



Intervention & Personal Safety Orders - Things you need to know

Relationship difficulties and breakdowns are a sad reality of modern life. Difficulties can arise in any relationship - with your spouse or partner, your ex, adult children, a work colleague, even between flat mates.

In today's high pressure, fast-paced world, relationship difficulties or breakdowns can sometimes involve actual or threatened violence. At times of stress or when emotions are running high, some people "lose their cool" or use intimidation or violence to control the other person. Occasionally, one person thinks they may gain an advantage by untruthfully alleging violence by the other person.

If you find yourself in such a situation, can you get help? Maybe someone claims you have been violent towards them and has sought an intervention order against you. What do you need to do?

Family violence protection

The Courts and police take family violence seriously. Family violence includes physical or sexual abuse, emotional or psychological abuse, economic abuse or financial control, and behaviour that is threatening, coercive, controlling or dominating, causing the victim to fear for his or her safety or welfare.

Such behaviour can also include property damage, harming or threatening to harm a pet, and depriving a family member of their freedom. Family violence also includes exposing children to such behaviour.

The *Family Violence Protection Act* sets out a regime to protect someone who fears or has experienced family violence from a family member, which includes a partner or spouse, an ex-partner or spouse, any relative, or a child who normally lives or lived with you.

Family Violence Safety Notice

In the first instance, the police could issue a Family Violence Safety Notice, so long as they believe the perpetrator is at least 18 years old. The purpose of such a Notice is to provide the victim with immediate protection from the alleged perpetrator. The Notice would require the alleged perpetrator to go to Court where the Court would decide whether to issue a Family Violence Intervention Order.

Family Violence Intervention Order

You or, if they agree, a police officer on your behalf can apply to the Court for a Family Violence Intervention Order if you have experienced family violence and fear that it will happen again.

If granted, a Family Violence Intervention Order could prevent the perpetrator from:

- committing family violence
- damaging or using the victim's personal property
- remaining in or entering the victim's home, workplace or school
- approaching or communicating with the victim
- causing someone else to commit family violence against the victim
- holding a firearms' license.

It is possible to obtain a Family Violence Intervention Order against a minor child. However, the Court will only exclude a child from the victim's residence if it is satisfied that the child will have appropriate alternate accommodation, care and supervision.

When making a Family Violence Intervention Order, the Court can also order that the perpetrator attend counselling to increase his or her sense of accountability for the family violence and to encourage him or her to change such behaviour.

What about parenting orders?

The police cannot issue a Family Violence Safety Notice that is inconsistent with any Family Court parenting orders then in place. However, when granting a Family Violence Intervention Order the Court can vary Family Court parenting orders, if the parenting order is inconsistent with the Family Violence Intervention Order.

If no Family Court parenting orders are in place, when considering a Family Violence Intervention Order the Court may include conditions in the Order about how the perpetrator can live, spend time or communicate with a child.

What if I'm not related to the perpetrator?

The *Personal Safety Intervention Order Act* contains provisions similar to those in the *Family Violence Protection Act* for the personal protection of victims of assault, sexual assault, stalking, harassment, property damage and threats to kill or inflict serious injury, where the perpetrator and the victim are not members of one another's family.

For the purposes of the Act, harassment includes conduct that is demeaning, derogatory or intimidating. Stalking includes the following conduct directed towards a victim with the intent to cause physical or mental harm (including self-harm) or fear for the safety of the victim or another person: following, loitering, keeping under surveillance, contacting,

publishing material on the internet, tracing electronic communication, abusive or offensive words or acts, and giving the victim offensive material.

If the Court finds that someone has engaged in conduct prohibited by this Act, it may grant a Personal Safety Intervention Order. Such an Order may be made against a child aged 10 years or older.

Consenting to Intervention or Personal Safety Orders

The Intervention or Personal Safety proceeding in the Magistrates' Court of Victoria is not treated in the same way as a criminal proceeding. The Court is not required to be satisfied beyond reasonable doubt, as in criminal cases, to make the Intervention/Personal Safety Order against the respondent. The Court has to only be satisfied on the balance of probabilities in order to make such Orders. The Court is more likely to be cautious, and make the Order. The thought process is that even in borderline cases, it is better to make the Order than to find that the Court has made a mistake.

It is possible for a respondent to consent to the making of an Intervention or Personal Safety Order against someone without admitting to the allegations made. The making of the Order would not be shown on the person's criminal record. However, if the Intervention or Personal Safety Order is breached then that matter becomes a criminal law proceeding which is initiated by the Police. This is regardless of whether the Intervention or Personal Safety Order was consented to without admission. In order for the Court find someone guilty of breaching an Order, the Court must be satisfied beyond reasonable doubt as being the standard level of proof in criminal law proceedings.

What happens if the intervention order is breached?

If someone breaches a Family Violence Intervention Order, he or she could be arrested and prosecuted. The maximum penalty is five years' imprisonment, a fine or both. The maximum penalty for breaching a Personal Safety Intervention Order is two years' imprisonment, a fine or both.

Can I defend an application against me for an intervention order?

Yes. You may want to challenge an application against you for a Family Violence or Personal Safety Intervention Order, if, for example, your version of what occurred differs from that of the alleged victim. It is also possible to appeal a Court's decision to grant such an Order.

It should, however, be noted that even if you successfully challenge an Intervention or Personal Safety Order, you would not usually get a Costs Order, and Costs Orders are only granted in exceptional circumstances. The proceeding will not be finalised at the first return date (the first Court date), and the matter will be listed for a Directions' Hearing, and the Court may order that the parties file particulars of the allegations made in the Complaint, and parties may be required to exchange documents. The Final

Hearing of the Application may take as long as 6 to 9 months from the initial Complaint. If the Court has granted Interim Orders, and such Interim Orders are usually granted if the Court is convinced that Complaint has some substance. The Interim Orders usually continue until the matter is determined at the Final Hearing. However, if the initial Complaint is not regarded by the Court as having substance, the Court will usually allow the Complaint to be issued, but without any Interim Orders.

Conclusion

Today, the Courts and police take the issue of family violence and personal safety very seriously. The definition of family violence is very broad, as is the range of prohibited conduct which could give rise to a Personal Safety Intervention Order. Breaches of such intervention orders are also treated seriously, and the Court has the power to impose a range of significant penalties, including imprisonment.

If you or someone you know wants more information or needs help or advice, please contact us on 03 9387 2424 or email info@rrrlawyers.com.au.