

aston legal group.

Intervention Orders

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TYPES OF INTERVENTION ORDERS

Family Violence Intervention Orders (FVIO)

A Family Violence Intervention Order ('FVIO') is a court order put in place to protect an individual, their children and/or their property from another family member, partner or ex-partner. The legal definition of a 'family member' includes domestic partners (e.g. boyfriend, girlfriend, husband, wife, de facto partners) and any person who has an 'intimate relationship' with the relevant person. It also includes a person's immediate family, such as parents or children, as well as siblings, aunts, uncles and other extended relatives. In some cultures, a 'family member' can include people with no genetic link, and the court may have to decide whether someone is a family member for the purposes of an Intervention Order.

Personal Safety Intervention Orders (PSIO)

A Personal Safety Intervention Order ('PSIO') is a court order put in place to protect an individual, their children and/or their property from any other individual's behaviour. If someone is being harassed, controlled or stalked by another person but they do not have an intimate relationship with that person and they are not related to that person in any way, then a Family Violence Intervention Order will not be applicable and a Personal Safety Intervention Order should be considered instead.

TYPES OF INTERVENTION ORDERS

Depending on the type of Intervention Order, there are various conditions that can be included on the Order as follows:

<u>Family Violence Intervention Orders</u>	<u>Personal Safety Intervention Orders</u>
<ul style="list-style-type: none"> • Not to commit family violence. • Not to damage property. • Not to follow or keep a protected person under surveillance. • Not to publish any electronic material about a protected person. • Not to contact or communicate with a protected person. • Not to approach or remain within 5 metres of a protected person. • Not to go or remain within 200 metres of a protected person's home, work, school/childcare. • Not to get anyone else to do anything you cannot do under the Order. 	<ul style="list-style-type: none"> • Not to stalk a protected person. • Not to commit prohibited behaviour toward a protected person. • Not to follow or keep a protected person under surveillance. • Not to publish any electronic material about a protected person. • Not to contact or communicate with a protected person. • Not to approach or remain within 5 metres of a protected person. • Not to go or remain within 200 metres of a protected person's home, work, school/childcare. • Not to get anyone else to do anything you cannot do under the Order.

In some cases, there may also be additional conditions on an Intervention Order such as:

- An Order for the return of personal property to the other party; or
- An Order suspending or cancelling the Respondent's firearms licence.

HOW TO APPLY FOR AND OBTAIN AN INTERVENTION ORDER

Any person can make an application for an Intervention Order on their own, however given that it is a stressful and difficult time, our lawyers are available to assist you in doing so. It is important that your application is made correctly to ensure you have the best possibility of obtaining an Intervention Order.

We are experienced in dealing with Intervention Orders and can advise you as to how your application should be made to ensure its success. With your instructions, we can draft the necessary application and attend the Magistrates' Court with you to make an application for an Interim or Final Intervention Order.

HOW TO APPLY FOR AND OBTAIN AN INTERVENTION ORDER

Once your application for an Intervention Order has been filed with the Court, you can expect the following to occur next:

- The Court will allocate a first court date. This is called a Mention Hearing.
- Attend the Mention Hearing with one of our friendly lawyers who will advocate your application on your behalf before the Magistrate. The Magistrate will examine your application and decide whether an Interim Intervention Order should be granted for your protection.
- The Respondent will get a chance to inform the Magistrate about whether they intend to consent to a Final Intervention Order being made against them or whether they intend to defend the application. This may or may not occur on the first court date.
- With the assistance of our lawyers, you may be required to file further and better particulars of your application, including any evidence you may have in support of your allegations. The Respondent will then get a chance to file a responding document.
- If the matter does not settle by consent, you will be required to attend a Directions Hearing where our lawyers will advise the Court on your behalf that your matter is ready to be listed for a Contested Hearing. This will include informing the Court about any witnesses you may intend to call at the Contested Hearing.
- Finally, you will be required to attend a Contested Hearing where witnesses are called and further evidence is given by both parties. The Magistrate will then make a determination as to whether a Final Intervention Order should be granted, based on evidence heard at the Contested Hearing. The length of period of time for any Final Intervention Order granted and its conditions will also be determined at this time by the Magistrate.



WHAT TO DO IF YOU ARE THE APPLICANT

To make an application for an Intervention Order you should first contact one of our lawyers to receive advice about what your rights and options are.

In certain circumstances, a member of Victoria Police may make an application on your behalf. Children can also be named as Protected Persons on an Intervention Order.

A Family Violence Intervention Order (FVIO) can also be taken out by yourself (with or without a lawyer) or by a Child Protection practitioner on behalf of your child. In these circumstances, the Respondent would likely no longer be able to stay in the child's home to provide a safer home environment for your child.

AM I A VICTIM OF FAMILY VIOLENCE?

'Family violence' is not limited to physical or sexual abuse. Emotional abuse of any kind, as well as threatening, controlling, or coercive behaviour are all forms of family violence. Family violence also includes any behaviour by a person that causes a child to hear or witness or otherwise be exposed to the effects of family violence.

Not all Intervention Orders are taken out due to family violence, but with family violence affecting one in five Victorian women, a large proportion of Intervention Orders are the result of family violence. Victims of family violence should be reassured that they do not have to continue being victim to family violence and that there are a number of support services who can assist.

WHAT TO DO IF YOU ARE THE RESPONDENT

If you are the Respondent to an Intervention Order, it is critical that you do not contact the Protected Person listed on the application without first obtaining legal advice.

When you are served with an Intervention Order, usually a member of the Victoria Police will explain the conditions of the order to you. However, the Police are often very busy and only have limited time to explain the order to you.

Additionally, most people are surprised to be served with an Intervention Order and may not fully understand the conditions of the order the first time they see it. We strongly advise that you immediately make an appointment to speak with a lawyer to understand the conditions of the order. Sometimes, the conditions are quite simple.

Usually, however, there are several conditions, exceptions, and sometimes other orders already in place that make understanding the order very difficult. For example, the Intervention Order can sometimes suspend Family Court Orders.

Every Intervention Order is unique, and the Court can include specific clauses depending on your specific circumstances. You should consider obtaining legal advice as soon as possible; our lawyers are on call to speak to you about your Intervention Order matter.

WHAT ARE MY OPTIONS AS A RESPONDENT?

The options available to a Respondent to an Intervention Order are as follows:

- You can consent to an order without admitting that the allegations are true.
- You can engage a lawyer to negotiate with the applicant to have the application against you withdrawn.
- You can defend the application by requesting further evidence from the applicant and having an opportunity to respond. If you choose this option, you will get the opportunity to give evidence at a Contested Hearing.
- In some circumstances, you can agree to an undertaking or written promise instead of agreeing to an Order.

HOW AN INTERVENTION ORDER CAN AFFECT YOUR FAMILY LAW MATTER

When there are related family law proceedings to be considered in relation to an Intervention Order, you should get urgent advice from an experienced family lawyer about the implications of an Intervention Order being made or the matter proceeding to a Contested Hearing.

Intervention Orders may suspend the operation of existing Family Law Orders, which could affect your rights in relation to spending time with your children or living with them.

In other cases, an Interventions Order may include an exception which allows the Respondent to do anything permitted by an existing or future Family Law Order.

If you are engaged in family law proceedings and are concerned about how an Intervention Order may affect your family law proceedings, an experienced family lawyer can guide you through the principles that the Family Law Courts use to decide what happens in parenting disputes where there has been family violence.

WHAT IS THE IMPACT OF FAMILY VIOLENCE ON PARENTING ORDERS?

Under Section 61DA of the Family Law Act, the presumption of equal shared parental responsibility is rebutted in the instance that there is family violence or child abuse, or it is otherwise not in the best interests of the child for the parents to share equal decision making responsibility for the child.

The Family Court will then consider what parenting order is in the “best interests of the child”, wherein family violence and related orders may have a significant impact.

In considering the presence of family violence, either party or an independent children’s lawyer (ICL) may enlist evidence from a number of experts, including – teachers, doctors, treating specialists, counsellors, family consultants, psychologists, psychiatrists, paediatricians, family violence experts and child protection officers.

Ordinarily and under Section 62G(2) of the Family Law Act, the Court will also enlist a Family Consultant to compile and tender a Family Report canvassing the child/parent relationship, the effect of any change in the child’s circumstances, the attributes of the child, the capacity of each parent to provide for the child and other matters deemed relevant.

FREQUENTLY ASKED QUESTIONS

Can I seek costs against the other party in Intervention Order proceedings?

The Intervention Order legislation provides that costs are generally borne by each respective party. Costs orders are difficult to obtain against the other party, even if you successfully defend the Intervention Order application and have spent money on legal fees in doing so.

However, in some cases where it is clear to the Magistrate that the other party has brought the application without any grounds to do so or solely to advance another agenda, there may be the possibility of a costs order being against that party being considered. You should consult a lawyer about making an application for a costs order.

Will I get a criminal record if I am a Respondent to an Intervention Order?

An Intervention Order is a civil order, not a criminal one. Having an Intervention Order against you, whether Interim or Final, is not a criminal offence, and does not give you a 'criminal record.' It does not appear on most police checks, and will usually not impact someone's work or travel.

However, if the Respondent breaches the Intervention Order, they may be charged with a criminal offence.

What happens if I breach the terms of an Intervention Order?

If the Respondent breaches an Intervention Order, they can be imprisoned for up to 2 years. If the Respondent continues to breach an Intervention Order, they can be imprisoned for up to 5 years. If you are charged with a breach of an Intervention Order or are contacted by Victoria Police in relation to a breach of an Intervention Order, you should contact us immediately to receive advice and have us attend the Police Station if you are arrested.

Can I appeal an Intervention Order?

If an Intervention Order was made against you, or if you wanted one made against the other party but were not successful, then you can appeal the Magistrates' decision. An appeal of a Magistrates' decision to grant to not to grant an Intervention Order must be made within 30 days of the Magistrates' decision. The appeal must be made to the County Court of Victoria.

You can appeal any of the following:

- The making of an Intervention Order.
- The refusal of a Magistrate to make an Intervention Order.
- The conditions of an Intervention Order.
- The Court's refusal to impose certain conditions in an Intervention Order.

Is it possible to extend, vary or revoke an Intervention Order?

Yes, any party to an Intervention Order may apply to the Court to do any of the following:

- Extend the duration of an Intervention Order;
- Vary the conditions of an Intervention Order; and
- Revoke (cancel) an Intervention Order.

If you are seeking to vary, extend or revoke an Intervention Order, you must seek leave (special permission) from the Court to lodge your application. You would need a legal reason to do so.

WE ARE HERE TO HELP

With recent changes to Family Violence legislation, it is more important than ever to ensure that you receive accurate advice about applying for or defending an Intervention Order.

These matters can have a significant impact upon family law proceedings as well as access to a former matrimonial home or to children of the relationship. We rely upon our experience in this area of law to ensure that our clients are properly advised and represented in both the Magistrates' Courts of Victoria and Children's Courts of Victoria. We carefully consider each individual case and its unique circumstances in providing you with informed advice.

Call us on (03) 8391 8411 to speak with one of our friendly lawyers for an obligation free initial consultation about how we can assist you with your matter.

To see the host of other individuals we have assisted with their Intervention Order matters, click [here](#) to read our google reviews. Otherwise, to read more about Family Law, Estate or any of our practice areas, click our logo below to view our website.

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