

Family Violence and Family Violence Orders

Defining Family Violence

Family violence is also known as domestic violence. It occurs when one partner in an existing, or former, intimate relationship tries to dominate and control the other person.

The person being violent or abusive is called the Perpetrator or Offender. The person who is being subjected to the violence or abuse may be referred to as a Victim or a Survivor. In this information sheet we call them the Affected Person.

- **Physical abuse** – includes direct assaults on the body, strangulation, use of weapons, driving dangerously, destruction of property, assault of children, locking the Affected Person up, or out of the house, and sleep deprivation.
- **Sexual abuse** – includes 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 Affected Person perform sexual acts unwillingly, criticising, or using sexually degrading insults.
- **Emotional abuse** – includes blaming the Affected Person for all the problems in the relationship, constantly comparing the Affected Person with others to damage self-esteem and self-worth periods of sulking or withdrawing all interest and engagement (for example, weeks of silence).
- **Verbal abuse** – includes 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** – includes isolating the Affected Person from others by methods such as ongoing rudeness to family and friends, moving to locations where the Affected Person knows nobody, and forbidding or physically preventing the Affected Person from going out and meeting people.
- **Economic abuse** – includes controlling finances, not allowing access to bank accounts, providing only an ‘allowance’ that is not enough, using any wages earned by the Affected Person for household expenses while the Perpetrator spends their wages on anything they choose.
- **Spiritual abuse** – includes denying access to ceremonies, land or family, preventing the Affected Person 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.

Family Violence Laws in Tasmania

The law governing family violence in Tasmania is the *Family Violence Act 2004* (“the Act”).

The Act defines family violence as behaviour occurring between people aged 16 years or older who are married or have been married, OR are in a ‘significant relationship’ or have been in one.

A “significant relationship” is defined as being a relationship between two people who have a relationship as a couple and who are not married to one another or who are not related by family. This includes de facto relationships.

Under the Act, family violence is defined as any of the following types of conduct committed by a

person, directly or indirectly, against their current or former spouse or partner:

- Assault, including sexual assault;
- Threats, coercion, intimidation or verbal abuse;
- Abduction;
- Stalking; and
- Attempting or threatening any of the above.

OR any of the following:

- Economic abuse;
- Emotional abuse or intimidation; and
- Breaching a Family Violence Order (FVO), an external FVO, an interim FVO or a Police Family Violence Order (PFVO). More information on FVOs below.

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

Police Powers

Under the Act, police have the 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.

When entering the premises, police may conduct searches of both people and property. They can seize any object suspected to be used in family violence, and they can 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 while the police determine a charge or charges, carry out a Risk Assessment or Safety Audit, put in place safety measures, and make and serve a Police Family Violence Order.

A Risk Assessment is an assessment of the amount of risk posed by the arrested person to the Affected Person and any affected children, and the likelihood of the family violence happening again or getting worse. A Safety Audit is an assessment of the safety

of the premises where the Affected Person lives. An affected child is a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence.

Bail

A person charged with a Family Violence Offence will not be granted bail unless a Judge, Court or police officer is satisfied that the release of the person would not be likely to adversely affect the safety, wellbeing and interests of the Affected Person or affected child. They must consider any available Risk Assessment, Safety Audit, and any other matter that is relevant.

Sentencing

When determining the sentence for a Family Violence Offence, a Judge or Court may consider whether there was a child present at the time of the offence, and whether the Affected Person was pregnant. The Court must consider any rehabilitation program undertaken by the offender, such as the [Men Engaging New Strategies \(MENS\) Program offered by Relationships Australia](#).

Family Violence Orders (FVOs)

A Family Violence Order (FVO) is a Court Order that may restrict contact between people or impose conditions on their behaviour. The Order may be in place for any amount of time considered necessary by the Court, usually for a period of 12 months.

How to apply for a Family Violence Order

Application forms are available directly from the Magistrates Court of Tasmania or at <https://www.magistratescourt.tas.gov.au/forms>

When filling out the application form, it is important to include details about the date and time of family violence incidents, and details about the Offender's conduct. The Court will make an Order if it is satisfied that a person has committed family violence and that they may again commit family violence.

When making a FVO, the Court must consider the following matters:

- The safety and interests of the Applicant and any affected child;
- Whether contact between the Applicant and the respondent (Offender) and any child who is a member of the family is relevant to the making of the FVO; and
- Whether there are any relevant Family Court Orders in place.

In some cases, where the matter is considered urgent, the Court will issue an Interim Family Violence Order (IFVO), which is an Order that comes into effect immediately and until the matter has been resolved on a final basis.

Police Family Violence Orders (PFVOs)

A police officer who is authorised by the Commissioner of Police may issue a PFVO against a person if they are 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 that include requiring that the Offender:

- Move out of the premises;
- Not enter the premises;
- Surrender any firearm or weapon;
- Refrain from harassing, threatening, verbally abusing or assaulting an Affected Person or child; and/or
- Refrain from approaching or contacting an Affected Person or child.

Changing the Family Violence Order or Police Family Violence Order

In some circumstances, it may be necessary and appropriate to change the FVO or PFVO that has been made. In the application, a FVO or PFVO may be varied, extended, or removed altogether. Such an application can be made by:

- An Affected Person or child;
- A police officer;
- A person against whom a FVO has been made; and

- Any other person to whom leave is granted by a Court.

When deciding whether to make the requested change, the Court must consider the safety and interests of the Affected Person and children and if there has been a substantial change in the circumstances since the order was made.

A police officer of the rank of inspector or above may vary a PFVO without an application to the Court where the Affected Person and the Offender agree to the variation, and where the variation will not adversely affect the safety and interests of the Affected Person or any affected child.

Breach of a Family Violence Order or Police Family Violence Order

If the Offender does not comply with the conditions imposed by the FVO or PFVO, they can be arrested and charged with a breach. Serious penalties can apply for breaching an Order including imprisonment and/or a fine. The penalty will depend on the seriousness of the breach and whether the Offender has a history of breaching.

If the Affected Person agrees to a breach (for example, they allow the other person to visit them when a FVO or PFVO prohibits contact between them), the Offender can still be arrested and charged for the breach. Further, the Affected Person can be charged with inciting the breach, but only if that person ought to have known that by enabling the breach an affected child named in the Order would also be put in a position of risk.

Contacts

- In an emergency call **Police** on 000
- **Women's Legal Service Advice Line** – 1800 682 468
- **Family Violence Counselling and Support Service** – 1800 608 122
- **Legal Aid Commission Safe at Home Lawyers** (response and referral line) – 1800 633 937
- **Engender Equality** (counselling) – (03) 6278 9090

- **Sexual Assault Support Service -**
1800 697 877

“Family Violence and Family Violence Orders” is intended to give general information. Whilst we have made every effort to ensure the contents of this document are accurate at the time of publication 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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