

## Community Action for Small Courts - Family Violence Response

A project made possible through the generous support of the

Legal Services **BOARD**

Funded through the Legal Services Board Grants Program

# The Family Violence Intervention Order Process

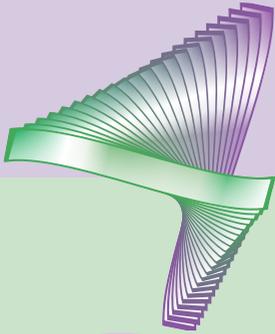
All references in this pdf document to "the Act" are to Victoria's **Family Violence Protection Act 2008**.

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Compiled by St Kilda Legal Service March 2012



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# The Family Violence Intervention Order Process

## Obtaining the protection of a family violence intervention order

As told through the hypothetical stories of Fleur and Phuong...

Hypothetical  
examples

**Phuong** received over 40 text messages in one week from her ex-boyfriend including a text in which he threatened to damage her car. She contacted her local court on the suggestion of a friend.

She was given an appointment. At this appointment a registry staff member recorded the details of what she said had occurred.

Court staff explained that she would need to return to court in around two weeks time. Meantime, her ex-boyfriend (**the respondent**) would be served by police with her application for an intervention order.

Because there was a risk of Phuong's property being damaged Phuong also went into court where a Magistrate decided to grant an **interim intervention order**. The interim intervention order would be effective as soon as Phuong's ex-boyfriend (the **respondent**) was served by police with the order and would provide Phuong with protection until the first court date in two week's time when Phuong's ex-boyfriend would be summoned to attend court. Phuong would need to attend court on this date.

Click here to find out about **the definition of family violence**

One Saturday evening **Fleur** was assaulted at her home by her de facto partner. She telephoned **VicPolice** who attended. Being a Saturday night it was outside of court hours. The attending officer applied for a **safety notice**. Fleur's de facto partner was required to leave the home. He was summoned to come to court on the Monday. The police officer explained that Fleur would also need to come to court on Monday.

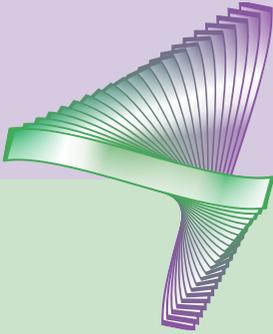
Click here to find out about **other action that police can take** apart from safety notices

Click here to find out about **safety notices**

Click here to find out what happens next for **Phuong and Fleur**

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## Safety notices

The powers of police to apply for safety notices are set out in Victoria's **Family Violence Protection Act 2008**.

### Out of court hours:

before 9 a.m. or after 5 p.m. on a weekday; or

Saturday, Sunday or public holiday.

The **affected family member** is the alleged victim of the family violence.

The **respondent** is the alleged perpetrator.

A police officer who **out of court hours** attends an incident involving family violence may apply for a family violence safety notice.

**Who does the police officer apply to?** The application is made to **another police officer**, who is of the rank of Sergeant or higher.

### What does the police officer applying need to believe?

That, until an application for a family violence intervention order can be decided by the court, a family violence safety notice is necessary

- (i) to ensure the safety of the affected family member; or
- (ii) to preserve any property of the affected family member; or
- (iii) to protect a child who has been subjected to family violence committed by the respondent.

### And the police officer issuing?

The police officer to whom the application is made must hear from the officer responding to the incident and, if practical, hear from the **affected family member** and the **respondent**.

Before issuing the safety notice the police officer must believe on reasonable grounds that issuing the notice is necessary to ensure any or all of (i) to (iii).

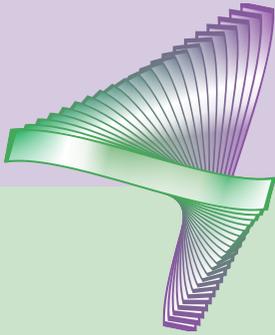
*from s.24 of the Act*

*from s.26*

[Click here to return to start](#)

Click here to find out:

- how long a safety notice lasts
- the conditions that can be included in a safety notice



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## Safety notices

The powers of police to apply for safety notices are set out in Victoria's **Family Violence Protection Act 2008**.

### Duration of a safety notice

A family violence safety notice starts when the notice is served on the **respondent**. The safety notice will include a date that the respondent is **summoned** to attend court (**known as the first mention date**).

This date generally must not be more than 72 hours after the safety notice is served on the respondent. There is an exception where because of public holidays this is not possible.

In most instances a safety notice cannot provide protection for an **affected family member** for more than 72 hours.

From the **first mention date** the matter becomes an intervention order application for the magistrate at the court to decide upon. The police officer will be the applicant and the alleged victim the **affected family member**.

### What can be included in a safety notice?

**A:** Any condition the court may include when making a family violence intervention order apart from those relating to weapons approvals and firearms authorities.

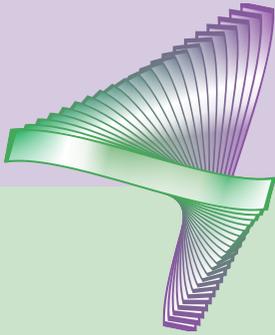
Police do have power under the Act to seize firearms.

s.163

**Note:** Before including a condition prohibiting the respondent from being anywhere within a specified distance from a particular place, the police officer issuing the notice must make reasonable enquiries to ensure this will be practical in the particular circumstances.

[Click here](#) to learn more about what conditions the court may include.

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# Alternatives to safety notices for police

### Application and Warrant

In some circumstances police may choose to apply for an application for an intervention order and a **warrant** for the **arrest** of the respondent. This application may be made to the Registrar of a Magistrates' Court and may be made through the out of hours Registrar if required.

After arresting the respondent the police can either bring the respondent directly to the court or can **bail** the respondent to appear at court for the "first return date" of the intervention order application. **Bail conditions** will generally provide the same forms of protection for the affected family member as a safety notice.

*see s.50 of the Act*

### Application and Summons

The police may seek an application and summons where the police determine that there is no immediate danger to the affected family member.

A summons will be served by police on the respondent requiring the respondent to attend court on a specified date. On that date the court will decide whether or not to grant an intervention order. There will be no protections in place for the affected family member prior to this court date.

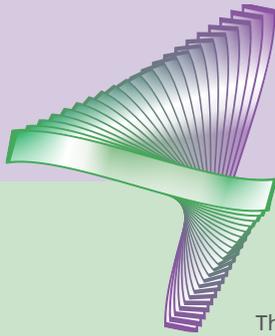
The police also have **holding powers** under the Act in circumstances where detaining the respondent is necessary to ensure the safety of the affected family member and their children or to preserve property of the affected family member. The initial holding period is up to 6 hours.

*see s.13 to 18 of the Act*

For more details see also the Victoria Police Code of Practice for the Investigation of Family Violence:

[http://www.police.vic.gov.au/content.asp?Document\\_ID=288](http://www.police.vic.gov.au/content.asp?Document_ID=288)

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## Definition of family violence

The definitions and examples below are from the **Family Violence Protection Act 2008**

### Family violence is

behaviour that

is physically or sexually abusive; or  
is emotionally or psychologically abusive; or  
is economically abusive; or  
is threatening; or  
is coercive; or  
in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person

from s.5

or

behaviour by a person that causes a **child** to hear or witness, or otherwise be exposed to the effects of, behaviour referred to above.

click here for  
examples of  
economic,  
emotional and  
psychological abuse

### Examples of family violence:

assaulting or causing personal injury to a family member or threatening to do so;

sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;

intentionally damaging a family member's property, or threatening to do so;

unlawfully depriving a family member of the family member's liberty, or threatening to do so;

causing or threatening to cause the death of, or injury to, an animal...so as to control, dominate or coerce the family member.

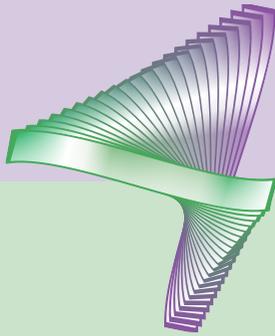
### Examples of where a child is exposed to family violence:

a child overhearing threats of physical abuse by one family member towards another family member;

comforting or providing assistance to a family member who has been physically abused by another family member;

being present when police officers attend an incident involving physical abuse of a family member by another family member.

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The examples below are from the **Family Violence Protection Act 2008**

## Examples of economic abuse:

coercing a person to relinquish control over assets and income;

removing or keeping a family member's property without permission;

preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses;

preventing a person from seeking or keeping employment;

coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person;

coercing a person to sign a contract for the provision of finance, a loan or credit.

from s.6

## Examples of emotional or psychological abuse:

repeated derogatory taunts, including racial taunts; threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes;

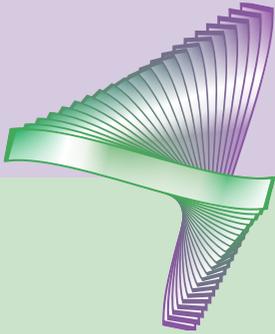
threatening to withhold a person's medication;

preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity;

threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person.

from s.7

return to definition of family violence



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# The Family Violence Intervention Order Process

## At court on the first mention date

As told through the hypothetical stories of Fleur and Phuong...

### Hypothetical examples

**Phuong** comes to court on the date specified on her interim intervention order. This is the first mention date. Phuong obtains the assistance of a duty lawyer from a community legal centre. Phuong's ex-boyfriend also comes to court. Phuong's ex-boyfriend obtains legal assistance from the Victoria Legal Aid duty lawyer. After obtaining legal advice Phuong's ex-boyfriend (the respondent) decides to agree to the intervention order without admitting to the allegations that Phuong made in her application. Phuong and her ex-boyfriend go into court and the duty lawyers explain that the respondent has consented to the order being made. The Magistrate makes the order. It is printed out and served on the respondent at court. It will last one year.

The respondent is not permitted to come to Phuong's home or workplace or come within 200 metres of Phuong or contact her via text messages or phone calls. If he breaches the intervention order it is a criminal offence and the police may decide to charge him.

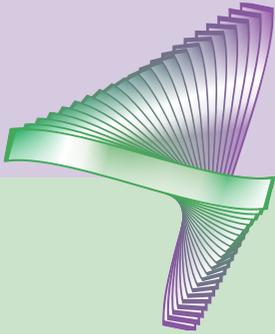
Click here to find out about the **conditions** that can be included in an intervention order

**Fleur's** former de facto partner comes to court on the first mention date. The police are the applicant and Fleur is the "affected family member". Her former de facto partner refuses to consent to an order being made. Another court date is set: a directions hearing date. If the matter is not resolved on this date there will be a contested hearing.

Fleur will need to give evidence at the hearing but the applicant will be the police informant. The Magistrate will decide on the evidence whether to grant the order and what conditions to include. In the meantime the Magistrate has granted an interim order with the same conditions as in the safety notice. One of these conditions excludes Fleur's former de facto partner from the home.

A hearing takes place two months later. Following the hearing the Magistrate grants a final intervention order for one year including the same conditions.

The End



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# Intervention Order Conditions

Common conditions:

### Conditions:

from s.81

prohibiting the respondent from committing family violence against the protected person

excluding the respondent from the protected person's residence

prohibiting the respondent from approaching, telephoning or otherwise contacting the protected person, unless in the company of a police officer or a specified person

Examples include: emailing the protected person, sending text messages to the protected person

prohibiting the respondent from being anywhere within a specified distance of the protected person or a specified place, including the place where the protected person lives

prohibiting the respondent from causing another person to engage in conduct prohibited by the order; and

revoking or suspending a weapons approval held by the respondent or cancelling or suspending the respondent's firearms authority

**Note:** The court may also include in a family violence intervention order any conditions that appear to the court necessary or desirable in the circumstances.

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**Note:** If the court decides to make a family violence intervention order, the court **must** consider whether to include a condition excluding the respondent from the protected person's residence.

from s.82