

The impact of Family Violence Intervention Orders on family law proceedings

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Family Violence Intervention Orders (FVIOs) are concerned with the protection of family members, partners, ex-partners, and children from domestic violence. Parenting Orders are concerned with making parenting arrangements that are in the best interest of the child, including making sure the child is not at risk of family violence. FVIOs can have a significant impact on family law proceedings as they can indicate there is a risk to the child, which can affect parenting arrangements.

Parenting Orders

A Parenting Order is a set of orders made about parenting arrangements for a child. Parenting Orders can be made in the Federal Circuit and Family Court of Australia and apply across the whole of Australia.

1. Parenting Orders will only be made where it is in the best interests of the child to do so. The general considerations in determining what is in the child's best interests are the need to promote the safety of the child and each person who has care of the child, whether or not this person has parental responsibility of the child (including safety from family violence abuse, neglect or other harm).
2. Any views expressed by the child.
3. The developmental, psychological, emotional and cultural needs of the child.
4. The capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs.
5. The benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so.

6. Anything else that is relevant to the particular circumstances of the child.

There are also a number of ‘further’ considerations that the Court must consider when determining the best interests of Aboriginal or Torres Strait Islander children.

The general and further considerations are non-hierarchal and focus on a core list of considerations to best promote the child’s welfare and development. The Court is not required to give more weight to any one factor over the others (although the Court still has the discretion to place whatever weight as they deem appropriate to a certain consideration).

However, when determining what is best for the child/children, the Court will give greater weight to the need to protect a child from physical or psychological harm or from being subjected to, or exposed to, abuse, neglect or family violence over the benefit to a child of having a meaningful relationship with both parents.

Family Violence Intervention Orders

A Family Violence Intervention Order (FVIO) is a court order made to protect a person, their children and their property from a family member, partner or ex-partner (the ‘protected person’). This order is made against the person alleged to have perpetrated family violence (the ‘respondent’).

In Victoria, FVIOs are most commonly made in the Magistrates’ Court of Victoria, however, they can also be made in the Children’s Court of Victoria.

In States and Territories other than Victoria, an FVIO can also be called a domestic violence order (DVO), intervention order (IVO), protection order, family violence order (FVO) or a violence restraining order (VRO).

FVIOs that are made after 25 November 2017 are nationally recognised – meaning that an FVIO made in Victoria after that date will automatically apply in every State and Territory across Australia.

Common FVIO conditions

- Communication – the respondent cannot contact or communicate with the protected person/s by any means;
- Damage to property – the respondent cannot intentionally damage the protected person/s property or threaten to do so;
- Family violence – the respondent cannot commit family violence against the protected person/s;
- Contact – the respondent cannot approach the protected person/s, or go near their house, workplace, school, or childcare.

These kinds of clauses are challenging when the respondent and the protected person/s have children and need to see and talk to each other to facilitate contact with their children. It can become even more challenging when children are also named as a protected person.

The ‘family law’ condition applied to an FVIO

Sometimes, an FVIO may include a condition that is informally referred to as a ‘family law’ condition. This condition can allow for communication/contact between the respondent and the protected person/s when it relates to family law.

These conditions may, for example, state that the respondent can:

- do anything that is permitted by the *Family Law Act* or a court order, a child protection order or a written agreement about child arrangements;
- negotiate child arrangements by letter, email or text message; and/or
- communicate with a protected person through a lawyer or a mediator.

These conditions allow for people who have children as well as an FVIO in place, to continue to negotiate and fulfil parenting arrangements.

Due to the complexities of family law matters, no one matter is the same. There are many different variations of FVIOs and parenting arrangements. It is really important to get legal advice to confirm how these orders interact and clarify what you can and cannot do when subject to an FVIO.

It should also be noted that breaching an FVIO is a criminal offence.

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Informing the court about FVIO’s and alleged risk

FVIOs are made in State and Territory Courts, and Parenting Orders are made in Commonwealth Courts. This is important, as while there is a framework in place to promote information sharing between the State and Territory Courts and the Commonwealth Courts, the Federal Circuit and Family Court of Australia will not automatically know if there is an FVIO in place that is relevant to the proceedings.

If there is an FVIO concerning one of the parties to parenting proceedings, the parties have an obligation to inform the Court of its existence.

When making an application to the Federal Circuit and Family Court of Australia for parenting orders, you must file a ‘Notice of child abuse, family violence or risk’ form. This form must be filed again if you are making new allegations of family violence or child abuse after making your initial application to the Court. This form helps the Court identify any possible risk to the child when determining what orders are in the best interests of the child.

How will an FVIO affect my family law proceedings?

FVIOs can have a significant impact on the outcome of family law proceedings. The Court must make orders in the best interests of the child. Greater weight to the need to protect a child from physical or psychological harm or from being subjected to, or exposed

to, abuse, neglect or family violence over the benefit to a child of having a meaningful relationship with both parents.

The existence of an FVIO can suggest that the child may be at risk of family violence. However, the mere existence of an FVIO does not automatically mean that the FVIO respondent will no longer be allowed to see their children due to the perceived risk of harm.

Whether you are the respondent or the protected person (or your child is the protected person), it is critical to seek legal advice about your situation. No one matter is the same, and the circumstances of each individual matter need to be properly considered and explained to the Court.

It is important to remember the only information the Court has about the FVIO (and alleged incident/risk) is the information that the parties to the proceedings provide. That is why it is so important to seek legal advice to be able to properly explain your position to the Court – and state why the children are (or are not) at risk of family violence and why it is in their best interests to have the parenting arrangements you seek (whatever they may be).

How a family lawyer can help

Due to the complexities of each individual matter, there is no ‘one size fits all’ solution. It is difficult to know what information will be relevant to the Court in making its decision. It is recommended you get legal advice to help you. Get in touch with one of our experienced family lawyers.

Contacting Smith Family Law

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