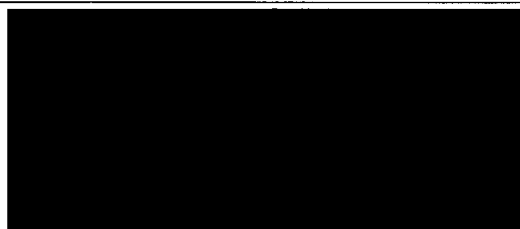


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

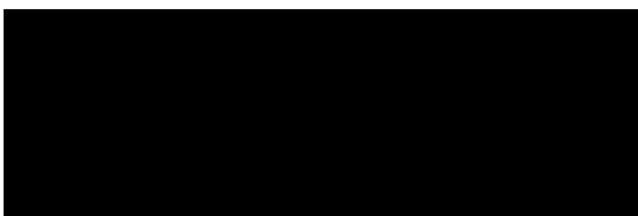
ATTACHMENT LM-6 TO STATEMENT OF LEEANNE MILLER

Date of document: 26 July 2015
Filed on behalf of: State of Victoria
Prepared by:
Victorian Government Solicitor's Office
Level 33
80 Collins Street
Melbourne VIC 3000



This is the attachment marked '**LM-6**' produced and shown to **LEEANNE MILLER** at the time of signing her statement on 26 July 2015.

Before me



An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Attachment LM-6



human.
services

Family Violence Intervention Orders and Personal Safety Intervention Orders - child respondent exclusion condition

Date of Advice: **1 December 2013**

Advice no: **1578**

This advice is endorsed by the: Assistant Director, Child Protection, Statutory and Forensic Services Design Branch

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This advice provides information regarding the Children's Court and Magistrate's Court requests for reports and notification of orders in relation to child exclusion conditions pursuant to sections 83 and 84 of the Family Violence Protection Act 2008 and section 71 and 72 of the Personal Safety Intervention Orders Act 2010, which outlines the legislative requirements and other procedures to be followed by child protection practitioners.

Background

Family Violence Protection Act 2008

The Family Violence Protection Act seeks to maximise safety for children and adults who have experienced family violence, prevent and reduce family violence to the greatest extent possible and promote the accountability of perpetrators of family violence for their actions.

The Family Violence Protection Act recognises 4 guiding principles, including:

- That non-violence is a fundamental social value that must be promoted,
- That family violence is a fundamental violation of human rights and is unacceptable in any form,
- That family violence is not acceptable in any community or culture, and
- That, in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of the victims of family violence with respect.

If the court has made a Family Violence Intervention Order (FVIO), it must consider whether to include a condition excluding the respondent from the protected person's home. This is aimed at assisting with minimising the economic and social disadvantage experienced by the protected person and their children, who may otherwise be forced to leave their homes as a result of family violence.

Under the Family Violence Protection Act, the court is able to make an exclusion condition against a respondent who is a child. However, the court may only make this exclusion condition if satisfied that if the child is excluded from the residence the child will have appropriate alternative accommodation and appropriate care and supervision option. In considering these factors, the court may request a report from the Secretary of the Department of Human Services and must inform the Secretary if such a condition is made.

Personal Safety Intervention Orders Act 2010

The Personal Safety Intervention Orders Act aims to provide better protection for victims of inappropriate behaviour that threatens their safety, such as stalking, assault and harassment in non-family situations. Some of the behaviour can be extremely serious and an intervention order may protect the victim from further inappropriate behaviour. Matters which are found to be appropriate for dispute resolution may be referred by the court to the Dispute Settlement Centre of Victoria for a mediation assessment.

As with the Family Violence Protection Act, the court is able to make a Personal Safety Intervention Order with a condition that excludes a child respondent from their residence. This may only occur if the court is satisfied that if the child is excluded from the residence there will be appropriate alternative accommodation and appropriate care and supervision options for the child. In considering these factors, the court may request a report from the Secretary of the Department of Human Services and must inform the Secretary if such a condition is made.

Under the Personal Safety Intervention Orders Act, the court **cannot** make an order against a child respondent if the court knows that the child was aged under 10 years of age at the time when the application was made.

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation.

Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Children, Youth and Families Act

Children, Youth and Families Act 2005

- Section 28 – Report to Secretary about child
- Section 30 – Response by Secretary to report

Family Violence Protection Act

Family Violence Protection Act 2008

The Family Violence Protection Act replaces the Crimes (Family Violence) Act 1987. Under the Family Violence Protection Act the following definitions apply:

- Child - a person who is under the age of 18
- Affected Family Member – includes a person the subject of an application for a family violence intervention order, a person for whom a police officer intends to make a family violence intervention order application, and a person who is seeking leave from the court to make application for certain family violence intervention orders.
- Protected person - a person who is protected by a family violence intervention order or a family violence safety notice.
- Respondent – includes a person against whom an application for a family violence order has been made or a family violence intervention order as been made or a family violence safety notice has been issued.

There are specific sections of the Family Violence Protection Act that are particularly relevant to Child Protection. These sections include:

- Section 83 - Exclusion of child respondent from residence
- Section 84 - Court may ask Secretary for report for purposes of section 83

- Section 146 – Jurisdiction of courts if affected member, protected person or respondent is a child
- Section 147 - Jurisdiction of Children's Court to deal with related applications
- Section 147A – Jurisdiction of the Children's Court to deal with applications related to child protection proceedings
- Section 172 - Application of principles under Children, Youth and Families Act 2005 to decision under this Act
- Section 173 - Family violence intervention orders prevail over child protection orders
- Section 174 - Notice to be given to Secretary to Department of Human Services
- Section 175 - Bail conditions prevail over child protection order

Personal Safety Intervention Orders Act

Personal Safety Intervention Orders Act 2010

The Personal Safety Intervention Orders Act replaces the Stalking Intervention Orders Act 2008. Under the Personal Safety Intervention Orders Act the following definitions apply:

- Child - a person who is under the age of 18
- Affected person – a person subject of an application for a personal safety intervention order to protect the person or the person's property; or a person who is seeking leave, or for whom leave is being sought, from the court to make an application for a personal safety intervention order.
- Protected person – a person who is protected by a personal safety intervention order
- Respondent – a person against whom an *application* for a personal safety intervention order has been made or a personal safety intervention *order* has been made.

There are specific sections of the Personal Safety Protection Act that are particularly relevant to Child Protection. These sections include:

- Section 18 - Applications against children aged under 10 years – The Court cannot make an order against a child who is under 10 years of age at the time the application is made.
- Section 67 - conditions that the court may make on Personal Safety Intervention Orders. See in particular s 67(3)
- Section 71 - Exclusion of child respondent from residence. This section addresses the issues the court must take into account when considering excluding a child from a residence.
- Section 72 - Court may ask Secretary for report for purposes of section 71
- Section 103 – Jurisdiction of courts if affected person, protected person or respondent is a child
- Section 104 - Jurisdiction of Children's Court to deal with related applications
- Section 104A – Jurisdiction of the Children's Court to deal with applications related to child protection proceedings
- Section 128 - Application of principles under Children, Youth and Families Act 2005 to decisions under this Act
- Section 129 – Personal safety intervention orders prevail over child protection orders
- Section 130 - Notice to be given to Secretary to Department of Human Services where the order is inconsistent with a child protection order

Standards and procedures

Overview

Exclusion conditions

If the court makes a Family Violence Intervention Order (FVIO), s.82 of the Family Violence Protection Act obliges the court to consider whether the respondent should be ordered to vacate the protected person's home. In choosing to make an exclusion condition as part of a FVIO, the court must consider the interests of the protected person and their children. Such considerations include minimising disruption to their lives in terms of childcare, schooling and employment and maintaining social support networks.

Exclusion conditions in relation to child respondent

Pursuant to s. 83 of the Family Violence Protection Act, the Court must have regard to additional factors when considering an exclusion condition on a FVIO against a respondent who is a child (under 18 years of age). These factors include the desirability of the child having access to educational and health services and the desirability of allowing the education, training or employment of the child to continue without interruption. The court may not make an exclusion condition on a FVIO against a child respondent unless the court is satisfied that if the child is excluded from his or her home, the child will have appropriate alternative accommodation and appropriate care and supervision.

Pursuant to s. 71 of the Personal Safety Intervention Orders Act, the Court must have regard to the above-mentioned conditions, as well as minimising disruption to the protected person and any child living with the protected person and maintaining social networks and support and the desirability of continuity and stability in the care of any child living with the protected person.

If a child is of Aboriginal or Torres Strait Islander descent, in deciding whether the child will have appropriate alternative accommodation and appropriate alternative care and supervision, the Court's decision must have regard to the desirability of keeping the child within the child's Aboriginal or Torres Strait Islander extended family or relatives and need to maintain the child's culture and identity through contact with his or her cultural community.

In considering a matter referred to in s. 83 of the Family Violence Protection Act or s.72 of the Personal Safety Intervention Orders Act, the court may request the Secretary to provide the court with a report about the options available for the appropriate accommodation, care and supervision of the child if the child is excluded from his or her home.

If the Secretary receives a request, the Secretary must respond within the period ordered by the court or the prescribed period. If the child who is the subject of the request is under 17 years of old, the Secretary must treat the request as a wellbeing report under section 28 of the Children Youth and Families Act 2005 (CYFA) and respond to the Court in one of the manners set out in section 30 of the CYFA.

Therefore, Child Protection must classify the request for a report as either a Child Wellbeing Report or a Protective Intervention Report depending on the intake assessment. The requested report is to be provided to the court in the period ordered by the court or within the prescribed time, which is seven days.

If the court includes an exclusion condition in the Family Violence Intervention Order or Personal Safety Intervention Order against a child respondent the court must notify the Secretary that the order has been made. This must occur even if the Secretary was not requested to provide a report to the court.

Children aged between 17 and 18 years of age

It is Department of Human Services policy that if the child is aged between 17 and 18, the request for a report is to be managed by Youth Justice staff. If the child will be turning 17 within 1 month of receiving the request for report from the court, the request is to be handled by Youth Justice. The exception to this is any child 17 and over who is a current Child Protection client, in this circumstance the matter should be responded to by Child Protection.

If Child Protection receives a request for a report on a child aged above 16 years 11 months who is not a current Child Protection client, the request is to be referred to the regional Youth Justice contact person.

Family Violence Safety Notices

The Family Violence Protection Act empowers the police to issue family violence safety notices. These notices are for use outside court hours (between 5pm and 9am on weekdays and on Saturdays, Sundays and public holidays) and provide police with another tool to ensure that immediate protection is available when police respond to an incident. A family violence safety notice may include the same conditions as a FVIO. A family violence safety notice should not be used when the respondent is a child, because s. 24(a) of the Family Violence Protection Act states that police officer may only apply for a notice if they have reasonable grounds to suspect that the **respondent is an adult**.

Sections 24(b) and (c) state that the police officer must have no reasonable grounds for suspecting that the respondent has a cognitive impairment; or that there is a Family Law Act order or child protection order in force that may be inconsistent with the proposed terms of the notice after making reasonable enquiries of the respondent, the affected family member and any other adults at the scene of the incident before applying for a safety notice.

Section 24(d), (e) and (f) of the Family Violence Protection Act contain other conditions that must be satisfied before applying for the safety notice.

The application may be made by the police officer who responded in person to the family violence incident, to another police officer who is a Sergeant or higher rank. The police officer who receives the application may issue a family violence notice if he or she believes on reasonable grounds that there is no FVIO in place and that the notice is necessary to ensure the safety of the affected family member or a child, or to preserve any property of the affected family member.

The family violence safety notice is taken to be the application for a FVIO by the police for the protected person against the respondent. The notice will begin when it is served on the respondent and will end when either the court refuses to make a FVIO or if the Court makes a FVIO, when the FVIO is served on the respondent.

Children's Court jurisdiction to deal with FVIO and PSIO applications

Section 147 of the Family Violence Protection Act and section 104 of the Personal Safety Intervention Orders Act allows the Children's Court to hear FVIO or PSIO applications where the affected family member or person, the protected person or the respondent is a child at the time the application is made.

The Children's Court can also hear FVIO and PSIO applications where:

- the application is related to a child protection proceeding, and
- an affected family member, protected person or respondent of the related application is an adult.

Section 147A of the Family Violence Protection Act and section 104A of the Personal Safety Intervention Order Act extends the Children's Court jurisdiction to applications under those Acts that are related to a child protection proceeding, where each affected person or protected person and each respondent is an adult. An application is related to a child protection proceeding if the child is the child of or under the care or supervision of the affected person or protected person, and the application raises issues relating to the safety of the child similar to the issues forming the basis of the child protection proceeding.

For the purpose of these provisions, *child protection proceeding* means a proceeding relating to a child protection order, which may include a protection application, or a breach, revocation, variation or extension of an order.

Intake assessment

The information received from the court in relation to request for report or to notify that an order has been made, should be assessed in the same way as all reports received by Child Protection. As such, in addition to providing a report to the court when required, the Intake practitioner will analyse the information gathered and identify any risk and protective factors to decide if the child is in need of protection or whether other interventions are required to ensure the well being of the child. Other practice requirements regarding receiving and processing reports apply. See Advice no. 1154 'Receiving and processing reports' or Advice no. 1194 'New allegations on open cases' for more information- refer Related content for a link.

Privacy and information sharing

In the course of contact with the courts, Victoria Police, Youth Justice or Disability Services, the child protection practitioner must only share information in accordance with the CYFA. See Advice number 1090, 'Information sharing in Child Protection practice' – refer Related content.

Where there is an existing Children's Court Order

Under s.173 of the Family Violence Protection Act and s.129 of the Personal Safety Intervention Order Act, a FVIO or Personal Safety Intervention Order applies despite a Child Protection order. As such, when there are inconsistent orders, Child Protection may be required to breach the Children's Court order. In this situation legal advice should be sought, see Advice no. 1139 'Early legal advice', for more information – refer section (5) for a link.

If the Children's Court is hearing an application for a protection order in relation to a child who is a protected person under a FVIO or Personal Safety Intervention order, the Court may, on its own initiative, revoke or vary the order to the extent that it would be inconsistent with the order the Court proposes to make under the CYFA.

Pursuant to s. 174 of the Family Violence Protection Act and s.130 of the Personal Safety Intervention Orders Act, the registrar of the court must notify the Secretary of the making a FVIO or Personal Safety Intervention Order which is or may be inconsistent with a protection order.

Pursuant to s. 175 of the Family Violence Protection Act, any bail condition resulting from an application for a FVIO overrides a protection order to the extent of any inconsistency.

Duration of a final Family Violence Intervention Order or Personal Safety Intervention Order if the respondent is a child

Pursuant to s. 98 of the Family Violence Protection Act and s.78 of the Personal Safety Intervention Order Act, orders made against child respondents must not exceed twelve month duration, unless there are exceptional circumstances.

Process

Where child protection is contacted by the police

Police and Child Protection have agreed in principle that Police will contact Child Protection when they are considering seeking an exclusion condition where the respondent is a child. It is anticipated that this will:

- assist Child Protection to identify and respond to any protective issues for the child early in the process
- enable the Police to take appropriate and informed action in arranging alternative care supervision and accommodation for the child
- reduce the likelihood of the court requiring a report from Child Protection, as it will have already been provided with the information required to make such an order.

Child Protection will assist the Police by providing any relevant information available in relation to the care, supervision and accommodation options for the child.

From the information provided, the Intake Practitioner is to identify any risk and protective factors to decide if the child is in need of protection or whether other interventions are required to ensure his or her well being. Child Protection will inform the Police of the outcome of the intake and any other relevant information under the provisions of the CYFA in order to ensure the best interests of the child.

If the child is a current Child Protection client, Child Protection will review the status of any protection orders or court ordered placements and take the appropriate legal action if required.

Where a request for a report is received from the court

Child Protection Intake will be contacted by the court and is required to provide the court with a report detailing options for the appropriate accommodation, care and supervision of the child. In addition, the situation is to be assessed like any other intake report. The intake report will be classified as either a:

- Child Wellbeing Report, or a
- Protective Intervention Report, or a
- New allegation (Familial)

Response to the court

Child Protection is required to provide the court with a report including the care, supervision and accommodation options available for the child within the prescribed period (seven days) of receiving the request or as determined by the court. The report should also include information relating to the outcome of the intake. Report templates are provided in Proformas.

However, if the court considers that the child's circumstances require an urgent response from Child Protection, the Court may negotiate with the regional intake practitioner or respective work unit an appropriate response time depending on the level of urgency and seriousness of the situation and other competing demands at that time. In this situation the court may accept a report by fax.

New client or closed case

The request will be recorded on CRIS as an intake report and based on the assessment of risk and needs as determined by the child protection intake practitioner and their supervisor a decision will be made about whether the report is classified as a protective intervention report or a child wellbeing report. See Advice no. 1154, 'Receiving and processing reports' for more information.

Current client

Where the request relates to an existing Child Protection client, the matter should be referred to the allocated practitioner or team. See Advice no. 1149, 'New allegations on open cases' for more information.

Youth Justice clients or dual order clients

Where the child is a Youth Justice client, Child Protection and Youth Justice should work collaboratively in preparing the report to the court, however, the provision of the report to the court remains the responsibility of Child Protection.

The protocol between Child Protection and Youth Justice clearly defines the arrangements where information must be exchanged.

For further information regarding clients that are subject to concurrent Youth Justice and Child Protection Orders, please refer to Advice 1015 – Dual Order Clients. See Related content for link.

Disability Services Clients

If the child is identified as a Disability Services client or is a child with a disability, Child Protection should make contact with the appropriate regional Disability Services to advise of the request for a report from the court and to gather information in relation to the child's current circumstances and, or seek advice regarding appropriate accommodation, care and supervision options for the child. The provision of the report to the court remains the responsibility of Child Protection.

The protocol between Child Protection and Disability Services includes information-sharing obligations and guidelines for collaborative partnership.

Where the court notifies that an exclusion condition has been included on a Family Violence Intervention Order for a child respondent

In this circumstance, the court does not require a report from Child Protection, however the information should be assessed, and recorded following usual practice, and any necessary action resulting from the exclusion of the child taken. Refer to 'Intake assessment' and 'Where there is an existing Children's Court Order' above.

Considerations for good practice

For this Advice, there are no specific considerations for good practice.

Contact for further procedural advice

- Branch, Child Protection Policy and Practice Unit (relating to child respondent exclusion condition)
- Branch, Sexual Assault and Family Violence Unit (relating to general information about the Family Violence Protection Act)
- Supervisor
- Team Manager
- Child Protection Manager
- Regional Solicitor/Court Officer

Related content and external links

Related Content:

1015 - Dual order clients

1090 - Information sharing in Child Protection practice

1149 - New allegations on open cases

1154 - Receiving and processing reports

1339 - Early Legal Advice

Child Protection and Youth Justice protocol

Protocol between Child Protection and Disability Services

Quick reference guide: Family Violence Intervention Orders – child respondent exclusion condition

Proformas - Court reports

External Links:

Department of Justice

Office of Women's Policy

Family Violence: Victoria has had enough campaign

Domestic Violence Resource Centre Victoria

Checklist of required standards

For this Advice, there are no required standards.