

Preparing For Your Family Violence Order Final Hearing

Who Should Use This Factsheet?

Use this factsheet if you are representing yourself at your Family Violence Order final hearing. There are two other resources that might be helpful to you: *'Family Violence Order Final Hearing – How to issue a subpoena'* and *'Family Violence Order Final Hearing – Checklist'*.

Key Terms

- Applicant – the person applying for a court order
- Respondent – the person named by an applicant as the other party
- Magistrate – another name for the Judge that will hear and decide your case at the final hearing
- Parties – another name for both the applicant and the respondent

What Happens Before The Final Hearing?

There are a number of things that happen before the final hearing takes place.

1. The first step is for the affected person to make an application for a Family Violence Order. After the affected person makes this application they become known as 'the applicant'.

However, the affected person is not the only person who can make an application for a Family Violence Order. A police officer or the parent/ guardian of a child can also apply on behalf of the affected person. There are other circumstances when another person can apply for a Family Violence Order on behalf of someone else. For example, on behalf of someone with a legal disability. This can be very complicated.

2. If the applicant needs emergency protection, an interim hearing will be held at the Magistrates Court. The Registrar or Magistrate will determine if an interim order is needed to make sure the applicant is safe or prevent substantial damage to property. An interim order is a temporary order and will usually only be made in urgent cases.

If the applicant does not get an interim order, the application for a final order still goes ahead. An applicant can also apply for a final order without an interim order if they do not need immediate protection.

3. Once the application has been filed with the Magistrates Court, the police will serve the respondent with a copy of the application, and Interim Family Violence Order if one has been made. After the respondent has been served, the interim family violence order is in effect.
4. A 'preliminary conference' will then take place after the application has been filed or after the interim hearing. The 'preliminary conference' is sometimes called a 'return conference'. The point of a preliminary conference is to see if the applicant and the respondent can come to an agreement and resolve the matter.

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At the preliminary conference the applicant and the respondent are not in the same room. Instead, the applicant and the respondent can communicate through a Deputy Registrar of the court who walks back and forth between the rooms.

At a preliminary conference any of the following things can happen:

- a) The applicant can decide to discontinue the application.
- b) The applicant and respondent can agree to final orders being made by consent 'without admissions'. 'Without admissions' means that the respondent agrees to the order being in place but does not admit that they have done anything the applicant says they have. This means that the applicant and the respondent do not need to go to a final hearing and present evidence.
- c) The respondent can agree to make undertakings. This means that the respondent promises to the court to follow the conditions the applicant is asking for. For example, the respondent agrees not to contact the applicant.

For undertakings to be accepted by the Court, both the applicant and the respondent must acknowledge in writing:

- That they understand that a breach of an undertaking is not an offence;
- Is not legally enforceable;
- Does not stop the court from making further orders; and
- Evidence of a breach of undertakings can be used as evidence later in the proceeding.

- d) The matter can go to a final hearing, if there is no agreement between the parties. The next court date will be for the Pre-Hearing Mention.
5. The 'Pre-Hearing Mention' happens in the Registrar's Protection Order List. The point of this court date is to see if the case can be settled without going to a hearing. This could mean:
- a) Another conference happening on the day;
 - b) Referral to a mediation service;
 - c) Making orders by consent without admissions, if there is consent; or
 - d) If the other party doesn't show up and has been served, making a final decision about the case.

If there is no agreement, then the court will manage the case to make sure everyone is ready for a hearing in the future. This could mean:

- a) Asking how many witnesses each party will have;
- b) Asking how long the hearing will take (for example, 2 hours? A day?)
- c) Making directions that tell the parties when to do certain things; and/or
- d) Finding a hearing date for the case to be heard by a Magistrate.

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How Should I Behave In Court?

Remember to:

- Dress in neat, clean attire with appropriate closed-toe shoes.
- Avoid wearing shorts, tracksuits, sunglasses or hats
- Make sure you bring all of the relevant paperwork
- Arrive at least 15 minutes before the hearing time
- Be patient. It may take a long time
- Avoid unnecessary talking when in the courtroom
- Stand when the Magistrate talks to you and when you talk to the Magistrate
- Call the Magistrate 'Your Honour'
- If the Magistrate is in the courtroom, you need to bow when you enter or leave the courtroom.

What Is Family Violence?

Family violence is defined as:

- **Physical violence or abuse**

This can include physical violence, damaging property, harming or threatening to harm a child or animal, stalking, choking or threatening to harm the person.

- **Sexual violence or abuse**

- **Emotional or psychological abuse**

This means behaviour that torments, intimidates or harasses the person.

For example, stopping the person from seeing family members, threatening to share personal information, stopping the person from engaging in cultural or spiritual practices, repeated racist comments or threatening to self-harm in order to intimidate the person.

- **Economic abuse**

This means behaviour that is coercive, deceptive or that unreasonably controls the persons without their consent. This includes taking away the persons financial independence or refusing to continue to give financial support if the person is wholly or mostly dependent on that support to meet living expenses.

For example, stopping the person from getting a job, forcing the person to sign a legal document like a loan or stopping the person from accessing the money they need for living expenses.

- **Threatening behaviour**

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- **Coercion or any other kind of behaviour that controls or dominates** the person and causes them to **feel fear for their own safety or wellbeing** or that of another person
- Behaviour that causes **a child to be exposed** to any of the behaviour above, or the effects of that behaviour.

For example, a child overhearing a threat being made in the next room, seeing an injured family member or other people comfort a family member who has been abused.

The definition of 'family violence' can be found in s 8 of the *Family Violence Act 2016* (ACT).

What Does The Applicant Need To Prove During The Hearing?

The Magistrate needs to be satisfied that on the 'balance of probabilities' the applicant has reasonable grounds to fear family violence by the respondent in the future or that the respondent has used family violence against the applicant in the past.

This means that the applicant needs to prove that it is more likely than not that there is a threat of family violence or that family violence has happened. The applicant does not need to prove their case 'beyond reasonable doubt'.

If you are the respondent it is in your best interests to provide evidence to help support your version of events.

What Will The Court Look At?

The Magistrate may make a Family Violence Order if they are satisfied that the applicant has a reasonable fear of family violence or that the respondent has used family violence against the applicant.

In deciding whether to make a Family Violence Order, the Magistrate must consider:

- The applicant's perception of the alleged behaviour including the nature of the behaviour and its seriousness
- The welfare of any child that is affected by the alleged family violence
- Hardship caused to the respondent by making a Family Violence Order
- Any previous family violence or personal violence by the respondent against the applicant or any other person
- Any previous family violence order made in relation to the respondent
- Any previous contraventions of Family Violence Orders by the respondent
- The need to protect property from damage
- The Magistrate can consider anything else they think is relevant.

What the court must consider can be found in s 14 of the *Family Violence Act 2016* (ACT).

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The Magistrate must also consider whether multiple minor incidents, when taken together, form a pattern of behavior which the applicant needs to be protected from.

How Can I Present My Case?

In court it may come down to 'applicant said/respondent said' and the Magistrate will have to decide whose version of the events is more likely. You should find and present evidence that supports your version of events.

There are a few ways you can do this. You can get evidence through a subpoena. You can also present evidence in the form of an affidavit and by calling witnesses.

The main point of the hearing is to tell your story and give the court evidence that can support your story. Think about what evidence might be used against you.

Subpoenas:

Subpoenas can be used to make an organisation or person provide documents to the court, if you think they have useful information to support your case.

A subpoena is a document that says you must give certain documents to the court or come to court to give evidence, at the request of one of the parties.

For example, a police report or hospital records could be subpoenaed to support your version of an event. Be careful as these documents might reveal information that does not help your case.

See the resource '*Family Violence Order Final Hearing- how to issue a subpoena*' for how to do this.

Affidavit

An affidavit is a written statement prepared by a party or witness. An affidavit is a statement of relevant facts and it should support your case. It is important to know that an affidavit will not be given much weight by the court unless the person who made the affidavit can come to your final hearing and answer questions about it. In the ACT, most evidence is given in person and verbally in court by a witness rather than in an affidavit. This is not the same everywhere in Australia.

You can write an affidavit by yourself, but it is not always easy. If you need help writing an affidavit, you should get legal advice. The affidavit form is at the end of this resource.

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Legal Aid ACT

Domestic Violence and Personal Protection
Order Unit

www.legalaidact.org.au/what-we-do/dv-unit

Phone: **1300 654 314** or **(02) 6207 1874**

Witnesses

If someone has witnessed something relevant to the Family Violence Order, you should ask them to be a witness for you to support your version of events.

A witness can also provide evidence through an affidavit. They will still need to come to court.

If a witness refuses to come to court, you can issue a subpoena to make them come to court.

If a witness comes to court, both the applicant and the respondent will be able to ask them questions.

Examination-in-chief and Cross-examination

During the court hearing, you may be able to examine the other party or a witness. This means you can ask the other party or a witness questions. If they are your witness, you are able to ask the questions first. This is called 'examination-in-chief'.

You should ask open-ended questions. For example, "what did you see?" or "how did you know it was the respondent?". If you have a lawyer, your lawyer will do this on your behalf.

If the witness is for the other party, they will ask their questions first. You will be able to ask questions after. This is called 'cross-examination'. During cross-examination you are able to challenge the evidence provided by the other party.

However, if you are the respondent and are representing yourself, you will not be allowed to ask the applicant questions directly. Instead you will need to write your questions down on a piece of paper and give it to the Magistrate. Usually another Court officer will then ask the questions you have written down.

During cross-examination, you should ask closed questions. For example, 'You said you saw me hit the applicant, but you were standing 100 meters away, weren't you?' or 'So you can't be certain that's what you saw, can you?'

You can write some of these questions before the hearing if you can guess what the main issues or important incidents are.

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What Happens On The Day?

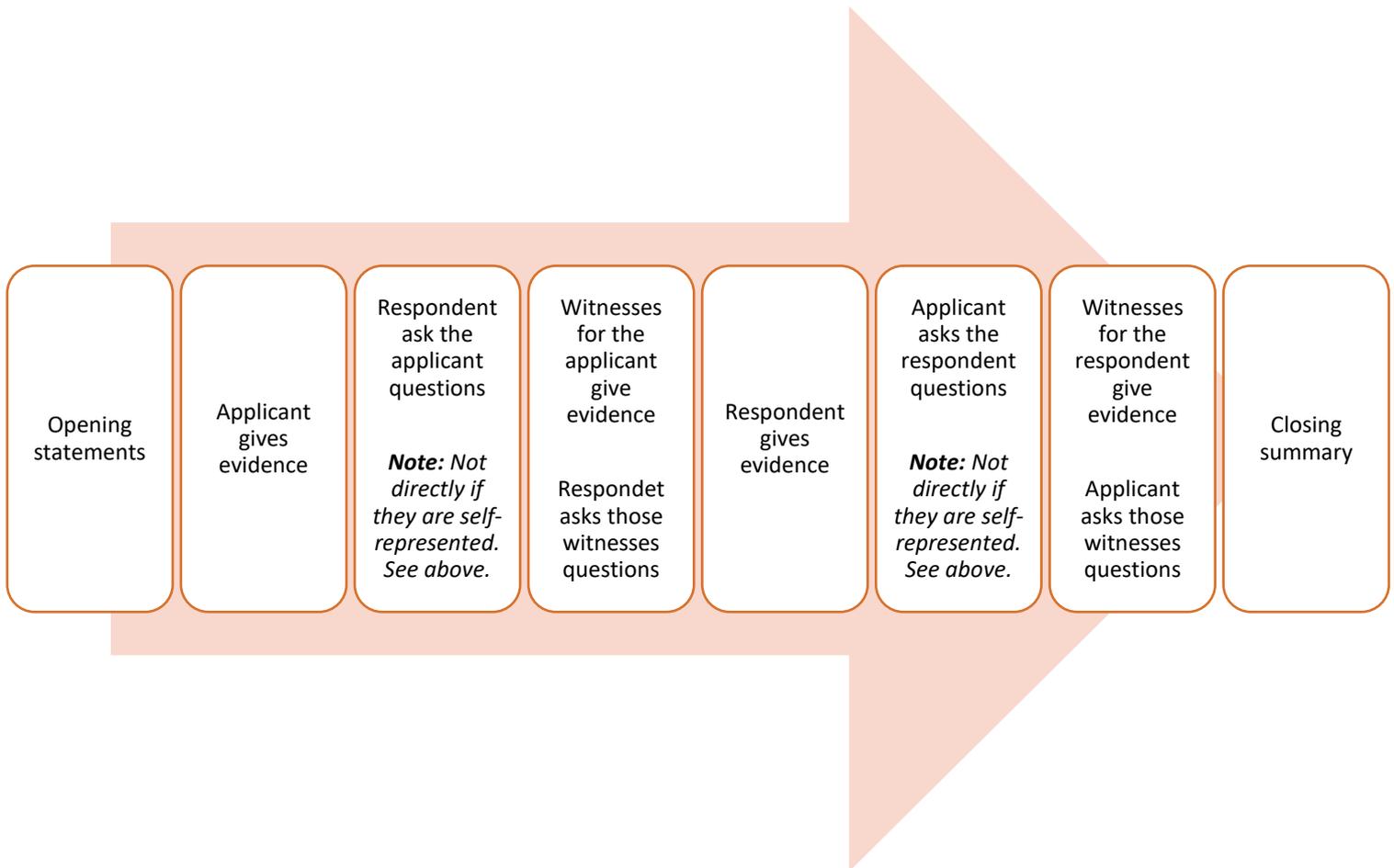
The first thing to do when you arrive at court is to tell the Magistrate's associate that you are representing yourself.

The order of a final hearing will usually go like this:

1. The applicant makes an opening statement explaining what the case is about, what they want and what evidence they have. It is not about arguing your case but instead outlining what you will do during the hearing.
2. The respondent makes their opening statement and explains what evidence they have. Again this is not about arguing your case.
3. The applicant will then enter the witness stand and give their evidence.
4. The respondent will then cross-examine the applicant. If the respondent is self-represented, the respondent cannot ask the applicant questions directly. A Deputy Registrar who works for the court will ask the questions. Write the questions on a piece of paper and pass it to the Deputy Registrar.
5. The respondent may then choose to enter the witness stand. The respondent is not required to give evidence so they do not have to enter the witness stand if they do not want to.
6. The applicant can cross-examine the respondent, if they give evidence.
7. The applicant will give a final 'submission'. This will be a summary of all of their evidence and what they want the Magistrate to decide.
8. The respondent will do the same.

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9. The Magistrate will then make a decision. In making the decision, the Magistrate will make a finding of fact about what has or has not happened.



What Happens After The Hearing?

If the Magistrate decides not to make a Family Violence Order, then that is the end of the court case.

If the Magistrate decides to make a Family Violence Order, then there could be many different things that happen. The Magistrate will decide what conditions to impose in the Family Violence Order depending on the situation.

For example, the Magistrate may order that the applicant and the respondent do not see each other, prohibit the respondent from contacting the applicant, or prohibit the respondent from going to places where the applicant would normally visit.

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A final Family Violence Order can last for up to two years. Before the order expires, the applicant can apply to have the Family Violence Order extended.

What about Costs?

Each party is responsible for their own costs. But the Court can make a 'cost order'. For example, a cost order can make one party to the proceeding pay a certain amount to the other party. This is rare in Family Violence Order and Personal Protection Order cases.

A cost order can be made against the applicant if the application for a Family Violence Order was 'vexatious, frivolous or in bad faith'. A cost order can be made against the respondent if the court thinks it is appropriate to make one.

Where Can I Get Legal Help?

Legal Aid ACT

For assistance phone our free Legal Aid Helpline.

Phone: 1300 654 314

Monday to Thursday: 8.30am to 7pm

Friday: 8.30am to 4.00pm

Address: 2 Allsop Street Canberra City

Website: www.legalaidACT.org.au

Legal Aid ACT

Domestic Violence and Personal Protection
Order Unit

www.legalaidact.org.au/what-we-do/dv-unit

Phone: **1300 654 314** or **(02) 6207 1874**

Women's Legal Centre

Women's Legal Centre is a Community Legal Centre for women in Canberra.

Phone (From Canberra): 02 6257 449

Phone (Outside Canberra): 1800 634 669

Monday to Friday 9.30am to 12.00pm

Website: <http://womenslegalact.org/>

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Other Resources

ACT Policing

Phone: **000** in an emergency or life threatening situation.

ACT Domestic Violence Crisis Service

DVCS is an inclusive service working with children, young people and adults who experience violence and/or controlling behaviours in their relationships.

Phone: 6280 0900 24/7 Crisis Line

Website: www.dvcs.org.au

Canberra Rape Crisis Centre (CRCC)

CRCC is available for any woman, man, young person or child who has experienced sexual violence in any of its forms, recently or historically. CRCC also offer support for family and friends who are supporting a victim/survivor of sexual violence.

Phone: 6247 2525, 7am to 11pm

Website: www.crcc.org.au

Magistrates Court

Address: 4 Knowles Place Canberra

Civil: (02) 6205 3649

Criminal: (02) 6205 4902

National Sexual Assault, Domestic & Family Violence Counselling Service

Professional counselling and support 24/7

Phone: 1800RESPECT (1800 737 732)

Website: <https://www.1800respect.org.au/>

Translating and Interpreting Service

Phone: 131 450, 24 hours / 7 days a week

Relevant Legislation

Family Violence Act 2016 (ACT)

<https://www.legislation.gov.au/Details/C2017C00385>

Form 6.11 Affidavit—general

Court Procedures Rules 2006

(see r 6710 (Affidavit—form))

In the *[Supreme/Magistrates] Court of the Australian Capital Territory

No FVO of (*year*)

(*name*)
Applicant

(*name*)
Respondent

On (*date*), I (*Full name of person making affidavit*) of (*home or business address*), *[say on oath/solemnly affirm]—

1. I am *etc.*
2. *etc*

Filed for the *[applicant/respondent/other (specify)] by: (name)

Address:

Phone number:

Email:

At the end of the body of the affidavit:

**[Sworn/Affirmed] by (full name):*

(signature of person making affidavit)

at (place) in the presence of:

(signature of person before whom affidavit is made)

(Full name of person before whom affidavit is made) of (address)

**[Justice of the Peace/Barrister/Solicitor/(other)]*

Note If the affidavit extends over more than 1 page, the person making the affidavit and the person taking the affidavit must sign or initial each page of the affidavit (see r 6715 (1) (Affidavit—taking of)).

**omit if, or whichever is, inapplicable*

