

Family Violence Protection Act 2008 and technology-facilitated stalking

The Family Violence Protection Act gives courts the power to make intervention orders that can protect those at risk of family violence. Technology-facilitated stalking can be a form of family violence and a court can make an Intervention Order (IO) to stop the person responsible.



Who can apply for a Family Violence Intervention Order?

A person can apply for a Family Violence Intervention Order if they have experienced family violence from a 'family member' and they are at risk of further violence from the same family member. Police may also apply for a Family Violence Intervention Order on a person's behalf.

Who is 'family member' for the purposes of applying for a Family Violence Intervention Order?

The Act defines a 'family member' as including:

- a current or former domestic partner
- someone with whom a person has had an 'intimate personal relationship' (may or may not include a sexual relationship)
- a relative by birth, marriage or adoption
- a person someone treats like a family member eg a carer or for other cultural reasons

If a person needs protection from someone other than a family member who is engaging in technology-facilitated stalking, please refer to SmartSafe Easy guide 2 - Personal Safety Intervention Order Act.

Can technology-facilitated stalking be a form of family violence?

Technology-facilitated stalking can be a form of family violence if it is physically, sexually, emotionally, psychologically or economically abusive towards a family member. Family violence includes behaviour that is threatening, coercive or meant to control or dominate a family member in way that makes them fear for their own safety or wellbeing or the safety and wellbeing of another person.

Examples of technology-facilitated stalking that can amount to family violence against a family member, such as a current or ex partner, include:

- making threats or harassing someone via text, email or social media
- using technology to put someone under surveillance by, for example, hacking into their email or social media account
- publishing content or making posts online to humiliate someone
- threatening to circulate or publish sexually explicit photographs of someone to force them to do (or not do) something

How can the Family Violence Protection Act protect a person from technology-facilitated stalking?

If a court finds that a person has experienced family violence and they are at risk of further family violence, it can make a Family Violence Intervention Order against the person responsible for the violence. An Order can include a number of different conditions, such as:

- keeping a certain distance away from the person and/or from where the person lives, works or goes to school
- not contacting the person by any means, including by phone, text, email or social media
- not committing family violence against a person, which can include technology-facilitated stalking if it amounts to family violence (as outlined above)

What evidence of technology-facilitated stalking will courts accept as evidence of family violence?

Courts must be satisfied it is more likely than not family violence occurred before they can make a Family Violence Intervention Order.

The courts can accept evidence in a number of formats, including:

- print-outs of text messages, emails or screen grabs of web pages or online social media posts
- photographs eg of injuries
- video footage
- audio recordings
- witness testimony (ie a person telling a court what they experienced, saw or heard)

A court may exclude certain evidence if it finds there are important reasons (eg privacy) that outweigh the need to use that evidence in court.

Can a person get in trouble for recording video or audio as proof of family violence?

A person should be aware there is a risk courts may view the making or sharing of audio or video recordings of a private activity or a private conversation taken without a person's consent as stalking or a form of family violence in and of itself.

Recording or communicating video or audio records of a private conversation or private activity may also amount to an offence under the Surveillance Devices Act in certain circumstances. A person should seek legal advice before they make or share a video or audio recording of a private activity without the consent of all persons recorded.

What if a person breaks the conditions of an intervention order by engaging in technology-facilitated stalking?

If a Family Violence Intervention Order has already been made against a person and they then engage in technology-facilitated stalking of the protected person, they may be breaching a condition of the Order. For example, it may be a breach of an Order if there is a condition to not contact the protected person by any means or engage in family violence. Breaking a condition of an intervention order is a criminal offence and a person can be investigated by police and charged in court for any breach.

Can police get involved if a family member engages in technology-facilitated stalking?

Some forms of technology-facilitated stalking can amount to a criminal offence under state and federal laws. For more information, see the *SmartSafe Easy guide 3*. You should contact police if you believe a crime has been committed or you are at immediate risk and you want police to investigate.

How can a person apply for a Family Violence Intervention Order?

A person can apply for a Family Violence Intervention Order at their local Magistrates Court. For more information on how to contact your local court, go to www.magistratescourt.vic.gov.au