

Family Law and Family Violence in Australia

What is family law in Australia?

What is family violence?

What is a family violence intervention order?

What happens to children after a divorce or separation?

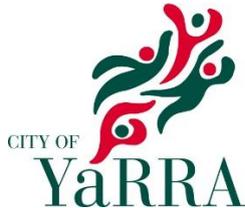
Where to get help.

English

Information for newly arrived communities in the City of Yarra.



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This booklet is legal information only, and is not intended as legal advice. Please see a lawyer at a community legal centre if you need advice about a specific issue. The information in this booklet was correct as of date of publish: 21 August 2017.

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Family Law

What is family law?

Family law is the term used to describe laws about family relationships.

Family law includes laws about marriage, separation, divorce, property between family members, and the care of children (who children will live with after a relationship breakdown).

Everyone has a right to get help from a lawyer if they are having family law problems. Community legal centres can provide free legal advice and free or affordable representation.

What is marriage in Australian law?

Marriage in Australia is a union between a man and a woman to the exclusion of all others.

Age

For a person to be married, they must be 18 years of age or older. A person from the age of 16 may be permitted to marry in exceptional circumstances, after applying to court.

Polygamy

In Australia, a person who is already married is not permitted to marry again.

De facto

In Australia, you don't have to be married to be a legally recognised couple.

The term *de facto* describes couples that have a relationship like a marriage, but without being legally married. This is very common in Australia and includes same sex couples (man and man, woman and woman).

Relationship breakdowns

Separation

Separation is when one person or both people in a relationship no longer want to be a couple.

In Australia, it can be the choice of just one person in the relationship to separate. Their partner does not need to agree.

There is no formal legal process to separate. To separate, one (or both) members of the relationship tells the other they no longer want to be in the relationship.

A couple can be separated but still live in the same house.

Divorce

Divorce is the legal order that ends a marriage. A divorce can be granted if:

- the couple have been separated for 12 months and
- can show that their relationship has broken down (that they cannot be together anymore).

The law **does not** require that somebody in the relationship do something wrong.

Australian citizens and long-term residents can apply for a divorce at the Family Law Courts.

For more information, you can contact your local community legal centre, Victoria Legal Aid or go to the Family Law Courts websites (see Helpful Contacts section).

The Family Law Courts

Sometimes, if parents cannot agree about where the children should live or who should keep the house after a relationship breakdown, they may end up in court.

If this happens, it is very important to contact a community legal centre or Victoria Legal Aid to get help.

There are two courts in Victoria which hear family law matters:

The Federal Circuit Court

The court that decides on most family law problems

The Family Court

The court that decides on difficult family law problems.

Mediation

Family mediation is when separated couples who can't agree what should happen during a separation or divorce are brought together to negotiate and come to an agreement. A professional mediator from Family Dispute Resolution runs the meeting.

The mediator will listen to both sides and try to help the couple reach an agreement that works for everyone involved.

Mediation can help to solve problems before they get to court. This can be a cheaper and easier option for people who have family law problems.

Mediation may not be appropriate if there is a history of family violence.

Family Violence

What is family violence?¹

Family violence is any physical violence or emotional abuse between family members. It is a **pattern of control** that one person uses to dominate and control a family member.

Family violence is behaviour that:

- physically harms
- causes fear
- prevents a person from doing what they want to do
- makes a family member behave in a way that isn't a free choice.²

Family violence is also known as domestic violence.

Important:

Family violence is not allowed in Victoria.

¹ Domestic Abuse Intervention Project , "Power and Control Wheel", <http://www.theduluthmodel.org/training/wheels.html>.

² Jones, A. & Schechter, S. (1992). When Love Goes Wrong. Melbourne: HarperCollins

Who is affected by family violence?

A victim/survivor is someone who has been hurt by family violence.

They can also be called:

affected family member This term is often used by police and the court.

protected person This term is used when an intervention order protects the victim/survivor.

People who use family violence are often called ‘perpetrators.’ They can also be called ‘respondents’ if they have an intervention order against them.

Any family member can be the victim/survivor of family violence. Any family member can perpetrate family violence.

Family violence can be intimate family violence, for example, between husband and wife.

It can also be violence in other family relationships, such as a son using violence towards his mother, or a granddaughter using violence towards her grandfather.

In most cases in Australia, the perpetrators of family violence are men and the victims/survivors are women and children.

What actions are family violence?

According to the Family Violence Protection Act (2008), the following behaviours are considered family violence when a person uses them towards a family member:

Type of violence

Examples:

Physical abuse

- hitting
- punching
- pushing
- spitting
- pulling hair
- any other forms of physical violence that causes harm or fear to another person

Sexual abuse

- rape
- sexual assault
- child sexual assault
- any other unwanted kissing, touching or sexual behavior

Emotional or psychological abuse

- calling the victim/survivor names
- swearing

- making the victim/survivor think they are crazy
- humiliating a victim/survivor
- making a victim/survivor feel bad about themselves
- any other behaviour that torments, intimidates or harasses

Economic abuse

- controlling all of the money
- limiting a victim/survivor's access to money, or making a victim/survivor ask for money
- preventing a victim/survivor from getting or keeping a job
- forcing a victim/survivor into work they do not want to do or that is illegal

Important

If the abuse is in a language other than English, it is still psychological abuse.

Threatening

- threatening to leave a family member
- threatening to hurt or kill oneself, the victim/survivor or their children
- threatening to take the children away
- causing, or threatening to cause, the death of an animal

Coercive

- forcing a victim/survivor to behave a certain way
- forcing a victim/survivor to do something they would otherwise not do

Or any other actions that controls or dominates a victim/survivor and causes them to *fear* for the safety or wellbeing of themselves or another person.

It is also family violence if the above behaviour, or the effects of the above behaviour is heard or seen by a child.

Witnessing family violence can be very traumatic for children and can cause long-term psychological issues. Please see ***What about my children?*** for more information.

Family violence and sponsorship/partner visas

If a person has come to Australia on a partner visa, they still have the right to live in a safe relationship, and can contact the police if they feel unsafe or abused.

If a person is worried about their residency status and wants to know what will happen if they report the violence, they should contact Victoria Legal Aid. There may be options to help them stay in Australia even if they leave the relationship.

Question

Q: What should someone do if they are worried about their visa?

A: The person should contact Victoria Legal Aid to find out more information.

The police

Incidents of family violence can be reported to the police by anyone who sees or hears family violence occurring.

This includes the victim/survivor, or a neighbour.

If an incident of family violence is reported to the police, the police can:

- attend a person's home or other place, such as a school.
- enter the home and investigate what happened, including taking photos of evidence
- arrest the perpetrator, or make the perpetrator leave the home if they think this is the best way to make sure everybody is safe.
- charge the perpetrator
- take out a family violence safety notice to stop the perpetrator from using violence, abuse, control or from going near their family.

The police can take action even if the victim/survivor does not want them to.

Question

Q: What should I do if a police officer asks me to leave my home?

A: If a police officer asks you to leave the home it is important to stay calm, ask when and where you need to go to court, and contact a community legal centre or Victoria Legal Aid for advice. Police take reports of family violence very seriously.

Family Violence Orders

What is an 'order?'

'Orders' are issued to stop family violence. There are different types of 'orders':

Family violence safety notice

If the police believe family violence is occurring, they can deliver a safety notice to protect the victim/survivors. Police will serve (give) a family violence safety notice to the perpetrator.

A safety notice lasts up to five working days, or until the matter can be heard in court. The notice places conditions on the perpetrator's behaviour, likely to be the same conditions that are on an intervention order. For example, it may say that the perpetrator cannot be in the home.

This notice will remain in place until the court hearing. The court will decide if an intervention order should be in place or not.

Interim intervention order

The court may make an interim intervention order while deciding whether to make a final intervention order. An interim order is a legal order and will prevent the perpetrator from doing certain things.

The interim order will be dated and list what sort of contact between the perpetrator and victim/survivors is allowed.

This order is applied for by the police or by the victim/survivor, and then approved by a magistrate.

Intervention order

An intervention order is a legal order made by a magistrate. An intervention order can be applied for by either the police or the victim/survivor.

An intervention order prevents a perpetrator from doing certain things.

An intervention order is made to suit the needs of the particular family and situation, but generally, the order says that the perpetrator:

- must not commit family violence
- must not intentionally damage property or threaten to damage property;
- must not attempt to find, follow or keep under surveillance a protected person (the victim/survivor);
- must not publish on the internet, by email or other electronic communication about a protected person;
- must not approach or remain within [X] meters of a protected person
- must not go to or remain within [X] meters of [address] or any other place where a protected person works, lives or attends school, kindergarten or childcare

- must not get another person to do anything the perpetrator is prohibited from doing under the order

For example: if the order states that the perpetrator cannot call the victim/survivor, they cannot ask someone else to do it for them.

Important:

These examples are just some of the more common things listed on an intervention order. More things can be added or modified depending on the situation and the needs of the people involved.

Breaching an intervention order

It is called a breach of an intervention order if the perpetrator does something that the intervention order says they cannot do.

Breaching an intervention order is a very serious criminal matter.

The courts can punish someone who breaches an intervention order with up to five years in prison, or a fine of up to \$24,000.

A breach of an intervention order can lead to a criminal record.

It is a breach of an intervention order if the victim/survivor asks the perpetrator to do something that the order says perpetrator cannot do.

It is very important that everyone affected by the order understands what the order says.

If there is anything unclear, it is important to seek legal advice and have all the details explained.

Community legal centres can contact interpreters to help explain orders.

Example

There is an intervention order against Jonathan that protects his wife Maria. The intervention order says Johnathan can't go to his family home.

One day Maria is sick and needs help caring for their three children so she calls Jonathan and asks him to come to the house. Jonathan drives over to the house to help cook dinner and get the children to bed.

Their neighbour, Angela, knows about the intervention order, and when she sees Jonathan arrive, she calls the police. The police arrest Jonathan and he goes to court.

Maria will not be charged as the intervention order places no restrictions on her. Jonathon must make sure he doesn't do the things the order says he cannot do.

What about my children?

Who is a child?

According to the Family Violence Protection Act, a child is any person under the age of 18 years.

Where can children live after a separation or divorce?

In Australia, both parents can ask to spend time with their children.

It is believed that the best place for children is where they will be safe and taken care of.

It is believed that ideally, every child needs the love and care of both their parents if that is possible.

If the children are in danger, or do not feel safe with one parent, the other parent can take full care of the children.

Important:

In some countries, when a couple separate or divorce, the father often gets full care of the children. This is NOT the case in Australia. Each case is assessed individually.

Who decides where children live after a separation or divorce?

Either the parents or the Family Law Courts can decide where children live.

If there is no conflict, the children are happy and safe and the parents can agree on who the children will live with and when they will spend time with the other parent the courts will probably not get involved.

The parents can go to mediation to help decide on these matters instead of going to court.

Example:

Yasmin and Michael decide to break up because they can't get along.

They have two young children who they both love and care for.

There has not been any violence in the relationship.

Yasmin and Michael talk about how to best care for the children and agree that the children should live with Yasmin from Monday to Friday, and live with Michael every weekend.

Yasmin and Michael do not have to involve police, mediation or the courts to make this decision.

If there has been conflict, violence, or if the parents cannot agree where the children should live after a relationship breakdown, the court may get involved and decide the best place for the children to live.

If there is conflict or violence, the court may decide to make one parent the main care giver of the children and set conditions about when and how the other parent can see and contact the children.

Example

Maria and Jonathan have decided to separate. Jonathan has been violent in the past and there had previously been an intervention order that says he cannot be violent or go to the family home.

Despite this, Jonathan wants the children to live with him one week and with Maria the next week. Maria wants the children to live with her the whole time.

Maria and Jonathan can't agree on what's best, so the court assesses the situation based on all the circumstances.

The court decides that the children will live with Maria most of the time, and will see Johnathan two days per fortnight.

Children are considered victim/survivors of family violence if they witness family violence, or are exposed to the effects of family violence, even if the violence isn't directed at them. This is because children can develop psychological, physical and mental health issues in the short, medium, and long term. It can affect them throughout their life.

It is the priority of the police, the courts, and the law to ensure that children are always safe and protected from harm. That is why it is considered family violence if a child hears or sees violence taking place in the family, even if the violence isn't directed at them.

It is very important to seek legal advice from a community legal centre, Victoria Legal Aid or to contact a local Family Relationships Centre for information about parenting during a relationship breakdown, particularly if there has been conflict or violence.

Important

If you are unsure if you are allowed to see or talk to your children because of an intervention order or another order, you can seek free legal advice from a community legal centre or Victoria Legal Aid.

Helpful contacts

The Family Courts

The Federal Circuit Court of Australia

305 William Street, Melbourne Vic. 3000

W: www.federalcircuitcourt.gov.au

E: enquiries@familylawcourts.gov.au

Ph: 1300 352 000

The Family Court of Australia

305 William Street, Melbourne Vic. 3000

W: www.familycourt.gov.au

E: enquiries@familylawcourts.gov.au

Ph: 1300 352 000

Mediation

Family Relationship Centre Melbourne City

Level Lower Ground Floor (enter via Queen Street)

379 Collins Street, Melbourne Vic. 3000

W: www.relationshipsvictoria.com.au

E: enquiries@melbournefrc.org.au

Ph: 8625 3666

Contacts for people who use family violence

In an emergency, always call the police on 000

Men's Referral Service:

Provides telephone counselling, information and referrals.

Ph: 1300 766 491

W: www.ntvmrs.org.au

Legal help

- Free legal advice about family law or family violence
- Free or low-cost representation
- Help to understand an intervention order

Fitzroy Legal Service

Level 4, Fitzroy Town Hall,

Access via the laneway next to 126 Moor Street Fitzroy, VIC 3065

Ph: 9419 3744

E: enquiries@fitzroy-legal.org.au

W: www.fitzroy-legal.org.au

Victoria Legal Aid

570 Bourke Street, Melbourne Vic. 3000

Ph. 1300 792 387

W: www.legalaid.vic.gov.au

Find a Community Legal Centre near you:

www.fclc.org.au/find_a_clc.php

Contacts for victims/survivors

In an emergency, always call the police on 000

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- Free legal advice about family law or family violence
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- To help understand an intervention order

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W: www.legalaid.vic.gov.au

Find a Community Legal Centre near you: www.fclc.org.au/find_a_clc.php

To apply for an intervention order

If you live in the City of Yarra, you can apply for an intervention order:

Online

www.familyviolence.courts.vic.gov.au/online-form

At the Neighbourhood Justice Centre Magistrates' Court

241 Wellington Street,

Collingwood Vic. 3066

Ph: 9948 8777

At your local police station

Fitzroy Police Station

13 Condell Street,

Fitzroy Vic. 3069

Ph: 9934 6400

Collingwood Police Station

1 Eddy Court,

Collingwood Vic. 3067

Ph: 8413 1700

Richmond Police Station

217 Church Street,

Richmond Vic. 3121

Ph: 8420 3600