

Family Violence Fact Sheet

Changing or Amending your Family Violence Intervention Order

What happens when a Family Violence Intervention Order ('FVIO') is made against you?

When someone has made an FVIO against you the police are required to give you the following documents:

- A copy of the application which will describe in detail what you have been accused of doing (conduct)
- A summons is a court document that includes details about the court date.

The police may also present you with:

- a family violence safety notice
- an interim intervention order
- a warrant for your arrest.

What are my options when an FVIO is made against me?

1. Not go to court

You can simply ignore the application. However, if you do not attend court, you cannot argue against the application. Even if you are not present at court, a final order can be made against you.

If you are not present at court when the Magistrate makes a final order or extends an interim order, the police will still give you notice of the order. If the police cannot find you to give you notice of the order personally, they can still give you notice through someone else, such as a family member, boss or associate.

2. Consent to the FVIO

You can consent to the FVIO by agreeing to obey the conditions in the application. You may give 'consent without admissions,' meaning you agree to the conditions of the order but do not agree with what is said about you in the application.

3. Argue against the FVIO (contest)

You can attend the hearing and argue against the FVIO. Before doing so, you should:

- seek legal representation; and
- Arrange witnesses and organise your evidence.

You need to convince the Magistrate that:

- the claims against you are false; and
- you are not a future threat to the protected person.

4. Seek an undertaking

An undertaking is a formal, written promise to the protected person and the Magistrate (the court) that you will abide by conditions and not harass the protected person. An undertaking is not an order of the court, it is a promise to the court. It is up to the applicant whether they will accept the undertaking, and if they do, the FVIO application is withdrawn. Failure to abide by the conditions in an undertaking can lead to an intervention order being made against you in the future.

When your FVIO ends

The court will specify the period for which the final order will be in force after an assessment of the level and duration of your risk and the safety of the protected persons. If the respondent is a child, the order is to remain in force for no more than 12 months, unless in exceptional circumstances.

If no period is specified under the order, the final order will cease when it is revoked by the court or set aside on appeal.

Conditions of the FVIO

FVIO will have rules to restrict the behaviour of the respondent and toward the applicant and the family members around them if necessary.

The common conditions on an FVIO order are:

1. cannot cause damage to the property even if they share ownership
2. sharing information about the protected person on social media
3. communicating with the protected person in any way
4. remaining a certain distance away from the protected person
5. restrict a family member committing family violence (physically, sexually, emotionally, psychologically).

Can the court extend an FVIO?

Before the expiry of a final intervention order, the court may order an extension of a final order, considering an application from a protected person or by the court's initiative. In this case, an interim order may be made in the absence of the respondent extending the final order (interim extension order).

How to change an FVIO

If you want to change or cancel your final order, you can make an application to the court. To do this you will have to contact the registrar. The registrar will help you fill in the court forms and notify the other person. You will have to come back to court on another day to see a Magistrate, who will make the decision.

Reasons to change an order

You may want to change an order because:

- there has been a change in the circumstances since the final order was made; and/or
- the change is significant enough to justify a change in the order.

An example of a change in circumstances might be allowing the respondent to engage in shared responsibility of parenting or spending an increased time with shared children.

Court's considerations

In deciding whether to change or cancel an FVIO, the court will consider all the circumstances of the case, including:

- the reason for seeking the variation or revocation
- the safety of the protected person
- the protected person's views about the variation or revocation or, if the protected person has a guardian, the guardian's views
- whether or not the protected person is legally represented.

Do you need to involve the police?

If the police applied for an order for your protection, you would need to contact them if you wish to change the order.

Changing a court order where you were not present

If an interim order or final was made when you were not present, the court may grant leave (permission) for you to apply for a variation, revocation or setting aside of the order, by having regard to the reasons why you were not present when the order was made. An example would be extreme illness.

This only applies if you seek leave from the court within 21 days after the day on which you were served with the order. However, this time limit may be extended if the court is satisfied there were exceptional circumstances.

Definitions

FVIO: Family Violence Intervention Order

Protected Person: a person that suffers abuse and/or harm from another

Respondent: a person that committed the violence an FVIO aims to stop

Applicant: person applying for an FVIO for themselves or on behalf of another

The Protected Person

The Protected person may wish to change the order if they want less protection and want to have contact with the respondent.

Or they may wish to change the order to receive more protection and want to include additional conditions.

The Respondent

The respondent may wish to apply for a change in the conditions if there are changing circumstances since the order was made that are significant enough to change the order.

For example, the respondent may have acquired a job within the distance conditions and need the court order to allow them to attend work.

Intervention Order Registrar

If you want to do this, contact the court registrar who is a person who works for the court. They will help you fill in the relevant court forms.

Find your nearest Magistrates' Court at: mcv.vic.gov.au/intervention-orders

Note: The information in this document is general information only and should not be relied on as legal advice. It is current as at 29 March 2023. If you need further assistance, please contact Deakin Law Clinic.



Law Clinic

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