


September 2017

How to respond to a family violence intervention order



This booklet is about family violence intervention orders. It explains what intervention orders are and how they work.

Do you need this booklet in a different format?

Please ring us on 9269 0234 and ask for Publications. We can talk with you about what you need.

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 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

Have you had an intervention order taken out against you, or been accused of family violence?

This booklet is about family violence intervention orders, which cover family members. It explains what intervention orders are and how they work. It does not cover stalking, or personal safety intervention orders.

It also looks at:

- how to respond to an application for a family violence intervention order at the Magistrates' Court of Victoria
- how to get ready for a court hearing
- what happens at court and your right to have your say about orders
- where you can go to get help.

Legal words

To help you, we have explained some words in 'What do these words mean?' at the front of this booklet. These words are also highlighted in **bold** the first time they appear in each section.

Get legal help before you go to court

This is a legal process, so legal advice will help you understand your options, whatever you decide. It is best to see a lawyer before you go to court.

A lawyer can:

- give you advice about responding to an intervention order
- explain the law and your options
- help you prepare for the hearing
- speak for you at court, including negotiating conditions on the first hearing date
- help you understand what an order means
- help sort out any other legal issues, like family law.

You may be able to get funding from Victoria Legal Aid for a lawyer.

Victoria Legal Aid can also 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 9652 1500 to find the centre closest to you.

You can get more information about family violence intervention orders at www.legalaid.vic.gov.au/find-legal-answers

Getting other help and information

The intervention order process can be stressful. Support services can give you practical, emotional, financial and other help. They can also help you if you decide you want help with changing your behaviour. These services are confidential.

Go to the back of this booklet, at page 25, to a section called 'Where to get help' for service information.

What do these words mean?

affected family member – this is the family member named in the application for an intervention order or family violence safety notice as seeking protection. If an intervention order is made they are then called a protected person

applicant – the person asking for the order. It can be your family member or someone else, like a police officer

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, and the reasons your family member says they need protection

conditions – the rules of the order, which must be followed

contested hearing – when the respondent does not agree (consent) to an order and the court hears evidence from both sides and then decides

contravention – when the intervention 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 condition of an intervention order that stops you being at your home

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

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 that has rules about how someone can behave, to protect their family member, children and property. For example, it might say that they are not to threaten them. If an order is made you must follow the rules exactly. If you break the order it is serious and the police can charge you

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 you

serve – delivery of a court document

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

undertaking – a formal promise made to the court

warrant – a court document authorising the police to arrest a person and hold them in custody

What the law says about family violence

What is family violence?

Family violence is when a **family member** makes someone feel unsafe and afraid. It is when they are controlling or threatening. It can start with small things and get worse over time.

It includes:

- hitting or pushing around (physical abuse)
- threatening to hurt someone, or their pet, or to damage their property
- forcing them to have sex (sexual abuse)
- calling them names, putting them down or stopping them from seeing family or friends (emotional or psychological abuse)
- controlling their 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 at a family violence incident when the police arrive.

The law says family violence is wrong and should stop.

Intervention orders are about changing behaviour. Ask yourself if your family member has a reason for saying that they are afraid of you. If so, there are confidential services that can help you with this.

See 'Where to get help' for a list of services on page 25.

It is violence that breaks up families, not the action to try to stop it.

What is a family member?

Under 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 an intimate 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.

About family violence intervention orders

What is a family violence intervention order?

A **family violence intervention order** helps to protect someone from a family member who has used violence against them. It is a court order, made by a **magistrate** in the Magistrates' Court.

It has **conditions** (rules) to stop behaviour that makes a family member feel unsafe. An order can also protect children, property or other people supporting your family member.

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, or if the order is consented (agreed) to.

How does an intervention order work?

The magistrate makes an intervention order if they accept that your family member needs protection. The order sets the conditions for you to follow. If the order is followed, the court may not get involved again.

What if my family member does not want an order?

Even if your family member disagrees, the police can still apply for an intervention order for them. The police must put your family member's safety and the safety of your children first. This is a police decision.

However, there are limits on the conditions the magistrate can make when your family member does not agree with the order.

Even if your family member tells you they agree with you doing something that breaks the order, do not do it – you are responsible for not breaking the order. The court will say your family member's agreement is no excuse.

What is a family violence safety notice?

If the police get a report of violence at any time and come to investigate they can use a **family violence safety notice** to stop violent behaviour. They give a copy of the notice to you and to your family member. It has conditions about how you can behave. For example, it might say you cannot go near your family member, or threaten them.

It works like an intervention order. You must follow the conditions and go to court on the date in the form. If you do not do this you are breaking the law and can be arrested.

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

How an order can affect you

What can an intervention order stop me doing?

There is a list of conditions in the **application** that the applicant asks the magistrate to include in the order. If there is an interim order this might have the same conditions.

The magistrate can include any conditions they believe are needed to keep your family member safe. They might stop you from:

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

Orders can also cover children or someone who supports your family member.

You have the right to argue against the conditions or ask the magistrate to change conditions. It is up to the magistrate to decide, and it may not be decided on the first day at court.

See 'Your options' on page 15.

Will I get a criminal record?

Getting an order against you is not the same as being charged with a crime. It is what is called a civil process. It is not on the public record, but the police and the court will have a record.

But the police must investigate, and you can get into serious trouble if you:

- break the conditions of the order
- act violently towards your family member or damage their property, if there is an order or not.

These are crimes, so you could get a **criminal record** if you are found guilty of any of these.

Do I have to leave home?

A magistrate can make a condition that says you have to leave home. This is called an **exclusion order**.

This order means that you must leave and not return, or you will break the order. You do not lose all your rights to the house or your things. You may also be able to return at a later time, for example with the police, to get your things. You can ask that an exclusion order not be made, but it is up to the magistrate. You may have to wait until the hearing of the final order to argue against the exclusion order.

Before a magistrate makes an exclusion order they will look at the situation, including whether there are children.

If there is a condition that you must leave your home then get legal help. You can also get other help, such as to find accommodation.

See 'Where to get help' on page 25.

Will the order affect my job?

If an order is made, it may affect your job if it stops you going to places you need to work at, or if you work with or near your family member. Talk to a lawyer if you are worried about this, because there may be options.

If you are found guilty of breaking the order you could get a criminal record. This may make it more difficult to get certain kinds of jobs or even travel in the future.

What about my gun licence?

An order can ban you from having a gun for five years or more and cancel any permits you have. The police can search for guns and other weapons, and remove any they find.

Get legal advice if you have any reason for having a gun, for example, you carry one for work.

Will I still be able to see my children?

If the order affects you seeing your children, get legal help before you go to court. You have options.

Intervention orders can protect children. The magistrate will always ask if your children have heard, seen or been exposed to any family violence. If they have, the magistrate may decide to include them on your family member's order or make a separate order, even if your family member does not agree.

It is the magistrate's job to make sure children are safe. As part of this, children are not allowed to be involved in the hearings.

Even if there are already family law orders about children, the magistrate can make an intervention order that stops you seeing the children under that order, while the intervention order lasts. It depends on what that order says, and what your family member asks for.

This is why legal advice is important, and can help you decide what to do.

What if I'm under 18?

If you are under 18, the police or a family member may apply for an intervention order against you in the Children's Court. The magistrate can make an intervention order with conditions that are needed to keep your family member safe, but the magistrate must consider additional things before making a condition that says you must leave home (an exclusion order). The magistrate will consider how an exclusion order will affect your education, work or access to health services. The magistrate must ensure that you have appropriate accommodation, care and supervision before making an exclusion order.

It is very important to get legal advice if someone applies for an intervention order against you. You can ask to speak with a free lawyer when you go to court.

Role of Victoria Police

Why are the police involved?

If the police get a report of family violence, they must investigate. They will look at any risk to your family member's safety and act to protect them.

They can do this even if your family member does not want them to, but they must explain why.

The police are also responsible for giving you the court forms (such as the **application** and any orders) and explaining the conditions. This is called serving them.

Even if you are angry about the report or getting an application for an intervention order, abusing the police will not help the situation and may sometimes lead to criminal charges.

What can the police do?

The police can:

- arrest or hold you in custody
- remove you from the home
- give you a family violence safety notice
- remove guns and other weapons.

If the police get involved and believe your family member's safety is in danger, they can apply for an intervention order for your family member and handle the case at court.

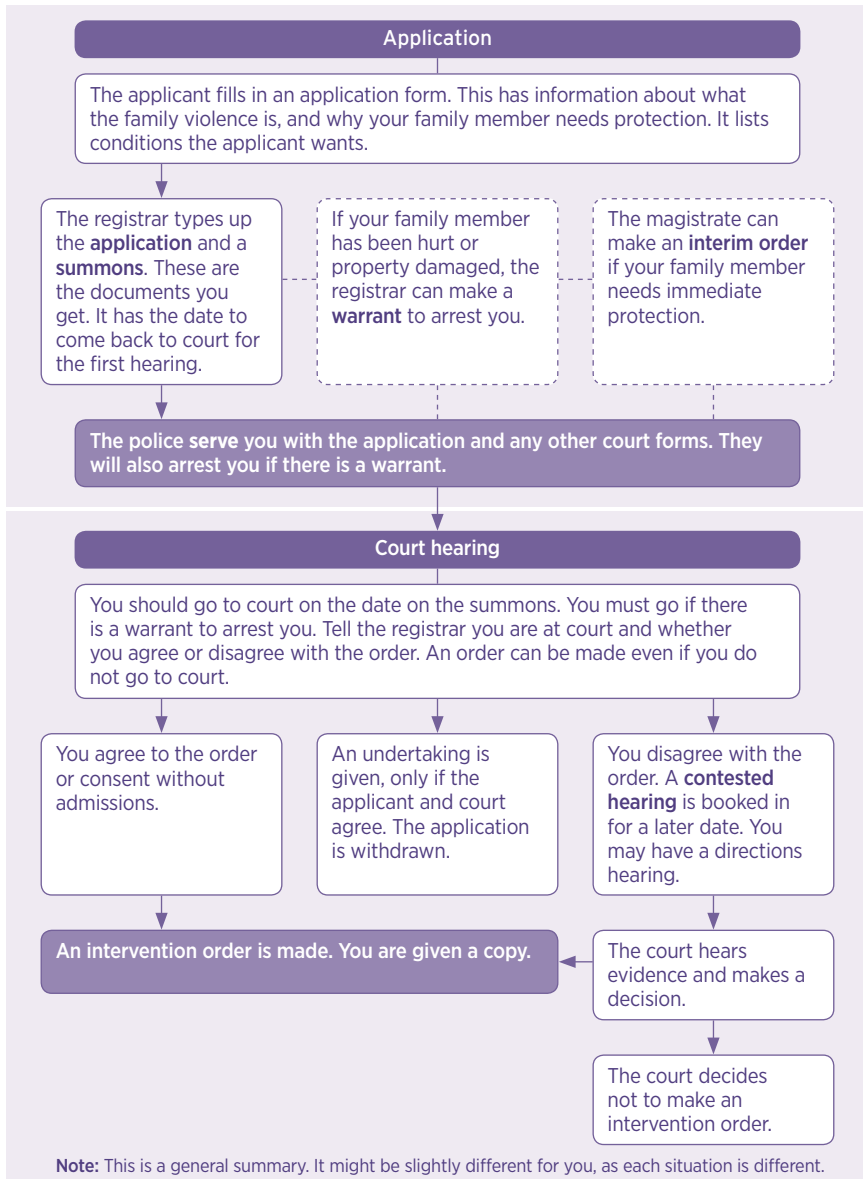
What if I am not happy with what the police do?

Remember that it is also the police who enforce an intervention order, and it is their duty to keep the peace. If you do not understand what the police tell you, ask them for more information and get legal and other help.

If you are unhappy with police action you can get help from Victoria Legal Aid or a community legal centre. You should take the names and details of any police officers you have contact with, including which station they are from. You can complain to the Section Sergeant of that or any other station, and to the Police Conduct Unit.

See 'Where to get help' on page 25.

Summary of how a family violence intervention order is made



Being told about the family violence application

What are these forms?

If you were not given a family violence safety notice, you might not know someone has asked for an intervention order against you until the police come to **serve** you with the order. You will get a copy of the **application** and **summons**, and any interim order.

What is the application?

This is the form that gives information about you and your family member, describes what happened and states the kinds of conditions the applicant wants the court to put on the intervention order.

What are interim orders and warrants?

An interim order is a temporary intervention order. A magistrate can make an interim order if they believe your family member needs protection straight away.

An interim order will continue until the first hearing. If the magistrate does not make a final decision at the first hearing, they can make the interim order continue until the next hearing. You must follow any interim order.

A warrant is a court order for you to be arrested.

Do I have to go to court?

If you signed a bail undertaking you have to go to court, or you may be arrested and charged.

If you get a summons, you do not have to go to court. But orders are serious and can be made even if you are not at court.

If you want to have a say about the order, you have to go to court.

Your options

What are my choices?

You can:

- consent (agree) to an intervention order being made (even if you don't agree with the reasons for it)
- argue against all or parts (conditions) of the order
- in some situations, offer to give an **undertaking** instead of consenting to or contesting an order.

You need to go to court to do any of these things. You may be able to negotiate some of the conditions. You can ask the magistrate, speak to the police or a duty lawyer may be able to help.

Do I need to see a lawyer?

If you have had an order taken out against you, get legal help. Talking to a lawyer can help you sort out what you want to do.

Because an order can affect your rights **you should really see a lawyer before court** if:

- there are children involved, because the order can have conditions about how you see or care for them
- you disagree with any of the conditions, for example, one that stops you from living at your home
- you want to contest the order
- you think you might be charged with a crime
- you have any reason for having a gun or other weapon, for example you carry one in your work, because the order can ban you from having one for five years or more.

The court expects you to see a lawyer and will ask if you have had independent legal advice about the family violence application. The court hearing may be delayed until both you and your family member have had independent legal advice.

See 'Where to get help' on page 25.

Your family member may have a lawyer. If you want to be able to test your family member's story you will usually need a lawyer too. You can get your own lawyer, or

the court may order Victoria Legal Aid to arrange a lawyer for you for the hearing. You need to fill out a grant of legal assistance application form. You may not have to pay.

If you refuse a lawyer you may not be able to tell your side of what happened, call witnesses or cross examine the applicant or their witnesses.

What happens if I consent (agree) to an order?

You can consent to:

- everything in the **application**
- the conditions in the application, but not with what was said about you in the application (this is called consenting without admissions)
- an order being made, but ask the magistrate to change some of the conditions so you do not risk breaking the order.

In court the magistrate will ask if you consent to the intervention order being made. Be clear about what you want, as orders are serious.

If you consent without admission, the magistrate can make an order without deciding whether you did what your family member or the police said you did or not.

Depending on which court you are at, the magistrate may also order you to have counselling.

Also see 'About family violence intervention orders' on page 7.

What if I do not agree with an order?

You must go to court. If you do not agree with the application the court will list it for a **contested hearing**, on another date.

This is when the magistrate hears all the evidence from both sides, including witnesses. You have to come back to court on the date the application is listed.

On the first hearing date the court may have a directions hearing. This hearing is where the court asks for more details about the application and what you say about it.

A magistrate will only set a date for a contested hearing if both of you:

- have had a chance to speak to a lawyer
- are ready for the contested hearing.

The court can order Victoria Legal Aid to arrange a lawyer for you or your family member.

See 'Do I need to see a lawyer?' on page 15.

If the application is listed on another court date it is very likely that any interim order or safety notice will continue until then. If you break this order or notice it is a crime and the police can charge you. You can get in serious trouble, and if you are found guilty of a crime you can get a criminal record.

What happens at a contested hearing?

If you do not agree to the order, the magistrate cannot make a final decision without hearing evidence. To make an order the court must accept that there has been violence and it is likely to continue. Usually this means the affected family member telling their story in court.

At the contested hearing the magistrate will listen to the applicant first, then you.

What is an undertaking?

An undertaking is a formal written promise that you give to the court and your family member that you will follow certain conditions. Your family member does not have to agree to an undertaking. The court can also refuse to accept it.

If you both agree to an undertaking the application for an intervention order is marked as withdrawn, which means stopped. If you do not break the conditions, your family member may decide they no longer need an intervention order. If you break the conditions they can still ask for an order.

Talk to a lawyer about your options.

Going to court

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

When do I have to go?

The **summons** that comes with the application form will tell you the date of your first court hearing. You may have to go to court more than once.

The hearing is usually two to three weeks after the application form is first filled in. It may be sooner if you were arrested.

Plan to be there for the whole day, as the court will also have other cases. And be on time.

What do I need to take?

Take the court forms you were given, and any other paperwork about the application. You can bring someone for support, but not to give evidence for you.

If you want to contest the order, you can organise witnesses for the final hearing. The court will not hear from witnesses 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 may ask whether you agree or disagree with an order, and whether you have seen a lawyer.

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 you would like to see a **duty lawyer** or get other help at court, tell the court registrar.

Can I talk to my family member or their lawyer?

If an interim intervention order has been made you should not to talk directly to your family member, even if they approach you. It is better to talk to the court registrar or magistrate about what you want, or their lawyer if they have one.

Sometimes negotiation at court with the help of lawyers can sort things out.

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 whatever happens. It will help your case.

What happens next depends on what you have decided to do. If you agree with the order the magistrate can look at the application and make a decision quite quickly.

If there is a chance that you and the applicant can make an agreement, possibly with the help of a lawyer, the court may give you some more time.

If you want to argue against the order the court will list it for a **contested hearing**, on another date.

See 'What if I do not agree with an order?' on page 16.

Contested hearings

How do I prepare for a contested hearing?

If you have not spoken to a lawyer yet, you need to now. Ask them what you need to prepare.

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

You and your family member can each find your own lawyer, or the court may make an order asking Victoria Legal Aid to find a lawyer. If so, you will need to fill out a grant of legal assistance application form and financial statements.

Can I ask my family member questions in court?

Your family member, and any child, becomes a protected witness. A protected witness may also be able to give evidence by video or in other ways.

You cannot usually ask a protected witness questions in court yourself during the hearing. Your family member might agree, but the **magistrate** may not let you.

If you have a lawyer, this lawyer can ask your family member questions in court. This is called cross-examination. Your lawyer can explain how this will work. If the court orders Victoria Legal Aid to pay for a lawyer for you and you refuse this lawyer or any lawyer, then you will not be able to ask a protected witness questions in court. You will also not be able to tell your story or call your own witnesses.

The court makes an intervention order

When can the magistrate make an order?

The **magistrate** will make an intervention order if both you and your family member consent to it.

If you or your family member disagrees, the magistrate can only make an order if they have heard **evidence** and believe:

- there has been **family violence** by you towards your family member **and**
- it is likely to continue.

If the magistrate says that there was not enough evidence then no order is made.

What conditions can the magistrate put in the order?

When deciding which conditions to put on an intervention order the magistrate will want to make sure they are clear about all of the details about:

- any children you have with your family member
- your living arrangements.

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

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. This is so you will know what you are not allowed to do.

Disagreeing with the magistrate's decision

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

You must appeal within **one month** of the decision. Get legal advice first.

You can appeal against the intervention order if you disagree with:

- the magistrate making an order
- any of the conditions in the order
- the length of the order.

You cannot appeal against an interim order or a family violence safety notice.

The conditions of the order apply until the County Court makes a decision.

Breaking an intervention order

What if I break the order?

If you do not follow the conditions of an intervention or interim intervention order or counselling order it is called a **contravention**.

Breaking a court order is a crime. The police can arrest and charge you.

You could also be charged if you have committed another offence, for example, assault or property damage.

The police must investigate. The police will take a statement from your **family member** and any witnesses and interview you.

If you are charged, you will need to decide whether to plead guilty or not guilty. You should have a lawyer for the court hearing. Get legal advice well before the hearing date.

If you are charged you have to go to court. If you are found guilty you can get a large fine or go to jail, as well as getting a criminal record.

Ending or changing an intervention order

What happens when the order finishes?

The order just stops on the date set in the order. If your family member still believes that they are not safe, they can ask for the intervention order to be extended. They must apply to the court before the order finishes. You will be told if they apply.

Can the order be changed or cancelled?

If your situation changes, for example, you and your partner get back together, you must not ignore an intervention order. It needs to 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.

If you want the conditions of the order changed, contact the court **registrar**. You need to fill in forms explaining what has changed. Your family member will be told that you are asking for this. 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.

What if my family member moves interstate or overseas?

Where they live is their decision. However if you have children and your family member plans to take them you need to get legal advice.

Your family member can also get the order registered in another Australian state, if they move there.

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 out your nearest community legal centre.

Tel: 9652 1500

www.communitylaw.org.au

Victorian Aboriginal Legal Service

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

Tel: 1800 064 865 or 9418 5999

www.vals.org.au

Law Institute of Victoria's Referral Service

For referral to a private lawyer – 30 minute enquiry interview free of charge.

Tel: 9607 9550

www.liv.asn.au/Referral

Magistrates' Court

To find out the address and contact details of courts in Victoria, more information about family violence and support services at the court, to watch an online mock family violence hearing and court tour.

Call the number on any court paperwork you have been given.

www.magistratescourt.vic.gov.au

Support services

Men's Referral Service

A free, anonymous and confidential telephone counselling, information and referral service for men and those concerned about their behaviour, or the safety of their family members.

Tel: 1300 766 491

www.mrs.org.au

Women's Information and Referral Exchange

Free information, support and referrals for women.

Tel: 1300 134 130

www.wire.org.au

Salvation Army Crisis Service

Tel: 1800 627 727

Useful Victoria Legal Aid resources

To order publications

We have free booklets about the law in English and other languages. Visit www.legalaid.vic.gov.au to order or download booklets. Call 9269 0234 and ask for Publications to find out more.

Our public law library

Open Monday to Friday, 9 am to 5 pm, 350 Queen Street, Melbourne



Family violence intervention order applications

Fact sheets for affected family members and for respondents



Safe at home: how to get a family violence intervention order (booklet)



You and family law: A short guide

This booklet is for anyone who is thinking about or going through separation and needs basic information on family law

Watch me on **You Tube**

Watch our community legal education videos.

How to respond to 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

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