

## LEGAL GUIDE TO INTERVENTION ORDERS IN VICTORIA

### 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 Intervention Orders in VIC

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

#### For information on other areas of law see:

##### Legal Guide to Surveillance Legislation in VIC

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 VIC

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 VIC

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, 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 Department of Treasury and Finance set the dollar amount for one penalty unit; this value is updated on 1 July each year. As of 1 July 2018: one penalty unit = \$161.19.

## FAMILY VIOLENCE INTERVENTION ORDERS

The *Family Violence Protection Act 2008 (Vic)* (the “Act”) is the piece of legislation in Victoria that allows the courts to make orders protecting people from family violence.

A person who is experiencing family violence (‘affected family member’) may apply to the Magistrates Court of Victoria for a family violence intervention 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 an FVO is a *civil* order, meaning it is not a criminal charge. However, an application for an FVO may be accompanied by related criminal charges and criminal penalties may apply if an FVO is breached.

Technology-facilitated stalking and abuse may be considered family violence. The Magistrates Court will grant an FVO if it is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and it likely to continue to do so, or do so again.

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

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

Technology-facilitated stalking and abuse can be a form of family violence if it is emotionally or psychologically abusive, threatening, coercive, or in any other way controls or dominates the family member and causes that family member to feel fear for the safety or well-being of that family member or another person.

*Emotional or psychological abuse* means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

The Act provides some examples of behaviour that is family violence, which may be perpetrated through technology-facilitated stalking and abuse:

- threatening to assault or cause personal injury to a family member
- threatening to sexually assault a family member or threatening to engage in another form of sexually coercive behaviour
- threatening to intentionally damage a family member’s property
- threatening to unlawfully deprive a family member of the family member’s liberty
- threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member
- Please note that this list is not exhaustive.

Other examples of technology-facilitated stalking and abuse that can amount to family violence against a family member, such as a current or ex-partner, include:

- making numerous and unwanted calls to a person’s mobile phone
- sending threatening and/or abusive messages (texting messaging, WhatsApp, Snapchat, Facebook messaging, Twitter)
- hacking into a person’s email or social media account to discover information about them (e.g. what the person has been doing, where they have gone, etc.)
- 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
- sharing, or threatening to share, intimate pictures of a person to force them to do (or not do) something

A certain behaviour may be considered family violence even if the behaviour itself does not constitute a criminal offence.

**Where can I find this information in the Act?**

See sections 5 and 7 of the Act for more information about what behaviour constitutes family violence.

**Who is a family member?**

The Act defines a *family member* of a person as:

- a current or former spouse or domestic partner
- someone with whom the person has, or has had, an intimate personal relationship with
- a relative
- a child who normally or regularly resides, or did, with the relevant person
- a child of a person who has, or has had, an intimate personal relationship with the relevant person

Please see the Act for comprehensive definitions of:

- *domestic partner* (section 9)
- *relative* (section 10)

**Where can I find this information in the Act?**

See sections 8, 9, and 10 of the Act for more information about who is considered a ‘family member’.

**Who can apply for a FVO?**

A person experiencing family violence is known as an *affected family member*.

The affected family member may apply for an FVO, or the police may apply for an FVO on behalf of the affected family member.

If the affected family member is an adult, that person may provide written consent for another person to apply for an FVO on their behalf.

If the affected family member is a child, the parent of the child or any other person with written consent of the parent or leave of the court, may apply for an FVO on the child’s behalf. A child may apply for an FVO if he or she is above the age of 14.

If the affected family member has a guardian, the guardian or any other person with the leave of the court may apply for an FVO on the affected family member’s behalf.

**Where can I find this information in the Act?**

See section 45 of the Act.

**How can a FVO protect a person from technology-facilitated stalking or abuse?**

FVOs commonly contain certain conditions restraining a respondent from committing family violence, including 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 or breaching the FVO), it is an offence and the police can investigate and lay charges against the respondent.

The court may include in an FVO any condition that appears to the court to be necessary or desirable in the circumstances. In theory this allows the court to make a wide range of orders restraining the respondent from committing various acts of family violence.

The Act provides some examples of conditions that may be included in an FVO. The conditions that relate to technology-facilitated stalking and abuse are:

- prohibiting the respondent from committing family violence against the protected person
- prohibiting the respondent from approaching, telephoning or otherwise contacting the protected person, unless in the company of a police officer or a specified person (e.g. emailing or sending text messages to the protected person)
- prohibiting the respondent from causing another person to engage in conduct prohibited by the order

The applicant for the FVO can also ask the court to include conditions that are specific to their situation and which will make them feel safe.

**Suggested wording to cover image-based abuse situations**

*The must not directly or indirectly publish, share or threaten to publish or share images or videos of the affected family member of an intimate nature*

**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 family member under surveillance.*

**Where can I find this information in the Act?**

See section 81 of the Act.

**How long does a FVO last?**

An FVO remains in force for the period specified by the court.

If the court does not specify a period, the FVO will remain in force until it is revoked by the court.

**Where can I find this information in the Act?**

See section 99 of the Act.

**What if a person is in urgent need of protection?**

**Interim orders**

If a person is in urgent need of protection, they can ask the court to make an interim order for their protection when they apply for an FVO. The court will make the interim order if it is satisfied on the balance of probabilities that the order is necessary to ensure the safety of the affected family member or preserve their property. An interim order takes effect immediately and may contain the same conditions as in a final order. An interim order usually lasts until the court can hear more evidence and decide whether to make a final order for an FVO or not.

**Where can I find this information in the Act?**

See sections 53–60 of the Act.

**Family Violence Safety Notices**

In circumstances where there has been an incident involving family violence and the police have attended the incident, if the responding police officer believes that the affected family member is in immediate need of protection, that police officer can apply to another police officer, who is of the rank of Sergeant or higher, for a family violence safety notice until an FVO can be decided by the court. A family violence safety notice may contain the same conditions as in an FVO. It remains in force until the first court mention date of the application for the FVO, at which time the court may consider whether to make an interim order.

A family violence safety notice is taken to be an application for an FVO.

**Where can I find this information in the Act?**

See sections 24–39 of the Act.

**What if a person breaks the conditions of a FVO by engaging in technology-facilitated stalking or abuse?**

When a person does not obey the conditions of an FVO, this is called a breach or contravention of the FVO.

## Contravention

It is an offence to contravene an FVO or a family violence safety notice. The **maximum penalty** is imprisonment for two years or 240 penalty units or both.

### Contravention with intent to cause harm or fear for safety

It is a more serious offence for a person to contravene an FVO with the intention to cause *physical or mental harm* (including self-harm), or *apprehension or fear* in the protected person for his or her own safety or that of any other. The **maximum penalty** is imprisonment for five years or 600 penalty units or both.

*Mental harm* includes psychological harm and suicidal thoughts.

Examples of contravening actions that can cause mental harm to a protected person:

- showing intimate pictures of the protected person to family/friends/workplace
- uploading intimate pictures of the protected person on the internet, including social media websites
- sending death threats to the protected person through text message, email, social media

### Persistent contravention

It is a more serious offence for a person to *persistently contravene* an FVO or a family violence safety notice. The **maximum penalty** is imprisonment for five years or 600 penalty units or both.

A person consistently contravenes an FVO or a family violence safety notice if, on three or more occasions in the previous 28 days, the person has engaged in conduct that would constitute a contravention of an FVO or a family violence safety notice.

In Victoria, if a protected person encourages, permits or authorises a respondent to engage in behaviour that contravenes the FVO or family violence safety notice, the protected person **will not** have committed an offence. For example, it is not an offence if:

- the protected person invites or allows the respondent to have access to the residence or another place in contravention of the family violence intervention order or family violence safety notice
- the protected person allows the respondent to spend time with the protected person or a child of the respondent or protected person in contravention of the order or notice.

### Where can I find this information in the Act?

See section 37–37A (family violence safety notice) and sections 123–125A of the Act.

### How can a person apply for a FVO?

A person can apply for an FVO, in person, at the Magistrates Court of Victoria. Ask to speak with the family violence registrar, who will ask some questions and provide an application form. Application forms are available online at [www.magistratescourt.vic.gov.au/forms](http://www.magistratescourt.vic.gov.au/forms)

Alternatively, a person can also go to their local police station to report the family violence and ask for police to assist with applying for an FVO. The police may also issue a family violence safety notice and apply for an interim order on the person's behalf.

### 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 Victorian 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 Victoria, 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 VIC*, *Legal Guide to Relevant Criminal Offences in VIC* and *Legal Guide to Surveillance Legislation in VIC* for further information.