

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 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.

If you are a protected person in a police application, Victoria Police will legally represent your interests at this hearing; you do not require your own lawyer.

The Respondent in a contested hearing must be legally represented or they may not effectively participate in the proceeding and defend the making of a final order.

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. You can make this application by attending the Heidelberg Magistrates' Court—you do not need an appointment.

For more information telephone:

Darebin Community Legal Centre

279 Spring St, Reservoir 3073

Phone 9484 7753
Monday - Thursday

9.30am - 1.00pm and 2 - 4.30pm

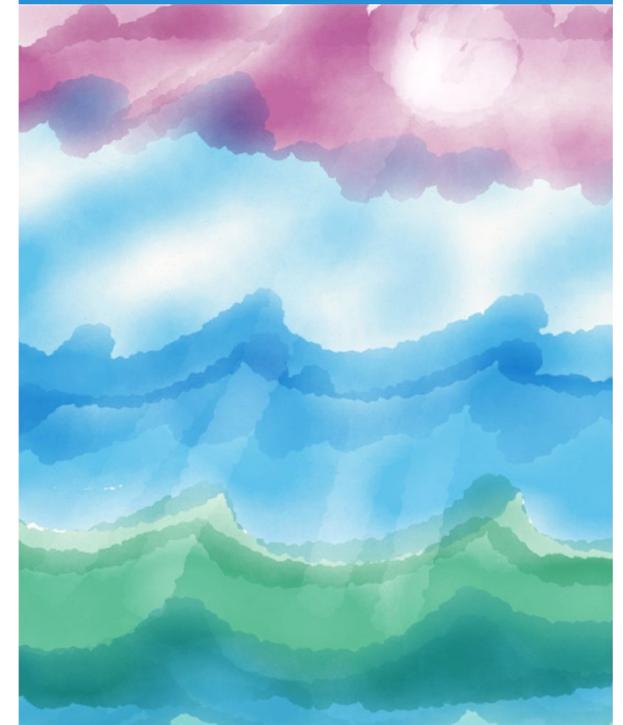


Prepared by Darebin Community Legal Centre 2018

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.**

DIOS duty lawyers can help you with negotiations and represent you at this hearing. However if no agreement can be reached, the Court can order Victoria Legal Aid (VLA) to provide each person with a lawyer for the next Court date—the **contested hearing**. VLA legal representation is means tested. Depending on your assets and income it may be free or you may be asked to make a contribution. VLA will send you a form requesting financial information. Fill in this form and return it as quickly as you can. Two weeks before the contest, contact VLA to ensure a lawyer has been allocated.

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.