



RESPONDING TO AN INTERVENTION ORDER

RESPONDING TO AN INTERVENTION ORDER

This booklet explains the court procedure for respondents to Intervention Orders in the Victorian Magistrates' Court

Contents

What an Intervention Order means	3
About Intervention Orders	4
What the order says	6
If there are children involved	7
Role of the police	8
Guns	9
How you can be notified about the Intervention Order	10
Be prepared for court	12
Going to court	14
What happens at the hearing	15
Living with the order	16
Breaking the order	18
Guide to procedure	19
Services you can use (<i>see back cover</i>)	

This booklet is written for anyone who is having an Intervention Order taken out against them for family violence. It will explain:

- whether you need to go to court,
- what the procedure is at court if you do go,
- what the order means,
- what happens afterwards, especially if you break the order.

Stalking

Intervention orders are mainly concerned with family violence, but a person can also apply for an Intervention Order if they are being stalked.

The person applying for an order against you for stalking need not be a member of your family – this is different from other Intervention Orders.

Stalking includes repeatedly following someone, telephoning them or sending messages, loitering near their house or workplace, keeping someone under surveillance and any other repeated behaviour that makes the victim fear for their safety.

Stalking is covered by the *Crimes Act 1958* section 21A.

What an Intervention Order means

An Intervention Order is a court order made by a magistrate under the *Crimes (Family Violence) Act 1987*.

If an Intervention Order is made against you, it puts limits on what you can do and where you can go.

An Intervention Order means that the person who has applied for the order feels scared and unsafe and needs protection from you. The magistrate grants an Intervention Order if they believe that your future behaviour should be limited, to protect the other person.

You are not being charged with a crime ...

The granting of an Intervention Order is a civil proceeding, not a criminal one. That means it is regarded as a personal dispute. You do not get a criminal record just by having an Intervention Order taken out against you.

... but breaking the order is a crime

If you disobey the terms of an Intervention Order you *can* be charged by the police with a criminal offence. If found guilty by the court, you can be given a gaol sentence, a good behaviour bond or a fine. You will also have a criminal record.

Support services

There are legal and support services throughout Victoria which can give you information and advice about what to do if someone wants to take out an Intervention Order against you.

There are also services which work with people to help them change the way that they behave in relationships and to find alternatives to violent or harassing behaviour (see the back cover).

If you are under 17

An Intervention Order can be taken out against a young person who is violent. The case can be heard in the Magistrates' Court or the Children's Court. If you are under 17 and you are faced with an Intervention Order or a summons, contact a legal aid office or community legal centre for help and advice (see back cover for the telephone numbers).

About Intervention Orders

Dealing with family violence

'Family violence' includes physical violence, threats, abuse, and emotional and psychological intimidation. If you have been violent or abusive towards a family member they can take action to stop it.

1. They can call the police.

The police can apply for an Intervention Order against you. If there's been physical violence, property damage or sexual assault, they can also charge you with a criminal offence.

2. They can get a court order.

The person affected by the violence ('the applicant') can apply for an Intervention Order against you ('the defendant') through the Magistrates' Court. You will have the chance to defend yourself in court.

Who can get an order

Any member of your family can get an Intervention Order against you.

'Family member' includes your spouse (married or de facto), ex-spouse, your children, parents and relatives. It also includes any person with whom you have had an intimate personal relationship (such as a boyfriend or girlfriend – including a same-sex partner), or who has ordinarily been a member of your household, or a person under 17 for whom you are a guardian.

'Relatives' includes people related to you by past and present marriages and de facto relationships, as well as your blood relations.

The person who wants an order against you (the applicant) is often called the 'complainant' or 'aggrieved family member' in the court documents.



Why an order is made

To make an Intervention Order the magistrate must decide on the evidence that you did one or more of the following:

- assaulted a family member,
- caused damage to the property of a family member,
- threatened to do either of these things,
- harassed, molested or behaved in an offensive manner to a family member, or
- repeatedly stalked somebody (see page 2).

The magistrate must believe that you are likely to do these things again unless the applicant is protected by a court order.

Stop and think

An Intervention Order gives you a chance to stop and think about the way you have been behaving towards your partner or family members.

Have you frightened or physically injured them?

If so, this is the time to seek advice on how to change your behaviour, rather than being angry at your partner or family member.

Everybody's interests are taken into account

When making an Intervention Order the magistrate has to consider:

- the need to protect the applicant from violence,
- the welfare of any children affected by the order,
- the accommodation needs of everyone affected by the order,

but the magistrate has to give most importance to the protection of the applicant.

How long the order lasts

A temporary ('interim') order will last for the time that it will take for you to be summoned to the hearing.

The final order will last for the time the magistrate thinks suitable, for example three months, one year, three years. The court can be asked to shorten or extend the order after it is made, or to make another order when the first order finishes.

What the order says

An Intervention Order can say any or all of the following things. It can forbid you to:

- Assault, harass, molest, threaten or intimidate the other person.
- Approach, telephone or contact the other person.
- Be at or within a certain distance (for example 200 metres) of the applicant's house or workplace or any other place named in the order. (If you live with the applicant this will mean that you have to stop living with them and move out – see page 16).
- Damage the other person's property or jointly owned property.
- Get another person (for example a friend or relative) to do any of the things that the order says you are not allowed to do.
- Possess, carry or use firearms.

You will have to surrender any guns you own. You will also be automatically disqualified from holding a firearms licence for the period of the order plus five years (see page 9).

Not all orders are the same

Magistrates can and do impose different restrictions to suit different situations, and they can include exceptions in the order. For example, you may be allowed to be at the applicant's workplace because it is where you work, provided you don't harass the applicant.

Some of the practical issues raised by Intervention Orders are covered in 'Living with the order', on page 16.

Make sure you understand what an Intervention Order prevents you doing.

If there are children involved

If you have children with the applicant you need to think about how the Intervention Order will work in relation to them. Having contact with your children may put you in the position of possibly having contact with the applicant. This could increase the risk of you breaching the Intervention Order. However, the order can allow contact with the applicant for the purpose of child contact.

Before the hearing, think about how regular contact (access) with the children can be managed, to avoid having contact with the applicant. For example, is there a neutral place where the children can be picked up and dropped off?

If you're concerned about the effect of an Intervention Order on your contact with your children, get legal advice to help you work out a suitable arrangement.

Applicant won't let you see the children

An Intervention Order may give the applicant the opportunity to refuse you contact with the children. The applicant may ask the magistrate making the Intervention Order to suspend or vary existing family law contact orders relating to children.

Even if the Intervention Order is only a temporary one, the magistrate can still suspend a contact order for a period up to 21 days.

This means you won't be able to see your children during that time.

You are still entitled to apply under the *Family Law Act* for a contact order. Courts take the view that children should usually be allowed to see both parents unless there is a strong reason for them not to. However, an Intervention Order must be taken into account by the court when making any family law orders about children.

The order may include the children

Children may be included on a parent's order or they may have their own orders. If the magistrate decides that the children need to be protected from you, then the Intervention Order may say that you can have no contact with the children, and it could prohibit you approaching, assaulting or molesting them. Even in this case you can still apply for a family law contact order.

Intervention orders are designed to deal with family violence. They are quite separate from any family law orders about divorce, property or the parenting of children. An Intervention Order is not a property settlement and it does not mean you are being divorced.

Role of the police

The police are involved in the Intervention Order process in several ways.

Dealing with a violent person

The police may be called if you have assaulted, harassed or threatened someone or damaged property. They can:

- *arrest* you;
- *search* for and remove weapons. If you have a gun, they *must* remove it;
- *charge* you with a criminal offence;
- *apply* for an Intervention Order on the victim's behalf, even if the person doesn't want an order taken out.

The police can get a warrant for your arrest over the telephone or by fax, out of hours, if they decide the person needs immediate protection. If you are arrested you will usually be released on bail. (see page 11)

The police may also tell the victim how to apply for an Intervention Order themselves at the Magistrates' Court.



Assisting the court with the order

Even if the police don't apply for the order, they will still be involved:

- They deliver the court summons and any court orders to you. This is called 'serving' the documents.
- They may arrest you if the court registrar decides the applicant needs protection before the court hearing and issues a warrant.
- They may help the order to be carried out. For example, they may be present when you or the applicant get belongings out of the house.
- They enforce the orders. If you break an order, including a temporary one, the police can charge you with a criminal offence.

Don't abuse the police

Even if you are angry about the Intervention Order, it will not help the situation to abuse the police. They may only be delivering the court documents at this stage, but remember that it is also the police who will be enforcing the order. Their role is to keep the peace.

Court's powers

If the court registrar believes that your guns are a threat to the applicant or your family, they can alert the police, who must then remove your guns.

With a temporary Intervention Order, the magistrate has power to *suspend* your gun licence – this means that you must hand in all your guns to police.

Police powers

The police have wide powers to go into your house to search for and seize any guns. This includes all guns, not just unlicensed ones. The police must act on information that someone is in danger because of a gun.

You are not allowed to have a gun

Once a final Intervention Order is made, your gun licence is *automatically* cancelled – regardless of whether the Intervention Order mentions guns. This means that you are not allowed to possess or carry a gun. This prohibition lasts while the Intervention Order is in place and for five years after the Intervention Order finishes.

You will be notified that your licence is cancelled and that you must hand in your guns to police. If you don't the police can enter your house and seize them.

Your guns will be given to a licensed dealer to be sold and you will receive the money.

If you have a *good* reason for having a gun, such as working as a security guard, then you can apply to the Magistrates' Court under the *Firearms Act* for the prohibition to be lifted. Both the police and the person protected by the order must be notified and can object. Check with the registrar of any Magistrates' Court for the procedure.



How you can be notified about

You can get a summons

The summons will tell you that the court is going to hear an application for an Intervention Order against you. It will give the date, time and place of the hearing.

With the summons you might also get a copy of a temporary (interim) order that the magistrate has made to last until the court hearing (see page 11).

When you receive a summons for an Intervention Order application, you have three options. Get legal advice before deciding what to do.

Option 1: Ignore the summons and don't go to court

You can't delay the court hearing by not turning up. If the magistrate is satisfied that you have received the summons, they will hear the application in your absence and will make the order if satisfied by the applicant's evidence. (You'll be given a copy of the order by the police.)

It's worth going to court even if you don't want to oppose the application because :

- You can have a say about the terms of the orders.
- You can have the orders explained to you.

This may help you to obey the terms of the order later on.

Option 2: Go to court and consent to the order

You can go to court on the day and agree to the order being made. This still allows you to tell the magistrate if you think any parts of the order are impractical, or are unreasonable or unnecessary.

You can also agree to the order being made, without admitting to everything the applicant has said in their application. This is called consenting without admission.

Option 3: Go to court and oppose the order

You can attend the hearing and oppose (contest) the order. You should definitely seek legal advice before doing this.

Tell the court in advance if you decide to contest the application, so they can allow enough time for the hearing. If the magistrate does not accept the allegations made against you or does not believe you are a future risk, an Intervention Order will not be granted.

You can be arrested

If you have seriously threatened the applicant's safety, or have already been violent to them or damaged their property, then you may be arrested on warrant by the police.

The police will usually release you on bail if you sign an undertaking agreeing to the bail conditions and agreeing to go to court on the date of the Intervention Order hearing.

Bail usually includes the conditions which are in an Intervention Order, such as that you stay away from the applicant and don't harass or assault them or damage their property, or get anyone else to.

You must go to court

Going to court on the hearing day is a condition of your bail, whether you decide to agree to the order being made or oppose it.

If you don't turn up, you will lose any bail money paid for you and the police can charge you. Failure to appear when on bail is a serious criminal offence and it can make it harder for you to get bail in the future. The police may keep you in custody until the hearing. You may also be ordered to pay court costs.

Obey your bail conditions

You must obey all your bail conditions. Whether you think it is fair or not, if you break them you can be arrested for breach of bail. The court can then impose more restrictive conditions.

Interim order

This is a temporary Intervention Order that lasts for a few weeks. It has the same sort of conditions in it that a final order has. It will be made by a magistrate if they believe the applicant needs protection until the final court hearing.

The interim order can be made without you being there or knowing anything about it. You will be given a copy of the interim order by the police.

You must obey the interim order, even if you plan to oppose the final order. If you break any of the conditions in the interim order, you can be charged with a criminal offence (see page 18).

At the final hearing the magistrate has a chance to hear evidence from both of you. This is one reason why you should go to the final hearing.

Be prepared for court

Get legal advice

The date of the court hearing is usually two to three weeks after the day your summons was issued, although if you are arrested it may be sooner.

Get legal advice before going to court, especially if:

- you have children who will be affected by the order,
- you already have a family law contact order,
- you have requirements that the court should consider (for example, you run a business from home which could be affected if you had to leave the house),
- you want to oppose the order.

One reason for getting advice is to decide whether you need to be represented when you go to court. Getting advice from a solicitor does not mean you have to be represented later by the solicitor at court.

Legal representation costs more than advice.

You can get *free* legal advice from Victoria Legal Aid or a community legal centre (see back cover).

If you want to get the terms of the order changed

Think carefully about what sorts of conditions are asked for in the applicant's complaint form. You can ask the magistrate to change them to make it easier for you to obey the order. You can also ask for exceptions.

For example, if you have children with the applicant and you want to go on seeing them, you need to make sure that the order is worded to allow this. A 'no contact' order can include an exception – usually that contact can take place in the presence of a third person.

It's a good idea to write down your suggested changes. Give a copy to the court registrar before the hearing date so that they can put it on the file for the magistrate to see.



If you want to oppose the order itself

The applicant's complaint form will detail what the applicant is saying you have done. If you disagree with the order being made you can go to the hearing to tell the magistrate your version of events. It helps to make notes beforehand of what you want to say.

Bring to court any witnesses who can support your story. They must have seen or heard something themselves, not just rely on what you or someone else has told them.

Tell the court what you are going to do

Ring the court registrar before the hearing date to let them know whether you're going to agree to the order or oppose it. If you're only opposing the order because you're unhappy with the terms, tell the registrar.

If you agree to the order, but don't want to go to court, you can write a letter to the registrar telling them this. (But remember, if you're on *bail*, you *must* go to court.)

Interpreter

If you need an interpreter at court, tell the registrar well before the hearing date.

It's hard to change the court date

Once the date for hearing has been set, the court may not be willing to change it unless both you and the applicant agree.

If you want to change the date or get an extension of time, you must come to court and explain why to the magistrate. If the applicant is ready to proceed the magistrate may not want to give you extra time.

It's better to be prepared to go ahead on the day.

Don't pressure or threaten the applicant before the hearing

Don't try to pressure the applicant into dropping the case and not turning up on the hearing day. You may be breaching bail conditions or an interim order. It could also be used against you at the court hearing.

Going to court

It may take a long time

The court generally starts hearing cases at 10am. Get there about half an hour before. Your case may not be heard straight-away and you should arrange to be there for the whole day.

When you first arrive

Go to the counter and tell the court staff your name so they know you're there. They can then organise the order in which cases will be heard that day. If you're opposing the order, the case may be heard last. If you're consenting to the order, it will probably be dealt with quickly.

Wait for your turn

Once you've been to the counter, wait in the foyer for your name to be called. Don't go too far away – you need to be able to hear your name being called when the magistrate is ready for you. You may also be called back to the counter if there's anything the court staff need to check with you.

Help at court

Volunteers from Court Network are available at some courts to talk to you while you wait and explain the procedure to you (see back cover).

If you want to bring a friend, choose someone who understands that they are there to support you, not to intimidate the applicant.

Don't approach the applicant

Waiting for your case to start can be difficult. You should not approach the applicant at court as you can get into trouble if they feel threatened by this. Even if you're planning to agree to the Intervention Order, don't get into a discussion with them. It could lead to you having a dispute in the courthouse, which won't help your case.

**If you don't come to court,
a final order can still be made.**

What happens at the hearing

When your name is called, go into the courtroom and stand behind the table at the front, facing the magistrate. The magistrate or clerk will tell you what to do.

If you agree to the order being made

The magistrate will ask you if you consent to the order being made. If you want to consent to the order, but you disagree with the applicant's version of events in the complaint, tell the magistrate this. This is called consenting without admission.

If you want different terms in the order

Tell the magistrate if there are any conditions in the order that you will have trouble obeying and why. Suggest changes that will make it more workable.

If you oppose the order

The magistrate may ask you why you are opposing the order. You may decide to agree to the order being made, although you disagree with parts of the complaint form.

If you still want to oppose the order, the magistrate will hear the case. Sometimes they will put the case off to another day to allow more preparation. First, the applicant presents their case. Then you present your case. Both of you can ask each other questions, call witnesses and give the magistrate any written evidence.

When speaking to the magistrate or questioning the applicant or their witnesses, it is important to remain calm. Keep your questions relevant to the facts.

The magistrate's decision

Once the magistrate has heard what everyone has to say, he or she will decide whether to make an order and how long it will last. If an order is made, they will read out the terms and explain to you that you must not break the order. Ask the magistrate if there's anything you don't understand.

Wait for a copy of the order

You can leave the courtroom once the magistrate has made a decision. Wait in the foyer to get a copy of the order if one was made. It can take a while for it to be typed. Read it before you leave and ask the court staff if there's anything you don't understand.

The order will be registered on the police database and a copy sent to the applicant's local police station.

Defendant must get a copy of the order

If you didn't get a copy of the order at court, the police will deliver a copy to you.

Understanding the order

It is important to understand what the order says, so that you can obey it. (Breaking the order is a criminal offence.)

If you are in court when the magistrate makes the order, they can explain it to you. You can also ask the court staff to explain anything in the order you are unsure about.

If you weren't in court when the order was made, you can ring the court registrar and ask them to explain the terms of the order.

You can also get advice about the meaning of the order from a community legal centre or legal aid office.

No contact with the other person

'No contact' means no contact at all – in person, by phone, fax, letter or e-mail. It also means that the person with the Intervention Order shouldn't contact you.

Be aware of how your behaviour can be interpreted. It is no excuse to breach the order without meaning to. For example, even driving past the place where the applicant is living could be a breach if you have been ordered to stay 200 metres away from it.

If your children are covered by the order, then repeatedly watching them from a distance when they're in a park or in their school grounds could be seen as harassment.

Contact with children

If your children are included in the Intervention Order the same sorts of restrictions on contact apply. (You shouldn't even send presents in the mail.)

If the order only says no contact with the applicant, make sure that when you have contact with your children this doesn't involve seeing the applicant as well, and so breaking the order (unless the order contains an exception for the purpose of child contact).

Moving out

If you are living with the applicant when the order is made and the order says that you cannot be at or near where the applicant lives, it means that you have to move out immediately.

If you wish to then collect your belongings you should ask the police to be present. This protects the applicant and it protects you from any allegations that you broke the order while you were there. You will have to contact police to arrange a time to suit you both. Expect to give them two or three days' notice.

Once you have moved out, you will have to stay away, so think carefully about what you need to take with you. (It is not the police's job to settle arguments about who owns what.)

If you have to come back for things you have forgotten, you will be breaking the Intervention Order. Most orders are worded so that you can come to the house if you are accompanied by a police officer.

The court can order you to stay away even if you own the house or the lease is in your name. This does *not* mean that you are losing your property rights in the house, and it does not increase the applicant's property rights.

Getting the order changed

Either party can apply to the court for the order to be changed (varied) after it has been made. There are many reasons for this: the applicant may have moved house or the situation in relation to child contact may have changed.

Check with the court registrar about how to get the order changed. The magistrate won't vary the order if the applicant doesn't agree to the change, unless you have a good reason, such as your workplace is now within the area and you haven't breached the order.

Only the court can change or cancel the order. The applicant can't give you permission to ignore the order.

If the applicant approaches or contacts you with a view to a reconciliation, you will be in breach of the order if you start seeing the applicant without having the order changed by the court first.

Orders can operate interstate

If the applicant travels interstate they can have their Intervention Order registered with the courts there. This means that the police in that state must enforce the order and you can be charged if you break the order there.

Appeals

If you disagree with the magistrate's decision to make an Intervention Order or if you disagree with the terms of the order, you can appeal to the County Court.

You must do this as soon as possible. Speak to the registrar at the Magistrates' Court about how to appeal.

Get legal advice first.

When the order finishes

The restrictions on you are lifted unless the applicant applies for and is given another order. You will receive a court summons if another order is being applied for.

Breaking the order

Breaking an Intervention Order is a criminal offence

The police can arrest you and charge you with the breach. They can also charge you if you have committed another offence (for example, assault, property damage).

The penalties for a breach can be extremely heavy.

If you're found guilty you could get a gaol term of up to two years or a fine of up to \$24,000. (For a second offence you could be imprisoned for up to five years.) You will also have a criminal record.

Get legal advice

If you are charged with breach of an Intervention Order, you will need to decide:

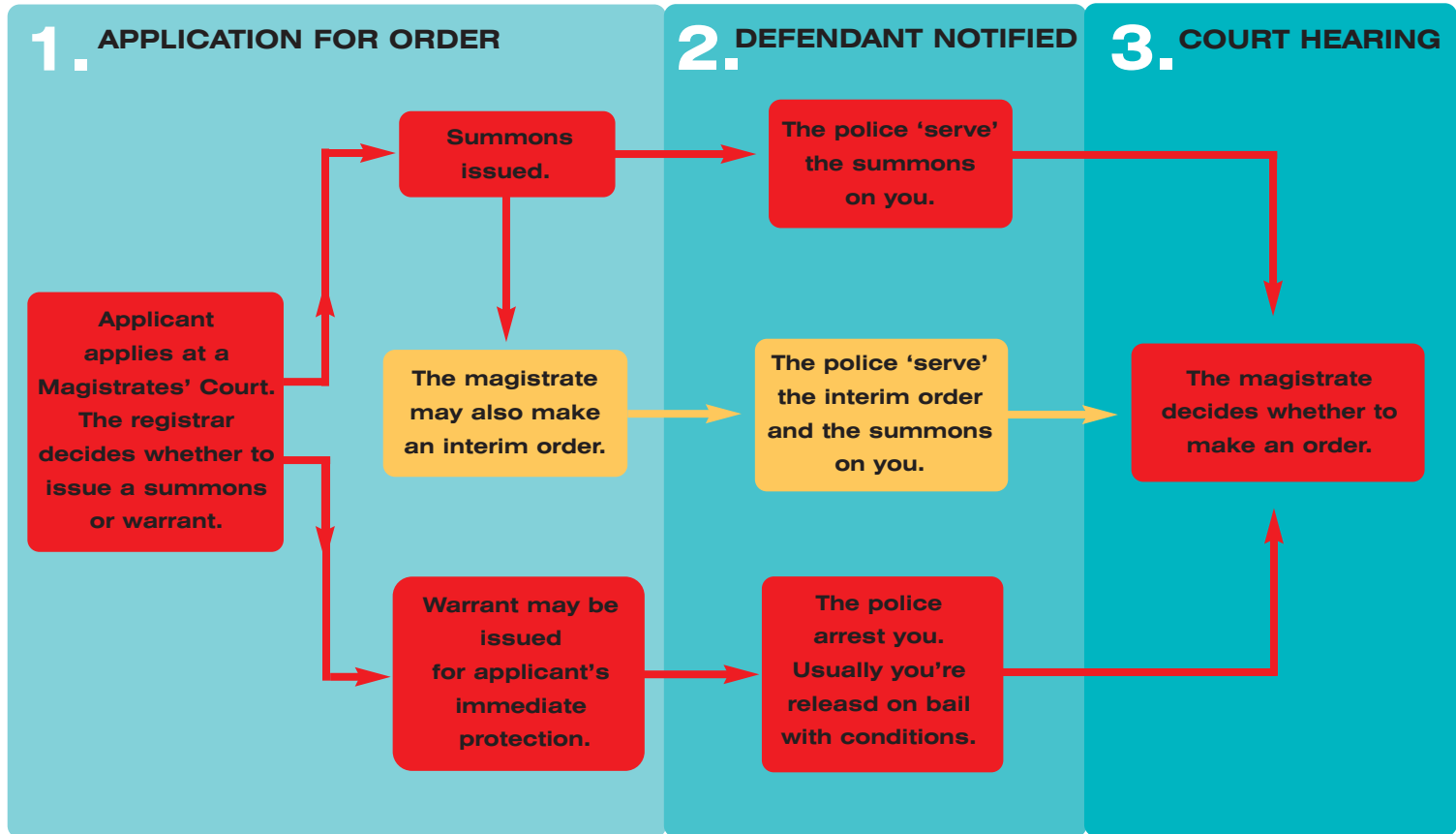
- whether to plead guilty or not guilty,
- whether to be represented in court.

Get legal advice well *before* the hearing date. It's desirable to be legally represented for a breach of an Intervention Order because the courts view it seriously.

If you decide to plead not guilty you should definitely be represented in court by a lawyer.

You may be eligible for legal aid. There will be a duty lawyer at court on the day if you haven't already seen a lawyer.

Guide to procedure



SERVICES YOU CAN USE

Support services

Men's Referral Service

Free and anonymous telephone counselling, information and referral service for men served with an Intervention Order

9428 2899

1800 065 973 (country callers)

Domestic Violence & Incest Resource Centre

9486 9866

9417 1255 (TTY)

Country callers can reverse the charges.

Legal help

Victoria Legal Aid

9269 0120

1800 677 402 (country callers)

Federation of Community Legal Centres

For referral to a community legal centre

9602 4949

Aboriginal Legal Service

9419 3888

Court help

Magistrates' Courts

For phone numbers see listing under Justice Department in the White Pages Telephone Book.

Court Network

Information and support before, during and after court

9603 7433

1800 681 614 (country callers)

Translating & Interpreting Service (24 hours)

131 450




Victoria Law Foundation

Produced and published by the Victoria Law Foundation and Victoria Legal Aid.
Written by Lynn Buchanan and Jennifer Lord. Designed by Richard Brownfield
© Victoria Law Foundation and Victoria Legal Aid
Reprint December 2002 ISBN 0-9586307-04

The material in this booklet is a general guide only. It is not intended to be and should not be relied on as a substitute for professional legal advice.