

## **Family Violence Orders: Information Sheet**

In Tasmania, the *Family Violence Act 2004 (Tas)* enables individuals affected by family violence to seek protection through two types of orders: Police Family Violence Orders (PFVOs) and Family Violence Orders (FVOs). These orders are legal mechanisms aimed at preventing and addressing family violence. This fact sheet provides an overview of both PFVOs and FVOs to help individuals understand their rights and the available legal remedies.

At the outset, for a PFVO or FVO to be issued or made there must be a 'significant relationship' between the parties. If a significant relationship does not exist, the alternative is to seek a Restraint Order. We have produced a fact sheet on Restraint Orders which is available on our website.

The law varies significantly between States and this fact sheet focuses on the Tasmanian law. For example, even the name of a FVO varies between Australian states – i.e., Apprehended Violence Orders (NSW), Family Violence Intervention Orders (VIC), Domestic Violence Orders (QLD), and Intervention Orders (SA). Despite different names, Family Violence Orders are recognised nationally pursuant to the *Domestic Violence Orders (National Recognition) Act 2016 (Tas)*.

### **What do the terms 'Significant Relationship' & 'Family Violence' mean?**

A **significant relationship** (a.k.a family relationship) is a marriage or other relationship that depends on a number of factors and can include what was traditionally known as a 'de facto relationship'. In determining if a significant relationship exists, all matters of a relationship are considered including but not limited to:-

- whether the relationship has been registered under the *Relationships Act 2003 (Tas)*;
- the length of the relationship;
- whether the parties live or stay together;
- whether or not a sexual relationship exists;
- the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
- the ownership, use and acquisition of property;
- the degree of mutual commitment to a shared life (i.e., purchase of joint property and setting up of joint accounts);
- the care and support of children;
- the performance of household duties (i.e., acting as a step-parent or homemaker); and
- the reputation and public aspects of the relationship (in other words, were you known to others as a couple or to Centrelink as a couple).

Length of relationship is not the only indicator. There have been Court cases where a relationship for as little as two months can be considered to be a significant relationship. There is no hard and fast rule as to what a significant relationship is and this may differ to what certain government entities such as Centrelink/Services Australia consider to be a 'de facto relationship'.

**Family Violence** is defined in section 7 of the *Family Violence Act 2004* (Tas) but can include:-

- a) assault, including sexual or other forms of assault;
- b) threats;
- c) coercion (including coercive control);
- d) emotional abuse and/or intimidation;
- e) verbal abuse;
- f) abduction;
- g) stalking or bullying;
- h) an attempt to or threat to commit any of the above;
- i) property damage including to jointly owned property;
- j) economic abuse; and
- k) breaching a Family Violence Order;

The above definition is broad, and the legislation imposes a relatively low bar for what meets the definition of family violence as a consequence.

### **Police Family Violence Orders (PFVOs)**

#### **What is a PFVO?**

- A PFVO is an immediate order issued by Tasmania Police to protect a person who is experiencing or at risk of family violence.
- It is issued by a Police officer without the need to go to Court.
- A PFVO aims to provide immediate protection to victims and may include conditions restricting the alleged perpetrator's behaviour, such as requiring them to:
  - a) vacate any premises, whether or not that person has an ownership interest;
  - b) not enter any premises or only enter premises on certain conditions;;
  - c) surrender any firearm or other weapon;
  - d) refrain from harassing, threatening, verbally abusing or assaulting a person named in the Order;
  - e) not approach, within a specified distance, a person named in the Order;

- f) refrain from contacting a person named in the Order either directly or indirectly (i.e., through third parties); and/or
- g) refrain from engaging in any other conduct specified in the order that constitutes, or may constitute, family violence.

### **How do I get a PFVO?**

At the outset, you should contact Tasmania Police. Tasmania Police can issue a PFVO of their own choice, or at the request of a protected party if they believe a person is at risk of family violence.

A Police officer of at least the rank of Sergeant or above (or otherwise authorised by the Police Commissioner) can issue a PFVO provided they are satisfied that the perpetrator has committed or is likely to commit a 'family violence offence.'

It is important that if you are seeking a PFVO, you make it clear whether you want certain Orders/restrictions included or excluded. It is not uncommon for an Order to bar a perpetrator from entering any place where a protected party is staying or living from time to time. If you want to continue a relationship and reside with the person (but would like limited protection), the effect of such an Order would mean they cannot enter where you are living or staying which has the effect of evicting them or placing them in breach of the Order even if you want them to be present.

### **How long does a PFVO last for?**

- A PFVO is issued for 12 months from the date of service on the perpetrating party (the Respondent).
- The Order will expire after 12 months but may be extended if an Application to Court is made by either a protected party or Tasmania Police.
- A PFVO may be revoked earlier, but only through making a successful Application to revoke with the Magistrates Court.

### **How do I change a PFVO?**

Under section 14 of the *Family Violence Act 2004* (Tas), a PFVO may be varied in two ways:-

1. By making Application to Tasmania Police. A Police Officer of the rank of Inspector or above has the power where both parties consent to the change and the Officer is satisfied it will not adversely impact on the safety and interests of a protected party; or
2. By making Application to the Magistrates Court. This Application can be made either by a protected party, the person on whom the Order restrains, Police, or any other person to whom permission is granted by the Court. To vary the PFVO through this route:-
  - a. The relevant form (available on the Magistrates Court website) must be completed and filed with the Court outlining the evidence on which you rely or basis to revoke the Order. It is not uncommon to be unaware as to why Police have placed a PFVO on a person;

- b. You must serve the filed Application on both the Protected Party and Tasmania Police. You may need to retain a Process Server to serve the protected party, particularly as you need to ensure you comply with the PFVO. If you are barred from communicating as a result of the PFVO, you should serve it on Tasmania Police but not serve it on the protected party to avoid being in breach; and
- c. A Court must be satisfied either that a precondition to the making of the Order does not exist (a lack of evidence or that there was not in fact a significant relationship), or that it is in line with the protected party's safety, wellbeing and interests to revoke or vary the Order. If the latter, it can be helpful to provide evidence of having undergone counselling to address triggers such as alcohol use, aggression, or relationship challenges.

It is ordinarily easier to apply to vary a PFVO rather than revoking an Order outright. You should seek legal advice from a lawyer prior to filing any Application to ensure it appropriately addresses relevant matters.

Practically, there is nothing wrong with choosing to leave a PFVO in place and allowing it to naturally expire if one is served on you. However, the issuing of a PFVO may result in the suspension of any Firearms Licence, Working with Vulnerable People accreditation, Security Licence and/or be relevant to employment. Nonetheless it is important to ensure any PFVO or FVO is complied with and to obtain advice specific to your circumstances.

## **Family Violence Orders (FVOs)**

### **What is an FVO?**

An FVO is a court-issued order that potentially provides longer-term protection for victims of family violence.

Unlike a PFVO, an Application to Court is required and the length of an FVO will be determined by a Magistrate based on the evidence before the Court. A Magistrate or Judge also has a discretion to make an FVO at the end of any criminal proceedings (without the need for a formal Application).

It is often in a protected party's interest to consult with Tasmania Police first to determine whether Police will:

- (a) issue a PFVO (which avoids the need to file in Court); or
- (b) are willing to make Application for a FVO on a protected person's behalf.

### **How long does an FVO last?**

FVOs can vary in duration but are most commonly made for 12 months. This depends on the length sought and evidence in support of the Application. It is in the Court's discretion. Whilst unusual, in particularly bad instances of family violence, Courts have been willing to make FVOs lasting for several years all the way through to indefinite orders.

### **Who can apply for an FVO?**

- A person who has experienced family violence or is at risk can apply for an FVO.
- Certain professionals, such as police officers, child protection workers and lawyers can also apply for FVOs on behalf of victims.

### **How do I apply for an FVO?**

1. An Application must be drafted and filed with the Magistrates Court. If you intend to represent yourself, it is preferable to download the form from the Magistrates Court website and type your Application rather than filling it out by hand. If your application is particularly urgent, you may request an urgent listing. ;
2. The Application must be served on the Respondent to the Application and a Memorandum of Service filed with the Court- ideally before the matter is listed for the first Court date. While you may request Police serve the Application, you must outline a good reason in your Application as to why you cannot have the application served via an independent person or a process server. The Court will consider your request for Police to serve an Application on the first return date, but this may cause delay in your matter progressing while service occurs.
3. At the first mention, there are three issues that need to be addressed:
  - i. Whether the Respondent agrees to or opposes the making of a Final FVO as sought. If not opposed, a Final FVO can be made in terms at the discretion of the Magistrate;
  - ii. If opposed, whether an Interim (temporary) FVO ought be made until the case reaches an end. If you want an Interim FVO, you must request this in your Application and outline why an Interim FVO is needed in your case; and
  - iii. If opposed, whether the matter ought go to mediation where the Applicant and Respondent can discuss with a Mediator whether the matter may be resolved in some way (e.g. by the Respondent providing an undertaking (promise) not to engage in certain behaviour for a defined period). If a matter does not go to mediation or fails to resolve at mediation, the Court will set requirements as to the Respondent filing and/or disclosing responsive evidence if not done so already.
4. Hearing - usually 2-8 months after the filing of an Application. At a Final Hearing, you will need to have your witnesses present and be prepared to conduct your case. If you are out of your depth, you may instruct a lawyer to conduct your case on your behalf at any stage but you should not leave this to the last minute. If you need guidance as to what to expect at Court, you should speak to a lawyer regarding the process involved.

Unless the Respondent is present when an Interim or Final FVO is made, it does not take effect until it is served on the Respondent. If you have an FVO protecting you in place, it is important that you report any breach of the FVO to Tasmania Police. If a person is not willing to report breaches, the utility in having an FVO in place is undermined.

### **What must be proven to obtain an FVO?**

A Magistrate will only make an FVO if satisfied on the balance of probabilities (more likely than not) that the Respondent has:

1. Committed Family Violence; **and**
2. May again commit Family Violence.

You should be aware that:

- A. Your Application should include in specific detail the conduct you allege warrants the granting of an FVO using consecutively numbered paragraphs. You should where possible provide reference to dates, times, locations and specifically what was said and/or done;
- B. There is currently no filing fee to seek an FVO but you will need to serve your Application on the Respondent. While you may serve the Application yourself, ideally it should be served by an independent person and you may wish to pay for a Process Server to ensure the document is served safely. We can provide a list of local process servers on request;
- C. The Rules of Evidence apply to FVO Applications. A good practical measure to ensure you comply is to only include evidence of things that you saw, heard or otherwise perceived. If there are other people you want to give evidence, they will need to make a separate Affidavit as to what they saw, heard or otherwise perceived and be prepared to give evidence in Court should the Application be opposed and proceed to Hearing;

It is better to obtain legal advice prior to filing an Application with the Court. It is much easier to fix errors with an Application or strengthen your case prior to it being filed, as opposed to involving a lawyer once you have filed and run into difficulty. The Court has a discretion to award costs in Restraining Order cases and so if either party has engaged a lawyer, there is a risk of having to pay some of the successful parties legal costs.

### **What are my options if I have been served with an Application for FVO or Interim FVO?**

If you have been served with an FVO Application naming you as the Respondent, your options on the first Court date are:-

1. You may agree to a Final FVO being made against you on a 'without admissions' basis. This means that an Order would be made against you but you do not admit the content of the Application. This will end the case on the first Court date although you will be bound by the FVO. It is important that make clear that the Orders are consented to 'without admission' to avoid it potentially being able to be used in other Court proceedings (i.e., criminal charges that may follow);
2. You may oppose the making of a Final FVO- in which case the matter would likely be sent to either mediation or a Hearing; or
3. You may apply to adjourn your matter to seek legal advice. The Court will consider whether an Interim FVO is made while the case adjourns (this will last until the end of the case).



If you do not attend Court on the first Court date and have been served, a Final FVO may be made in your absence. If you do not want certain aspects of an FVO to be made, it is easier to negotiate these issues proactively before a Final Order is made. It is much harder to change an Order once it has been made as you will have to prove why the FVO should be changed and file an Application to Vary/Revoke the FVO.

### **Other Considerations**

- An FVO may impact your employment. It may need to be disclosed if you hold a Working with Vulnerable People card, Firearms Licence or Security Licence. You should seek specific advice from a lawyer as soon as possible after being served with a FVO or PFVO if you have concerns surrounding these matters.
- If you do not want to have an FVO made against you, you may offer to the Applicant that you will enter into an Undertaking (being a promise) not to do certain conduct (i.e., contact or approach them) for a defined period (usually 6 – 12 months). An Undertaking is a promise to the Court and to the Applicant. If you breach your Undertaking, the case can be brought back to Court by the Applicant and continued.
- If an Interim or final FVO Order is made against you, you must ensure you comply with it as if you do not, you may be charged with a criminal offence, prosecuted and punished. If you develop a significant history for breaching FVOs, this may be relevant as to whether Police and/or a Court grant you bail in relation to other offending at a later stage.
- In Tasmania, the presumption of bail is reversed in relation to ‘family violence offences’ as a result of section 12 of the *Family Violence Act 2004* (Tas). This means that you must prove why it would not be against the safety, wellbeing and interests of the protected party to be granted bail. If you cannot satisfy the Court of this, you may be remanded in custody and taken to prison until the finalisation of all Court proceedings against you. If you find yourself in this situation, seek legal advice as early as possible.

### **Advice**

- ✓ If you require advice in relation to PFVOs or FVOs, you may contact North West Community Legal Centre on 6424 8720 or email [office@nwclc.org.au](mailto:office@nwclc.org.au) to seek our assistance.
- ✓ There is also specific legal aid funding (current at the time of publication) available under the ‘Safe at Home’ program to assist victims of family violence obtain advice about and make Application for a PFVO/FVO. This service may be accessed either through Tasmania Legal Aid or by contacting a private lawyer who conducts this type of work.

- ✓ The Women's Legal Service Tasmania (WLST), Just Healthy Families (a Women's Legal Service Tasmania/Tasmania Legal Aid partnership), and SiS (a program of the Tasmanian Aboriginal Legal Service) are also available to provide assistance in this area.
- ✓ There are also other services available to provide assistance, support and counselling to victims of family violence. Please contact us so we may refer you to appropriate services.

### **Other Helpful Resources**

- Magistrates Court Guide: [https://www.magistratescourt.tas.gov.au/going\\_to\\_court/restraint\\_orders](https://www.magistratescourt.tas.gov.au/going_to_court/restraint_orders)
- Women's Legal Service Fact Sheet: [https://www.womenslegaltas.org.au/uploads/fact-sheets/Family\\_Violence\\_Orders.pdf](https://www.womenslegaltas.org.au/uploads/fact-sheets/Family_Violence_Orders.pdf)
- Safe at Home Website: <https://www.safeathome.tas.gov.au/>
- Family Violence Victim Support Services: <https://www.safeathome.tas.gov.au/services/counselling>

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