

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?

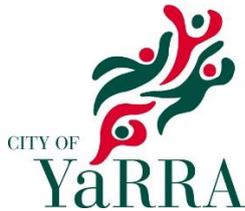
Where to get help.

Simple 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 14 March, 2018.

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What do these words mean?

Word or term	Meaning
Affected family member	<p>A person who is hurt by family violence.</p> <p>A person who sees or hears family violence.</p>
Arrest	The police think a person broke the law. The police take the person to a police station and ask questions.
Breach/Breaching	When a person does something an intervention order says they cannot do.
Charge	A person will get legal papers saying the police think they broke the law and they have to go to court.
Community legal centre	A community organisation where you can get free legal advice, and free or low-cost help in court.
Control	To make a person act in a way they do not want to.
Court	A place where decisions about the law are made.
<i>De facto</i> relationship	Two people are in a relationship like marriage, but are not married.

Word or term	Meaning
Divorce To get divorced	The legal end of a marriage.
Family Law Courts	The courts that decide on laws about families.
Family Violence	To hurt, scare or control a family member.
Family Violence Intervention Order or Intervention Order	A legal paper from a court to stop family violence. It says what a person cannot do.
Family Violence Safety Notice or Interim Intervention Order	Legal papers that stop violence until a court decide if a longer order is needed.
Fine	Money a person needs to pay if they break the law.
To get married A marriage	Two people have legal papers saying they are married.
To be found guilty	A court decides that a person did a crime.
Legal	About the law
Legal advice	Talking to a lawyer.
Mediation	Where separated families can talk about how to care for children.
Perpetrator	A person who uses family violence.

Word or term	Meaning
Protected person	<p>A person who is hurt by family violence and has an intervention order to protect them.</p> <p>A person who sees or hears family violence and has an intervention order to protect them.</p>
Relationship	A couple. The couple can be married, or <i>de facto</i> .
Representation	When a lawyer acts for you. This can be going to court or writing letters for you.
Respondent	A person who uses family violence and has an intervention order against them.
Separate Separation	<p>When one person in the relationship tells the other person the relationship has ended.</p> <p>When both people in the relationship agree the relationship has ended.</p>
Victim/survivor	<p>A person who is hurt by family violence.</p> <p>A person who sees or hears family violence.</p>
Victoria Legal Aid	A government organisation where you can get free legal advice, and free or low-cost representation.

Legal help

Every person in Australia can ask for help from a lawyer.

A community legal centre and Victoria Legal Aid can help by giving:

- free legal advice (talking to a lawyer)
- free or low-cost representation (when a lawyer acts for you).

You can ask for an interpreter when you see a lawyer.

There are telephone numbers for Fitzroy Legal Service and Victoria Legal Aid at the end of this booklet.

Family law

What is family law?

Australia has many laws. Family law is the laws about families.

These are very important laws in Australia.

What is a marriage in Australia?

Marriage in Australia is when a two people sign legal papers saying they are married.

Who can get married?

Marriage is between two people. Marriage can be between:

a man and a woman, or

a man and a man, or

a woman and a woman.

If a person is married, they cannot get married to another person at the same time.

People who are 18 years old or older can get married.

If a person is 16 or 17 and wants to get married, they must ask a **court**.

Normally, the court will not allow a person under 18 to get married.

Do I have to be married to be protected by family law?

Some people are not married, but live together or may have children.

These **relationships** are like a marriage. They are *de facto* relationships.

Family law protects people in *de facto* relationships.

What happens when a marriage ends?

To end a marriage, the couple **separate** then **divorce**.

Separate

If one person, or both people, do not want to be married anymore, they can separate.

In Australia, if only one person does not want to be married, they can separate. The other person does not have to agree.

A couple separates when one person tells the other person they don't want to be in the relationship anymore.

Two people can be separated and live in the same house.

Divorce

After 12 months of **separation**, Australian citizens and long-term residents can ask the **Family Law Courts** for a divorce.

A divorce is a legal paper that ends the marriage.

A person does not have to do something wrong to get a divorce.

To get a divorce, a person only needs to show they have been separated for 12 months and won't be in the relationship again.

What are the Family Law Courts?

Australia has many courts. The Family Law Courts make decisions on laws about families. There are two Family Courts in Victoria:

The Federal Circuit Court The court that decides most family law problems.

The Family Court The court that decides difficult family law problems.

If a couple cannot decide where the children should live after separation or a divorce, or who should stay in the family house, the Family Law Courts can decide.

Are the Family Law Courts the only place to go?

If a couple does not agree about what should happen when a marriage ends, they can go to **mediation** instead of the Family Court.

In mediation, families can talk about who the children will live with, and who will stay in the family home.

A worker called a mediator will listen to both parents and help find an answer everyone agrees with. Mediation is usually cheaper than going to court.

For many families, mediation is easier than going to court. However, if a family member is scared of the other person because of family violence, they do not have to go to mediation.

Important

A community legal centre or Victoria Legal Aid can help with separation, divorce, and going to the Family Law Courts or mediation.

Family violence

What is family violence?

Family **violence** is when a person uses violence against someone in their family. Violence is used to **control a victim/survivor**, to hurt them or make them feel scared.

Family violence is also known as domestic violence.

Family violence is not allowed in Victoria.

Who is affected by family violence?

Any family member can be hurt by family violence. They can be called:

- Affected family member What police or the courts call someone who is hurt by family violence.
- Protected person When the person hurt by family violence has an intervention order to protect them.
- Victim/survivor A person who was hurt by family violence.

Who uses family violence?

Any family member can use family violence. They can be called:

- Respondent When the person who uses violence has an **intervention order** against them.
- Perpetrator This is what police or the courts call someone who uses family violence.

In Australia, it is usually men who use violence, and women and children who are hurt by family violence.

What actions are family violence?

Family violence is any action that is used to control or scare a family member.

Some actions that are family violence are:

Physical:

- To hit
- To push
- To kick
- To slap
- To spit
- To pull hair

Sexual:

- To kiss, touch or have sex with someone when they do not want to
- To kiss, touch or have sex with a child

Psychological
and
emotional:

- To call a victim/survivor bad words
- To swear
- To make a victim/survivor think they are crazy
- To make a victim/survivor feel like they are nothing
- To stop a victim/survivor seeing their friends

Important

Calling a victim/survivor bad words, swearing and other forms of psychological and emotional violence is family violence in every language, not just English.

- Economic:
- Not give a victim/survivor money
 - To give a victim/survivor only a little bit of money so they have to ask for more
 - Not let a victim/survivor have a job
 - To make a victim/survivor do illegal work

- Threats: To make the victim/survivor scared, such as:
- “I will leave you”
 - “I will hurt myself”
 - “I will kill myself”
 - “I will hurt the children”
 - “I will take the children away and you will never see the children again”
 - “I will kill the dog”
 - “Your visa will be taken away”

Coercive: • When the victim/survivor does something they do not want to do because they are scared that they will be hurt, or their children will be hurt, or their pets will be hurt.

Children: • When family violence is used against a child
• When a child sees or hears family violence
• When a child sees or hears what happens after family violence – such as a parent crying.

If a child sees or hears family violence the child can be hurt for a very long time.

Examples

Johnathan spits on his wife Maria and pulls her hair. This is family violence.

Tom sees his father Johnathan spit on his mother Maria and pull her hair. This is family violence.

Jack tells his parents he will hit them if they do not give him money. His parents give Jack money because they are scared he will hurt them. This is family violence.

Question

Q: Sally is in Australia on a partner visa. Sally is married to Fred. Fred tells Sally that she is very stupid and hits her. Fred says that if Sally leaves him, the police will take away her visa. Sally is scared she will lose her visa. Where can Sally go to get help?

A: Sally can call Victoria Police, or Victorian Legal Aid to get help.

Calling the police

Anyone can call the police if they see, or hear family violence.

A victim/survivor can call the police.

A neighbour can call the police.

What can the police do?

If the police hear about family violence, they can visit the family.

If the police think a person is using family violence, the police can:

- go inside the house
- take photos of the family violence, such as injuries or damage
- arrest the person they think is using family violence

- give the person they think is using family violence a family violence safety notice.
- make the person they think is using family violence leave the house
- ask for an intervention order against the person who is using violence
- charge the person they think is using family violence. If a person is charged they have to go to court. If they are found guilty they can go to jail.

The police can do all of these actions even if the victim/survivor does not want them to.

Question

Q: John is violent towards his family and their neighbour calls the police. The police come to the house and ask John to leave. What should John do?

A: John should stay calm. John should do what the police say and leave the house. John should contact a community legal centre or Victorian Legal Aid as soon as he can.

Family Violence Intervention Orders

What is a family violence intervention order?

Remember

A respondent is a person who uses family violence.

A family violence intervention order is a legal paper that protects a victim/survivor.

A family violence intervention order is given to the respondent.

A family violence intervention order will say what respondent cannot do.

Who can ask for an intervention order?

A victim/survivor can ask a court for an intervention order.

The police can ask a court for an intervention order for the victim/survivor.

The police can ask for an intervention order even if the victim/survivor does not want one.

Types of intervention orders

Family violence safety notice

A family violence safety notice is to stop family violence before the victim/survivor and the respondent go to court. Police give **family violence notices** if they think family violence is being used.

Interim intervention order

An interim intervention order is for a short time. An interim intervention order is to stop family violence while a court decides if the family needs an intervention order for a longer time.

Intervention order

An intervention order is to stop family violence for a longer time. An intervention order is often for 12 months. It can be shorter or longer. Some intervention orders can last forever.

Remember

All types of family violence interventions order will say what the respondent cannot do.

What can an intervention order say?

The court will make a family violence order for the victim/survivor, so every family violence order can say something different.

An intervention order might say:

- The respondent cannot use family violence.
- The respondent cannot damage, or say they will damage, the victim/survivor's house, car or other anything the victim/survivor owns or rents.
- The respondent cannot follow the victim/survivor or their children.
- The respondent cannot write about the victim/survivor on the internet, in emails or by text.
- The respondent cannot go to the victim/survivor's house, work, or their children's school, kindergarten or childcare.
- The respondent cannot go close to the victim/survivor or the children.
- The respondent cannot contact the victim/survivor or the children.
- The respondent cannot ask another person to do anything in the order.

Important

These are some of the actions that can be in an intervention order.

More actions can be added. Actions can be changed by the court.

Breaching an intervention order

If a respondent does something the intervention order says they cannot do, they **breach** the intervention order.

Breaching an intervention order is a crime and the respondent could get arrested and go to jail, or get a **fine** of up to \$24,000.

Example

An intervention order says Dan cannot use family violence. Dan spits on his wife. His wife calls the police.

Dan has **breached** his intervention order. The police can arrest Dan and he could go to jail.

It is very important for the victim/survivor and the respondent to understand what an intervention order says. Community legal centres can explain what an intervention order says.

Question

Q: Paul has been given an intervention order, but Paul doesn't speak English. Where can Paul go for help?

A: Paul can go to a community legal centre and see a lawyer. Paul can ask for an interpreter to make sure he understands everything the lawyer says.

Arrest

The police can arrest a person they think has breached an intervention order. It is important for the person who is arrested is calm, and to contact their local community legal centre or Victoria Legal Aid for help.

Even if the victim/survivor asks the respondent to do something the intervention order says they cannot do, the respondent could still be charged. The victim/survivor will not be charged.

Example

Maria has an intervention order against her husband, Jonathan. The intervention order says Jonathan cannot go into the family home.

One day Maria is sick and needs help looking after her children. Maria telephones Jonathan and asks for help. Jonathan drives to Maria's house. Jonathan helps cook dinner and put the children to bed.

Angela is Maria's neighbour. She knows Maria has an intervention order against Jonathan. She sees Jonathan in the house and calls the police.

The police arrest Jonathan and charge him for breaching the intervention order.

Maria is not arrested because the intervention order does not stop her from doing anything.

What about my children?

Who is a child?

In Australia, a child is a person aged 0–18 years old.

Where can the children live after a separation?

If a couple separate, both parents can ask for the children to live with them.

The law says the children must live where they are **safe and taken care of**. This can be with one parent only, or the children can spend time with both parents.

Important

There is no law saying the children must live with their father or must live with their mother.

Who decides where the children live?

The couple can decide where the children live or the Family Law Courts can decide where the children live.

When can the couple decide where the children live?

A couple can decide where the children will live if:

- the parents agree where the children will live. The parents can decide by themselves, or with the help of mediation
- the children are happy and safe
- there is no fighting or family violence.

Example

Yasmin and Michael decide to separate. They both love and care for their children.

There is no family violence and no fighting.

Yasmin and Michael agree that the children will live with Yasmin from Monday to Friday, and with Michael on Saturday and Sunday.

Yasmin and Michael do not need to go to the Family Law Courts.

When can the Family Law Courts decide where the children live?

The Family Law Courts can decide where the children will live if:

- the parents cannot agree where the children will live
- the children are not safe
- there is fighting and family violence.

Example

Maria and Jonathan decide to separate. Jonathan has an intervention order that says he cannot be violent or go to the family home.

Maria wants the children to live with her every day.

Johnathan wants the children to live with him for one week and with Maria for one week.

Maria and Johnathan can't agree. They go they go to the Family Law Courts.

The court decides that the children will live with Maria for 12 days, and with Johnathan for 2 days.

How do the Family Law Courts decide where the children live?

The court will start with the idea that the children should spend time with both parents.

The court will listen to both parents and will decide:

- 1 who the children will live with, and
- 2 if the other parent can see the children.

If the children will not be safe with one parent, the court can say the children must not live with that parent.

Important

A community legal centre, Victoria Legal Aid or a Family Relationship Centre can give you information and help with separation and divorce.

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 (perpetrators/respondents)

In an emergency, always call the police on 000

Men's Referral Service:

Help to stop using violence

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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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

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