

## Introduction

This publication presents statistics on complaints for an intervention order finalised in the Magistrates' and Children's Courts of Victoria for the five years from 2002/03 – 2006/07. Chapter 1 presents statistics on all original applications for an intervention order brought under the *Crimes (Family Violence) Act 1987* and *Crimes Act 1958*. The focus of chapter 2 is on original applications for an intervention order relating to family members and sought pursuant to the *Crimes (Family Violence) Act 1987*. Chapter 3 focuses on original applications for an intervention order relating to non family members and sought pursuant to the *Crimes Act 1958*.

Chapters 4, 5 and 6 present statistics on secondary applications to extend, vary or revoke an intervention order. Chapter 7 focuses on criminal charges for breach of an intervention order (s.22 of the *Crimes (Family Violence) Act 1987*) finalised in the Magistrates' Court of Victoria. Chapter 8 presents regional statistics relating to complaints for an intervention order.

The data in this report builds upon previously published reports produced by Court Services, Department of Justice and titled:

- Statistics of the Magistrates' and Children's Court, Intervention Order Statistics, 1994/95 – 2000/01
- Statistics of the Magistrates' and Children's Court, Intervention Order Statistics, 1998/99 – 2002/03

An explanation of the process of making a complaint for an intervention order, and the definitions and counting rules used to compile the data contained in this report have been provided. It is strongly recommended that the explanations and definitions provided be referred to when examining data included in this report, to assist in correct interpretation.

## Data Source and Counting Rules

### Data source

Data presented in this report has been extracted from the Courtlink database, the official register of the Magistrates' and Children's Courts of Victoria. The accuracy of the data compiled for analysis is dependent upon the accurate entry of data into the Courtlink database.

### Previous reports

The data contained in this report may differ to other reports available to the public because unique counting rules are employed by different agencies. Due to the dynamic nature of the Courtlink database, small variations between the 1998/99 - 2002/03 report and this report are evident. These variations are not statistically significant.

In the 1998/99 – 2002/03 report, the environment in which intervention order legislation operated had been more stable and hence there were less pronounced changes in the data across the period in the report. Since that time, changes have been made to the legislation governing intervention orders as well as processes adopted by the Courts and the police. The impact of these changes are evident in the 2002/03 – 2006/07 report. An explanation of the changes can be found under the 'interpreting court statistics' section.

### Distinction between matters relating to family members and non family members

The report makes a distinction between complaints for an intervention order that relate to family members and those that relate to non family members. The distinction between family members and non family members is determined by the relationship between the parties.

A complaint is characterised as being brought under the *Crimes (Family Violence) Act 1987* where the relationship between the aggrieved person and the defendant is characterised as 'family member'. This could include a domestic partner or former domestic partner, a child / step child, a sibling or a parent / step parent. A full list of the types of relationships which would be classified as a 'family related' complaint is located in Appendix B.

## Data Source and Counting Rules, continued

### Distinction between matters relating to family members and non family members, continued

A complaint is characterised as being brought under the *Crimes Act 1958* where the relationship between the aggrieved person and the defendant is 'non family member'. This could include where the relationship between the parties is a neighbour, work colleague or friend. Where the relationship between the aggrieved person and defendant does not fall into any of the 'family member' categories provided in Appendix 7, the relationship will be a 'non family member'.

It should be noted that some complaints relate to family members but are classified as non family member complaints because the relationship between the parties does not fit within a classified 'family relationship'. For example, step-cousin.

### Multiple aggrieved persons

Since 1997/98, multiple aggrieved persons could be included on one complaint for an intervention order.

For example, a complaint for an intervention order in relation to a mother and 2 children would be counted as:

- 1 complaint for an intervention order; and
- 3 aggrieved persons

### Defendant

Whilst a complaint for an intervention order may include multiple aggrieved persons, one defendant has been counted in relation to each complaint finalised.

### Age of aggrieved persons

The report presents data regarding the age of the aggrieved person at the time that a complaint for an intervention order was finalised in the Magistrates' or Children's Court of Victoria.

### Age of defendant

This report presents data regarding the age of the defendant at the time that the complaint for an intervention order was finalised in the Magistrates' or Children's Court of Victoria. In the case of breach data, the age of the defendant is the age at the time the charge was finalised at Court.

## Data Source and Counting Rules, continued

### Classification of aggrieved persons

Prior to 2002/03, if an intervention order was made for the protection of the husband / wife of the defendant, the relationship of the aggrieved person to the defendant would be classified as a 'husband' or 'wife' in the Courtlink database. As of 2002/03, legislative trends moved towards the gender neutral classification of 'domestic partner'. 'Domestic partner' includes husbands, wives and same sex partners. This change in classification explains the variations in the proportion of aggrieved persons classified as a domestic partner instead of husband or wife since 2002/03.

### Number of charges finalised for breach of an intervention order

The number of charges finalised refers to the number of charges that were finalised in the Magistrates' Court of Victoria under s.22 of the *Crimes (Family Violence) Act 1987* for the offence of breach of an intervention order.

One defendant may be charged multiple times with the offence of breach of an intervention order. The data presented in this report is a count of individual charges finalised in the Magistrates' Court of Victoria, and not a count of individual persons charged with this offence.

A charge is recorded as finalised when all charges in the case have been finalised. Cases that have some charges adjourned sine die (to a date to be determined) are not recorded as finalised and therefore not included in this publication.

The count of finalised charges in this report includes the finalisation of the charge in the first instance only. Therefore, if charges have been re-listed, due to the defendant breaching the original sentencing order (i.e. community based order), the re-hearing of these charges is not included in this publication.

Please note that a small number of charges of breach an intervention order are finalised in the Children's, County and Supreme Courts of Victoria. The Children's Court of Victoria has jurisdiction to finalise a charge where the defendant is aged less than 17 at the time of offence prior to July 2005 and less than 18 at the time of offence from 1 July 2005.

The Higher Courts, (County and Supreme Court), also have the jurisdiction to finalise charges for breach of an intervention order where the charge forms part of a presentment made to the Higher Courts. It should be noted that this report only presents statistics on charges finalised in the Magistrates' Court of Victoria.

## Data Source and Counting Rules, continued

### Outcome of finalised charge

A charge may attract more than one type of outcome / sentence (for example, a fine and a suspended sentence). For the purposes of this report, one outcome (the principal outcome) has been recorded in relation to each charge that was finalised.

Where a charge attracts more than one outcome / sentence, the principle outcome will be the sentencing outcome that is highest in the sentencing hierarchy as detailed in the *Sentencing Act 1991*. For example, if a charge resulted in a fine and a suspended sentence, the suspended sentence would be recorded as the principal outcome.

### Court Regional Statistics

There are 54 Magistrates' and Children's Courts located throughout Victoria and these have been classified into 12 Court regions. Each Court region has one headquarter Court.

The Court regions in the Magistrates' and Children's Court of Victoria were reclassified in January 2006 to largely align with the Department of Human Services regions. For the purposes of this report, the Court regions represented in this publication are those which applied prior to this reclassification and as such will not align with the Department of Human Services, Victoria Police or Local Government regions / areas (see appendix C for details of how the individual courts are grouped into regions).

The Court regional statistics refer to the Court location where the complaint for an intervention order / application was finalised and not where it was issued. For example, if the complaint / application is issued at the Bendigo Court and later finalised at the Sunshine Court, the report presents the complaint as being finalised at the Sunshine Court.

## Interpreting court statistics

The nature and volume of the work of the Magistrates' and Children's Courts in relation to intervention orders is determined by a range of social, procedural and legislative factors. In order to understand variations in statistics about workflows, aggrieved persons and defendants, it is necessary to understand how these factors can affect court statistics.

### *Variations in court work flows arising from changes in procedure and legislation*

The Victoria Police Code of Practice into dealing with incidents of family violence was introduced in 2004. Amendments to the *Crimes (Family Violence) Act 1987* and *Magistrates' Court Act 1989* came into effect on 1 April 2005 as a result of the *Magistrates' Court (Family Violence) Act 2004*. The amendments to the legislation and introduction of the Victoria Police Code of Practice resulted in changes in the trends of complaints for an intervention order over the reporting period. Noticeable differences occurred primarily between 2003/04 and 2004/05.

The introduction of the Victoria Police Code of Practice has increased the number of complaints for an intervention order made by the police in relation to family violence, and thus the number of overall complaints for an intervention order finalised.

The main legislative changes effecting trends in the reporting period relate to an increase in the number of children becoming aggrieved persons. Legislative changes allow for:

- Hearing or witnessing family violence to be deemed grounds for intervention orders for children; and
- The Court to make, on its own initiative, an intervention order for a child where it considers the child has been subjected to family violence or seen or heard family violence and is likely to again.

## Applying for an intervention order

### Jurisdiction

Intervention orders are made:

- Pursuant to section 4 of the *Crimes (Family Violence) Act 1987* in relation to family members; and
- Pursuant to section 21A of the *Crimes Act 1958* in relation to non family members.

Section 21A (5) of the *Crimes Act 1958* allows an intervention order to be made in respect of the prohibited behaviours detailed in section 21A (2).

If the aggrieved person or defendant is under the age of 18 years at the time a complaint for an intervention order is made, the complaint can be heard and determined in the Family Division of the Children's Court of Victoria or the Magistrates' Court of Victoria.<sup>1</sup>

### What is an intervention order?

An intervention order is an order made by the Magistrates' or Children's Court of Victoria that restricts a person's (the defendant) behaviour in relation to another person (the aggrieved person), or requires the defendant to undertake certain activities (for example, counselling).

### What may an intervention order do?

An intervention order may prohibit or restrict a person (the defendant) from:

- Approaching, telephoning or contacting an aggrieved person;
- Accessing premises where an aggrieved person lives or works;
- Being at a particular location(s);
- Assaulting, harassing, threatening or intimidating an aggrieved person;
- Damaging property owned by an aggrieved person;
- Causing another person to engage in conduct that is prohibited by the intervention order; or
- Revoke any licence, permit or other authority held by the defendant to possess, carry or use firearms.

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<sup>1</sup> Source: *Section 3A(1) of the Crimes (Family Violence) Act 1987*

## Applying for an intervention order, continued

### Who may make a complaint for an intervention order?<sup>2</sup>

A complaint for an intervention order may be made by:

- A member of the police force;
- The aggrieved person;
- If the aggrieved person is a child:
  - A member of the police force;
  - A parent of the child;
  - Any other person with the written consent of a parent of the child or with permission from the Court; or
  - The aggrieved person with permission from the Court if they are of or above the age of 14 years.
- Any other person, with the written consent of the aggrieved person if they are above the age of 14 years;
- If a guardianship order under the *Guardianship and Administration Act 1986* is in force in respect of the aggrieved person, by the Guardian appointed under that Act, or by any other person with permission from the Court.

### Issuing the complaint for an intervention order

If a complaint for an intervention order has been made, a Court Registrar may<sup>3</sup>:

- issue a summons; or
- issue a warrant to arrest the defendant as if the complaint had alleged the commission of an offence, if:
  - the complaint alleges that the aggrieved person has been assaulted or threatened with assault, or that damage has been caused or threatened to be caused to property of the aggrieved person; and
  - the Registrar is satisfied that the personal safety of the aggrieved person would be seriously threatened, or that damage would be likely to be caused to any property of the aggrieved person, unless the defendant was arrested and brought into custody.

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<sup>2</sup> Source: *Section 7 of the Crimes (Family Violence) Act 1987*

<sup>3</sup> Source: *Section 9 of the Crimes (Family Violence) Act 1987*

## Applying for an intervention order, continued

### Interim intervention orders<sup>4</sup>

An interim intervention order is a temporary intervention order that may include the same restrictions as a final intervention order.

The Court may make an interim intervention order if satisfied that it is necessary to ensure the safety of the aggrieved person, or to protect their property pending the final hearing and determination of the complaint for an intervention order, even if the defendant is not aware that a complaint has been made against them.

An interim intervention order will not take effect until the defendant has personally been served with a copy of the order.

An interim intervention order will remain in force until the date on the order (being the date the complaint is next due to be heard in Court).

### Notifying the defendant about the complaint<sup>5</sup>

If an interim intervention order has been made, the following documents must be served personally on the defendant:

- A copy of the interim intervention order; and
- A copy of the complaint and summons for an intervention order.

If a complaint for an intervention order is made, and an interim intervention order has not been made, the defendant must be served with a copy of the complaint and summons either:

- Personally; or
- By leaving it at the defendant's last or most usual place of residence with a person who appears to reside or work there, and who appears to be above the age of 16 years.

A complaint and summons will include details of the date, time and location of where the complaint will be heard, and the particulars of the complaint (i.e. the ground upon which the complaint was made).

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<sup>4</sup> Source: *Section 8 of the Crimes (Family Violence) Act 1987*

<sup>5</sup> Source: *Section 11 of the Crimes (Family Violence) Act 1987*

## Applying for an intervention order, continued

### Notifying the defendant about the complaint<sup>6</sup>, continued

If the registrar has issued a warrant to arrest for an intervention order, the defendant will be either:

- Arrested and bailed to appear at Court on a specific date for the hearing of the complaint; or
- Arrested and brought straight to Court.

### When can an intervention order be made regarding a family member?<sup>7</sup>

The Court may make an intervention order regarding a family member if satisfied on the balance of probabilities that the defendant has:

- Assaulted the aggrieved family member, or caused damage to their property, and is likely to do so again;
- Threatened to assault the aggrieved family member, or cause damage to their property; or
- Harassed, molested or behaved in an offensive manner towards the aggrieved family member, and is likely to do so again.

Before making an order that restricts the defendant's access to any premises, the Court must take into account:

- The need to ensure that the aggrieved family member is protected from violence;
- The welfare of any children who may be affected by the intervention order; and
- The accommodation of all people who may be affected by the intervention order.

### When can an intervention order be made regarding a non family member?<sup>8</sup>

The Court may make an intervention order in relation to stalking behaviour if satisfied, on the balance of probabilities, that the defendant has stalked the aggrieved person, and is likely to continue to do so, or do so again.

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<sup>6</sup> Source: *Section 11 of the Crimes (Family Violence) Act 1987*

<sup>7</sup> Source: *Section 4 of the Crimes (Family Violence) Act 1987*

<sup>8</sup> Source: *Section 21A of the Crimes Act 1958*. Refer to section 21A of the *Crimes Act 1958* for details regarding the offence of stalking, and the actions that constitute stalking in Victoria.

## Applying for an intervention order, continued

### What happens if the defendant does not attend Court??

If a complaint and summons has been served on the defendant, or they have been arrested and bailed to appear at the Court for the hearing of the complaint for an intervention order, and they fail to appear, the Court may:

- Make a final intervention order in their absence;
- Adjourn the hearing of the complaint for an intervention order, and issue a warrant to arrest the defendant and bring them before the Court for the hearing of the complaint.

If the Magistrate makes a final intervention order in the absence of the defendant, a copy of the intervention order must be served on the defendant. The intervention order will not take effect until the defendant has been served with a copy of the order.

### Explanation of the intervention order<sup>10</sup>

If a magistrate proposes to make an intervention order and the defendant is present at Court, before making the order the following must be explained to the defendant:

- The purpose, terms and effect of the intervention order;
- The consequences that may follow if the defendant does not comply with the intervention order; and
- How the intervention order may be varied or revoked (i.e. cancelled).

### Duration of intervention orders<sup>11</sup>

An intervention order will remain in force for the period specified by the court unless it is:

- Revoked; or
- Set-aside on appeal.

The Court may specify a period for which an intervention order is to remain in force. In the event that the Court does not specify a period, the order will remain in force until further order.

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<sup>9</sup> Source: *Section 12 of the Crimes (Family Violence) Act 1987*

<sup>10</sup> Source: *Section 15 of the Crimes (Family Violence) Act 1987*

<sup>11</sup> Source: *Section 6 of the Crimes (Family Violence) Act 1987*

## Applying for an intervention order, continued

### Extending, varying or revoking an intervention order<sup>12</sup>

Upon application, a magistrate may make an order to:

- Extend the duration of an intervention order (this application must be made before the original order expires);
- Vary the conditions of an intervention order; or
- Revoke an intervention order (i.e. cancel).

An application to extend, vary or revoke an intervention order may be made by any party to an application for an intervention order. All parties to the original complaint must be served with a copy of the application (including the Victoria Police if the original complaint was made by a police officer).

### Breach of an intervention order

Breaching an intervention order is a criminal offence<sup>13</sup>.

On the first occasion that the defendant is found guilty of breaching an intervention order, they may be:

- Fined up to 240 penalty units;
- Imprisoned for up to 2 years; or
- Fined up to 240 penalty units and imprisoned for up to 2 years.

The defendant may be imprisoned for a period of up to 5 years if found guilty of breaching an intervention order, on any subsequent occasion.

### Appeals

A party to a complaint for an intervention order may appeal to the County Court of Victoria against<sup>14</sup>:

- The making of an intervention order;
- The conditions of an intervention order;
- The refusal to make an intervention order; or
- The refusal to impose certain conditions in an intervention order.

An appeal against an order of the President of the Children's Court of Victoria must be made to the Trial Division of the Supreme Court of Victoria<sup>15</sup>.

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<sup>12</sup> Source: *Section 16 of the Crimes (Family Violence) Act 1987*

<sup>13</sup> Source: *Section 22 of the Crimes (Family Violence) Act 1987*

<sup>14</sup> Source: *Section 20 and 21 of the Crimes (Family Violence) Act 1987*

<sup>15</sup> Source: *Children and Young Persons Act 1989*