

MAGISTRATES COURT *of* TASMANIA

Criminal and General Division

November 2022

**Information on Family Violence Orders**

Family Violence Orders (also known as Domestic Violence Orders) are a court order designed to stop forms of violence that may exist in the context of a significant relationship. Family Violence therefore includes the following when committed against a partner, spouse, ex-partner or ex-spouse;

* assault, including sexual assault
* threats
* coercion
* intimidation
* verbal abuse
* abduction
* stalking or
* bullying

The law recognises that damage to property may be a form of family violence. It is family violence if a partner, spouse, ex-partner or ex-spouse directly or indirectly damages property owned by you, jointly owned with you, or property owned by a child affected by the family violence.

The following is also family violence when done, or are attempted to be done, by a partner, spouse, ex-partner or ex-spouse:

* Economic abuse - that is, where one person controls another’s access to money or resources which creates financial dependency
* Emotional abuse - that can include anything from verbal abuse and constant criticism to intimidation, manipulation, and refusal to ever be pleased. It can also include physical abuse of someone else or a pet
* Intimidation, and;
* breaching any existing orders relating to family violence

The person who applies for a Family Violence Order is known as the **Applicant** and the person who is to be restrained by an order is known as the **Respondent**.

You can apply to a Magistrate for a Family Violence Order to be taken out against someone if you are concerned this behavior will continue and put you or your children at risk.

These orders aim to prevent further unwanted behaviours. They will often have conditions, which make it illegal for the person to:

* Come near you or your household family members
* Threaten, abuse, or assault you or your family stalk you
* Come near or go on or damage your property
* Contact you by mail, email, phone, SMS messages or Facebook or other social media
* Use other people to contact you

Other people can also apply on your behalf, including a police officer or solicitor.

You can seek assistance and representation from a lawyer if you wish. Assistance may also be obtained from the Legal Aid Commission of Tasmania and Court Support and Liaison Service.

To apply, complete an application form and take it to your local court. The court staff will provide you with a date and time for the application to be listed before a Magistrate.

If you do not want your address disclosed to the Respondent, a non-disclosure address form also needs to be completed and submitted at the time of lodgment. The link to the form is here; <https://www.magistratescourt.tas.gov.au/__data/assets/word_doc/0005/681944/Do-Not-Disclose-Restraint-and-Family-Violence-Application.doc>.

Anything which is written on this form is for contact only purposes by the Court.

Please note when completing the application form the Respondent will be provided/served with a copy of that application, therefore address details should not be listed in the application if you do not wish them to be disclosed.

If you attend in person to obtain a copy of the application, court staff will also refer you to speak to the Court Support and Liaison Service which provides free and confidential support to adult and children who are victims of family violence. It helps male and female victims, of any age or cultural background.

Dedicated Court Support Officers are available across the state to help Safe at Home clients with;

* Applying for a Family Violence Order
* Applying to vary or extend an existing Order
* Advising on court processes
* Providing updates on the progress of a matter through the courts

They can also help you with matters as they proceed through the courts, including;

* Taking you on court tour to explain court layout and facilities and the roles of people in the court.
* Accompanying you to court and providing support throughout the court process.
* Debriefing after court and discussing the impact of a Magistrate/Judge’s decisions.
* Follow-up through referral to other services.

The Magistrate will make the order if they are satisfied that the person to be restrained has committed unwanted behaviour, and may do so again. The Magistrate will consider factors such as the safety and wellbeing of the Applicant.

Orders usually last about 12 months.

**What happens in Court?**

A Family Violence Order application may follow several processes through the Court.

### Urgent hearing

* When an application is urgent, it can usually be heard on the same day it is lodged with the court.
* The Applicant will need to attend court even though the Respondent may not be there, because the Magistrate may want to ask questions.
* The purpose of the urgent hearing is for a Magistrate to consider making interim orders and set a time for a first formal hearing.

### First formal hearing

The purpose of a formal hearing is to give the Respondent the opportunity to say whether they consent to the orders or not.

Consent: to agree to the making of orders

Contest: to not agree to the making of orders

* If the Respondent contests the application, the Magistrate may list the matter for mediation before the final hearing.
* The hearing is normally in an open court.
* The application will not be read out in court.
* The Magistrate may ask the Applicant questions to explain what they have said in their application.
* You should stand up to answer if the Magistrate asks you questions.
* You may answer from where you were sitting in the court unless the Magistrate asks you to stand at the end of the table.
* **The Magistrate will not expect you to behave as if you are a lawyer, just answer the questions in a straight-forward way.**

### Mediation

If a Respondent contests the application, the Magistrate may refer the application to mediation.

An independent person (mediator) will try to help the Applicant and the Respondent to reach an agreement. They can help the parties think about the issues and try to find the best outcome. Mediators do not make decisions in relation to the application.

If an application does not reach an agreement at mediation, the matter will be listed back before a Magistrate for a decision.

### Final hearing

* The matter may have to go to a final hearing if the Respondent contests the application.
* Before a final hearing, the matter may be listed for mention.
* A mention is to identify the issues, see if witnesses are going to be called and how long the hearing may take.
* You may have a lawyer represent you at a mention listing if you wish.
* If the Respondent still contests the application after a mention listing, the matter will be listed for a final hearing.
* You may have a lawyer represent you at this hearing if you wish, and you can give evidence and call witnesses to give evidence.

The Magistrate may grant or dismiss the application.

If the Magistrate **grants** the application

* The Magistrate may make final orders and;
* the Applicant may wish to apply to the Magistrate for the recovery of their legal costs.

If the Magistrate **dismisses** the application

* No orders will be made and;
* the Respondent may apply to the Magistrate for the recovery of their legal costs.

**Service of Applications and Orders**

The service process is sending or giving court documents to a party after they have been filed, in accordance with the rules of court. Service ensures that all parties have received the documents filed with a court.

* The application must be lodged with the court prior to service.
* A Family Violence Order Application can be served on the respondent by a process server or any other person over the age of 18 years.
* Orders and applications must be served personally on the Respondent.
* It is the responsibility of the Applicant to arrange service of the application.
* In some instances, the Magistrate may order that the application is served by the Police.
* The Respondent will find a 'Notice for Respondent’ on the last page of the application. It shows the date and time of the formal hearing at which they should attend.
* If the Magistrate has already made interim orders, the Respondent will also be served with a copy of the interim orders. The interim orders take effect as soon as they are served. This interim order will also state the next court date.
* If the Respondent is in court when any orders are made, the orders take effect immediately.
* If an order is made by the Magistrate, the Applicant can request that the orders be served by Police. Service by Police can only occur if ordered by a Magistrate. Keeping in mind the court cannot guarantee a timeline on service if Police are ordered to serve the order. If urgent service is required, it may be more suitable to arrange a private process server.

**I have been served with an Application – what do I do now?**

Read carefully through all the documents you have been given.

In the application:

* Note the **date and time** for the formal hearing. This is in the 'Notice to Respondent' section of the application.
* Read the **orders the Applicant is seeking**. There are more than ten common types of orders, and often more than one order is sought in an application.
* Read the **reasons why** the Applicant is seeking the orders
* If you have been served with any interim orders you must read them carefully and obey the orders immediately.
* Interim and final orders take effect immediately if you are in court when the orders are made.
* If you were not in court, the orders take effect when you are given (served with) a copy of the orders.
* A Respondent to an application may file and serve an Affidavit (sworn declaration) in response to the allegation (s) in the application.

**Your Options in Court**

### 1. Consent to orders

Consent: to agree to the making of orders

* You can appear in court and consent to the order (either interim or final) being made. If you consent, the orders will be made and no further hearings will be necessary.
* If you consent it does not mean that you accept that everything in the application is true. You must state your denial of the allegation(s) to the Magistrate who will make a record of this on the file.

**2. Not appear**

* You do not have to come to court for any hearing of the application. However, if you do not appear, the matter may be heard in your absence and the Magistrate may make any orders he or she considers appropriate.

**3. Contest the application**

Contest: to say that you do not agree to the making of orders

* You can contest a Family Violence Order application.
* If you do, you will need to put your case to the court at a final hearing. You may wish to talk to your lawyer or seek legal advice first.
* Even though you are contesting the application, a Magistrate may make interim orders which usually remain in force until a determination of the application is reached.

## Breaches of Family Violence Orders

A Family Violence Order, whether interim or final, is a court order.

If someone does not comply with the conditions imposed by the order, they can be arrested and charged for the breach.

You should contact the police if the respondent breaches the order.

Serious penalties can apply, such as being fined or imprisoned, depending on the seriousness of the breach and the Respondent’s history of breaching.

A person protected by an order must not encourage or assist a Respondent to breach an order.

**How to Vary a Family Violence Order**

Should your circumstance change you will need to attend the Magistrates Court and complete an application to vary the Family Violence Order.

Your application will be listed on a date before the court, and it is your responsibility to arrange a copy to be served on the other party.

The Magistrate will consider factors such as the safety of you and your children and if there has been substantial changes in your situation since the original order was made

**How to Extend a Family Violence Order**

If you require a current Family Violence Order to be extended you will need to attend the Magistrates Court and complete an application to extend the Family Violence Order.

An application to extend a Family Violence Order needs to be made at least one month prior to the expiry of your family violence order. You will need to attach a copy of your current Family Violence Order to your application to extend.

Your application will be listed on a date before the court, and it is your responsibility to arrange a copy to be served on the other party.

### Contact Telephone Numbers

If you have any questions or require assistance you can contact one of the following services:

* Legal Aid Commission of Tasmania: 1300 366 611
* Hobart Community Legal Service - City: 6223 2500
* Hobart Community Legal Service - Bridgewater: 6263 4755
* North West Community Legal Centre 6424 8720
* Tasmanian Aboriginal Community Legal Service 1800 064 865
* Launceston Community Legal Centre 6334 1577
* Womens Legal Service 1800 682 468
* Court Support and Liaison Service 1300 633 773

**Magistrates’ Courts**

* Hobart: 61 657136
* Launceston: 67 772945
* Burnie: 64 777140
* Devonport: 64 784353