

### **How to get legal help for a victim of family violence?**

An intervention order is an order of the Court to protect the safety of a family member that has been a victim of family violence, to protect a child or to protect property.

A victim of family violence may be able to obtain an intervention order in the Magistrates Court. The application is made pursuant to the *Family Violence Protection Act 2008* (“**the Act**”). A person who applies for and secures an intervention order is called a protected person.

Intervention orders can be either an interim intervention order or a final intervention order.

#### **What does an intervention do?**

The purpose of the intervention order is to prohibit family violence against a family member and places restrictions on a person’s access and/or contact with the victim of family violence.

Should an intervention order be breached, the order allows the Police to arrest a person in breach of the order without a warrant.

#### **Abuse of the system**

There are instances where the intervention order process can be abused for ulterior motives. In a recent case our firm represented a person accused of inflicting family violence on his wife. The wife arrived in Australia on a spousal visa and claimed family violence had been inflicted on her by our client. These allegations followed our client informing the wife that he no longer wished to continue with the marriage. As a result, the wife alleged family violence in order to secure a permanent residency because had the marriage failed, the spousal visa would have been cancelled.

Awash Prasad, one of our associates, conducted the trial and was successful in opposing the grant of a final intervention order. The trial was a full day trial where 6 witnesses were called.

#### **Who can apply for an intervention order?**

A family member who has been affected by family violence includes, parents, children, relatives, current or former spouse, domestic partners or a person having an intimate relationship with the person accused of inflicting family violence.

For persons that are not a family member, they may be able to obtain a stalking order under the *Stalking Intervention Orders Act 2008* (Vic).

#### **What constitutes family violence?**

Family violence has a broad definition under the Act and includes behaviour that is:

1. physically or sexually abusive;
2. emotionally or psychologically abusive;

3. economically abusive;
4. threatening;
5. coercive;
6. controlling or dominating such that a family member feels fearful for their safety or wellbeing.

Family violence also includes behaviour by a person that causes a child to hear or witness, or being exposed to the effects of family violence. Examples include (but are not limited to) such situations where a child:

1. overhears threats of physical abuse by one family member towards another;
2. seeing or hearing an assault of a family member;
3. comforting or providing assistance to a family member who has been physically abused by another family member.

### **Interim intervention order**

An interim intervention order is sought for urgent protection of a victim and can be sought either by the victim or in most cases, through the Police.

An interim intervention order may be granted if a Magistrate is satisfied that it is more probable than not that the victim has suffered family violence.

### **Final intervention order**

A final intervention order is either for a longer period or for an indefinite period. In order for a Magistrate to award a final intervention order, he/she will need to be satisfied that it is more probable than not that:

1. Family violence has occurred; and
2. There is a threat that family will continue.

As the word final suggests in the context, it applies from this day forward, i.e. into the future. As such there must be a threat that the family violence complained of will continue into the future.

### **Do intervention orders apply interstate?**

The short answer is no. The intervention order applies to the State in which it was made.

The long answer is that you can apply to the Court to have the intervention order registered in another State. By doing so, each state allows "portability" of intervention orders.

### **How we can help?**

Should an intervention order be made against you or be threatened against you, we are in a position to provide advice and represent you should it be required. Alternatively, if you know someone who may be a victim please pass on this article or encourage them to seek assistance. Please contact us for further information on:

Phone: (3) 9387 2424 Email: [info@rrrlawyers.com.au](mailto:info@rrrlawyers.com.au)