

Keeping safe from family violence



Everyone has a right to be safe in their relationship. If you do not feel safe in your relationship, there are supports available to help.

Acknowledgement of Country

Tasmania Legal Aid acknowledges and pays our respect to the Palawa/Tasmanian Aboriginal people as the Traditional Custodians of the land and waters of Lutruwita/Tasmania, where we live and work.

Purpose of this document

This document is intended to help assist family violence victim survivors and their support people to seek protection from family violence. It can and should be used by professionals working alongside family violence victim survivors.

It is intended to be general legal information only and does not constitute legal advice.

For advice on your specific circumstances, you can contact Tasmania Legal Aid on 1300 366 611.



Definitions

Applicant: The person making an application.

Coercive control: When someone uses patterns of abusive behaviour against you. Over time, this causes you to be afraid and takes away your independence. You might feel trapped and afraid, and like you can't reach out for help.

Conciliation Conference: A type of mediation, in the context of this document, it is a mediation to help you and the other person agree about a Family Violence Order.

Cross-Examination: After a witness for one party has given their evidence in a hearing (called 'evidence in chief'), the other party in the case, or their lawyer, can ask the witness questions about their evidence. These questions are called 'cross examination'.

Ex parte: A decision of the court made without notice to the other party, or without the other party being present.

Evidence: Verbal or written statements of witnesses, documents and other items used to support a party's case in court.

Family violence: Violent, threatening or other behaviour by a person that coerces or controls a member of that person's family or causes them to be fearful.

Family Violence Act 2004 (Tas): The legislation in Tasmania that defines family violence which all lawyers and courts follow.

Family Violence Order: An order issued by the court against your partner or ex partner. It is designed to stop them from perpetrating further family violence against you.

Hearing: The time when the parties present their evidence to the court and make submissions on the law that applies to the case. After the hearing the court makes a decision in the case.

Interim Order: An order that is made by a court for a period of time, usually until the next court date.

Magistrate: A judicial officer appointed to hear and determine civil and criminal matters in the Local Court.

Mediation: Confidential meetings where an independent third person (a 'mediator') tries to help parties to a dispute come to an agreement about their matter.

Party/parties: The people involved in legal proceedings (e.g. the applicant and respondent)

Perpetrator: Person using violence: the person who is making you feel unsafe and/or using violence against you. You may also hear them referred to as a person using violence or a primary aggressor.

Police Family Violence Order: An order issued by police against your partner or ex partner. It is designed to stop them from perpetrating further family violence against you.

Registry: A counter at the court house where people can file documents and make enquiries.

Restraint Order: An order against a person you are not in a relationship with which is designed to stop threats, property damage, violence, intimidating behaviour and emotional abuse in the future.

Respondent: A person against who an application is made.

Safe at Home: A Tasmanian Government response to family violence. This includes Tasmania Legal Aid lawyers who can help you apply for a family violence order free of charge. Other programs include financial support, counseling and housing support. More information about everything included in the Safe at Home response can be found at www.safeathome.tas.gov.au.

Safety plan: A plan that considers things that make you and your family safer when you are experiencing domestic and family violence and abuse.

Serve documents: Formally giving someone court documents, or bringing those documents to that person's attention.

Service: The formal process of delivering or posting court documents to another party in a case after they have been filed, in accordance with the rules of the court. Service ensures that all parties have received the documents filed with the court.

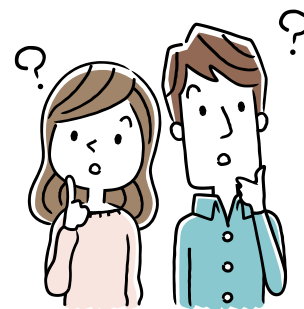
Submissions: Written or verbal arguments made to the court.

Witness: a person who saw/heard/experienced something first hand and can share their account with the court or police.

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What is family violence?



Everyone has a right to be safe in their relationship. If you do not feel safe in your relationship, it is possible you may be experiencing family violence.

Any behaviour that's violent, threatening, controlling or intended to make you or your family feel scared and unsafe can be considered family and domestic violence.

In Tasmania, the law defines family violence as one or more of the following occurring between two people who are (or have been) in a relationship:



Assault, including but not limited to sexual assault, indecent assault and aggravated assault

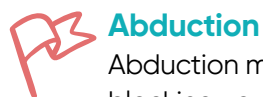
Assault may include hitting, shoving, pushing, grabbing. It may also include threats of assault, such as holding fists up in your face, moving to hit you but not making contact, or throwing items in your direction but not hitting you directly.

This may also include choking you or restricting your breathing (such as by putting their weight on your chest). If you have been choked or strangled you should seek medical attention, even if you feel fine.



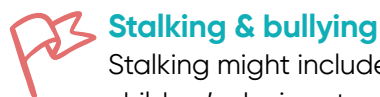
Threats, coercion, intimidation or verbal abuse

Threats might include threats to hurt children, relatives or pets, threatening to damage your property or remove your children, threatening suicide or self-harm, threatening unnecessary legal action or to revoke visas or report misconduct to Centrelink.



Abduction

Abduction might include locking you in the car or house, physically blocking your exit, or refusing to stop a moving vehicle.



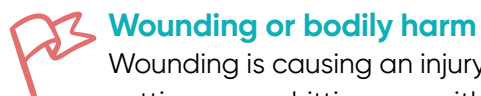
Stalking & bullying

Stalking might include using electronic or GPS tracking, using children's devices to access personal or location information about you, routinely checking your phone, sending messages from your account purporting to be you and/or logging into your phone from other devices. It might also include installing cameras in your home or installing apps on your devices to allow them to see what you are doing.



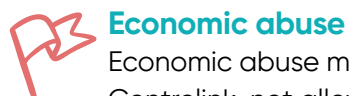
Rape

Rape might include tampering with condoms or lying about wearing a condom (stealthing), coercing you into sex, having sex with when you are so under the influence of drugs or alcohol that you did not understand or consent to having sex with you while you are asleep, and/or threatening you into having sex.



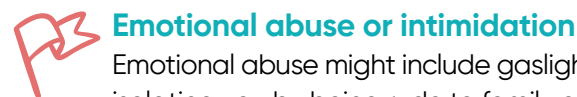
Wounding or bodily harm

Wounding is causing an injury that breaks the skin – for example, cutting you or hitting you with an object hard enough to cause you to bleed. Bodily harm is an injury that affects your ongoing comfort and could include serious bruising, broken or fractured bones or serious sprains.



Economic abuse

Economic abuse might include making you falsely report to Centrelink, not allowing you to work or study, removing funds from shared accounts without your consent, pressuring you into withdrawing savings, interrogating you about your spending, and/or refusing to include your name on leases or housing titles. It can also include spending money on non-essentials like alcohol so there is not enough money for groceries or children's items and/or lying about paying bills.



Emotional abuse or intimidation

Emotional abuse might include gaslighting, prolonged silent treatment, isolating you by being rude to family or friends, trying to turn you against family or friends, undermining parenting decisions, mocking you or belittling you (especially in front of children) or encouraging children to mock you or call you names.

It might include creating unrealistic or impossible standards or acting in a way that makes you 'walk on eggshells' around them. It might include going to police 'first' and making up stories, so you don't feel safe to seek help.

If you are in an LGBTIQ+ relationship, this might include deadnaming you or threatening to 'out' you to others.



Damaging property that is jointly owned, owned by someone or owned by the children

Property damage could include breaking windows or putting holes in walls (especially in rental properties where it can affect the lease), kicking animals, throwing phones, or breaking children's electronics.



Harm to animals

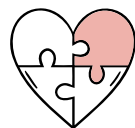
Causing the death or neglect of an animal (either directly or indirectly) or threatening to do so. This could be threatening to hurt or kill the animal, killing an animal, refusing to provide food, water, shelter or vet care to an animal, or threatening violence to you or someone else if you try to care for the pet or animal. The animal does not need to be a pet or to be owned by you.



Family violence can look like the other person doing these things to you again and again across a long period of time. Often, each of these behaviours on their own may appear small, but by doing them over time, the other person can cause you to be scared without ever physically hurting you.

It is important to remember family violence often happens in a cycle (called 'the cycle of violence'). The other person may act in a way that makes you feel unsafe, then apologise and be a good partner, before starting the unsafe behaviour again.

What if I am not sure if we are in relationship?



Family violence legislation relates to people in or who have been in a 'significant' relationship. A significant relationship is based on things like:

- how long you have been together
- whether you lived together
- shared finances
- have children
- whether other people would consider you were in a relationship.

This isn't a full list and every relationship is different, so if you are not sure whether your relationship is considered significant a lawyer can help you.

If you're not able to get a Family Violence Order because of the nature of your relationship, you may still apply for a Restraint Order. More information on this can be found on page 35.

What if it's someone else in my family who is making me feel unsafe?

In Tasmania, family violence only refers to romantic relationships. It does not cover parents, children or other family members.

Violence from other family members may still be illegal, and you can still apply for legal protection. If a family member is making you feel unsafe you may wish to:

- Report the behavior to police
- Apply for a Restraint Order in the Magistrates Court. A lawyer can help you do this
- Get help from a support service.

What if I am LGBTQIA+?



In Tasmania, the definition of family violence includes people in queer relationships. You are still protected by family violence legislation if you are experiencing family violence from a queer or same-sex partner.

Collecting evidence

It's important to remember that your own word is evidence – even if you don't have photos, videos or texts, you can prepare a written statement which explains your experiences and it can still be enough for the court to make an order protecting you.

It is still important that, when possible, you keep records to help persuade the magistrate that you are telling the truth, as they will usually have to decide between what you and the other person are saying. You have a better chance of the magistrate making a decision in your favor if you have more to support your version of events.

Some ways you can collect evidence are:



Keep records. Write down times, dates and locations when things happen. Sometimes, family violence can look like lots of 'small' things that add up to you feeling unsafe. Keeping a list of incidents – big and small – can help you build a picture for yourself and others.



Take photos. Take pictures of injuries or marks to your body, property damage and screenshot messages that make you feel unsafe or uncomfortable.



Seek medical attention. It's important that if you are injured, you get the appropriate medical support. Doctor or hospital notes can also be useful supporting any claims you make about having been injured, as medical practitioners will make notes about what you say happened.



Make sure your notes and photos are backed up. It's important that you have your information saved somewhere else, in case something happens to your phone. This might look like sending things to a friend or family member you trust, or even to an email address you create just for this purpose.



Remember, your safety is always the priority.

Make sure you are staying safe when saving or sharing information. Talk to your support worker about this.

What if I am in a relationship or separating?



Leaving can be dangerous.

Get support from specialist services.

They can help you:

- Make a safety plan
- Prepare a 'go bag'
- Copy documents
- Contact the bank
- Speak to a lawyer

If you are still in a relationship, or are in the process of separating, there are many specialist services you can connect with to help you keep safe. These services are experienced in supporting people in and leaving unsafe relationships and can help someone safety plan around leaving. **Leaving an unsafe relationship is one of the most dangerous times for anyone experiencing family violence, so it's important you ask for help if you are feeling unsafe.**

As well as connecting to services, these steps can help you stay safer:



Make a safety plan with a professional or someone you trust. This might include where you will go, how you will get there, and how you will communicate with someone if you are currently not safe. They can also provide emotional support, as leaving an unsafe relationship is stressful.



Work out where you will go if you need to leave your home quickly. This might be a shelter (remembering that if you have pets, you may need to organise somewhere else for the animals to go), or a spare key provided by a colleague, family member or friend.



Prepare a 'go bag' with any important items, in case you need to leave home quickly. This should include children's and/or pet items, medications and scripts, sentimental items and necessary personal documentation.



Make copies of any important documents and keep them in a safe place outside the home. This may include medical information for you, your children and/or your pets, visa information, passports or other ID, Medibank cards, banking information and sentimental items like baby photos.



Keep records of any unsafe behaviour. If it is safe to do so, it can be useful for you to create a separate email address to send copies of messages to, or to keep a diary of the other person's unsafe behaviour with times, dates and brief details. You may find it useful to send this information to a designated friend or support person. This information should be stored off your phone or other devices in case they are damaged or stolen.



Contact the bank and set limits on single withdrawals. If safe to do so, you should change your banking so removing large sums requires both account holders to authorise. You can also set up your own bank and phone accounts so the other person cannot access this information.



Connect with a lawyer to get legal advice and support on your options during and following separation. Refer to Family Violence legal services list on page 15.

Family Violence Support Services

STATEWIDE

- **Family Violence Counselling & Support Service (FVCSS)**
1800 608 122
Safety planning, case management, counselling and referrals for people experiencing FV
- **Safe Choices**
1800 806 189
www.safechoicestas.org.au
Case management for people leaving FV
- **Statewide Sexual Assault Support Phonenumber**
1800 697 877
24/7 confidential phonenumber providing support and guidance to victim-survivors of sexual assault, including crisis support. Provided by SASS and Laurel House.
- **1800 RESPECT**
1800 737 732
www.1800respect.org.au
24/7 telephone and online counselling
- **Engender Equality**
6278 9090
www.engenderequality.org.au
Counselling, education, training for violence against women
- **Safe Beds**
www.rspcatas.org.au/rspca-petbarn-foundation-safe-beds-program
Temporary care for animals of people experiencing FV

SOUTH

- **Hobart Women's Shelter**
6273 8455
www.hobartws.org.au
Emergency accommodation and support for women affected by FV
- **Huon Domestic Violence Service**
6264 2222
www.huondomesticviolence.com.au
Case management of people experiencing FV

NORTH

- **Yemaya Women's Support Services**
6334 0305
www.yemaya.com.au
Case management for women experiencing FV
- **Magnolia Place**
6344 5322
www.lws.org.au
Crisis accommodation for women experiencing homelessness and/or FV

NORTH WEST

- **North West Tasmania Women's Shelter**
6425 1382
www.nwtws.org.au
Emergency accommodation and support for women and children escaping violence

Family Violence Legal Services

STATEWIDE

- **Tasmania Legal Aid**
1300 366 611
www.legalaid.tas.gov.au
Legal advice and representation, including for family violence order applications and family law
Family Advocacy and Support Service (FASS): 1800 431 157
Lawyers and social support workers who work together with clients and is based at the court
- **SiS Tasmania**
1800 747 827
www.sistas.org.au
Legal support for Aboriginal and Torres Strait Islander people
- **Women's Legal Service Tasmania**
1800 682 468
www.womenslegaltas.org.au
Legal support for women experiencing FV

SOUTH

- **Hobart Community Legal Service**
6223 2500
www.hobartlegal.org.au
Legal advice and representation for people in the south of Tasmania

NORTH

- **Launceston Community Legal Centre**
1800 066 019
www.lclc.net.au
Legal advice and representation for people in north and north east Tasmania

NORTH WEST

- **North West Community Legal Centre**
6424 8720
www.nwclc.org.au
Legal advice and representation for people in the north west of Tasmania

Protective Orders



Police can issue a protective order if they believe family violence has occurred and could occur again.

These orders:

- Usually lasts for 12 months
- Start when the other person is given the order
- May be issued even if you don't ask for it.

The most basic order they can put in place is sometimes called a 'keep the peace' order. This creates conditions that stop the person using violence from threatening, stalking or assaulting you even when you are still living together.

A more protective order might be what is often called a 'no contact' order, which stops the other person from contacting you or arranging other people to contact you (either electronically or in person with some exceptions). This will often include conditions that stop the person using violence from being able to come near your house or workplace, or from approaching you in public.

Police may issue a Police Family Violence Order (PFVO), which is an order that creates rules the person using violence must follow.

- Police can put a PFVO in place if they think there has been family violence, and if they think it will happen again without a protective order.
- Police will often ask you if you want a PFVO in place, but sometimes they may put a PFVO in place without asking you.

Police Family Violence Order (PFVO)

If it is safe to do so, you should report the family violence you are experiencing to the police.

You can do this by:

- going to a police station
- speaking to them on the phone (000 for an emergency)
- contacting them on their non-emergency line **131 444** if you are not at an immediate risk of harm.

- A PFVO will be in place for twelve months.
- The PFVO will start protecting you after the police have given a copy of the PFVO to the person using violence (called 'serving' the other person).
- If police have come to your house to speak to you and the person using violence, they may 'serve' the other person at the same time.
- If they issue a PFVO when the person using violence is not there (such as because you have gone to the police station to make a report), police will let you know when the person using violence has been served and your protection has started. If you have not heard from police, you can attend your local station or call the non-emergency line on **131 444** to request an update.

What do I do if I reported to police, and they did not issue a PFVO?

If you made a report about family violence to police and they did not issue a PFVO, but you believe you need a protective order to be safe, you can make an application to the Magistrates Court for a Family Violence Order (FVO). A Magistrate will still consider the information you provide even if police have not made a PFVO. More information on this process is available on page 19.

What do I do if police have issued a PFVO and I do not want it/ want it to be different?

You can apply to remove (revoke) or change (vary) a PFVO by applying to the Magistrates Court. The process to vary or revoke a PFVO is the same as varying or revoking an FVO. More information about doing this can be found on the Magistrate's Court website, or you can speak to our Safe At Home team at Tasmania Legal Aid.

What do I do if police issued a PFVO on both me and on the other person (or me instead of the other person), even though I didn't do any family violence/was only defending myself?

Sometimes police issue PFVOs against both people or against the victim survivor. This can happen when a victim survivor uses violence to protect themselves against a person who has been making them unsafe. We call this misidentification. You can apply for the PFVO to be revoked on the

basis there is no risk of future family violence or that you did not commit any family violence in the first place. You should seek legal help to do this. The Safe At Home team at Tasmania Legal Aid can give you free advice and support on revoking a PFVO.

What if the person using violence doesn't follow the order?

If someone is breaching the FVO, you should contact the police. They cannot charge a person with a breach unless they know it has happened.

Will an FVO show up on a police check?

A FVO will not show up on an ordinary criminal check and will not usually affect someones employment. If they breach the FVO, they will be charged with an offence. If they are found guilty, this offence will be included on their criminal record and may prevent them from getting or keeping a Working With Vulnerable People card.

Family Violence Order (FVO)



The court can issue a Family Violence Order to protect you. You can make this application even if police have not assisted you.

These orders:

- Can last any length of time (usually 12-24 months)
- Can include any order the Court thinks is necessary.

Applications can be made without a lawyer or with help from a free legal service like Safe At Home at Tasmania Legal Aid.

A Family Violence Order (FVO) is a protective order made by the Court preventing one person from acting a certain way against another person and/or their children. They will usually be in place for 12 months but can be in place for more or less time.

These conditions must be followed by the person using violence, or they can face criminal penalties such a conviction, fine or imprisonment. Not following the conditions is called **breaching the FVO**.



An FVO has conditions that a person using violence must follow. These can include conditions that they cannot threaten, abuse or assault you, or that they cannot come near you, your work or your house. More information on the conditions that can be included are available on page 22.

Applying for a FVO

- 1. Print and complete the FVO application located here: www.magistratescourt.tas.gov.au/going_to_court/restraint_orders/information_for_applicants**
 - You should include as much information about the person using violence's unsafe behaviour as you can. If you have times, dates or locations, you should include these as it will help the Magistrate better understand the behaviour.
 - If you have copies of text messages or posts made by the person using violence that include threats or name calling, you can attach these to your application. It can be useful to use headings to help the Magistrate easily follow your application.
 - You will need to get your signature witnessed by a Justice of the Peace. There is usually a Justice of the Peace available at the court or at Service Tasmania, but you can also find one at this list: www.justice.tas.gov.au/justice-system/justices-of-the-peace-and-commissioners-for-declarations/jp/find. A Justice of the Peace will not charge to witness your signature.
- 2. Go to the Magistrate's Court and file your application.** You will not have to pay to file your application. You will need to take five (5) copies of your application. The Registry staff may be able to help you make copies if you do not have access to a photocopier.
- 3. If you are worried the other person might harm you when they find out about the FVO Application, ask for your Application to be heard urgently and without the other person (ex parte).** This allows the Magistrate to consider making in-between (interim) orders, so you are already protected when the person using violence sees your application. The Magistrate will need to understand why you require urgent protection. You should include these reasons in your application and be prepared to explain them to the Magistrate
- 4. If you do not feel safe having someone you know give the application to the other person,** and you cannot afford to pay a professional to serve them (or you don't think it would be safe for

a professional to do so), **you can ask the Magistrate for police service of your application.** This means police will be responsible for providing the Order to the other party. They may take several days to give them the application. There is a question on the Application Form you should answer if you are asking for police service – see below.

14. SERVICE BY POLICE

If you are asking the court to order Tasmania Police to serve the Family Violence Order or Interim Family Violence Order please provide details as to why this is necessary. If the court does not order service by Tasmania Police it will be your responsibility to arrange service on the person to be restrained (respondent). This may require you to engage a private process server at your cost.

- 5. The Registry will file your Application and provide you with a Court date.** It is important you come to court on the day and time of your Court Date, as this is when the Magistrate will read your application and decide if they put an order in place to protect you. They will not make the Order if you do not come to Court.

What conditions can be included?

Unlike police, the Magistrate can include any conditions they think are necessary to protect you from family violence. The application includes a checklist where you can select the conditions you think will best protect you. You can also add other conditions you think you need if those in the checklist don't address your personal circumstances.

- **Property:** You can ask for specific property (including pets) to be returned – but keep in mind the other person might damage these or sell them if they know they are important to you. If there are sentimental or irreplaceable items you wish to have returned to you, you should seek legal advice on the best way to arrange this before identifying them in the Application.
- **Leases:** You can also ask for conditions requiring the other person to vacate a shared property. If the Court makes an Order including this condition, you can give the Order to your landlord or rental agency, and they can provide a new lease for you. If you are asking for this, it is important for you to detail the reasons why in your application (e.g. if the other party has somewhere else to stay but you and the children do not). It is a good idea to get legal advice if you are asking for this, as you will need to include extra information in your Application.
- **Children:** You can ask for children to be included in protective conditions. The Magistrate may be reluctant to include children unless you have clearly set out how they have been impacted by any family violence in your application, and why they need to be protected. If children are included in the Order, you can also ask for conditions that stop the other person from going to their school or daycare.
- **Firearms:** Most orders in Tasmania will also include conditions requiring the other person to surrender any firearms they have, and conditions preventing them from using or purchasing firearms while the FVO is in place.

Attending Court



Be prepared

What to bring:

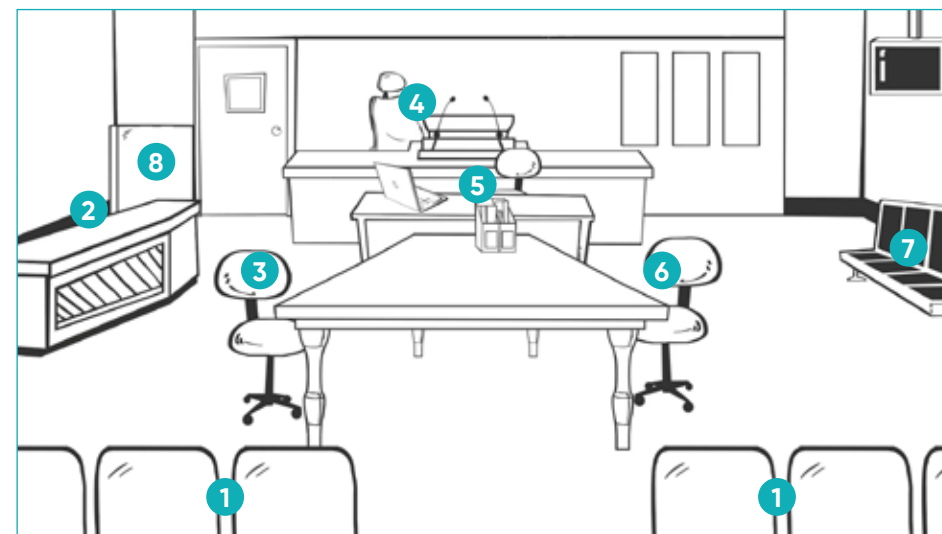
- your application, pen/paper, phone charger, water/snacks.

What to expect:

- Security check at the entrance
- You can ask if a safe waiting room is available
- Be polite, clear, and brief when speaking
- The Magistrate may give a temporary order to protect you.

What to expect when visiting the Magistrates Court

- 1 Where you and your support person wait for your matter to be called
- 2 Box for people who are being held in custody
- 3 Lawyers
- 4 Magistrate
- 5 Court clerk
- 6 Prosecutor
- 7 Media seats (more commonly used by lawyers waiting to appear)
- 8 Witness box



What do I need to bring?

- A copy of your application
- Pen and paper
- Charged phone or portable charger
- Snacks and a plastic water bottle
- A support person to wait with you

How should I dress?

You should dress neatly but comfortably. You do not need to wear a suit.

What will happen when I arrive?

1. Arrive 30 minutes early

This will give you time to go through security and find your courtroom.

2. Go through security

When you arrive at court, you'll go through security. They will check your bag and ask you to walk through a metal detector. They may also use a wand to check you. If you have anything you can't take into the court (like a metal water bottle or a cigarette lighter), they will hold it in a locker for you until you leave. They may ask your name and why you're at court. You can tell them you're there to apply for a Family Violence Order.

3. Check your courtroom

When you filed your application, they might have given you the name of the Magistrate you'll be seeing. You can also check the list in the waiting room to see which courtroom you need to go to. Your name might not be on the list in the public area for safety reasons. If you don't know the name of the Magistrate or you don't understand the list, ask at the Registry or Security desk.

4. Check in with the court clerk

The court clerk might come into the waiting area and call people for their court sessions. They'll usually be dressed neatly and have a clipboard or list, and will be standing outside the court room. Approach them and tell them your name. If you don't see the clerk, let the security officer know your name when you go into the courtroom.

5. Take a seat and wait to be called

You can sit in the back of the court room or in the main waiting area until your name is called by the security guard.

Quick tips...

- Bow your head as you come in and outside of the court room.
- Refer to the Magistrate as '**your honour**'
- Don't use your phone in the court room (security will ask you to step out or turn it off if you do)
- Keep your voice quiet and don't yell or swear in the back of the court room

URGENT

What happens when my matter is called **ex parte/urgent**?

When your name is called, go to the table in the middle of the room (the bar table). Stand up when the Magistrate speaks to you or when you speak to the Magistrate. If the Magistrate is talking to someone else, or if someone else is speaking, sit back down.

If you've asked for your case to be heard quickly, the Magistrate might not have had enough time to read your application fully. They might ask you to wait while they read it. They could ask you to briefly explain your case or ask specific questions to understand what you want and why. Make sure to speak clearly, politely, and briefly when answering their questions.

The Magistrate will then decide if they will grant you a temporary order (called an Interim Family Violence Order or IFVO) to protect you while the case is ongoing. They need to be sure of two things:

- 1. Family violence has happened.**
- 2. Without an order, the violence is likely to happen again.**

The Magistrate may make the IFVO with different conditions than you requested. In some circumstances a Magistrate may make a FVO rather than an IFVO. If there's a condition you think is important for your safety and it's not included, you can politely ask if it can be added. However, if the Magistrate doesn't think it's necessary, accept their decision without arguing. You may need to provide more evidence if you want that condition added later.

Once the Magistrate is finished with your case:

- You can leave the courtroom
- Before you leave, bow to the Magistrate
- Go to the Registry desk to get copies of any orders the Magistrate made.
- Make sure to write down your next court date as soon as you leave, so you don't forget it.

NOT URGENT

What happens if my matter is called **NOT ex parte/urgent**?

When your name is called, go sit at the table in the middle of the room (the Bar Table). The person using violence will be called to come into the courtroom. You should stand when the Magistrate is talking to you or when you're talking to the Magistrate. If the Magistrate is talking to someone else, you should sit down.

The Magistrate may ask you some questions about your application or the conditions you're asking for. Answer them politely and briefly.

The Magistrate will then ask the person using violence if they agree with the order. They have three options:

- 1. Accept the order (with or without admitting to the claims)**
- 2. Ask for different conditions**
- 3. Reject the order.**

If the person using violence agrees to the order, the Magistrate will make a final order, and you won't need to come back to court.

If the person using violence asks for different conditions, the Magistrate might ask if you agree to those changes. If you agree, they may make a final order, and you may not need to return to court. If you don't agree, the Magistrate may make a temporary order to protect you while the court process continues. This is called an Interim Family Violence Order (IFVO). The Magistrate will decide to make an IFVO based on two things:

- 1. Whether family violence has happened.**
- 2. Whether family violence is likely to happen again without an order.**

The Magistrate may make an order with different conditions than what you requested. If a condition you really need for safety isn't included, you can politely ask for it to be added. If the Magistrate doesn't think there's enough evidence to support your request, accept their decision. Don't argue about the conditions – you might need to provide more evidence later.

The Magistrate may also ask both of you if you'd like to go to mediation. More information about mediation can be found on page 29.

Am I protected as soon as I leave court?

If the person using violence was in court when the order was made, you're protected right away, because they know about the order.

If they weren't in court, you're not protected until the order is officially served to them. In the meantime, you can call the police if you feel unsafe, but the person using violence won't be breaking the order if their actions make you feel that way.

If you asked the police to deliver the order to the person using violence, the court will send them a copy. It might take a few days for the police to serve the order, and they will let you know once they've done it. If you don't hear back in a few days, you can call the non-emergency police number on **131 444** to check.



Serving the order

If you didn't ask the police to serve the order, or the Magistrate didn't order them to do it, you'll need to arrange for someone else to serve it. A friend or family member can deliver the documents, but they need to fill out a form saying they did.

It's recommended to hire a process server, a professional who delivers legal documents, for a fee of \$100-200. You can find process servers online or ask the court for recommendations. After serving the order, they'll provide an affidavit of service, which either you, or the court registry, will receive.

You need to make sure a copy of this is provided to the court registry before your next court date.

Mediation



If the person using violence doesn't agree to the Family Violence Order (FVO), the Magistrate might ask you to go to a conciliation conference (a type of mediation). If you're worried about your safety—physically or emotionally—you can tell the Magistrate you don't want to go.

If you are told to go to the conference, you'll be given a specific time and date. It will take place at the court in a private room. The mediator who runs the session is not a Magistrate and can't make any decisions for you.

The mediator can't force you to agree to anything, and they can't make decisions for you. If you don't agree, the case will go to a hearing. Any temporary (interim) FVO will still protect you in the meantime.

After the mediation, you'll go into court with the mediator. If you reached an agreement, the mediator will tell the Magistrate, who will then make the final FVO. You won't have to come back to court. If you didn't agree, the Magistrate will give you a new court date, which could be for a brief discussion (mention) or a full hearing.



What if I don't feel safe being in the same room as the person using violence?

If you don't want to be in the same room as the person using violence, you can ask the court ahead of time for a "shuttle conference." That means you'll be in separate rooms, and the mediator will go back and forth between you both to help try to reach an agreement about the FVO conditions.

Final Hearing



Hearings can be tricky without a lawyer – we recommend you speak to the Safe At Home team at Tasmania Legal Aid as soon as possible to see if they can help you advocate for yourself in court.

If they can't, here are some tips and tricks for preparing for a hearing:

- Remember the Magistrate needs to be satisfied that:
 - 1) family violence has already occurred; and
 - 2) family violence is likely to occur again if there is no order in place.
- Remember any evidence you provide to the court should be to prove one or both of these things.
- The main point of a hearing is to tell your story and support your story with evidence, so the court knows you are telling the truth (even if the person using violence says you aren't).
 - Are there other people (witnesses) who can support your version of events? You can have them put what they have seen and heard on affidavit, or just let the court know that they will be speaking to what they have seen or heard at the hearing. They will need to attend court on the day of the final hearing, in case the other person or the magistrate wants to ask them questions.
 - You will have the opportunity to ask the other party or witnesses questions – called examining. If they are your witnesses, you will ask them questions first. These questions should be open ended (who/what/where/why/how questions). This might be questions like “what were you doing on Sunday 5 May?” or “how do you know the respondent?”
 - If the witness is for the person using violence, you will cross examine them after the person using violence has asked their questions. During cross examination, your questions should be closed (yes or no questions), such as “you said you heard him call me a name, but you were inside the house at the time, weren't you?” The person using violence will also have the chance to cross

examine your witnesses but won't be able to cross-examine you themselves (their lawyer can).



It can be scary giving evidence, especially if you are being cross examined. Remember you are not trying to prove you are right – you are simply sharing what you saw, heard or experienced. Answer the question you are being asked, and in short, clear sentences. The Magistrate will interrupt if the questions are repetitive or unfair.

- After the hearing, if the Magistrate decides not to make the final Family Violence Order, that is the end of the court case. Any interim orders are no longer legally binding and you will no longer be protected by any order.
- If the Magistrate decides to make a final Family Violence Order, they will tell you and the person using violence what conditions are to be included, such as how long it will be in place for and what protections are to be included.

What happens on the day of the hearing?

The first thing to do when you arrive at court is to tell the Magistrate's associate that you are representing yourself.

Opening Statements

Applicant gives evidence

Respondent asks the applicant questions

Note: Not directly if they are self represented.

Witnesses for the **Applicant** give evidence

Respondent asks those witnesses questions and gives evidence

Applicant asks the respondent questions

Note: Not directly if they are self represented.

Witnesses for the **Respondent** give evidence

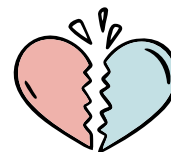
Applicant asks those witnesses questions

Closing summary

Magistrate makes a decision

Flowchart from Legal Aid ACT

After separation



Separation is tricky even when you feel safe. Once your immediate safety is addressed, there are some things to consider.

Leases/agreements

If you have a shared lease or agreement, you should consider your options for removing the person using violence from the lease. If this is not included on your family violence order, you will need to negotiate with the person using violence and your landlord to have your lease changed into your name.

If you stay on the lease after you move out, you might be liable for damage done by the person using violence.

If your partner stays on the lease after they have moved out, it may stop police being able to support you if the person using violence comes to the house uninvited.

Parenting

If you have a child/children with a person using violence, you will need to negotiate parenting arrangements. If you and the other parent cannot agree on what is best for the children, there are rules that can help you decide, or even decide for you. These decisions are based on the 'best interests' of the children and look at what is going to keep them safe.

If you are worried about the children's safety while with the person using violence, you don't need to facilitate unsupervised time. You should speak to a lawyer as soon as possible about your worries.

Tasmania Legal Aid has family lawyers that can help you negotiate with the person using violence.

You should tell your lawyer about your safety worries so they can help you feel safe throughout this process.

Property

If you have shared property with the person using violence, you will need to negotiate how this is going to be divided. This includes if you have shared debt, or if you both have superannuation.

Tasmania Legal Aid can provide some assistance to help you negotiate on how your property (including debt) will be divided.

Divorce

If you are married and have been separated for over twelve months, you can apply for a divorce from the person using violence. You can do this without their agreement (although you do need to give them a copy of their application).

More information about applying for a divorce, including how to do it without a lawyer, is available online at: www.fcfsa.gov.au



Financial support available

There are grants available to help keep you safe after you have left (or if you are in the process of leaving) an unsafe relationship. These grants can include security upgrades for your home, cash payments, financial assistance to cover security deposits or moving costs, and much more. More information about some grants available can be found at www.safeathome.tas.gov.au/services/financial-support-for-victim-survivors

Restraint Orders



In Tasmania, PFVOs and FVOs (types of protection orders) are only for people in significant relationships, like those who are married or living together as partners. These orders don't cover violence from other people including other family members, like parents, siblings, or children.

If you're feeling unsafe because of a parent, sibling, or another person, you can apply for a **Restraint Order** instead. This process is very similar to applying for a Family Violence Order, as outlined above.

You don't need a lawyer to apply for a Restraint Order but we recommend getting some legal advice before you file a Restraint Order. If you're in immediate danger, you can ask the court to treat your application as urgent or even to decide on it without the other person being there at first (this is called an 'ex parte' application).

Police will often suggest you make an application in the Magistrates Court for a Restraint Order. You can use the information in this guide to assist you, as the process is very similar to applying for a Family Violence Order. You can also contact the legal services on page 15 for assistance to make this application. You have to apply through the court to get one.

More information about Restraint Orders is available below:



www.legalaid.tas.gov.au

www.magistratescourt.tas.gov.au

Abbreviations

Some common abbreviations:

FV family violence

FVO family violence order

IFVO interim family violence order

PFVO police family violence order

RO restraint order

IRO interim restraint order

FCFCOA Federal Circuit and Family Court of Australia

SAH safe at home

Notes

Notes

Remember...

Call 000 if in immediate danger

Police (non emergency): **13 14 44**

Safe At Home lawyers work at Tasmania Legal Aid. They are specialty lawyers who protect people experiencing or at risk of family violence. Call 1300 366 611 and ask for Safe At Home.

Disclaimer

This guide should not be used as substitute for legal advice.

No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on the information contained within this guide, or omitted from it.

1300 366 611

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