



# Submission to the Victorian Royal Commission into Family Violence

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JUNE 2015

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Darebin Community Legal Centre

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'Empowering and supporting our community'

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## 1. Introduction

Darebin Community Legal Centre (“**Darebin**”) is a community-based, not-for-profit organisation that has been providing free legal advice, assistance, advocacy and community legal education to the Darebin community for more than 26 years.

This submission to the Royal Commission into Family Violence (Victoria) reflects Darebin’s practical experience of participating in the Family Violence Division (“**the Division**”) of Heidelberg Magistrates’ Court (“**HMC**”) as applicant duty lawyers. The submission also offers a perspective from a small, established, generalist community legal centre that provides holistic, integrated advice, referral and limited representation to family violence clients in related family and other civil law legal matters.

## 2. Darebin Community Legal Centre’s Family Violence/Family Law Service

Darebin began providing a family violence duty lawyer service for one half day each week in 1992 at the Preston Magistrates’ Court. Demand for the service grew quickly and in 2005 Darebin CLC was appointed as the applicants’ duty lawyer service for Victoria’s innovative Family Violence Court Division at Heidelberg Magistrates’ Court. Darebin continues to provide duty lawyers for family violence intervention order applicants and protected persons in police applications on four days each week at the Court.

In 2008 Darebin supported the introduction and implementation of the *Family Violence Protection Act 2008* (Vic) (“**the Act**”). Darebin’s duty lawyers provide a continuity of service to clients whose matters do not resolve at their first Court appearance. The lawyers represent and advise clients in mention and directions hearings but currently do not have the resources to appear in contested matters.

Darebin receives Commonwealth government funding until 2017 to provide integrated family law advice, casework and limited representation for clients who are navigating parenting and property matters in the context of family violence and parallel (or completed) intervention order proceedings. This service is in high demand, particularly in an environment of inadequate legal aid for family law matters and the high costs of private legal advice and representation. Clients who access family law support, having utilised Darebin’s duty lawyers, are not required to recount in detail traumatic personal stories repeatedly to new workers.

## 3. Numbers of family violence clients seen by Darebin Community Legal Centre

In the first year of the Division (2005/06) Darebin saw 680 family violence clients for 904 activities. These figures peaked in 2011/12 with 1256 clients seen for a total of 1751 family violence activities. In that year’s environment the Division’s services were stretched to maintain high standards of service delivery. The Court responded by improving case management and listing practices and reduced daily case numbers. Darebin now averages seeing approximately 900 family violence clients for 1200 activities each year.

In 2013/14 Magistrates' Court boundaries were redrawn to redistribute caseloads across Victorian courts causing a slight reduction in Darebin's family violence client numbers. These figures are expected to increase again in line with anticipated population growth in the Court's new northern catchment and the higher public profile of family violence generally. Darebin has worked closely within the Division to ensure that throughout these changes, including the recent temporary relocation to Melbourne Magistrates' Court, clients' cases are managed in an efficient and sensitive manner.

#### 4. Darebin Community Legal Centre generalist legal services

Darebin offers generalist legal services four days a week, including two evening legal advice sessions. In addition Darebin operates several outreach services. They include programs at local community housing/tenancy venues in Reservoir, a youth legal service and an Aboriginal and Torres Strait Islander service in two locations. These programs, including Darebin's community legal education program and local family violence initiatives, provide another access point for clients who can benefit from family violence legal support. Family violence clients are regularly referred to Darebin's Victims of Crime Tribunal Assistance worker.

One of Darebin's clients, who was first assisted with a family violence application, wrote in November 2014

*"I have found this assistance invaluable as I have been able to access a service where I am very comfortable and I didn't need to retell my story all over again as Alex the VOCAT [Victims of Crime Assistance Tribunal] worker was able to obtain the information from Tabitha [Darebin's family lawyer]"*

**Recommendation 1. that funding to generalist community legal centres be maintained and strengthened to facilitate integrated legal responses and referral for family violence victims. Generalist legal services provide alternative entry points for clients who disclose family violence in the context of addressing superficially unrelated legal or non-legal problems.**

#### 5. Clients

Annually approximately 80% of Darebin's family violence clients are women. These clients come into contact with Darebin's intervention order service in one of four ways.

- Most clients' first contact is made at Heidelberg Magistrates' Court when a police safety notice or private application for an intervention order is made.
- Clients also seek independent legal advice from duty lawyers for the first time when they are already part way through the Court's system of mention and direction hearings that lead to a contested hearing.
- Clients attend Darebin's Thornbury office in person or telephone the Centre. This can be self-initiated or the result of referral from other community-based domestic violence support organisations.

- Clients may also be referred internally. These clients can also be referred to Darebin’s family lawyer, VOCAT worker and, to appropriate non-legal family violence support agencies.

Darebin conflict checks its clients at Court and aims to ensure continuity of access to legal service for applicants and/or protected persons who may need to return to Court several times before an order is finalised. Clients also return to vary or extend a final order, to apply for a new intervention order against the same or a different family member, or to access related family law or other civil law legal services from Darebin. At Court if a conflict arises Darebin will exchange clients in the matter with Victoria Legal Aid’s respondent duty lawyer service.

## 5.1 Intimate partner relationships

Approximately 70% of Darebin’s family violence clients are in current, or have had past, intimate partner relationships (IPR) with the respondent. On a small sample, Darebin estimates 62% of IPR applicants have experienced physical harm, 65% report verbal abuse and 73% report emotional abuse. Increasingly, lawyers are being made aware of technology being used by respondents to monitor and control the electronic communications of clients, as well as to track their physical location through the use of mobile phones and in some cases commercially available car tracking devices.

█████ recently separated from █████, her husband of five years. There is a current interim family violence intervention order. █████ has received a notification on her iphone which indicates █████ has accessed her phone and the “cloud” and is using the information to keep █████ under surveillance. █████ has also stolen intimate photos of █████ from her account and published them on social media.

### 5.1.1 Family Law

Approximately 60% of Darebin’s family violence clients have dependent children under 18 years of age. Predominately these clients allege verbal, physical and emotional abuse by the respondent towards themselves and their children. Children are affected by direct abuse or by witnessing assaults on family members or the after effects of such assaults.

Disputes may involve Family or Federal Circuit Court proceedings about child access and property division that are in preparation or already underway.

**Recommendation 2. that funding be provided for increased access to affordable family law services for family violence parties engaged in post intervention order parenting disputes.**

#### 5.1.11 Section 92 exceptions of the *Family Violence Protection Act 2008* (Vic)

Some parties who did not receive legal advice when their interim order was made have returned to Court having failed to grasp that section 92 exceptions of the Act permit contact with the respondent in limited circumstances, in particular with the parties’ children. This misunderstanding can result in unnecessarily preventing respondents from maintaining contact with children and escalate ill will and distress between parties.

Darebin anticipates that the commencement of the *Family Violence Protection Amendment Act 2014* (Vic) that allows for ‘self-executing’ intervention orders will aggravate this problem. It is expected it will become more commonplace for respondents to not attend court before the terms of a final intervention order are decided. In turn this increases the risk that respondents will misunderstand the exceptions about access to children and prompt a spike in violent behaviors because of a feeling of being disenfranchised. It may also cause respondent parents to cease all contact with their children.

**Recommendation 3. that the Court provides written plain language explanations of the effect on child contact of section 92 family law exceptions of the Act. Applicants and respondents should receive this information when they are served with interim and final orders.**

#### 5.1.12 Department of Health and Human Services Child Protection Services (“CPS”)

The interrelationship between Court services and Child Protection Services (CPS) is problematic. In intervention orders where CPS is involved, delays in completing risk assessments of children’s safety and lack of communication result in uncertainty about the status and progress of CPS investigations. Workers are rarely present at Court and access to the relevant worker or team leader over the telephone is difficult and time consuming. This frequently means that matters are unable to be finalized on their listing date. This is difficult and stressful for clients and needlessly results in increased use of Court time and that of services.

**Recommendation 4. In matters where Department of Health and Human Services Child Protection Services has an active interest and protective concerns, a representative of CPS be required to attend Court.**

It is common that once an interim intervention order is in place CPS will withdraw from the case because it considers the applicant parent is acting protectively. When a final intervention order is made, provided the protected parent is the primary carer and the children are also named as protected persons, CPS is likely to close its investigation. Even though CPS is unlikely to have ongoing involvement with the family, it may require the protected parent to formalize child contact arrangements in Family Court orders. If those orders cannot be obtained by consent and the matter is not otherwise eligible for a grant of legal aid, mothers without financial means are often unable to pursue contested parenting orders.

██████ had separated from her husband ██████ after CPS disclosed that several allegations of past child sexual abuse, and some convictions, had been made against ██████. CPS told ██████ that ██████ should only have supervised contact with the parties’ two children. Initially ██████ supervised ██████’s child contact at her home. This became untenable when ██████ became verbally abusive and made several threats to take the children interstate. ██████ applied for an intervention order against ██████ and an interim order was granted. CPS advised ██████ to formalize child contact arrangements.

Despite two previous family dispute resolution sessions, ██████ disagreed with any proposed contact plans. CPS continued to pressure ██████ to finalize parenting orders. The matter did not fall within

Continued: *Victoria Legal Aid guidelines for assistance and ██████ saw a private lawyer but could not afford continuing representation. She attended Darebin distressed, not knowing how to begin making an application for parenting orders and saying she found the legal system daunting and inaccessible.*

### 5.1.13 Contact centres for supervised child contact

Family contact centres generally offer a maximum of 15 supervised contact sessions between a parent and child/children to eligible clients. Once these allocated sessions have been used, women who want the children's father to continue to have supervised access face difficult decisions. If there are no appropriate friends or family to assist, contact in many cases ceases or continues without supervision. Alternatively mothers, who themselves have been the victim of violence, are compelled to supervise contact. Private supervision services are expensive and unregulated.

Darebin also has concerns that non-English speaking respondent parents are having contact with children in circumstances where the supervisor cannot monitor verbal communication because they do not speak the relevant language and lack access to an interpreter.

*██████ separated from her husband ██████ several years ago after experiencing years of psychological and physical abuse. There are current Family Court orders which provide for their children to have supervised time with ██████ however the contact Centre is unable to accommodate any further sessions. The children want to continue to see their father but there are continuing protective concerns.*

**Recommendation 5. that family violence victims should have access to an unrestricted number of sessions at supervised contact centres.**

**Recommendation 6. that there should be same-language supervision of non-English speaking child/parent contact sessions.**

**Recommendation 7. that all professional child contact supervisors be regulated and accredited to provide minimum standards of safety and transparency.**



### 5.1.2 Respondent substance abuse and mental health

Respondent substance abuse, particularly alcohol, cannabis and methamphetamine addictions and independent or associated mental ill health are factors clients regularly report as triggers for violence and catalysts for escalation in respondents' abusive behaviours.

**Recommendation 8. that where a respondent's substance abuse is established as a major factor in family violence, Magistrates in the Division should have the discretion to order the respondent in a final intervention order to attend an approved drug and alcohol rehabilitation program. The discretion should be exercised particularly in cases where children are named as protected persons and there is the likelihood of a continuing parental relationship between the respondent and the children.**

### 5.1.3 Sexual violence

Darebin believes that sexual abuse by intimate partners who are violent and controlling in other ways is significantly underreported at Court, particularly in circumstances where duty lawyer services are operating under time pressures to manage lists of more than 10 clients on any one day.

*██████ has separated from ██████ her husband of five years. ██████ has applied for an intervention Order against ██████ because of his controlling and abusive behaviour towards her. ██████'s application contains various allegations detailing abusive text messages sent to her as well as a allegations of emotional and psychological abuse. During ██████'s interview with the Darebin duty lawyer she elaborates further and reveals that ██████ has also sexually abused her during their relationship. These serious allegations of sexual abuse are not mentioned in ██████'s application.*

Darebin is concerned that after referring clients to specialist support services for victims of sexual assault, they are having to wait up to 10 weeks for a first appointment.

**Recommendation 9. that steps be taken to increase immediate access to specialist support services for women who have experienced sexual assault within family violence relationships.**

## 5.2 Culturally and linguistically diverse clients

Many of the clients that Darebin works with are from culturally and linguistically diverse backgrounds. Working with these clients presents specific challenges. Even where a client's English is adequate there are also cultural complexities that arise in relation to issues such as dowries, honour, threats to family members, shame and cultural expectations about male and female roles. Often newly arrived women who do not speak English find themselves very isolated without friends or family. There are also legal complexities regarding visa issues and cross jurisdictional family law.

## 5.2.1 Use of interpreters

### 5.2.11 Standards

Darebin's experience using Court appointed interpreters varies according to the professionalism of the interpreter allocated for the case. It is unclear without some independent verification as to how accurately, and without bias, interpreters are communicating information and instructions between lawyer and client. Anecdotally some interpreters have been observed to inaccurately translate advice and instructions in a way that lent some bias to the outcome of the representation.

### 5.2.12 Confidentiality

Further where the Court has only booked, or been able to access, one interpreter for both parties it is difficult to be completely satisfied that fundamental standards of impartiality and confidentiality are being observed. Where the language community of the parties is small with limited interpreters, it is possible that an interpreter used in a prior hearing for the other party may be booked to interpret for the applicant or respondent.

### 5.2.13 Availability

Court practice is to book interpreters for one half day, usually from the start of the day until 1.00pm. If negotiations are delayed or not concluded with the respondent by that time, interpreters will often not be able to extend their time for reasons of having another job for the afternoon. Sometimes this pressure leads to hasty decisions being made in order to push matters through by lunch time or, if no resolution is reached, the matter will be adjourned and the interpreter and client will have to return for another half day anyway.

**Recommendation 10. that there be regular, independent auditing of interpreters who are practising in the family violence Courts to monitor accuracy and impartiality.**

**Recommendation 11. that efforts be made to train more interpreters across diverse language groups to a higher standard and that each party have access to their own interpreter.**

**Recommendation 12. that interpreters be booked so that they can be available for as long as they are required on the day of the client's hearing.**

### 5.2.14 Interpreters for Men's Behaviour Change programs

A lack of interpreters for Men's Behaviour Change Programs (MBC) for some language groups of respondents, means men who would otherwise be required to participate in counselling under section 130 of the Act avoid this obligation. The protected persons in these cases unfairly miss out on the potential benefits arising from their husbands, partners and fathers having the opportunity to learn how to change their abusive behaviours.

█ reported her husband, █'s aggressive and controlling verbal behaviours and his practice of striking her on the face and the body. Both parties spoke little English and were assisted at Court by one interpreter. █ supported █'s consent without admissions to a limited final order that prohibited family violence but would not exclude █ from their home. █ said she was giving him a chance to show he understood he could not continue his violence towards her. She was encouraged by the Court's power to order █ to participate in a Men's Behaviour Change program. Both the client and the duty lawyer were dismayed when the Magistrate declined to order █ to attend an assessment for eligibility because she knew ultimately there was no program with an appropriate interpreter that would make it practical for █ to attend.

**Recommendation 13. That funding be made available so that all culturally and linguistically diverse respondents can access Men's Behaviour Change programs.**

### 5.3 Aboriginal and Torres Strait Islander clients

The City of Darebin has one of the largest proportions of Aboriginal and Torres Strait Islander residents of the 31 municipalities in metropolitan Melbourne. Darebin duty lawyers see a small number of Aboriginal and Torres Strait Islander clients at Court. This is in part due to the family violence jurisdiction being served by the Victoria Aboriginal Legal Service (VALS) and the Aboriginal Family Violence Prevention and Legal Service (AFVPLS).

Some family violence referrals come from Darebin's two outreach programs for Aboriginal clients. Darebin plays an important role in providing an alternative service for clients where VALS or AFVPLS have a conflict or where clients prefer to receive advice and representation from outside the established networks of their community.

## 6. Police

Darebin has witnessed a significant improvement in the culture of policing family violence. Amongst the most obvious developments have been the quality and commitment of police prosecutors and civil advocates, the presence of police liaison officers at Court, the development of dedicated family violence units overseeing family violence matters and the appointment of regional family violence advisors. It appears there is now a consistent practice, when police have initiated a complaint to follow it through to

contest if the matter does not resolve by agreement at the directions hearing. There also have been fewer examples of police initiating cross applications against each party involved in the same family violence incident.

Darebin supports Victoria Police's elevation of family violence as a priority within its organisation and in the community. Clients have made positive reports about their interactions with specific practical initiatives such as the risk assessment and management panels (RAMP) that identify and intensively support family violence victims who are at high risk of serious harm from respondents. However, at a grass roots level there remain some areas of concern.

### 6.1 Initial applications/Safety Notices

Darebin clients' experiences of making initial complaints in person and over the telephone to police vary. Some clients have been told by police to attend Court and make their own applications for intervention orders where the circumstances of the client and the seriousness of the allegations indicate to duty lawyers that police should have issued a safety notice and pursued a criminal investigation.

The involvement of police as applicant provides a safety net for clients, enabling guaranteed legal support through the process from first mention until the matter is resolved either by agreed withdrawal, consent or contest. Police involvement also sends a strong message to respondents about the gravity of the allegations and how the State will sanction family violence.

Not for publication

**Recommendation 14. that Victoria Police ensure all members receive comprehensive training about the nature of family violence and the legal processes under the Act.**

**Recommendation 15. that there be on-the-job mentoring in family violence for recent police graduates.**

**Recommendation 16. that particular focus be given to improving police understanding and response to harm caused by emotional and psychological abuse as well as by physical and overt verbal violence.**

## 6.2 Breaches

The value of an intervention order is only as good as the protected person's willingness to report breaches and the police's capacity and willingness to enforce the order.

Darebin's clients make regular complaints to duty lawyers about police not prosecuting breaches of intervention orders, particularly where the breaches relate to prohibited electronic or telephone communication. In some cases the breach appears to have been evaluated by police against the content of the communication, rather than the act of making prohibited contact being subject to criminal consequences. Clients generally grasp that the criminal standard of proof requires more robust evidence for police to successfully prosecute a breach, however sometimes this leads clients not to report incidents that may meet that standard.

**Recommendation 17. that it be the policy and practice of Victoria Police to make consistent, direct and unambiguous personal responses to any intentional breach of an intervention order, regardless of its 'magnitude'. It is hoped such a policy would reinforce respondents' and community awareness that an intervention order is a serious order of the Court that requires respondents to change their behaviours or risk severe financial and/or custodial penalties and a potential criminal record.**

## 6.3 Service

Duty lawyers regularly see clients at Court where the intervention order application has not been served on the respondent and so the matter cannot proceed on that day. Not having been notified about the lack of service, applicants take time off work and arrange for childcare. They overcome their anxiety about an unknown legal process and their fear of confronting the respondent and attend Court only to find the matter is adjourned to another date when they will have to go through the same process again. Also, without direct notification from police when service is made, clients are uncertain about when they can rely on the application's interim protection.

Failure to serve can occur multiple times, delaying the process, wasting clients' and the Court's time and leaving applicants vulnerable without the protection of any interim intervention order that may have been made. Understandably, police may be unable to locate the respondent and after reasonable attempts have been made the Act does provide for substituted service.

**Recommendation 18. that a system be established for Victoria Police to notify protected persons by email, text or telephone when service has been effected.**

**Recommendation 19. that Victoria Police be required to inform the Court of the reason for failure to serve the respondent by the listed date.**

Informally police acknowledge that the necessity of delivering hardcopy documents from police stations to the Court means, in the of context of shift work, unforeseen callouts, changing vehicles etc, that certificates of service and other documents are vulnerable to being lost and are regularly misplaced.

██████ had made an application to extend a no contact intervention order against her ex-partner ██████ on a background of a long history of physical, verbal and emotional abuse including threats to kill. The first mention was adjourned for lack of service. Four weeks later, at the second mention ██████ did not attend Court and ██████ was told the matter would be adjourned again because the Court had no record of ██████ being served. ██████ called the informant's station and although he was not on duty, his colleague confirmed service was recorded on the police data base as having been made. However the physical paper copy of the police certificate of service, required by the Court to proceed, could not be located. The station does not keep copies of certificates of service and so the Magistrate adjourned ██████ application for another 6 weeks, when she will again have to take a day off work to attend the Court.

**Recommendation 20.** that Victoria Police and the Court implement an acceptable, reliable electronic confirmation system that confirms service of family violence documents .

## 7. Court - The Family Violence Division

Darebin believes since 2005 the Family Violence Division of the Magistrates' Court at Heidelberg has made significant progress towards achieving its aims of

- making access to the court easier
- promoting the safety of persons affected by violence
- increasing accountability of persons who have used violence against family members and encouraging them to change their behaviour and
- increasing the protection of children exposed to family violence.

The Division has positioned the legal response to an intensely private, emotional and complex problem in a well thought-out multidisciplinary and supportive environment. It is a disappointment that the Heidelberg Family Violence Division model in its entirety has not been introduced across the State and that, 10 years after its instigation, there are still Victorian Courts where no specialist family violence services operate.

**Recommendation 21.** that the Family Violence Division model be replicated, in its full form, in dedicated, purpose built, Family Violence courts across Victorian metropolitan and regional hubs.

## 7.1 Multidisciplinary approach to family violence in the legal context

One of the strongest aspects of the Division is the opportunity to develop a cohesive, informed team of professionals who support applicants and respondents through the Court process and give focus to the aims of the Division. Goodwill and commitment to a holistic approach to service are fostered by the Division's practice of conducting a brief morning meeting to review that day's list. It is attended by the registrar, police civil advocate, police liaison officer, applicant and respondent workers, mental health nurse and duty lawyers from Victoria Legal Aid and Darebin. The meeting is held in the Court and often the bench clerk is present. High risk clients, conflicts of interest and cross referrals can be identified early and managed efficiently to the benefit of clients and the practical operation of the Court.

At an administrative level, regular management meetings between key parties to discuss aspects of the Division also reflect a sense of joint endeavour that aims for best practice.

### 7.1.1. Judicial leadership

A crucial aspect of the creation and continued strength of the Division is the strong leadership of several experienced women Magistrates who have championed the family violence jurisdiction. Consistent with changing social values, there has been continuing improvement on the bench encompassing generational change and new appointments of younger women who display a deep understanding of family violence.

**Recommendation 22. that the Court continue to recruit Magistrates with specific aptitude for, and commitment to, the work of the family violence jurisdiction.**

The demeanour of presiding Magistrates significantly affects the experience of clients in the Court, irrespective of the outcome of their cases. The best Magistrates are able to put the parties, both of whom are stressed, at ease and demonstrate to the respondent the community's expectations about violence in a strong and respectful manner. This is able to hold the applicant in the system and send a clear message to the respondent without increasing his anger and alienation.

Historically there have been instances where a Magistrate's manner was unreasonably intimidating and distressing to both parties. Today there are far fewer examples of this behaviour; however the issue remains that inappropriate behaviour by Magistrates is difficult to address. Clients are often too distressed and focussed on the outcomes of their matters to make formal complaints. Lawyers too are reluctant to pursue such complaints because they are repeat players in the system.

**Recommendation 23. that all Victorian Magistrates be required to undertake intensive training about family violence and how to manage proceedings sensitively.**

**Recommendation 24. that Magistrates attend each other's Courts on a regular basis to provide an informal method of peer support and to mitigate inconsistencies between Magistrates' approaches to issues in family violence matters.**

### 7.1.2. Applicant Worker

The Division applicant worker supports applicants by attending the hearing with the client, providing comprehensive risk assessments, assisting the client with safety planning, linking clients to practical services such as emergency housing and, providing referral to other external support agencies. Working with the applicant worker, Darebin's duty lawyer is able to provide more intensive legal assistance to clients. Clients, with the personal support of the applicant worker, are able to more effectively understand and participate in the legal process.

**Recommendation 25. that all Victorian Magistrates' Courts listing family violence applications have a Court appointed support worker available to assist applicants and/or protected persons.**

### 7.1.3 Mandatory Men's Behaviour Change programs

Where a male respondent in a final intervention order lives within a specified postcode area, the Division Magistrate may order him to participate in a Men's Behaviour Change program (MBC). MBC programs counsel respondents in how to take responsibility for their violence and how to understand and alter their controlling and coercive behaviours.

**Recommendation 26. that the current limitation of eligibility by postcode for court ordered participation in Men's Behaviour Change programs be abandoned so that all respondents to final intervention orders across Victoria may be ordered to attend approved Men's Behaviour Change counselling.**

Darebin's clients have been subject to violence perpetrated by respondents from all demographics and all types of relationships. In particular, duty lawyers see mothers of adolescents and young men who want their sons to have the benefit of an early intervention such as MBC before their attitudes and behaviours to women become entrenched.

At 5.2.14 this submission has already addressed the difficulty for non-English speaking men in accessing MBC.

**Recommendation 27. that increased funding be made available for voluntary places in Men's Behaviour Change programs.**

**Recommendation 28. that specific Men's Behaviour Change programs be designed for young men and adolescents.**

### 7.1.4 Duty Lawyers

Under significant time pressure, duty lawyers must sensitively assess the applicant's case, explain the legal process and likely outcomes, negotiate with police, the respondent or their legal representative and represent the applicant in Court. Lawyers also provide applicants with referral to other appropriate legal and non-legal support services. The Court expects matters to proceed as quickly as possible and this also must be reconciled with client demand, the complexity of the issues they bring and attempting



to minimise any further trauma being caused to clients by their engagement with legal process. Family violence duty lawyers are experts in this field.

**Recommendation 29. that there be increased funding for duty lawyers to more broadly meet client needs.**

### 7.1.5 Application process

Darebin understands that applicants are being interviewed for initial intervention order applications over the counter in the public reception areas of some Courts. Clients say they have felt uncomfortable and exposed discussing private information in this environment. As a consequence some women have left sensitive, important aspects out of their narrative which makes their application less effective.

**Recommendation 30. that initial applications should be taken in a private space by registrars specifically trained in interviewing techniques for family violence.**

## 7.2 Hearings

### 7.2.1 Safety at court

Serious incidents occur in the Court surroundings with some regularity; lower order harassment and intimidation is commonplace while parties are waiting for their matters to be called into Court eg respondents, their friends and relations eyeball applicants and make threatening and harassing comments.

It can also be difficult and unsafe for women as they leave the court complex after their matter is completed. There is a danger they will be threatened, harassed and followed as they return to their car. At HMC it is occasionally possible to make arrangements for women to be escorted, but these arrangements are ad hoc and uncertain.

There have also been some serious security breaches in the Courtroom and it is optimal to have security officers present at all times in family violence matters.

It is Darebin's experience that the level of training and competence of security services is variable. The most highly skilled Protective Services Officers (PSO) display a nuanced understanding of violence and how to diffuse and prevent it.

Another feature of the Division is the alternative evidence facilities which allow applicants to elect to use a variety of facilities. These range from seeking leave to remain outside the Court to using screens inside the Court to provide a visual barrier. Remote witness facilities are available but not often used.

**Recommendation 31. that security for family violence hearings and waiting areas be provided by Protective Services Officers.**

**Recommendation 32. that security services be provided to accompany protected persons to and from their cars when required.**

### 7.2.2 Separation of applicants from respondents at Court

Heidelberg Court was selected as the site of the Division in part because its layout allowed for a separate dedicated courtroom and separate waiting areas for applicants and respondents. Separate waiting areas help applicants manage the fear and anxiety associated with confronting respondents about their behaviours. It also decreases the opportunity for respondents to harass and intimidate applicants and compound the trauma they have already inflicted.

**Recommendation 33. that as a matter of priority, courts hearing family violence intervention order applications arrange the physical environment to ensure applicants and respondents are not required to wait in the same areas.**

**Recommendation 34. that where family violence applications are being listed there be appropriate secure spaces made available for high risk applicants.**

### 7.2.3 Legal Process

#### 7.2.31 Delays

Darebin believes too many cases are not progressing to final orders in a timely way. Delays are caused by under resourcing and other management issues within the overall family violence system eg see service at 6.3 of this submission. In particular the staged process of the application, including directions hearings, provides many opportunities for respondents to adjourn matters. Some respondents exploit their return date to seek further adjournments on spurious grounds when they appear before a new Magistrate who has limited time to investigate the history of the application.

**Recommendation 35. that the administration of the judicial process be streamlined so that each application, where possible, is allocated to one Magistrate to follow through to its conclusion.**

#### 7.2.32 Delay for concurrent criminal proceedings

Where respondents are contesting applications, or the prosecution of a breach of an interim intervention order, and there are concurrent criminal charges arising from the initiating family violence incident, respondents will generally seek to have the intervention order matter adjourned to the same date as the criminal proceedings. The respondents' purpose is to prevent any incriminating evidence being exposed before the criminal trial. However, it can take months before criminal charges are heard and the applicant is left with continuing anxiety about having to return to Court and the degree of protection they can expect when the matter is finalised. Darebin believes the interests of timely resolution of the application and the need for protection of the applicant are of prime importance and should not have to wait until finalisation of the criminal charges.

**Recommendation 36. that family violence matters should not be adjourned to be heard concurrently with criminal matters, or until after family law proceedings, without compelling reason.**

### 7.2.33 Further and better particulars

In recent years a noticeable change in the Court's practice is that further and better particulars are more frequently being ordered. This is usually done in response to applications by private lawyers and represents an increasingly legalistic approach by advocates in the jurisdiction. Improvements in the drafting of the initial application could reduce the need for further and better particulars.

Darebin considers that drafting further and better particulars is outside the duty lawyer role. It is also appropriate that these documents are drafted by the lawyer or service that will represent the clients at contest. Even when legal aid is ordered for applicants going to contest (section 72(2) the Act), assistance does not include drafting further and better particulars, perhaps reflecting a time when they were not so often sought. In the absence of another option for clients, Darebin has increasingly taken on this role which has significantly increased the service's already heavy workload.

### 7.2.34 Contests

Changes to legislation in 2008 to prevent applicants from being cross examined by respondents have made contests more legalistic, slower and more expensive. Orders made under sections 71 and 72 of the Act only provide legal representation for cross examination purposes, not for the entire contest. Some practitioners will provide full representation, however this is subject to their goodwill. As noted above the preparation of further and better particulars is not funded and representation is often last minute with the client being met by their lawyer for the first time at the Court.

Where legal aid is granted, some applicants with limited means find they are still required to make a contribution. Consequently some of Darebin's clients now have to meet costs of legal representation at a level of litigation that is beyond their capacity to pay. Darebin is aware that some private practitioners apply unreasonable pressure to clients to resolve matters at Court on the contest date. In matters where there are very serious allegations of family violence, some clients, who have been waiting many months and been through many stressful court appearances, simply do not have the strength to fight an advocate who pressures them to settle in an unsatisfactory manner such as by way of accepting an undertaking.

**Recommendation 37. that community legal centre specialist family violence services receive dedicated funding to enable consistent legal representation for applicants from first contact at mention hearing to the conclusion of their matter, including making appearances at contest.**

## 8. Resources

All Darebin's family violence funding goes to providing the duty lawyer legal service. It has been stretched to encompass expanding needs of family violence clients. In the process of advising and representing clients Darebin collects a great deal of valuable information about where, when and how family violence is occurring, how it is perceived and responded to by those who perpetrate and endure it, and how the support services and institutions that have the responsibility to address it do so. Darebin, like many others in the community legal sector, does not have the resources to properly utilize this information for the purposes of research, policy development and law reform to address some of

the underlying causes of family violence. Even the preparation of this submission has been limited by lack of resources despite the contribution of voluntary work.

**Recommendation 38. that funding be allocated to assist community legal services to properly analyse information that is being gathered daily in the Courts by applicant and respondent legal services to prepare and inform strategies for change.**

## 9. Conclusion

Family violence occurs on a broad spectrum which includes the tragic cases that have finally brought this issue into community focus. The statistics on preventable death and injury to women aged between 15 and 44 years of age are horrific. Darebin applauds the appointment of the Royal Commission to address this and examine the lived experience of the women and children who are the faces behind these statistics. It is important in this examination not to forget the vast majority of victims who experience more mundane and yet still oppressive forms of daily intimidation, control and abuse. In its work Darebin observes that too often the systems designed to protect can in themselves unintentionally cause further distress.

It should not be forgotten that workers in this field are predominantly women and are chronically under resourced and underpaid. Issues such as this speak to the deep levels of inequity in our society which provide the basis on which our culture of male violence rests. It is a highly skilled workforce of committed and dedicated people, desperate for more resources to better address the ever increasing needs of women and children who face family violence.

## Summary of Recommendations

**Recommendation 1. that funding to generalist community legal centres be maintained and strengthened to facilitate integrated legal responses and referral for family violence victims. Generalist legal services provide alternative entry points for clients who disclose family violence in the context of addressing superficially unrelated legal or non-legal problems.**

**Recommendation 2. that funding be provided for increased access to affordable family law services for family violence parties engaged in post intervention order parenting disputes.**

**Recommendation 3. that the Court provides written plain language explanations of the effect on child contact of section 92 family law exceptions of the Act. Applicants and respondents should receive this information when they are served with interim and final orders.**

**Recommendation 4.** In matters where Department of Health and Human Services Child Protection Services has an active interest and protective concerns, a representative of CPS be required to attend Court.

**Recommendation 5.** that family violence victims should have access to an unrestricted number of sessions at supervised contact centres.

**Recommendation 6.** that there should be same-language supervision of non-English speaking child/parent contact sessions.

**Recommendation 7.** that all professional child contact supervisors be regulated and accredited to provide minimum standards of safety and transparency.

**Recommendation 8.** that where a respondent's substance abuse is established as a major factor in family violence, Magistrates in the Division should have the discretion to order the respondent in a final intervention order to attend an approved drug and alcohol rehabilitation program. The discretion should be exercised particularly in cases where children are named as protected persons and there is the likelihood of a continuing parental relationship between the respondent and the children.

**Recommendation 9.** that steps be taken to increase immediate access to specialist support services for women who have experienced sexual assault within family violence relationships.

**Recommendation 10.** that there be regular, independent auditing of interpreters who are practising in the family violence Courts to monitor accuracy and impartiality.

**Recommendation 11.** that efforts be made to train more interpreters across diverse language groups to a higher standard and that each party have access to their own interpreter.

**Recommendation 12.** that interpreters be booked so that they can be available for as long as they are required on the day of the client's hearing.

**Recommendation 13.** That funding be made available so that all culturally and linguistically diverse respondents can access Men's Behaviour Change programs.

**Recommendation 14.** that Victoria Police ensure all members receive comprehensive training about the nature of family violence and the legal processes under the Act.

**Recommendation 15.** that there be on-the-job mentoring in family violence for recent police graduates.

**Recommendation 16.** that particular focus be given to improving police understanding and response to harm caused by emotional and psychological abuse as well as by physical and overt verbal violence.

**Recommendation 17.** that it be the policy and practice of Victoria Police to make consistent, direct and unambiguous personal responses to any intentional breach of an intervention order, regardless of its 'magnitude'. It is hoped such a policy would reinforce respondents' and community awareness that an intervention order is a serious order of the Court that requires respondents to change their behaviours or risk severe financial and/or custodial penalties and a potential criminal record.

**Recommendation 18.** that a system be established for Victoria Police to notify protected persons by email, text or telephone when service has been effected.

**Recommendation 19.** that Victoria Police be required to inform the Court of the reason for failure to serve the respondent by the listed date.

**Recommendation 20.** that Victoria Police and the Court implement an acceptable, reliable electronic confirmation system that confirms service of family violence documents .

**Recommendation 21.** that the Family Violence Division model be replicated, in its full form, in dedicated, purpose built, Family Violence courts across Victorian metropolitan and regional hubs.

**Recommendation 22.** that the Court continue to recruit Magistrates with specific aptitude for, and commitment to, the work of the family violence jurisdiction.

**Recommendation 23.** that all Victorian Magistrates be required to undertake intensive training about family violence and how to manage proceedings sensitively.

**Recommendation 24.** that Magistrates attend each other's Courts on a regular basis to provide an informal method of peer support and to mitigate inconsistencies between Magistrates' approaches to issues in family violence matters.

**Recommendation 25.** that all Victorian Magistrates' Courts listing family violence applications have a Court appointed support worker available to assist applicants and/or protected persons.

**Recommendation 26.** that the current limitation of eligibility by postcode for court ordered participation in Men's Behaviour Change programs be abandoned so that all respondents to final intervention orders across Victoria may be ordered to attend approved Men's Behaviour Change counselling.

**Recommendation 27.** that increased funding be made available for voluntary places in Men's Behaviour Change programs.

**Recommendation 28.** that specific Men's Behaviour Change programs be designed for young men and adolescents.

**Recommendation 29.** that there be increased funding for duty lawyers to more broadly meet client needs.

**Recommendation 30.** that initial applications should be taken in a private space by registrars specifically trained in interviewing techniques for family violence.

**Recommendation 31.** that security for family violence hearings and waiting areas be provided by Protective Services Officers.

**Recommendation 32.** that security services be provided to accompany protected persons to and from their cars when required.

**Recommendation 33.** that as a matter of priority, courts hearing family violence intervention order applications arrange the physical environment to ensure applicants and respondents are not required to wait in the same areas.

**Recommendation 34.** that where family violence applications are being listed there be appropriate secure spaces made available for high risk applicants.

**Recommendation 35.** that the administration of the judicial process be streamlined so that each application, where possible, is allocated to one Magistrate to follow through to its conclusion.

**Recommendation 36.** that family violence matters should not be adjourned to be heard concurrently with criminal matters, or until after family law proceedings, without compelling reason.

**Recommendation 37.** that community legal centre specialist family violence services receive dedicated funding to enable consistent legal representation for applicants from first contact at mention hearing to the conclusion of their matter, including making appearances at contest.

**Recommendation 38.** that funding be allocated to assist community legal services to properly analyse information that is being gathered daily in the Courts by applicant and respondent legal services to prepare and inform strategies for change.



## On Court Day

Be prepared to wait - Court may take all day so arrange childcare, or for someone to collect your children after school.

Bring :

- food and drink.
- books or magazines to read, or other activities.
- a friend or other support person if possible.
- Dress well - wear something neat and tidy, like you would wear to a job interview.

## Interpreters

If you need an interpreter tell the Court Registrar well in advance of your hearing date. Interpreters are available for free.

## Parking

Free all day parking is available a short walk from the Court at Heidelberg Park, Melways reference Map 32 B4.

## Where can you find DIOS?

DIOS operates at Heidelberg Magistrates' Court when the Family Violence Court Division is sitting on Monday, Tuesday, Thursday and Friday.

On the day of your hearing, go to the Family Violence counter and tell the Registrar you have arrived. If you would like to see a lawyer, let the Registrar know and you will be put on a waiting list. When the lawyer is available, your name will be called and you will be seen in the DIOS office.

Please be patient, many people need to use the duty lawyer service - assistance may be limited and there may be a lengthy wait.

## For more information telephone:

Darebin Community Legal Centre

732 High Street Thornbury 3071

Phone 9484 7753

Monday – Thursday

9.30am - 1.00pm and 2.00- 4.30pm



Prepared by Darebin Community Legal Centre Nov 2014

Family Violence  
Intervention Orders

## DAREBIN INTERVENTION ORDER SERVICE (DIOS)

A free duty lawyer service for people seeking an intervention order at the Family Violence Court Division of the Heidelberg Magistrates' Court



## What is the Darebin Intervention Order Service (DIOS)?

DIOS is a free duty lawyer service for anyone seeking an intervention order at the Family Violence Court Division of the Heidelberg Magistrates' Court. DIOS also assists protected persons in applications made on their behalf by Victoria Police.

This service is provided by the Darebin Community Legal Centre.

### How can a DIOS lawyer assist?

DIOS lawyers can provide you (**the Applicant**) with limited legal advice and representation. They can negotiate with the other person (**the Respondent**) on your behalf.

DIOS lawyers can only represent you at the early stages of your application. If your application becomes listed for a 'contested hearing', the lawyer will explain different options for you to be legally represented at that hearing.

### If you are the Respondent

Victoria Legal Aid (VLA) provides a free duty lawyer service for Respondents. To see a lawyer from VLA ask the Family Violence Registrar at the Court.

## What is a family violence intervention order?

A family violence intervention order is a Court order made by a Magistrate to protect you, the Applicant/protected person, from a family member who is being violent, threatening or abusive.

A 'family member' can be:

- a relative
- partner or ex-partner, somebody you have had an intimate relationship with
- your child or the child of your partner or ex-partner
- may also include somebody who you treat like family

### An intervention order can include conditions to stop the Respondent from:

- contacting you by telephone, email and other means
- approaching or harming you
- making threats against you or your property
- going to your home or place of work

### If you have children

An interim or final intervention order can include exceptions so that it will not interfere with existing children's arrangements.

**If you fear for your children's safety you can include them as protected persons in your application.**

## What happens if the Respondent breaches the conditions of an intervention order?

Police can charge the Respondent with a criminal offence if they breach the conditions of an intervention order. You should report breaches to police.

Keep evidence of breaches such as a diary of events, photographs, text messages or anything else you think is important.

### What other services does the Family Violence Court Division provide?

There are several services available at the Court that aim to improve your safety and make applying for an intervention order as easy as possible for victims. **An Applicant Support Worker is available to Applicants and children.** Other support may be available from:

- a Respondent Support Worker
- a Mental Health Nurse
- Berry Street
- Intouch Multicultural Centre Against Family Violence
- Elizabeth Hoffman House

If you would like to speak to the Family Violence Applicant Support Worker or another support worker, please let the Family Violence Registrar know.

## Breaches of the interim order

If the Respondent makes prohibited contact with you after the order has been served, you should contact your local police station to report the breach. Record the names of any police officers you speak with.

You should write down and keep the dates, times and other details of the breaches.

Police will only charge the Respondent for a breach if they think that there is evidence which proves 'beyond reasonable doubt' that the breach happened.

Photos of damage and/or injuries, names of witnesses and medical reports are useful. Keep copies of texts, emails and Facebook messages.

In circumstances where it is your word against the Respondent's, it is helpful to police if you can remember details such as what the Respondent was wearing when you saw him or her, what sort of car he or she was driving, its registration number etc.

Breaching an interim or final intervention order is a criminal offence. If the Respondent is found guilty he or she may be imprisoned for up to 2 years and receive significant fines.

## Tips for safety

- Change the locks and install new deadlocks, security doors, window locks, alarms and sensor lights.
- Financial assistance to make your home safer may be available from the Victims of Crime Assistance Tribunal (VOCAT). Speak to your lawyer or the Court's Applicant Support Worker about VOCAT.
- Turn off location settings in your mobile phone and keep the phone charged.
- Consider buying a pre-paid mobile so the Respondent doesn't know your number. If you drive, keep petrol in your car.
- Keep important documents in a safe place outside the family home.
- Carry a copy of the interim or final intervention order with you so you can show it to police if you need to.
- Give a copy of the order to your children's school or childcare centre.

### For more information telephone:

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732 High Street Thornbury 3071

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Family Violence  
Intervention Orders

1

## HOW DO INTERIM INTERVENTION ORDERS WORK?

Can I get immediate  
protection from the  
Court system?



## I need urgent protection. Where can I get help?

If you are in **immediate danger**, call Police on 000. The Women's Domestic Violence Crisis Service of Victoria (WDVCS) provides emergency accommodation and a free 24-hour crisis line. For support and information call 1800 015 188.

You can get **immediate protection** from the Court system by applying for an interim intervention order. **Legal advice and representation** is available at the Heidelberg Magistrates' Court from the **Darebin Intervention Order Service (DIOS)**, a free duty lawyer service offered by Darebin Community Legal Centre.

## Your safety while at Court is a high priority

Security staff are present at all times and special arrangements can be made to protect you. If you are feeling threatened at the Court, tell your lawyer, the Registrar or Court Security staff. You do not have to speak directly with the Respondent or their lawyer. Applicants and Respondents must sit in separate waiting areas of the Court. You can also ask the Registrar for a screen to protect you from seeing the Respondent in the Courtroom.

## What is an interim intervention order?

An interim intervention order is a temporary order that gives you (**the Applicant**) protection from the violent person (**the Respondent**) while you go through the Court process of seeking an intervention order. An interim order may be made on the day you first make your application and usually it will last until the Court makes a final intervention order or your application is withdrawn or refused.

## How do I apply for an intervention order?

1. Go to Counter 1 at the Court and tell the staff member (**Registrar**) that you want to apply for an intervention order.
2. The Registrar will help you fill in an application form explaining why you need protection. You will need to describe what the Respondent has been doing to you, when it happened and why you think it will happen again.
3. Your application will be sent into Court and your name will be called over a loud speaker asking you to go into a courtroom.
4. Enter the court room. Call the Magistrate 'Your Honour'. The Magistrate may ask you questions about the violence, why you think it will happen again, current arrangements with your child/children and if you want your partner removed from the home.
5. The Magistrate will make an interim order if satisfied that it is immediately necessary to ensure your personal safety and/or to protect your property.
6. The Court will also set a first hearing date (first mention) for approximately two weeks after the day of your application. In this time police should **serve** (formally give) the application on the Respondent so he or she knows what you say about their behaviour and the date they should attend Court.
7. If an interim order is not made, your application can still proceed and it may be possible to obtain a final order at a later date in the Court process.

## Interim orders - things to think about

- An interim order does not take effect until it has been served on the Respondent by the police.
- Where will you and your children be when the order is served? Will you still be living with the Respondent? Plan for your safety - the Court's Applicant Support Worker can help you with this.

A few days before your next Court date, check with police or the Court to find out if the order has been served on the Respondent.

## What if the police cannot serve the order?

If the police are unable to find the Respondent, the Court may order that he or she is served in a different way, for example by text message or by delivery to an alternative address. This is called **substituted service**.

The Magistrate must believe that the application will come to the Respondent's attention by the proposed method of substituted service.

Police may not charge a Respondent with breaching an interim or final intervention order if it was not served on him or her.

## Contested hearing

This is the hearing where the Magistrate will hear evidence from you, the Respondent and any witnesses. The Magistrate will listen to you first, then the Respondent. Both parties may be legally represented and their lawyers have the right to question the other party after they have given evidence.

The Court can order Victoria Legal Aid (VLA) to provide each person with a lawyer for the **contest hearing**. If this happens, you should contact VLA one week prior to your hearing to ensure a lawyer has been allocated.

The Magistrate will decide if they think a final order is necessary. To make a final order the Court must be satisfied, based on the evidence it has heard, that family violence has occurred in the past and that it is likely to happen again.

## Duration of a family violence intervention order

The Magistrate will think about the threat to your safety and decide the length of time the intervention order is to last. One year (12 months) is the most common period but orders can be made for a shorter or longer time. Alternatively, a Magistrate may make an order that will continue 'until further notice' (indefinitely). Talk to your lawyer about how long you think the intervention order should last.

## What to bring to hearings

- medical reports describing any relevant injuries.
- photographs of any injuries or damage to your property.
- copies of abusive texts, emails or Facebook messages.
- a chronological list and a brief description of all incidents.
- a copy of any current Family or Federal Circuit Court orders relating to your children.
- police reports about any family violence incidents.

You can apply to **vary** an intervention order if your circumstances change for better or worse. If the expiry date of the order is approaching and you still need protection, you can apply to **extend** the intervention order. You must apply to extend before the order expires; doing this 4-6 weeks beforehand is best.

### For more information telephone:

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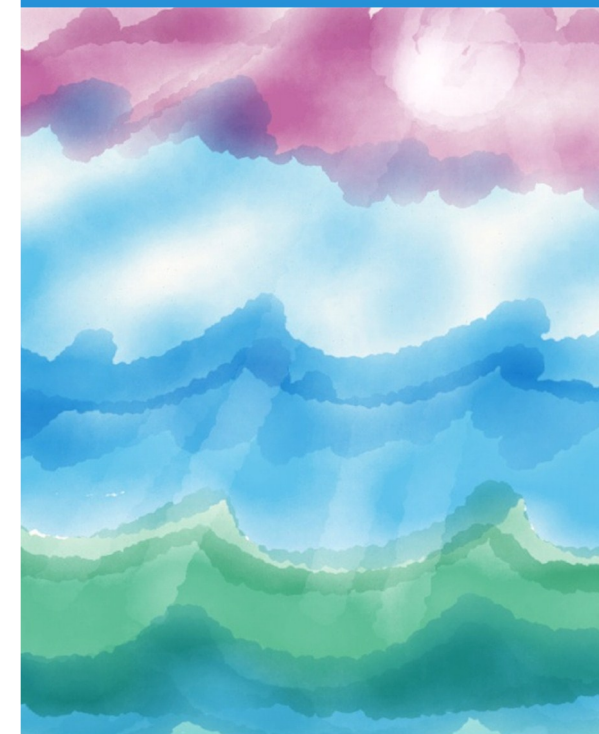


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## Family Violence Intervention Orders

# 2

## WHAT HAPPENS AT THE FIRST MENTION, DIRECTIONS HEARING AND CONTESTED HEARING?



## First mention

A first mention is the date that the Respondent (the other person) has been notified that they should attend Court for the first time. It is an opportunity to see what the Respondent says about the application and, if possible, negotiate (usually with the help of a lawyer or police) an agreed outcome. If there is no agreement the Court will set a date for another hearing.

At a first mention, although you will go into the Courtroom, your hearing is likely to be quite short. Negotiations with the Respondent can be slow and Court lists busy, so please be patient.

## Your safety while at Court

Your safety is a high priority. If you are feeling threatened at the Court, tell your lawyer, the Registrar or Court Security staff. You will not have to speak directly with the Respondent or their lawyer. Applicants and Respondents must sit in separate waiting areas of the Court. You can also ask the Registrar for a screen to protect you and the Respondent from seeing each other in the Courtroom.

## If the Respondent does not attend Court

You will be called into Court and you may be asked to give evidence from the witness box. If the Respondent has been **served** (formally given notice of the hearing) and does not attend, the Magistrate may make a final intervention order if they believe family violence has occurred and that it is likely to happen again.

## If the Respondent attends Court he or she has the following options:

### Consent - agree to accept an order

The Respondent may agree to a final intervention order being made against him or her without accepting or admitting to any of the allegations made in the application.

### Provide a Court undertaking

The Respondent can make a formal, written promise to the Court that they will follow certain conditions; for example they will not harass, assault or intimidate you. By giving an undertaking to the Court, the Respondent avoids an intervention order.

If you accept an undertaking you must understand that police cannot charge the Respondent with a breach of an undertaking. Instead you can tell the Court about the breach and ask to bring back your original intervention order application. You do not need to apply all over again.

You do not have to accept an undertaking from the Respondent. The Court can also refuse to accept an undertaking. It is important to get legal advice before you agree to accept an undertaking.

### Contest - disagree with an order being made

If the Respondent will not agree to an intervention order your matter will be listed for another hearing on a day when the Court has more time, probably some months away. The next hearing usually will be a **directions hearing** or a **contested hearing**.

## Directions hearing

A directions hearing is a short Court appearance to help the Magistrate decide how much time will be needed for a future contested hearing. Tell the Court if there are any witnesses other than yourself who will give evidence and if you have any special needs such as an interpreter or if you would like to be screened from the Respondent while you are in Court. **Your witnesses do not need to attend a directions hearing.**

Also, a directions hearing is another chance to negotiate an agreed outcome of your application. DIO's duty lawyers can help you with negotiations and represent you at this hearing.

## Further and better particulars

The Respondent may ask the Court to order you to provide **further and better particulars** of your intervention order application. 'Further and better particulars' refers to a written document that gives specific details about the incidents mentioned in your application. You must provide further and better particulars before the deadline set by the Court. The Court may give directions about what information should be included.

## Useful Contacts:

Women's Domestic Violence Crisis Service : 24 hour 1800 015 188

Darebin Intervention Order Service: (03) 9484 7753

Heidelberg Magistrates' Court : (03) 8488 6700

Victoria Legal Aid: 1300 792 387

Women's Legal Service: (03) 8622 0600

Berry Street: (03) 9429 9266

Elizabeth Hoffman House Aboriginal Women's Services: 1800 796 122

InTouch Multicultural Centre Against Family Violence: 1800 755 988

Australian Muslim Women's Centre for Human Rights:(03) 9481 3000

Domestic Violence Resource Centre Victoria: (03) 9486 9866

Family Court of Australia: [www.familycourt.gov.au](http://www.familycourt.gov.au)

Victorian Law Institute referral service: [www.liv.asn.au/referral](http://www.liv.asn.au/referral)

1800RESPECT - National rape and domestic violence counselling service

## For more information telephone:

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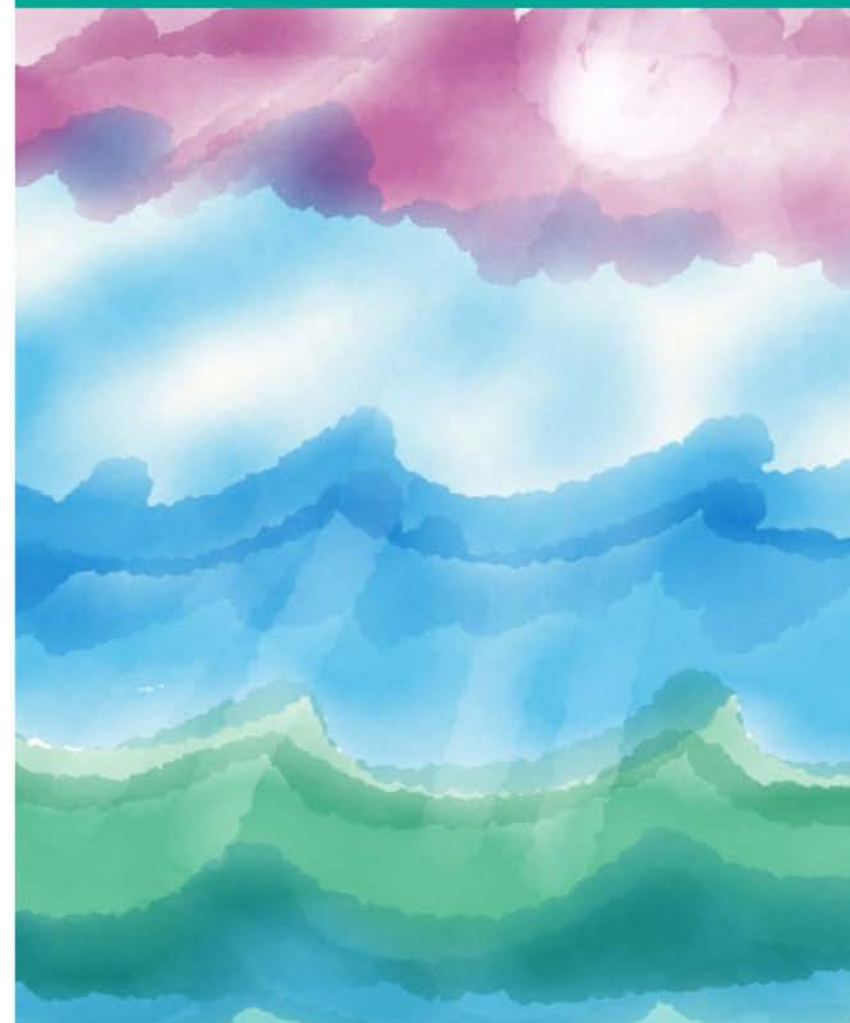


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## Family Violence Intervention Orders

# 3

## I have an intervention order WHAT NEXT?



## Once you have an intervention order

### Changing a tenancy agreement

If you are renting your home with the Respondent, and the interim or final order states that he or she cannot be at the premises, you can request that the landlord or agent remove the Respondent's name from the tenancy agreement.

If the landlord/ agent will not cooperate, you can contact the Tenants Union of Victoria, phone 9411 1444 for assistance.

If the landlord or agent still won't cooperate, you can seek an order to change the Tenancy Agreement from the Victorian Civil and Administrative Tribunal (VCAT), phone 9268 9800.

VCAT provides a Koori and Family Violence Support Worker, phone 9628 9856.

You can also access the Protected Persons' Application Guide (Residential Tenancies' List) on the VCAT website: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

### Changing the locks

If the Respondent has been excluded from the home by the interim or final order, you can change the locks on the property.

If you are renting, you need to inform the agent or landlord and give them a copy of the order and a copy of the new keys.

You may be eligible for financial assistance to help with the cost of changing the locks from the Victims of Crime Assistance Tribunal.

## Family Law

### Arrangements for children

**If your children live with you and there are no Family Court orders in place** when the final intervention order is made, you (the protected person) do not have to consent to child arrangements at this stage.

**If the intervention order does not allow the Respondent to contact and communicate with you**, usually the Court will include an exception that allows the Respondent to contact you by letter, text or email only **for the purpose of child arrangements**. You may reach your own agreement with the Respondent about child contact, but usually that agreement **must be in writing** and it is recommended you get legal advice about this.

### Family dispute resolution (mediation)

Mediation is a formal meeting between the parties in the presence of a neutral third person who can help the parties discuss arrangements about children and family property. Accredited family dispute resolution services are available at a number of organisations including: Relationships Australia (1300 364 277), Family Relationships Centres (1800 050 321), Catholic Care (9827 5500), Lifeworks (1300 543396) and Family Mediation Centres (1800 639 523). More information is available at [www.familyrelationship.gov.au](http://www.familyrelationship.gov.au).

The Family Law Courts require you to attempt mediation before making an application in relation to children's issues. However, **if you have experienced family violence and you do not feel safe or comfortable about participating in mediation, you may be exempted from this requirement. Discuss this with a lawyer.**

**If you are considering mediation with the Respondent**, there are a number of safety measures that can be provided: separate waiting rooms, separate arrival and departure times, separate rooms for the mediation and having a support person present. It may be a good idea to discuss any potential mediation with a family violence worker. There is additional information and resources available on the Domestic Violence Resource Centre Victoria website ([www.thelookout.org.au](http://www.thelookout.org.au)).



## What if the Respondent breaches the intervention order?

If the Respondent makes prohibited contact with you after the order has been served, you should contact your local police station to report the breach. Record the names of any police officers you speak with.

You should write down and keep the dates, times and other details of the breaches. Make sure you keep copies of texts, emails and Facebook messages in a safe place as well as photos of injuries, property damage and medical reports.

It is a good idea to carry a copy of your order with you so you can show it to police quickly in an emergency.

Police will only charge the Respondent for a breach if they think there is evidence which proves 'beyond reasonable doubt' that the breach happened.

In circumstances where it is your word against the Respondent's, it is helpful to police if you can remember details such as what the Respondent was wearing when you saw him or her, what sort of car he or she was driving, its registration number etc.

If you report the matter to police but do not feel adequate action is being taken, you can make a complaint. Ask to speak to the Family Violence Liaison Officer at your local police station.

Breaching an interim or final intervention order is a criminal offence. If the Respondent is found guilty he or she may be imprisoned for up to 2 years and receive significant fines.

If the breach is an offence under the Crimes Act, such as sexual assault, police can also charge the respondent with a further criminal offence.

## VOCAT financial assistance and counselling

The Victims of Crime Assistance Tribunal (VOCAT) provides the opportunity for victims of crime, including some victims of family violence, to receive counselling or financial assistance.

- You may be eligible to receive financial assistance for:
  - A number of counselling sessions
  - Safety related expense
  - Something specific to assist your recovery
  - Medical expenses
  - Loss of earnings
  - Loss or damage to clothing
  - Safety measures e.g. security doors, deadlocks
- **An application to VOCAT must be made within 2 years of the date the matter was first reported to the police.** In limited circumstances, VOCAT may consider an application made outside the two year limit. Alternatively VOCAT may also make an award to a family violence victim who did not report the crime to police.

## Varying, extending or revoking your order

### Variation - changing your order

If your circumstances change you can apply to the Court to vary your final order. For instance, you may find that you need an order that gives more protection or one that allows for some increased contact. If you want the Court to vary the order, contact the Registrar at the Court and explain the change of circumstances.

If you and the Respondent agree that you want to see each other or make changes to current arrangements **it is very important that the Court varies the order before you do so. Do not just ignore the order as this may cause problems later.**

If the Respondent wishes to vary the order they must seek leave (permission) of the Court. The matter will be listed for a hearing and you (the protected person) will be advised.

### Extension - making your order longer

If your intervention order is about to expire and there have been breaches and/or you reasonably believe family violence is likely to happen again once the order expires, you can apply to the Court for an extension of the order.

**If you want to extend your order you should contact the Court at least 4 to 6 weeks before the order expires.**

The application for extension will be listed for hearing and the Respondent will be notified of the hearing date.

If the Respondent doesn't agree with extending the order, your application will go through the same stages of hearing as an application for an intervention order. Eventually it may go to a contested hearing where the Magistrate will hear evidence from both sides and then decide whether to extend the order.

### Revocation - removing an order

If you as a **protected person want to have an intervention order removed**, you must make an application to the Court. The Respondent will be notified and may attend the hearing.

The Court will take into account the reasons you want the order removed, as well as your safety and that of any children.

The Court may decide to vary the order by removing some of the conditions, rather than revoking it entirely.

**If the Respondent wants to apply to have an intervention order revoked**, they must first seek leave (permission) from the Court. The Respondent will have to satisfy a Magistrate that since the intervention order was made, circumstances have changed that may justify revocation. If the Respondent is allowed to make the application, you will be notified and asked to attend the hearing on the date provided.

### Expiry

An intervention order ends on the date specified in the order. If you have not applied to extend the order it will simply end. Neither you nor the Respondent need to attend Court.