

Family Violence Orders

Key principles

- **Final orders** are discretionary and require findings that:
 - the affected person has reasonable grounds to fear family violence by the respondent; or
 - the respondent has used family violence against the affected person: *Family Violence Act 2016*, s 34
- **Interim orders** are discretionary and require findings that during the interim it is necessary to:
 - ensure the safety of affected persons from family violence; or
 - prevent substantial damage to an affected person's property: s 21
- **Standing** – Affected person, parent, guardian, litigation guardian or a police officer may apply to the Magistrates Court for a FVO: ss 16, 16A and 38(2)(i)
- **Procedures** for this act are to be as simple, quick and inexpensive as is consistent with achieving justice: s 12
- The **rules of evidence** need not apply: s 13A; and the Court may inform itself in any way it considers appropriate: s 65.
- Final orders are for 2 years, by default; but may be shorter; and may be longer in special or exceptional circumstances, but not if consent orders: s 35

Considerations

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| <ul style="list-style-type: none"> • Safety and protection of the affected persons and any affected child is the paramount consideration: s 36 • Parsimony – the court should impose the least restrictive conditions as possible that still achieve safety and the objects of the Act: s 37 • The objects of the Act (s 6): <ul style="list-style-type: none"> ○ To prevent and reduce family violence; ○ To ensure the safety and protection of people, including children, who fear, experience or witness family violence; and ○ To encourage perpetrators of family violence be accountable for their actions • The affected person's perception of the nature and seriousness of the respondent's alleged conduct | <ul style="list-style-type: none"> • The welfare of any child that is an affected person • The accommodation needs of the affected person and any child of the affected person or respondent • Any hardship that may be caused to the respondent or anyone else by the making of the order • Any previous family violence or personal violence by the respondent in relation to the affected person or anyone else • Any previous family violence order made in relation to the respondent • Any previous contravention of a family violence order by the respondent • The need to ensure that property is protected from damage • Anything else the court considers relevant |
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Additional Considerations

- If contemplating excluding a respondent from home or a child from care/school, need to consider:
 - as primary factors - the physical, emotional and psychological needs, and any disability, of the affected person and any affected child; and
 - as secondary factors – the accommodation options and needs of the affected person and any affected child, including the time required for them to find alternative accommodation: s 39
- If contemplating requiring a respondent to give or not take possession of personal property, need to consider:
 - the income, assets and liabilities of the parties

Inconsistency with Family Law orders

- If the Court makes a FVO, it may also suspend parties of Family Law orders and undertakings (and parenting plans), but only if there is fresh evidence; and having regard to whether:
 - spending time with both parents is in the best interests of the child; and if the best interests of the child are met, including by ensuring their safety; and
 - the family law orders, injunctions or arrangements do not expose people to family violence: *Family Law Act 1975*, s 68R

Non-publication etc

- Hearings should be in public, but need not be for interim orders or where a party is not present: ss 58 and 59
- However, no publication of identities: s 149; with some exceptions, including when Court order if:
 - in the public interests;
 - will promote compliance with the FVO; or
 - is necessary for the proper operation of the Act: s150
- Court may order hearing in private and or prohibiting publication of information (including to parties), if in the interests of safety, justice or the public; considerations – when necessary to:
 - protect the affected person;
 - protect morals, public order or national security in a democratic society;
 - because of the interest of the private lives of the parties require the privacy; or
 - to the extent privacy is strictly necessary, in special circumstances of the application, because publicity would otherwise prejudice the interests of justice: s 60

Extension of Final Orders

- Court must on application for an extension of a final order, extend the order unless satisfied that a protection order is no longer necessary to protect the protected person from family violence by the respondent: s 86. Onus of proof on respondent: *TS v DT* [2022] ACTSC 137 at [25]
- The Court may extend a final order on a temporary (interim) basis, to a stated date and time: s 84

Geographic Jurisdiction

- **Test:** Is there a real connection, even a remote or general connection, between a party or the risk of family violence on the one hand and the Territory on the other: *SX v NT* [2020] ACTMC 20 at [34]; For example, does a party spend time in the Territory and or is there a risk of family violence in the Territory?
- Act gives local effect to the National Recognition Scheme for domestic violence orders: s 124. Accordingly, nationally recognised orders operate in the Territory and Territory orders operate across Australia. Interstate orders may be amended locally, and vice versa: s 120