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**Magistrates' Court
Victoria**

Chief Magistrate's Chambers
Melbourne Magistrates' Court
233 William Street
Melbourne, Vic 3000

15 October 2012

Judge Coate, State Coroner
Coroners Court of Victoria
Level 11, 22 Exhibition Street
Melbourne VIC 3000

GPO Box 882G
Melbourne, Vic 3001
(Ausdoc 350080)

Sent by email: cpuresponses@coronerscourt.vic.gov.au

Dear Judge Coate

Court Reference 873/06, 874/06: Inquest into the deaths of Mr and Mrs Perera

I refer to your letter dated 23 July 2012, enclosing a copy of the inquest finding into the deaths of Mr and Mrs Perera.

In accordance with section 72(2) and 72(4) of the *Coroners Act 2008* (Vic), I set out the Magistrates' Court of Victoria's response to the recommendations outlined on page 22 of the finding, namely:

1. I recommend that the Victoria Police and Magistrates' Court of Victoria Family Violence Committee review the written format of family violence intervention orders, so as to improve the readability of these documents for all those required to understand and adhere to them, including members of Victoria Police, affected family members and respondents.

Changes to documentation

The Victoria Police and Magistrates' Court of Victoria Family Violence Committee are currently working together in scoping what improvements can be made to the readability of family violence intervention orders. The Children's Court of Victoria is also represented on this Committee.

I understand Victoria Police are reviewing the information contained on their intervention order service cover sheets as well as the training provided to members. The Court is seeking advice from the Courts Technology Group in respect to changes to the layout of intervention order information that prints from Courtlink. We will notify you once these changes have been progressed.

Explanations of orders

I note that the *Family Violence Protection Act 2008* requires magistrates to provide affected family members and respondents present in court with a clear oral explanation of the purpose, terms and effect of the order (s57 of the FVPA for interim orders and s96 of the FVPA for final orders). The parties are also provided with a written explanation of the order, whether or not they are present in court when the order is made.

The written explanations print from Courtlink when an interim or final intervention order is made and are included in all requests for service to Victoria Police. The requirement for there to be a written and oral explanation of all orders came into effect after the date of the Perera incident.

This change has assisted in ensuring that affected family members and respondents understand the terms of an order and the consequences for breaching it. Copies of the written explanations are **attached** to this letter.

Professional development

In terms of ongoing review and professional development, the Court has developed a comprehensive and structured family violence professional development strategy for magistrates, which will commence in 2013. Part of the professional development strategy will include court craft techniques for effectively explaining orders and ensuring that affected family members and respondents clearly understand the terms of the order and the seriousness of the matter. The Court will also continue to review the written explanations for readability and accuracy.

Impact of demand

In terms of the Court's legislative requirement to give clear oral explanations of orders, I note the significant increase within the intervention order jurisdiction puts pressure on the time magistrates have in court to deal with each of these matters. In order to ensure parties have a clear understanding and appreciation of orders, court lists need to be a manageable size. The Court is continuing to work with the Department of Justice to identify long-term strategies to address this demand, including identifying the resources required to ensure the Court continues to deliver a high level of service to adults and children who have experienced family violence.

If you require any further information, please contact Mereana White, Manager, Family Violence Programs and Initiatives Unit on 9032 0955 or mereana.white@magistratescourt.vic.gov.au.

Yours sincerely,



Jelena Popovic

Acting Chief Magistrate, Magistrates' Court of Victoria

CC: Deputy Chief Magistrate Felicity Broughton, MCV
Magistrate Kate Hawkins, MCV
Rudy Monteleone, Acting CEO, MCV
Detective Inspector Kerryn Hynam, Victoria Police
Mereana White, MCV

EXPLANATION OF INTERIM FAMILY VIOLENCE INTERVENTION ORDER
Family Violence Protection Act 2008 Section 57

What is an interim order?

1. An interim order is a temporary family violence intervention order made by the Magistrates' Court to protect a person from family violence until the court can decide whether to make a final order. An interim order prevents a respondent from behaving in certain ways, or requires the respondent to do certain things, stated on the order.
2. An interim order is a civil order, and making an interim order does not necessarily mean that an offence has been committed. However, contravention of an interim order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units** or both.

Who are the parties to an interim order?

3. The "affected family member" is the person who needed the protection of the order. After an interim order is made, an "affected family member" is called a "protected person".
4. The applicant is the person who applies for the family violence intervention order. The applicant may be the affected family member, or the applicant could be another person, such as a police officer. Section 45 of the **Family Violence Protection Act 2008** lists the people who can apply for a family violence intervention order.
5. The "respondent" is the person against whom an application for a family violence intervention order or an order has been made.
6. The respondent, applicant and the adult affected family member(s) will be given copies of the interim order. This is called being "served" with the order.

What happens if the respondent disobeys an interim family violence intervention order?

7. The respondent must obey all of the conditions listed in the order at all times.
8. If the respondent disobeys or "breaches" a condition in the order this means the respondent had "contravened" the order. A contravention of an interim order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units** or both.

What if the protected person gives permission to contravene the order?

9. A person cannot permit another person to contravene an order of the Court. This means that, even if the protected person allows a respondent to disobey the order, the respondent would still commit an offence.
10. It is not a defence to claim that the protected person consented to the behaviour that contravened an interim order.

How long does an interim order last?

11. An interim order usually lasts until one of the following occurs:
 - (a) the court makes a final order AND it is served on the respondent; OR
 - (b) the court makes a final order; OR
 - (c) the court refuses to make a final order; OR
 - (c) the court revokes the interim order; OR
 - (d) the application for the family violence intervention order is withdrawn

When does the court make a decision about the final order?

12. The respondent, protected person and any other parties (for example, the police) will be notified of the next court date when served with the application for the family violence intervention order and the interim order.
13. The court may make a final order on the next court date if:
 - (a) the parties agree to a final order being made by the court; OR
 - (b) the parties do not oppose the making of a final order; OR
 - (c) the respondent does not attend court and the court is satisfied that the respondent has been served with a copy of the application for a family violence intervention order and the court is satisfied the evidence supports the making of a final order.
14. The conditions of the final order may be the same or different to those included in the interim order, family violence safety notice or application for a family violence intervention order.
15. The final order may protect children who have been subjected to family violence by the respondent even if those children are not referred to in a family violence safety notice or an application for a family violence intervention order.
16. If either party, or both parties, oppose the court making a final order, the court will fix a new court date ("a contested hearing date") and the interim order will continue until that date. On this later date the parties and all their witnesses can come to court to give their evidence to the magistrate.
17. Special rules apply if the respondent wants to ask questions or challenge the evidence of protected witnesses, such as the affected family member or a child (called "cross-examination"). Section 70 of the Act lists other people who are protected witnesses. To cross examine a protected witness, the respondent will need to have a lawyer at court. It is important to get legal advice about this. See the end of this notice for information about how to arrange legal advice.
18. After the magistrate has heard relevant evidence from the parties, he or she will decide whether to make a final order and if so, what conditions should be included in the final order and how long the final order will last.

Can the interim order be varied?

19. Yes. The protected person, respondent or applicant, for example, can apply to have the interim order changed. Section 108 of the Act lists the people who can apply to have the interim order changed.
20. If the respondent wants the interim order changed, he or she cannot apply without the leave of the court. The magistrate must be satisfied there has been a change in circumstances since the interim intervention order was made and that the change may justify a change to the interim order before granting leave.

What if there is a Family Law Act 1975 order?

21. If there is a Family Law Act 1975 order in force, the magistrate who made the interim order may have changed or suspended the Family Law Act order if it was inconsistent with the interim order. The magistrate may have also revived the Family Law Act order. The purpose of the change, suspension or revival of the Family Law Act order is to prevent the respondent from committing family violence against a protected person (including preventing a child hearing or witnessing violence).
22. If the magistrate has made an interim order that affects a Family Law Act order, that order will continue until the return date of the interim order or for 21 days, whichever is the sooner.
23. Speak to a lawyer about how any Family Law Act order and your interim order interact.

What if there is an order made under the Children Youth and Families Act 2005?

24. The interim order applies despite any child protection order made by the Children's Court. Speak to a lawyer about how any child protection order and your interim order interact.

Contacts

Legal Advice

Victoria Legal Aid provides free legal advice and referrals.

Telephone: 9269 0120

Country callers: 1800 677 402

Website: www.legalaid.vic.gov.au

Federation of Community Legal Centres may have a centre close to you that can provide advice.

Telephone: 9652 1500 (for the centre closest to you)

Website: www.communitylaw.org.au

Women's Legal Service Victoria provides free legal advice by telephone concerning family violence and family law.

Telephone: 9642 0877 or 1800 133 302

Website: www.communitylaw.org.au/clc_women

Key Support Services

The **Women's Domestic Violence Crisis Service** provides crisis support and referral to women experiencing family violence.

Telephone: 9322 3555 or 1800 015 188

Website: www.wdvcs.org.au

Immigrant Women's Domestic Violence Service provides support for immigrant women who are victims of family violence.

Telephone: 8413 6800 or 1800 755 988

Website: www.intouch.asn.au

Elizabeth Hoffman House Aboriginal Women's Family Violence Services provides crisis accommodation and support for Aboriginal women and spouses of Aboriginal men.

Telephone: 9482 5744 or 1800 796 112

Website: www.ehhaws.org.au

The following support services are available to help men who use violence toward their families.

Men's Referral Service

The Men's Referral Service is a statewide service which provides free and independent advice about what men can do. This anonymous and confidential service can provide suggestions about where to go for more assistance.

Telephone: 9428 2899

Country callers: 1800 065 973

Website: www.mrs.org.au

Salvation Army Crisis Service

The Crisis Service is a statewide service available by telephone for people in need of support. The service provides information, advocacy, referral for accommodation, material aids and links to counselling and other support services.

Telephone: 1300 363 622

Website: www.salvationarmy.org.au

Local courts and police may have other referral information for family violence support services in your area.

**** NOTE:** The value of a penalty unit for the financial year commencing 1 July 2011 is \$122.14. The value of a penalty unit for future financial years is to be fixed by the Treasurer.

EXPLANATION OF FINAL FAMILY VIOLENCE INTERVENTION ORDER

Family Violence Protection Act 2008 Section 96

What is a final family violence intervention order?

1. A final family violence intervention order is an order made by the Magistrates' Court to protect a person from family violence. A final order prevents a respondent from behaving in certain ways or requires the respondent to do certain things as stated in the order.
2. A final intervention order is a civil order and making a final order does not necessarily mean an offence has been committed. However, contravention of an intervention order is an offence punishable by 2 years imprisonment or a fine of up to 240 penalty units ** or both.

Who are the parties to a final family violence intervention order?

3. The "protected person" is the person who needs the protection of the order. After a final intervention order is made, a person called an "affected family member" in an application or an interim order is called a "protected person".
4. The "applicant" is the person who applies for the family violence intervention order. The applicant may be the protected person or the applicant could be another person, such as a police officer. Section 45 of the Family Violence Protection Act 2008 lists the people who can apply for a family violence intervention order.
5. The "respondent" is the person against whom an application for a family violence intervention order or an intervention order has been made.
6. The respondent, applicant and the adult protected person(s) will be given copies of the final intervention order. This is called being "served" with the order.

What happens if the respondent disobeys a family violence intervention order?

7. The respondent must obey all of the conditions listed in the order at all times.
8. If the respondent disobeys or "breaches" a condition in the order this means the respondent has contravened the order. A contravention of an intervention order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

What if the protected person gives permission to contravene the order?

9. A person cannot permit another person to contravene an order of the Court. This means that, even if the protected person allows a respondent to disobey the order, the respondent would still commit an offence.
10. It is not a defence that the protected person consented to the behaviour that contravened the intervention order.

How long does a final order last?

11. A final order lasts for the period the court specifies in the order. If the order says it will last "until further order", it lasts until it is revoked by the court or set aside on appeal.
12. The court can extend a final order but this requires a further application to the court. The magistrate may order the extension if he/she is satisfied the respondent is likely to commit family violence against the protected person.

Can a final family violence intervention order be varied?

13. Yes. The applicant, protected person or respondent, for example, can apply to have the final order changed. Section 108 of the Act lists the people who can apply to have a final order changed. Section 108 of the Act lists the people who can apply to have a final order changed.
14. If the respondent wants the final order changed, he or she cannot apply without the leave of the court. The magistrate must be satisfied there has been a change in circumstances since the final order was made and that the change may justify a change to the final order before granting leave.

What if there is a Family Law Act 1975 order?

15. If there is a relevant Family Law Act order in force, the magistrate who made the final family violence intervention order may have discharged, suspended, or varied the Family Law Act order. The magistrate may also have revived a Family Law Act order. The purpose of the discharge, suspension, variation or revival of the order is to prevent the respondent from committing family violence against a protected person (including preventing a child hearing or witnessing violence).

What if there is an order made under the Children, Youth and Families Act 2005?

16. The final family violence intervention order applies despite any child protection order made by the Children's Court.

What if the family violence intervention order includes a condition requiring children's arrangements to be in writing?

17. The final family violence intervention order may include a condition requiring children's arrangements between the protected person and the respondent to be in writing. Children's arrangements are arrangements about a child living with, spending time with or communicating with the respondent. They also include arrangements for the handover of a child for those purposes. The order may also specify how these arrangements are to be negotiated to maximise the safety of the protected person.

What if the order prohibits the respondent from living with, spending time with or communicating with a child?

18. The court may include a condition in a final family violence intervention order preventing a respondent from living with, spending time with or communicating with a child if it decides that it may jeopardise the safety of a child or a protected person.

Speak to a lawyer

19. Speak to a lawyer about the interaction between a Family Law Act order or a Children's Court order and a final family violence intervention order. A lawyer may also be able to assist you to sort out children's arrangements after an intervention order is made.

Firearms and weapons

20. A final family violence intervention order may include a condition cancelling the respondent's firearms authority, revoking the respondent's weapons approval or revoking the application of a weapons exemption to the respondent.
21. A respondent cannot appeal against the cancellation of a firearms authority and cannot make an application under the Firearms Act 1996 to be deemed not to be a prohibited person.

Contacts

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