

Intervention Orders And Family Law: The Middle Ground

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Intervention orders – overview

- What are they?
- Purpose
- Conditions – not to:
 1. Commit family violence
 2. Intentionally damage property
 3. Attempt to locate, follow or keep a protected person under surveillance
 4. Publish on the internet or electronic means

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Intervention orders – overview (continued)

5. Contact or communicate
6. Approach or remain with metres
7. Go to or remain within metres of any place where a protected person lives, works or attends school/ childcare
8. Agency

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Intervention orders – overview (continued)

Exceptions – respondent may:

- a) Do anything permitted by a Family Law Act order, a child protection order [or written arrangement as agreed with DHHS] or written agreement about child arrangements
- b) Negotiate child arrangements by letter, email or SMS
- c) Communicate through a lawyer or mediator
- d) Arrange and/or participate in counselling or mediation
- e) Go to the home of a protected person in the company of a police officer or a person chosen by the applicant to collect personal property

BUT ONLY IF the respondent does not commit family violence while doing so

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Intervention orders Final outcomes

1. Strike out application
2. Withdrawal
3. Undertaking – without admission to allegations
 - a) Unenforceable
 - b) Reinstatement of application
 - c) Recommended if cross application are on foot or parties wanting boundaries in place (for example, recent breakdown of relationship), avoid an order and potentially misuse through false breach reporting
 - d) Not likely accepted if police are the applicants

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Intervention orders Final outcomes (continued)

4. Intervention order (IVO)
 - a) Consent without admission
 - Advise on consequences of breach – prison
 - Interstate recognition
 - Negotiate conditions and exceptions
 - Children – must be included (section 77) – a condition not to commit FV (only)?
 - Duration – court’s discretion

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Intervention orders Final outcomes (continued)

b) Order made based on evidence heard by the court

- Two fold test – section 74 *Family Violence Protection Act 2008* (Vic)

Court may make a final order, if the court is satisfied, on the balance of probabilities, that the respondent has committed FV against the affected family member and is likely to continue to do so or do so again

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Intervention orders Final outcomes (continued)

- Factual findings – concurrent proceedings – criminal, family law?

b) Respondent does not attend court – order made ex parte

Consider – applications to extend in future

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Relevance to parenting cases

- Exclusion from former matrimonial home
- Reinstatement of time
- Dispute over who is primary carer
- Supervision
- Parental responsibility
- The need to protect children – risk
- Who is your client? The protected person or respondent?
- What strategies would you take if you represented a protected person? How about the respondent?

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Example

X applies for an IVO against Y.

X and Y have 3 children ages 4, 8 and 12.

X alleges that Y has perpetrated family violence during the course of the relationship. The family violence consists of threats towards X, physical abuse (mainly being physically pushed around) and emotional and psychological abuse.

The IVO is made ex-parte in the Magistrates Court against Y with full no contact conditions and family law exceptions.

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Example (continued)

Y is excluded from the matrimonial home.

Y has not spent time with the children for 4 months.

Y is contesting the IVO application.

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Stage 1 - Negotiations

- Family dispute resolution service conference (FDRS)
- Is FDRS appropriate in the circumstances?
- Can solicitors assist X and Y in negotiating a reinstatement of time regime for the children?
- Consider the alleged family violence – do not disregard – for example, changeover locations, supervision necessary?
- Advise clients on consequences of breaching IVO conditions
- How long do you negotiate for before making an application to the Federal Circuit Court (or Family Court)?

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Stage 2 – Application to the Federal Circuit Court

- Documents to file
 - o Initiating Application / Response
 - o Affidavit
 - o Notice of Risk
 - o Affidavit of non-filing of Family Dispute Resolution Certificate
- What do you include in an affidavit accompanying an Initiating Application/ Response?

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Stage 2 – Application to the Federal Circuit Court (cont)

- Attempts to negotiate spend time arrangements for the children
- Application and Summons / FVSN / IVOs made
- Progress of any intervention order proceeding
- Details of any breaches or criminal charges
- Clear proposal of a spend time regime –
 - Will X consent to supervised time?
 - Will Y agree to do an anger management course or Men's Behavioural Change program on a without admissions basis?
 - Be realistic with spend time arrangements – ages of children
- Consider the allegations of family violence – are illicit drugs or alcohol a factor? Mental health?

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Stage 2 – Application to the Federal Circuit Court (cont)

- What advice would you give if you were acting for X?
- What advice would you give if you were acting for Y?
- At the first court date, what happens if X and Y cannot agree to time being reinstated?
 - Interim defended hearing?
 - Appointment of ICL – consider *Re K* factors?
 - Child inclusive conference (11F)? Children's wishes?
 - Agreement to at least enrol into a supervised contact centre to join waiting list?

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Stage 2 – Application to the Federal Circuit Court (cont)

- At the first court date, if parties agree to professionally supervised time, obtain a report from supervised contact centre or professional supervisor and have a supervisor swear an affidavit exhibiting the report
- Movement towards a progression in time
- Does the DHHS s69ZW report say anything about family violence?
- Adjournment of IVO proceedings until resolution of FCC proceedings?

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Stage 3 – Final hearing

- Parental responsibility – s61DA *Family Law Act 1975*
- (1) When making a parenting order... the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.
- (2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:
 - (a) abuse of the child... or
 - (b) family violence.

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Stage 3 – Final hearing (cont)

- Are the parties seek equal shared parental responsibility or sole parental responsibility for the children?
- If one party is seeking sole parental responsibility, consider:
 - Is the family violence sufficiently particularised?
 - Were children present during family violence?
 - How far back to the allegations go?
 - Were the police involved?
 - Were past IVOS made by consent without admissions or made as a result of a contested hearing by way of evidence?
- Subpoenas – contemporaneous documents or records to support allegations?

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Stage 3 – Final hearing (cont)

- Does the family report consider the allegations of family violence?
- Looking to X, whilst X alleges family violence against Y, does X have issues such as anxiety that may be seen as being projected to the children?
- Looking to Y, has Y done everything possible to attempt to reinstatement or progress time? Has Y shown any insight?
- Consider the impact of recent family violence cases in media and how that may potentially impact the outcome of IVO and parenting proceedings

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Stage 3 – Final hearing (cont)

Section 102NA applications

- Ban on personal cross-examination

Categories in s102NA(1)(c) that applies:

- (i) either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party – s102NA(1)(c)(i)
- (ii) a family violence order (other than an interim order) applies to both parties – s102NA(1)(c)(ii)
- (iii) an injunction under section 68B or 114 for the personal protection of either party is directed against the other party – s102NA(1)(c)(iii)

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Stage 3 – Final hearing (cont)

- (iv) Order of the court made that personal cross-examination will not be permitted- S102NA(1)(c)(iv)

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