to do mediation for it to happen.

The court can direct the parties to go to an assessment to work out if the case is right for mediation. The court can then direct the parties to go ahead with mediation.

It is not an offence to refuse to go to mediation. However, the magistrate can take this into account when deciding whether or not to make an intervention order.

Not all cases are suitable for mediation. A case may not be suitable if it involves a real risk of harm, threat or violence or if the police applied for the intervention order.

There is more information about mediation on the Dispute Settlement Centre of Victoria website www.disputes.vic.gov.au

More information

Victoria Legal Aid

Free legal help by telephone

Tel: 9269 0120 or 1800 677 402 (country callers)

www.legalaid.vic.gov.au

Federation of Community Legal Centres

Call to find your nearest community legal centre

Tel: 9652 1500

Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

Magistrates' Court of Victoria

For court locations and contact details

www.magistratescourt.vic.gov.au