

Have you been accused of family violence?

If you have been accused of family violence, the violence may be relevant to parenting orders you seek in a Family Law court, or to intervention orders which are sought against you in the Magistrates' Court. Some of the questions you may have about these are answered below.

If you want more detailed information specific to your circumstances, you can complete our initial enquiry form - [CLICK HERE](#)

During COVID-19 as it is more difficult to access legal advice, Forte Family Lawyers is offering free initial legal advice to people accused of family violence.

You can obtain this advice by completing and returning the initial enquiry form – [CLICK HERE](#). We will contact you to schedule an initial conference and will provide you with a more detailed questionnaire for you to complete and return ahead of our first meeting with you. This allows us to use our conference time with you most efficiently and to address the issues which are most important to you.

In the Magistrates' Courts – Intervention orders

1. What is family violence?

For the purpose of an intervention order, family violence is behavior which is:

- Physically or sexually abusive; or
- Emotionally or psychologically abusive; or
- Economically abusive; or
- Threatening; or
- Coercive; or
- Controlling or dominating the family member causing that family member to feel fear for the safety or wellbeing of that family member or another person; or
- If a child can hear, see, or experience the effects of the above actions, that in itself is deemed to be family violence.

Some examples of family violence include:

- An assault on a family member;
- A sexual assault or other sexually abusive behaviour towards a family member;
- Stalking a family member;
- Repeated derogatory taunts to a family member;
- Intentionally damaging or destroying property owned by a family member;
- Intentionally causing death or injury to an animal;

- Unreasonably denying a family member the financial autonomy that he or she would otherwise have had, for example not having access to money to buy food;
- Unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or their child, at a time when the family member is entirely or predominantly dependent on the person for financial support;
- Preventing the family member from making or keeping connections with their family, friends or culture; or
- Unlawfully depriving the family member, or any member of the family member's family, of their liberty.

2. Who is a family member?

An individual's family member, in the context of family violence, is:

- A person who is, or has been, the individual's spouse or domestic partner;
- A person who has, or has had, an intimate relationship with the individual;
- A person who is, or has been, a relative of the individual;
- A person who normally or regularly resides with the individual, or has previously resided with the individual on a normal or regular basis; or
- A child of an affected family member who is currently or was previously in an intimate personal relationship with the individual.

3. What is a Family Violence Safety Notice?

Victoria Police has the power to issue a Family Violence Safety Notice in circumstances where a victim needs immediate protection. The Notice will contain various conditions that the police deem necessary to protect the victim from immediate harm. Once the Notice has been issued, it operates immediately and until the first court date.

A Family Violence Safety Notice is effectively an application by Victoria Police for a family violence intervention order. The application is made on your behalf against the respondent. The respondent will receive a summons to attend court on the first date that the matter is called at court. At this point, if the matter is contested the Magistrate can make an interim intervention order or dismiss the application. If an interim intervention order is made, the contested hearing will be several months later. If the respondent consents to the order a final intervention order can be made.

4. What happens if someone does not follow a Family Violence Safety Notice?

The respondent may be charged with a criminal offence for breaching a condition in the Family Violence Safety Notice. For example, if there is a condition requiring that the respondent leaves the home but they return, the protected person (which could be you) can contact Victoria Police who then has the authority to remove the respondent from the home and charge them with a criminal offence.

5. What are the different types of Family Violence Intervention Orders?

There are two types of family violence intervention orders. These are:

- Interim family violence intervention orders; and
- Final intervention orders.

Family violence orders made in other States or Territories of Australia are recognised in Victoria. There are discussed below in Question 15.

6. What is an interim Family Violence Intervention Order?

An interim family violence intervention order is an order that gives an affected family member with urgent, short-term protection from family violence. An interim order protects you on an interim basis it gives the court time to determine whether to make a final intervention order.

7. When can the court make an interim Family Violence Intervention Order?

The court can make an interim family violence intervention order if it is satisfied of one of the following:

- The court finds it is necessary to make an order pending a final decision to ensure your safety, preserve your property or protect a child; or
- You and the respondent consent to the making of an interim order, or the respondent does not oppose the making of the interim order; or
- Victoria Police issued a family violence safety notice and there is no compelling reason to justify removing the protection until the court makes a final decision.

The court can make an interim family violence intervention order in circumstances where:

- The affected family member is in Victoria even if the violence occurred outside of Victoria; or
- The affected family member is outside Victoria, but the alleged family violence occurred in Victoria.

8. What is a final Family Violence Intervention Order?

The court can make a final family violence intervention order if the court is satisfied on the balance of probabilities that:

- The respondent committed family violence; and
- The respondent is likely to continue to commit family violence or will commit family violence again.

9. How long does an interim Intervention Order last?

An interim intervention order ceases to be effective if one of the following occurs:

- The final order is served on the respondent. If the interim order is extended to cover the period until the respondent is served. If the court does not order this additional period, the interim order ends when the court makes the final order;
- The court refuses to make a final intervention order;
- The court revokes the interim order; or
- The application for a final or interim family violence intervention order is withdrawn.

10. What conditions can a Magistrate impose?

The court can include any condition that it deems necessary or desirable in the circumstances.

Examples of conditions are:

- Forbidding the respondent from committing family violence against the protected person (which could be you and/or your child);
- Excluding the respondent from approaching the protected person's home;
- Requiring the respondent to return personal property, or alternatively allowing the respondent to attend the home to collect their personal property in the company of a police officer or another specified person;
- Forbidding the respondent from contacting the protected person in any manner, unless in the presence of a police officer or specified person;
- Requiring the respondent to stay a specified distance away from the protected person or a specified place such as, their home and place of work;
- Forbidding the respondent from having another person engage in conduct prohibited by the order.

11. Will I have a criminal record as a result of an Intervention Order Application?

An Intervention Order Application is a civil process and not a criminal one.

If an Intervention Order is made listing you as the Respondent, this will not appear on your criminal record. However, the police and the Court will have a record of the Intervention Order.

However, breaching the terms of an Intervention Order is a criminal offence with serious penalties. If you are found guilty of breaching an Intervention Order, this information will appear on your criminal record.

12. Can I live at home if I am a Respondent to an Intervention Order?

The answer to this question depends on the conditions of the Intervention Order.

For example, if you live with the family member named as the protected person and the Intervention Order states that you cannot be within say 100 metres of the protected person's home, you cannot live at the home.

You may seek to have the Intervention Order varied to change this condition, which is commonly referred to as an exclusion order. We can provide you with legal advice and representation if you need to apply to vary an Intervention Order.

13. Can I work if I am a Respondent to an Intervention Order?

The answer to this question depends on the conditions of the Intervention Order. If the area you are restricted from includes your workplace then you will be in breach of the order if you go to work unless going to work is a specific exemption. If you are the affected family member and live in the same suburb or town then you may not be able to go to places you usually would go to like work and visit particular friends the # or a local café. **#please review scan cut off.**

You may seek to have the Intervention Order varied to change this condition, which is commonly referred to as an exclusion order. We can provide you with legal advice and representation if you need to apply to vary an Intervention Order.

14. Can I see my children if I am a Respondent to an Intervention Order?

The answer to this question depends on the conditions of the Intervention Order.

If your Intervention Order includes a clause which permits you to do anything that an Order under the *Family Law Act 1975* (Cth) or written agreement about child arrangements permits you to do, you may still be able to see your children. If you do not have existing parenting orders and cannot agree with your partner on what the parenting arrangements should be, you may need to apply to a Family Law Court for orders. If you are trying to negotiate with your former partner you should try to do so in writing (by text, email or a parenting app) rather than by phone so there is a record of your conversations. Keep your tone polite as these messages may be seen by a judge. However, you should obtain specific legal advice in relation to this issue.

15. Does the Intervention Order still apply if the protected person moves interstate?

Intervention Orders are nationally recognised. This means that an Intervention Order made interstate will be recognised and is enforceable in Victoria and Intervention Orders made in Victoria will be recognised and are enforceable interstate,

Therefore, if you were to breach a Victorian Intervention Order while interstate, the interstate police force can lay charges against you in relation to the breach.

16. Will my parenting orders be impacted by an Intervention Order?

When making an Intervention Order, the Court making the Order (the Magistrates' Court in Victoria) has the power to vary, discharge or suspend *Family Law Act* Orders, pursuant to Section 68R of the *Family Law Act 1975* (Cth). This means the Intervention Order can have an impact on your parenting Orders.

You should obtain legal advice specific to your circumstances if you believe that this applies to you.

17. What are my options if I am named as a Respondent in an Intervention Order Application?

You should obtain legal advice specific to your circumstances but you can:

- Consent to the order;
- Consent to the order without admissions;
- Try to negotiate for the withdrawal of the application on the basis of an undertaking by you not to commit family violence;
- Try to negotiate the withdrawal of the application;
- Oppose the application and seek that the application proceed to a contested hearing several months later.

18. What are my options if I am named as a Respondent in a Family Violence Safety Notice?

You should obtain legal advice specific to your circumstances, but the options are broadly similar to those in 17.

In the Family Law Courts – Parenting matters

1. **What is family violence?**

Family violence is broadly defined under *Family Law Act 1975* (Cth) ('the Act') to mean violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful.

Examples of family violence provided under the Act to include:

- An assault on a family member;
- A sexual assault or other sexually abusive behaviour towards a family member;
- Stalking a family member;
- Repeated derogatory taunts to a family member;
- Intentionally damaging or destroying property owned by a family member;
- Intentionally causing death or injury to an animal;
- Unreasonably denying a family member the financial autonomy that he or she would otherwise have had, for example not having access to money to buy food;
- Unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or their child, at a time when the family member is entirely or predominantly dependent on the person for financial support;
- Preventing the family member from making or keeping connections with their family, friends or culture; or
- Unlawfully depriving the family member, or any member of the family member's family, of their liberty.

2. **Will the court know about the violence I have been accused of committing?**

When you are seeking orders from the court you must attach all existing orders. This includes Family Violence Intervention Orders - whether you consented to the orders (with or without admission to the allegations made) or after a Magistrate found you guilty of committing family violence. You may also need to file an affidavit in which family violence and allegations of violence should be addressed if you are seeking parenting orders.

All parties seeking parenting orders must file a Notice of Risk. A Notice of Risk is a form which identifies any risks towards the children.

The court provides the Notice of Risk to the child protection authorities which will provide a written response identifying any risk (including historically) which has been reported or investigated by the child protection authorities and any findings made.

3. **How does family violence affect the conduct of my family law proceedings?**

The Court is obliged to ensure, so far as possible, the safety of the parties and children.

If allegations of family violence have been made against you, the Court will likely adopt a conservative approach on an interim basis with a focus on obtaining all information relevant to determining the issues in dispute and ensuring the safety of children and parties.

Family Consultant

Before making orders relating to the care of a child, the court may order that parties attend upon a Family Consultant or private family report writer. A Family Consultant is a psychologist or social worker who works for and reports to the Family Court and assists parties in resolving disputes, advising the courts about programmes you and the other party can attend, such as anger management and drug rehabilitation programs.

Upon meeting, you, the other party and the children, the Family Consultant produces a report. There are two kinds of reports which may be requested by the court. The first is what known to be a “section 11F report”. A section 11F report is a small ‘family report’ which can usually be done quite quickly. The second is a ‘Family Report’. A Family Report is the Family Consultant’s assessment of the main issues within your case. The Family Report is provided to the judge dealing with your matter and assists them in deciding what parenting orders are reasonable.

If the Court orders that you attend an appointment or a program (such as a parenting after separation program or parenting education program) and you do not attend, the Family Consultant must inform the Court of your absence.

Depending on the financial circumstances of the parties, the court may order that you both engage a private family report writer to prepare a Family Report.

Independent Children’s Lawyer

In some parenting matters, the Court may appoint an Independent Children’s Lawyer (ICL) if it determines that based on the circumstances it is necessary, or an application is made requesting that an Independent Children’s Lawyer be appointed.

An Independent Children’s Lawyer acts on behalf of your child to represent and promote their best interests. The Independent Children’s Lawyer considers the views of your child but does not obtain instructions from your child, you or the other party.

Common circumstances which the court may make an order appointing an Independent Children’s Lawyer include:

- Allegations of abuse or neglect towards your child;
- You and the other party are unable to communicate regarding the care and welfare of your children due to high levels of conflict;
- The children in the matter are under the age of 18 but mature enough to express their view on matters which affect them;

- There is either proven or alleged family violence against the other party;
- Either you, the other party or the child has serious mental health issues; or
- Difficult and complex issues stem from your family law proceedings.

4. How does family violence affect the outcome of my parenting proceedings?

When the court is making parenting orders, the Court's paramount consideration must be what is in the best interests of the child.

In determining what is in the best interests of the child, the Court must consider all the factors identified in s 60CC of the Act. This includes the two primary considerations:

- The benefit to your child of having a meaningful relationship with their parents; and
- The need to protect your child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

The determination of what is in the best interests of your child requires the Court to balance the importance of your child having a meaningful relationship with both parents against the need to protect your child from harm, or unacceptable risk of harm.

In circumstances where there is a family violence intervention order against you, and the other party and your children are listed as protected persons, the Court will take into consideration your past behaviour and assess the level of protection the children may require to have a relationship with you.

The most common ways that the court takes into account the family violence whilst still allowing the other parent to spend time with the children are:

- To ensure changeovers take place in a safe way, such as at school, or take-away store or otherwise away from your home. This means that you and the children are not, or are less likely to be exposed to family violence.
- Restricting the time that the other parent spends with the children. A parent who has committed family violence is less likely to have an equal shared time arrangement so that the children are not exposed to that parent's violence and views about family violence.

5. Will I get to spend time with the child even though I have a family violence intervention order against me?

It depends.

In balancing the competing s 60CC factors, the Court may make an order which provides for a child to spend with a parent subject to specific conditions which are intended to safeguard the child from harm.

Specific conditions in orders may include:

- Requiring a parent to complete certain programs (post separation parenting education, anger management and/or behaviour change).
- Requiring a parent to undertake a hair follicle (or urine) drug test.
- Requiring that a parent's time with the child be supervised. Supervised time may be done in the presence of a trusted family member or friend or an independent, professional supervisor.
- For time to occur at a Children's Contact Centre. A Children's Contact Centre is an independent child-focussed place which allows parents to spend time with their child whilst being supervised by an employee of the centre. The supervisor spends the whole time with the parent whilst they care for the child and monitors them to ensure the safety of the child. After every session the supervisor takes notes which may then be produced to the court.

It is often the case that a family violence intervention order will include a provision permitting time to be spent with children (who are named as protected persons) pursuant to a Family Law Order, or other written agreement. It is important to consider the specific terms of any intervention order made against you.

A Family Law Court may make an order which is inconsistent with the family violence intervention order against you. This is usually the case when the Court orders that you spend time with your children even though they are listed as a protected person in the family violence intervention order against you.

If the Court does make an order or injunction that authorises you to spend time with your children and is inconsistent with the intervention order against you, the Court must:

- Specify that you spending time with the children is inconsistent with an existing family violence order; and
- Provide a detailed explanation as to how the contact is to take place. This includes imposing conditions as explained below;
- Explain or arrange for someone else to explain the order or Injunction to you; and
- State within the Court's explanation the purpose of the order or injunction, the obligations created by the order or injunction, the consequences that may follow if you do not comply with the order or injunction, the Court's reason for making the order or granting the injunction which is inconsistent with the intervention order, and the circumstances where you or the other party may apply for variation or removal of the order or injunction.

Although the Court may make an order for you to spend time with your children and contact them in various ways, if you act outside the scope of the Family Law Act order or injunction, then depending on your intervention order, you may breach the intervention order and therefore commit a criminal offence.