

LEGAL GUIDE TO FAMILY VIOLENCE ORDERS IN TASMANIA

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, WhatsApp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of four guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Family Violence Orders in TAS

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In Tasmania these protection orders are called **Family Violence Orders (FVOs)**.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in TAS

This guide looks at what the law says about surveillance devices – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Relevant Criminal Offences in TAS

This guide looks at the various criminal offences that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

Legal Guide to Image-based Abuse in TAS

This guide looks at what the law says about image-based abuse – when it is an offence to record or distribute intimate images and what legal options exist for victims of image-based abuse.

Language

‘Victim’ vs. ‘Survivor’

Some women who are experiencing, or who have experienced, domestic violence use the term ‘victim’ of domestic violence to describe themselves. Others believe the term ‘survivor’ of domestic violence more accurately reflects their experience. Whilst acknowledging that each woman’s experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as ‘victims’ of domestic violence.

Gender

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims. For this reason these guides use ‘he’ to refer to perpetrators and ‘she’ to refer to victims. This is not intended to exclude other situations.

Terminology

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as ‘breaking the law’.

Summary offence

Less serious offences (such as parking violations), are known as summary offences. Summary offences normally have a maximum penalty of no more than 12 months imprisonment or are not punishable by imprisonment at all.

Indictable (serious) offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences. Indictable offences are punishable by imprisonment exceeding 12 months.

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

Penalty unit

Criminal legislation usually describes the amount payable for a fine in a “penalty unit”. Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may change from time to time. The *Penalty Units and Other Penalties Act 1987* (Tas) states the dollar amount for one penalty unit. As of July 2018: one penalty unit = \$163. Therefore, an offence with a maximum penalty of a fine of 50 penalty units will have a maximum fine of \$8,150.

FAMILY VIOLENCE ORDERS

The *Family Violence Act 2004* (Tas) (the "Act") is the legislation in Tasmania that allows the courts to make orders protecting people from family (or domestic) violence.

A person who is experiencing family violence ('affected person') may apply to the Magistrates Court for a family violence order ('FVO'). An FVO can protect a person by ordering the person against whom the FVO is made ('respondent') not to commit further acts of family violence.

It is important to note that a FVO is a *civil* order, meaning it is not a criminal charge. However, an application for a FVO may be accompanied by related criminal charges and criminal penalties may apply if a FVO is breached.

The Magistrates Court will grant an FVO if it is satisfied on the balance of probabilities (more likely than not) that a person has committed family violence and that person may again commit family violence.

Can technology-facilitated stalking and abuse be a form of family violence?

Yes, technology-facilitated stalking and abuse may be a form of family violence.

Family violence refers to a certain type of conduct committed by a person, directly or indirectly, against that person's spouse or partner. It does not include conduct committed by a person against their child, parent, or other relative.

Examples of behaviour that is family violence, which may be perpetrated through technology-facilitated stalking and abuse include:

- threats, coercion, intimidation or verbal abuse (or attempting to do so)
- stalking (or attempting to do so)
- economic abuse
- emotional abuse or intimidation
- contravening an FVO (including interim and police FVOs)
- damage to property

Some forms of technology-facilitated stalking and abuse may be considered emotional abuse. Emotional abuse is conduct that a person knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, that person's spouse or partner. It includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.

It is a criminal offence for a person to engage in emotional abuse or intimidation.

Maximum penalty: Fine of 40 penalty units or imprisonment for two years.

Where can I find this information in the Act?

See sections 7, 8, and 9 of the Act for more information about what behaviour constitutes family violence.

Who is a spouse or partner?

Family violence refers to a certain type of conduct committed by a person, directly or indirectly, against that person's *spouse or partner*.

The spouse or partner of a person means another person with whom the person is, or has been in a *marriage* or a *significant relationship*. A significant relationship is a relationship between two persons over the age of 16 who have a relationship as a couple, and who are not married to one another or related by family.

Where can I find this information in the Act?

See section 4 of the Act and section 4 of the *Relationships Act 2003* (Tas).

Who can apply for a Family Violence Order?

The police may apply for an FVO on behalf of the affected person.

If the affected person is an adult, that person may also apply for an FVO on his or her own behalf to the Magistrates Court. If the affected person is a child, the child may apply on their own behalf if they can satisfy the court that they understand the nature of the proceedings.

Where can I find this information in the Act?

See section 15 of the Act.

How can a Family Violence Order protect a person from technology-facilitated stalking or abuse?

The Magistrates Court may make an FVO if satisfied, on the balance of probabilities that a person has committed family violence and that person may commit family violence again.

The Court may include in an FVO any condition that appears to the Court to be necessary or desirable to prevent the commission of family violence against the affected person or to protect any other person named in the FVO. This includes orders preventing the commission of technology-facilitated stalking and abuse.

A respondent must follow the conditions of an FVO. If the respondent breaks any of the FVO conditions (called contravening the FVO), it is an offence and the police can investigate and lay charges against the respondent

The application form for a FVO provides some guidance on the orders that the Court can make to prevent the commission of technology-facilitated stalking and abuse, for example:

- Not to stalk a person
- Not to directly or indirectly threaten, abuse or assault a person
- Not to contact a person including by electronic means
- Not to go within a certain distance of a person
- Not to damage property owned or possessed by a person
- To attend counselling, mediation or meetings

The Court can also make other conditions as it considers necessary or desirable to prevent the commission of family violence. If applicable, the applicant can ask the Court to include conditions that are specific to their situation.

FVO additional order: Suggested wording to cover image-based abuse situations

The respondent must not directly or indirectly publish, share or threaten to publish or share images or videos of the affected person of an intimate nature

FVO additional order: Suggested wording to cover 'tracking/surveillance device' situations

The respondent must not attempt to locate, ask someone else to locate, follow or keep the affected person under surveillance.

Where can I find this information in the Act?

See sections 16 and 35 of the Act.

How long does a Family Violence Order last?

An FVO remains in force for whatever period of time the Court considers necessary to ensure the safety and interests of the affected person. Alternatively, it remains in force until an order is made revoking the FVO.

In the application form for an FVO, the applicant can ask the Court to make an FVO of 6 or 12 months duration, or any other duration.

Where can I find this information in the Act?

See section 19 of the Act.

What if a person is in urgent need of protection?

Interim Family Violence Orders

If a person is in urgent need of protection, they can ask the Court to make an interim order (a temporary order) for their protection when they apply for an FVO ('interim FVO'). The Court can make an interim FVO without needing to be satisfied that a person has committed family violence and that the person may again commit family violence.

An interim FVO takes effect immediately if the respondent is in court when the interim order is made. Otherwise, the interim order takes effect when the respondent is served personally with a copy of the interim FVO.

An interim FVO may contain the same conditions as in a final order. It usually lasts until the Court can hear more evidence and decide on whether or not to make a final order for an FVO.

Where can I find this information in the Act?

See sections 23 and 25 of the Act.

Other protection orders

Police Family Violence Orders

A police officer may issue a *police family violence order* (PFVO) if the officer is satisfied that a person has committed, or is likely to commit, a family violence offence.

A 'family violence offence' means any offence the commission of which constitutes family violence.

Conditions that a PFVO may include, which relate to preventing the commission of technology-facilitated stalking and abuse, are:

- refrain from harassing, threatening, verbally abusing or assaulting an affected person, affected child or other person named in the order
- refrain from contacting an affected person, affected child or other person named in the order directly or indirectly or otherwise than under specified conditions.

A PFVO takes effect from the date it is served on the respondent. It lasts for the duration specified in the PFVO, but for no longer than 12 months. Also, a PFVO is revoked by the issue and service of an FVO or interim FVO in respect of the same parties.

Where can I find this information in the Act?

See sections 4 and 14 of the Act.

Restraint Orders

If, after hearing an application for an FVO, the Court is not satisfied, on the balance of probabilities, that a person has committed family violence and that the person may again commit family violence, the Court may consider making a *restraint order* in accordance with section 106B(1) of the *Justices Act 1959* (Tas). See that Act for the grounds on which a restraint order may be made.

Where can I find this information in the Act?

See section 24 of the Act.

What if a person breaks the conditions of a Family Violence Order by engaging in technology-facilitated stalking or abuse?

When a person does not obey the conditions of an FVO (interim or final) or PFVO, this is called a breach or contravention of the order.

It is an offence to contravene an FVO or PFVO. If a person has previously contravened a protection order and goes on to commit further contraventions, more severe penalties will apply.

The **maximum penalty** for a person who contravenes a protection order ranges from a fine of 20 penalty units or imprisonment for 12 months for a first offence to imprisonment for five years for a fourth or subsequent offence.

A previous offence (or a previous contravention) means any previous contravention of a protection order, regardless of whether the order was made for the protection of the same affected person or someone else.

Where can I find this information in the Act?

See section 35 of the Act.

How can a person apply for a Family Violence Order?

Applying in person

A person can apply for an FVO on their own at the Magistrates Court of Tasmania. Information and application forms are available online at https://www.magistratescourt.tas.gov.au/going_to_court/restraint_orders

Applying through police

Where Tasmania Police have responded to a family violence incident, or where a family violence offence has been reported to them, police may issue a PFVO and/or assist the affected person with making an application to Court for an FVO.

Effect of Domestic Violence Orders interstate

From 25 November 2017, a Domestic Violence Order made in any Australian state or territory is now automatically recognised and enforceable Australia-wide. This means that Tasmanian Police can enforce Domestic Violence Orders made on or after this date in other Australian states and territories. Other states and territories can also vary or revoke orders made in Tasmania, and make new orders for the same parties.

A Domestic Violence Order issued prior to 25 November 2017, can be “declared” a *nationally recognised Domestic Violence Order* by any local court in Australia. It does not need to be a local court in the state or territory where the Domestic Violence Order was issued. You can find application forms on Local Court websites. Find more information about the National Domestic Violence Order Scheme here: <https://www.ag.gov.au/ndvos>.

Gathering evidence to prove technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show an FVO is necessary or an FVO has been contravened include:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated

Note: certain conduct in relation to technology-facilitated stalking or abuse may constitute a criminal offence. Please see the *Legal Guide to Image-based Abuse in TAS*, *Legal Guide to Relevant Criminal Offences in TAS* and *Legal Guide to Surveillance Legislation in TAS* for further information.