

Family Violence Orders

Defining Family Violence

Family violence, also known as domestic violence, occurs when one partner in an existing, or former, intimate relationship tries to dominate and control the other (Tasmanian Government's Safe at Home program).

Physical abuse - including direct assaults on the body, strangulation, use of weapons, driving dangerously, destruction of property, assault of children, locking the victim up, or out of the house, and sleep deprivation.

Sexual abuse - any form of forced sex or sexual degradation, such as sexual activity without consent, causing pain during sex, assaulting genitals, forced sex without protection against pregnancy or sexually transmitted disease, making the victim perform sexual acts unwillingly, criticising, or using sexually degrading insults.

Emotional abuse - blaming the victim for all the problems in the relationship, constantly comparing the victim with others to damage self esteem and self worth, periods of sulking or withdrawing all interest and engagement (e.g. weeks of silence).

Verbal abuse - continual 'put downs' and humiliations, either privately or publicly, following clear themes that focus on the victim's intelligence, sexuality, body image and ability as a parent and spouse.

Social abuse - isolating the victims from others by methods such as ongoing rudeness to family and friends, moving to locations where the victim knows nobody, and forbidding or physically preventing the victim from going out and meeting people.

Economic abuse - complete control of all money, no access to bank accounts, providing only an 'allowance' that is not enough, using any wages earned by the victim for household expenses whilst the perpetrator spends their wages on anything they choose.

Spiritual abuse - denying access to ceremonies, land or family, preventing victim from practicing their religion, forcing them to do things against their beliefs, criticising their cultural background, or using religious teachings or cultural tradition as a reason for violence.

The Law in Tasmania

The relevant legislation governing family violence is the *Family Violence Act 2004* (“the Act”).

Under the law in Tasmania, Family Violence can occur between people aged 16 years and over and who:

- Are married or have been married;
- Are in a ‘significant’ relationship or have been in one.

“Significant relationships” are defined as between two persons who have a relationship as a couple and who are not married to one another or who are not related by family. This includes same-sex and de facto relationships.

Under the *Family Violence Act*, Family Violence is defined in section 7 as: any of the following types of conduct committed by a person, directly or indirectly, against that person’s spouse or partner:

- assault including sexual assault;
- threats, coercion, intimidation or verbal abuse;
- abduction;
- stalking;
- attempting or threatening any of the above;

or

any of the following:

- economic abuse
- emotional abuse or intimidation
- contravening an external family violence order, an interim FVO, an FVO or a PFVO.

This section is important as it means that the law recognises that Family Violence can occur in forms other than physical violence or sexual assault.

Police Powers

Under this law, the police have power to enter premises, without a warrant, where they reasonably suspect that family violence has been or is likely to be committed, or at the request of a person who lives at the premises.

Upon entering such premises, the police may conduct searches (both of people and property), seize any object suspected to be used in family violence or make arrests.

Arrest

The police may arrest, without a warrant, any person suspected to have committed family violence. An arrested person may be detained for a reasonable period required to determine a charge or charges, carry out a risk assessment or safety audit, implement safety measures and make and serve a Police Family Violence Order.

• **Risk Assessment** – is an assessment of the magnitude of the risk posed by the accused person to the victim of family violence and any affected children and the likelihood of reoccurrence or escalation.

• **Safety Audit** – is an assessment of the safety of the premises in which the victim resides.

Bail

A person charged with a Family Violence offence will not be granted bail unless a judge, court or police officer is satisfied that release of the person would not be likely to adversely affect the safety, well being and interests of an affected person or affected child.

A judge, court or police officer must have regard to the following matters:

- Any available risk assessment or rehabilitation program assessment;
- The person's demeanour;
- The result of any available safety audit;
- The availability of suitable accommodation for the person and any affected person or affected child; or
- Any other matter considered relevant.

Sentencing

When determining the sentence for a family violence offence, a judge or court may consider:

- The presence of a child at the time of the offence;
- Whether the affected person was pregnant; and
- The Court must consider results of any rehabilitation program assessment undertaken by the offender.

FAMILY VIOLENCE ORDER (FVO)

A Family Violence Order (FVO) is a Court Order that may restrict contact between people or impose conditions on their behaviour.

Who can apply for a Family Violence Order

An application may be made to a magistrate by:

- a person affected by family violence (the affected person);
- a police officer;
- an affected child
- any other person to whom leave is granted by a court.

How to Apply for a Family Violence Order

Application forms are available directly from the Magistrates Court of Tasmania or on the Internet at www.magistratescourt.tas.gov.au.

The Court will make a FVO if satisfied that a person has committed family violence and that they may again commit family violence. In making a FVO, the Court must consider the following matters:

- The safety and interests of the applicant and any affected child (meaning a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence);
- Whether contact between the applicant and the respondent and any child who is a member of the family is relevant to the making of the FVO; or
- Whether there are any relevant Family Court Orders in place.

Variation, Extension or Revocation of a Family Violence Order

If the Court decides to make a FVO, then the FVO will remain in force for such period as the Court considers necessary to ensure the safety and interests of the applicant or until an application is made to revoke the FVO. The length of an FVO is generally 12 months.

Sometimes people need to change the terms of their orders. This could be for many reasons such as allowing contact between a parent and their children or because the parties have reconciled and a party removed from the home by an order wishes to return. An application to vary, extend or revoke a FVO may be made to a court at any time by:

- an affected person or child;
- a police officer;
- a person against whom a FVO has been; or
- any other person to whom leave is granted by a court.

The Court must consider the safety and interests of the person and children for whose benefit the order is sought and if there has been a substantial change in the relevant circumstances since the order was made.

POLICE FAMILY VIOLENCE ORDERS (PFVO)

A police officer of the rank of sergeant or above, or authorised by the Commissioner of Police may issue a Police Family Violence Order (PFVO) against a person if satisfied that the person has committed, or is likely to commit, a family violence offence. A PFVO will operate for a period no more than 12 months.

The PFVO may have conditions attached to it including:

- requiring a person to vacate any premises;
- not enter any premises;
- surrender any firearm or weapon;
- refrain from harassing, threatening, verbally abusing or assaulting an affected person or child; and
- not approach or contact an affected person or child.

Variation, Extension or Revocation of a Police Family Violence Order

An PFVO will be revoked if a FVO or interim FVO is issued in respect of the same parties.

A police officer of the rank of inspector or above may vary a PFVO where:

- the affected person and the person against whom it is made consent to the variation; and
- the variation will not adversely affect the safety and interests of the affected person or any affected child.

If the police are unable to vary the PFVO a court may vary, extend or revoke a PFVO at any time, on the application of:

- a police officer;
- an affected person or child;
- the person to whom it is issued against; or
- any other person the Court may grant leave to.

Breaching a Family Violence Order or Police Family Violence Order

If a person does not comply with the conditions imposed by the FVO or PFVO, they can be arrested and charged for the breach. Serious penalties can apply such as imprisonment or a fine, depending on the seriousness of the breach and the perpetrator's history of breaching.

If the person protected by the FVO or PFVO consents to a breach (for example they allow the other person to visit them when a FVO or PFVO prohibits contact between them), that other person can still be arrested and charged for the breach. Further, the person protected by the FVO or PFVO can be charged with inciting the breach.

Contacts

- In an emergency call 000
- Women's Legal Service Advice Line: 1800 682 468
- Family Violence Response Referral Line: 1800 633 937

"Family Violence Orders" is intended to give general information about the Family Violence Laws in Tasmania. Whilst we have made every effort to ensure the contents of this publication are accurate at the time of printing the law and services do change. Legal and service exactness is not possible in a publication of this nature. This publication should not be used as a substitute for legal advice

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