

## Chapter 7

# Getting an Interim Order

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## INTRODUCTION

7.1 An interim intervention order is available under the Crimes (Family Violence) Act during and outside court hours.<sup>836</sup> Interim orders provide immediate protection for victims. This is because an interim order can be made ‘on the spot’, without the need to inform the defendant of the application.<sup>837</sup> An interim order lasts for a maximum of 21 days and is usually made for a shorter period of about seven days.<sup>838</sup> The defendant is informed of the interim order and the application for a final order. The parties return to court for the final hearing. The availability of interim orders is an essential aspect of the intervention order system. From 2002, at least half of the people who obtained final intervention orders had at least one interim order before getting the final order.<sup>839</sup> This chapter will discuss ways that access to interim orders can be improved—both during court hours and outside court hours.

## INTERIM ORDERS AFTER HOURS

7.2 It is essential that family violence victims have access to the protection of an intervention order when they do not have immediate access to a court. Access to emergency orders is particularly crucial given that most family violence incidents occur after 5pm during the week and on weekends.<sup>840</sup> If a woman seeks protection from the legal system at this crisis moment, the system must be able to respond and offer an appropriate level of protection. Currently, however, final intervention orders are not available outside court business hours.

7.3 Between 1992 and 1997 police were able to make applications for intervention orders to an after-hours magistrate.<sup>841</sup> However, since 1997 changes to administrative procedures agreed to between Victoria Police and the Magistrates’ Court resulted in the police ceasing to apply for after-hours intervention orders and instead making applications for a complaint and warrant or a complaint and summons. A recent court review of

A **complaint and warrant** is an application for an intervention order that includes a power of arrest. A **complaint and summons** does not have a power of arrest.

836 *Crimes (Family Violence) Act 1987* s 8.

837 *Crimes (Family Violence) Act 1987* s 8(1).

838 The commission recommends an extension to the normal length of an interim order at Recommendation 84.

839 Submission 86 (Magistrates’ Court of Victoria).

840 Victoria Police, *Victoria Police Crime Statistics 2002/03* (2003); Victoria Police, *Victoria Police Crime Statistics 2003/04* (2004) 133.

841 *Crimes (Family Violence) Act 1987* s 8(4).

after-hours procedures for intervention orders has resulted in a decision to reintroduce an after-hours procedure for intervention order applications. Revised documentation, a review of the current fax procedure, and development of an 'electronic interchange' of all documents is under consideration by Victoria Police and the Magistrates' Court.<sup>842</sup> If this is successfully implemented, it would significantly reduce the administrative duplication which exists and which unnecessarily extends the time it takes police to obtain protection for family violence victims after hours.

7.4 Where police attend a family violence incident and they are obliged under their Code of Practice to apply for an intervention order on behalf of the victim,<sup>843</sup> they are only able to make an application to an on-duty registrar for a complaint and warrant or complaint and summons. This is an administrative process. If the registrar grants a complaint and warrant, police can arrest the perpetrator and set bail conditions with the same conditions as an intervention order (eg not approaching the victims) until the scheduled hearing at court. However, this is not an intervention order and does not carry the same consequences if the conditions are breached. Breach of an intervention order is a criminal offence, whereas breach of a bail condition is not.<sup>844</sup> In some cases the victim is not informed of the granting of bail or conditions of bail and will not be given a copy of the bail conditions.<sup>845</sup>

7.5 If the registrar issues a complaint and summons rather than a complaint and warrant, police can only serve the summons on the perpetrator with directions to attend court on the date set. There are no conditions preventing the perpetrator from approaching the victim. This outcome therefore provides no protection for the victim and no accountability for the perpetrator. The power of registrars to decide to issue a summons rather than a warrant therefore has serious consequences for the safety of those involved. Anecdotally, the commission has also heard that registrars sometimes refuse to issue a warrant or a summons based on their own perception of the seriousness of the case. The commission has discussed the attitudes of registrars to family violence and made recommendations for change at paragraphs 6.3–6.20 and recommendations 34–36.

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842 Submission 86 (Magistrates' Court).

843 Police are obliged to apply for an intervention order whenever they determine that a family member's safety, welfare or property appears to be endangered by another: Victoria Police, *Code of Practice: For the Investigation of Family Violence* (2004) para 5.3.2.

844 Victorian Law Reform Commission (2005) above n 399, 114, 115.

845 Ibid 29.

## OTHER JURISDICTIONS

### Police Orders

7.6 Other Australian jurisdictions have dealt with the need to provide immediate protection to family violence victims by allowing police to grant emergency intervention orders without applying to a court. In Western Australia, amendments implemented in December 2004 to the Restraining Orders Act provide that police have the power to issue temporary orders that restrain the respondent in the same way as a court-imposed order. Orders can be made for either 24 hours or 72 hours, however, a 72 hour order can only be made with the consent of the person in need of protection.<sup>846</sup>

7.7 This power was introduced because the previous procedure of telephone applications to an on-duty magistrate was not being used by police.<sup>847</sup> The reasons police were not making telephone applications were:

- the procedure was too time consuming, as police needed to leave the scene of the incident, fill out the paperwork and contact Police Communications in Perth who would then contact the duty magistrate;
- there was a perception among police officers that the procedure was a waste of time because the application would either fail at the Police Communications level or the magistrate would not grant the order.<sup>848</sup>

7.8 The ability to immediately remove the perpetrator was also seen as an important reason for introducing the power. The report that recommended the introduction of this new power noted:

A further advantage with police orders is that, in many domestic violence situations, the only option is for police to remove mother and children from the home, which is disruptive for the children and, in effect, punishes the apparent victims.<sup>849</sup>

7.9 Tasmanian police have recently been granted a very extensive power to make orders of up to 12 months duration where the violence is between intimate partners.<sup>850</sup> The *Family Violence Act 2004* gives police officers of the rank of sergeant or above the

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846 *Restraining Orders Act 1997* (WA) ss 30F–G.

847 Between 1999 and 2001, 144 telephone applications were made, which was less than 0.5% of all applications made: Department of Justice [Western Australia] (2004) above n 565, 38.

848 Ibid.

849 Ibid 39.

850 *Family Violence Act 2004* (Tas) s 14.

power to issue a Police Family Violence Order if they are satisfied that the person has committed or is likely to commit a family violence offence.<sup>851</sup> An order made by police can include a range of conditions, including an order excluding a person from the family home.<sup>852</sup> Magistrates' Courts continue to have the power to make family violence orders, both in and out of court hours, and police can apply to the court for an order rather than grant the order themselves.<sup>853</sup> Police officers have received specialist family violence training to guide the use of their new powers under the Act.

7.10 In 2003 the NSW Law Reform Commission recommended that police have the power to make an order that lasts for up to 48 hours when an authorised justice cannot be contacted.<sup>854</sup> The NSW commission found that there were often problems with contacting an authorised justice on telephone interim order duty. The commission noted:

It is not intended that police ought to be able to issue exclusion orders under a TIO [telephone interim order] without the approval of an authorised justice. While some may view this as a move to making such orders too easy to obtain, the Commission believes that the public and individual benefit from making an urgent order, outweighs any risk of a miscarriage of justice.<sup>855</sup>

7.11 The Northern Territory parliament passed the *Domestic Violence Amendment (Police Orders) Act 2005* in October 2005. This Act allows police to issue restraining orders outside normal court hours when the situation requires immediate action. Police orders may contain the same conditions as an order made by a magistrate.<sup>856</sup> The order must be returned to court as soon as practicable after it is made.<sup>857</sup> In town areas this will be within two to five working days and in remote areas from three to four weeks.<sup>858</sup> An order can be made by a police officer of or above the rank of Senior Sergeant or an officer in charge of a police station.<sup>859</sup> If the defendant wishes to apply

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851 *Family Violence Act 2004* (Tas) s 14.

852 *Family Violence Act 2004* (Tas) s 14(3)(b).

853 *Family Violence Act 2004* (Tas) ss 15(2)(a), 16, 23.

854 New South Wales Law Reform Commission (2003) above n 504, 142.

855 *Ibid* 141–142.

856 *Domestic Violence Amendment (Police Orders) Act 2005* (NT), amending *Domestic Violence Act (NT)* s 6A(3).

857 *Domestic Violence Amendment (Police Orders) Act 2005* (NT) s 6A(7).

858 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 25 August 2005 (Dr Peter Toyne, Minister for Justice and Attorney-General).

859 *Domestic Violence Amendment (Police Orders) Act 2005* (NT) inserting s 6A(10) into the *Domestic Violence Act (NT)*.

for a variation or revocation of the police order it can be reviewed by a magistrate by telephone or fax.<sup>860</sup> Magistrates retain the ability to make orders outside court hours, but it is envisaged that police will only apply to a magistrate in particularly complex or sensitive cases.<sup>861</sup> Police orders were introduced in the Northern Territory to give police greater flexibility in their response to family violence and reduce the amount of out-of-hours work for magistrates.<sup>862</sup> Demand for out-of-hours orders had risen from 39 a year in 1999 to 724 in 2004.<sup>863</sup>

## VIEWS FROM SUBMISSIONS

7.12 Submissions from police officers, individuals, Robinson House, Women's Domestic Violence Service, the Whittlesea Domestic Violence Network and the Darebin Family Violence Working Group outlined problems with access to intervention orders in emergency situations and supported better access to emergency intervention orders.

7.13 The commission received mixed views on whether it is desirable for police to have the power to issue short-term orders. In favour of this power, Victoria Police provided a detailed submission outlining the benefits of this system in Western Australia. This power was also supported by submissions from individuals who have experienced family violence, the Royal Women's Hospital, the Domestic Violence and Incest Resource Centre and the Queensland Crime and Misconduct Commission. The Queensland Crime and Misconduct Commission stated:

This approach has a number of benefits: first, the police officer attending the incident has the immediate power to initiate protection for the victim; second, the offender can be immediately served with the order, and it is therefore not necessary to subsequently locate that person in order to serve an order on them; third, immediate police action sends a strong message to the community that domestic violence is not to be tolerated; and, finally, officers attending a scene are likely to feel a greater degree of job satisfaction at having the ability to undertake positive action on the spot.

7.14 The Police Association, which is the police union, stated that it opposes a police power to make short-term orders, due to the increased workload on police members and the possibility of exposure to litigation. The Police Association also

860 *Domestic Violence Amendment (Police Orders) Act 2005* (NT) s 6B(3)–(5).

861 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 25 August 2005 (Dr Peter Toyne, Minister for Justice and Attorney-General).

862 Ibid.

863 Ibid.

believes that a police power to issue temporary orders would violate the separation of powers between police and the courts. This is not the view of the submission from Victoria Police. The Women's Legal Service Victoria also expressed concern that interim orders will be perceived negatively if they are granted without the scrutiny of a judicial officer.

## COMMISSION'S RECOMMENDATIONS

7.15 It is essential for the effective functioning of the system that the protection afforded by an intervention order is available at all times, particularly in emergency situations. This is clearly intended in the current provisions of the Crimes (Family Violence) Act. The commission therefore recommends that the Magistrates' Court implements a system to consider intervention order applications from police after hours. Any system must provide effective and efficient access to overcome the types of problems that have arisen in Western Australia as a result of police leaving the scene to undertake a time-consuming procedure to obtain an order. The commission notes that the Magistrates' Court is currently working with Victoria Police to develop a system for after-hours orders, and the commission encourages the court and Victoria Police to implement this as a matter of priority.

7.16 The commission believes that an interim intervention order provides better protection for victims and more accountability for perpetrators than a warrant and bail system. This is because:

- Breaching an interim order is a criminal offence. Breaching a bail condition is not. The only possible consequence of breaching a bail condition is revocation of bail.<sup>864</sup>
- A copy of an interim order will be given to the protected person which will list the types of behaviours prohibited by the order. If the perpetrator is bailed, police must inform the victim<sup>865</sup> but there is no requirement that they inform the victim of the bail conditions.
- Assuming that the Crimes (Family Violence) (Police Holding Powers) Bill is enacted,<sup>866</sup> police will have the power to hold a perpetrator while they apply for and serve an interim intervention order. Therefore, the major benefit of the power of arrest under a warrant and bail system would no longer be relevant.

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864 Victorian Law Reform Commission (2005) above n 399, 115.

865 Victoria Police, *Code of Practice: For the Investigation of Family Violence* (2004) para 4.2.4.

866 As recommended by the commission in: Victorian Law Reform Commission (2005) above n 463. We have outlined the provisions of the Bill at para 5.62.

- An interim order will generally last for longer than the period until the court hearing date set on a warrant.<sup>867</sup> This will give the parties time to prepare for a hearing of a final intervention order rather than needing to attend court a few days after an interim order has been made.

7.17 A complaint and warrant system may still be of use to police in some circumstances and should be retained as an option along with the possibility of applying for an interim order. For example, where police need to find the perpetrator, obtaining a complaint and warrant will give them a power of arrest.

7.18 The commission wants to ensure that police can take effective and immediate action when they attend a family violence incident. It is essential that police can take steps to protect family members and do not have to take them away from the home to do so. A holding power for police as outlined in the commission's Interim Report<sup>868</sup> and the Crimes (Family Violence) (Holding Powers) Bill is an important and timely action that ensures a perpetrator can be removed from the home while an interim order is applied for.

7.19 The commission also seriously considered the option of police having the power to make an intervention order outside business hours as a way of improving after-hours protection. Some commissioners felt that this would be an appropriate response as there is currently no adequate system for obtaining after-hours orders. Other commissioners felt that the Magistrates' Court is the appropriate place for such applications to be made and it is therefore the court's responsibility to provide a system for hearing after-hours applications. The commission recommends that the government should monitor any system that the Magistrates' Court implements to ensure it is providing effective and efficient access to intervention orders after hours. If this is not occurring, the government should reconsider giving police the power to make intervention orders.

7.20 The commission also considered the relevant criteria for a police order. Although we are not recommending the introduction of police orders, the commission believes that if any police orders system is introduced in the future it should have the following features:

- Police orders should only last until the matter can be returned to court for consideration. An appropriate limit may be 72 hours. The commission does not believe that it is necessary to set a different time limit for orders obtained

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867 The commission has recommended an extension to the normal length of interim intervention orders at Recommendation 84.

868 Victorian Law Reform Commission (2005) above n 463.

with or without the protected person's consent, as in Western Australia. In an emergency situation the police should be authorised to take action that will protect family members and it is therefore appropriate that an order that lasts until a court is available can be made.

- Police orders should be authorised by a sergeant or officer in charge of a police station. The commission believes it is appropriate for a police order to be authorised by a police officer in a relatively senior position, however, this may cause similar obstacles to those experienced in rural areas where there may not be a sergeant on duty. Police officers in charge of a police station are currently authorised to discharge a person on bail where it is not practicable to bring the person before a court.<sup>869</sup> The commission therefore thinks it is appropriate for officers in charge to have the power to issue police orders, as well as sergeants or more senior officers.
- Police orders should not be available where the perpetrator is under 18 years of age. In these cases police should apply to a magistrate to make the decision.
- Police orders should be available wherever it is not possible to make an application to a magistrate, not only outside business hours. In regional and rural areas the Magistrates' Court is not available every weekday and many regional courts sit for less than one day a week.<sup>870</sup> Therefore, police should have access to this procedure whenever it is not possible to apply for an order from the court.



## RECOMMENDATION(S)

65. The Magistrates' Court should implement a system for determining intervention order applications outside business hours.

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869 *Bail Act 1977* s 10.

870 There are 41 Magistrates' Courts in regional Victoria. In 2005 the following 19 Magistrates' Courts were scheduled to sit for less than one day a week: Ararat, Casterton, Cobram, Corryong, Dromana, Edenhope, Hopetoun, Kerang, Mansfield, Myrtleford, Nhill, Omeo, Orbost, Ouyen, Robinvale, St Arnaud, Stawell, Swan Hill, Wonthaggi. Only three regional Magistrates' Courts are open every weekday: Ballarat, Bendigo and Geelong: Department of Justice [Victoria], *Magistrates' Court of Victoria* <[www.justice.vic.gov.au](http://www.justice.vic.gov.au)> at 29 November 2005.

## ! RECOMMENDATION(S)

66. Victoria Police should use the system implemented by the Magistrates' Court for after-hours intervention orders, rather than applying for complaint and warrants or complaint and summons from registrars.
67. The Department of Justice should establish a system to monitor any system implemented in the Magistrates' Court for granting after-hours intervention orders. If the Magistrates' Court is unable to provide quick and efficient access to intervention orders after hours, the government should consider giving police officers the power to make short-term intervention orders.

### INTERIM ORDERS IN COURT HOURS

7.21 The Crimes (Family Violence) Act allows the court to make an interim intervention order until a final decision is made about the victim's application. The court may make an interim order, whether or not the respondent is present or knows about the application, if the court is satisfied that an interim order is necessary to ensure the victim's safety or to preserve their property.<sup>871</sup> The court can hear oral evidence or accept evidence by affidavit.<sup>872</sup> A victim can apply for an interim order in court and will be heard on the same day.

An **affidavit** is a written statement made under oath out of court.

7.22 There are two main issues with the granting of interim intervention orders in court: the lack of awareness among victims about the availability of interim intervention orders and the extension of interim intervention orders if the final hearing is postponed.

### INCREASING THE AWARENESS OF INTERIM INTERVENTION ORDERS

7.23 Various groups have told the commission that many people who require the immediate protection of an interim intervention order are not aware they can apply for one. This occurs particularly where a victim has not received any support from community or legal services before attending court. The standard application form for an intervention order does not include a question about whether the applicant requires

871 *Crimes (Family Violence) Act 1987* s 8(1).

872 *Crimes (Family Violence) Act 1987* s 8(2).

urgent protection.<sup>873</sup> Similarly, information provided to applicants in court does not alert them to the possibility of an interim order. However, the Family Violence Court Division application form does ask:

**Do you want to apply for an interim order?** (A temporary intervention order made pending the hearing of the application for an intervention order.)

### **VIEWS FROM SUBMISSIONS**

7.24 All the submissions that addressed this issue agreed that interim intervention orders must be made more accessible for people experiencing family violence.<sup>874</sup> The submissions contained practical suggestions of how awareness of and access to these types of orders could be improved:

- a requirement that registrars inform the applicant about the possibility of applying for an interim order<sup>875</sup>—registrars should not be able to decide whether an interim order is necessary, this decision should be made by a magistrate;<sup>876</sup>
- including a question on the standard intervention order application form asking if the applicant is in need of protection ‘today’<sup>877</sup> or a question such as ‘Do you feel you need protection immediately, or are you prepared to wait a few days or weeks for the case to be heard?’;<sup>878</sup>
- changing the name of interim orders to ‘emergency protection order’<sup>879</sup> or ‘urgent temporary order’<sup>880</sup> to make it clearer what the orders are for;

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873 Magistrates’ Court of Victoria (2003) above n 575, 25–26.

874 Submissions 20 (Mrs EF Belsten), 25 (Barbara Roberts), 27 (Robinson House BBWR), 28 (Murray Mallee Community Legal Service), 30 (Violence Against Women Integrated Services), 40 (Whittlesea Domestic Violence Network), 46 (Royal Children’s Hospital), 49 (Domestic Violence and Incest Resource Centre), 53 (Women’s Electoral Lobby, Victoria), 62 (Eastern Community Legal Centre), 63 (Darebin Family Violence Working Group), 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women’s Legal Service Victoria), 78 (Department for Victorian Communities), 79 (Department of Human Services).

875 Submissions 20 (Mrs EF Belsten), 30 (Violence Against Women Integrated Services), 46 (Royal Children’s Hospital), 53 (Women’s Electoral Lobby, Victoria), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women’s Legal Service Victoria).

876 Submissions 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women’s Legal Service Victoria).

877 Submission 74 (Women’s Legal Service Victoria).

878 Submissions 25 (Barbara Roberts), 28 (Murray Mallee Community Legal Service), 46 (Royal Children’s Hospital), 64 (Federation of Community Legal Centres (Vic)).

879 Submission 40 (Whittlesea Domestic Violence Network).

- better access to legal advice at court;<sup>881</sup>
- including information on the availability of interim orders in any family violence community education programs,<sup>882</sup> and ensuring that people with disabilities are made aware of this option through any education campaigns.<sup>883</sup>

### **COMMISSION'S RECOMMENDATIONS**

7.25 The commission agrees that interim intervention orders should be made more widely known among family violence victims. The final two suggestions about legal advice and community education are addressed at recommendations 39–41, 47, and 52.

7.26 All applicants should be made aware of the possibility of obtaining an interim order. The commission recommends that the Magistrates' Court Protocols require registrars to discuss the possibility of an interim order with all applicants. It is essential that adequate numbers of registrars are available in family violence lists to enable this. Registrar training and provision of registrars is addressed at recommendations 34–36.

7.27 The commission agrees that the standard application form must provide an opportunity for people seeking protection to indicate whether they require protection immediately or whether they are prepared to wait for a final hearing. Recommendation 43 proposes that the application form used in the Family Violence Court Division be used in all Magistrates' Courts. Although the application form used by the division includes a question on interim orders, its meaning may not be clear to those without legal or other assistance. Therefore, the commission recommends that the phrasing of this question be reviewed before the form is adopted in all courts. If applicants indicate they require immediate protection on the application form, then the registrar should put the case before the magistrate to make a decision. It is not appropriate for registrars to inform potential applicants that their situation is not serious or severe enough for an interim order.

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880 Submission 63 (Darebin Family Violence Working Group).

881 Submissions 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women's Legal Service Victoria). The commission makes recommendations regarding the availability of legal advice at recommendations 39–41.

882 Submissions 27 (Robinson House BBWR), 49 (Domestic Violence and Incest Resource Centre), 62 (Eastern Community Legal Centre), 63 (Darebin Family Violence Working Group), 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 78 (Department for Victorian Communities). The commission makes recommendations relating to community education programs at recommendations 47, 52.

883 Submission 79 (Department of Human Services).

7.28 The commission considered changing the name from interim order to temporary or emergency order, but it believes ‘interim’ order is the most legally accurate term, even though not all applicants and respondents understand it. The commission believes that this should be dealt with through the provision of better information to applicants and respondents at courts. For example, the application form used in the family violence courts refers to interim orders as a ‘temporary order’ in the accompanying bracketed information. We make a recommendation to improve other forms of information available at Recommendation 42.

### ! RECOMMENDATION(S)

68. The Magistrates’ Court Protocols should be amended to require registrars to discuss with applicants whether there is a need for an interim intervention order. The protocols should make it clear that it is not the registrar’s role to decide whether an interim application will be placed before the magistrate.
69. The Magistrates’ Court should revise the question about interim intervention orders included on the application form used in the Family Violence Court Division for use in all Magistrates’ Courts. The question should be phrased simply, for example, ‘Do you need protection immediately, before your final application is heard?’

### POSTPONED FINAL HEARINGS AND EXTENDING INTERIM ORDERS

7.29 Another problem outlined in the Consultation Paper is the process for extending an interim intervention order where the final hearing of an order is postponed, usually because the respondent has not been served with the order.<sup>884</sup> Under the current system, an applicant must return to court and have the matter heard again, usually by a different magistrate. Applications for extensions of interim orders are usually granted. However, the commission has heard that the subsequent magistrate sometimes takes a different view of the facts of the case and does not extend

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884 The commission makes a recommendation to improve the system of service at Recommendation 82. The commission has also previously recommended a police holding power for family violence incidents, so that any interim order made can be served on the respondent. This recommendation was implemented by the government in the Crimes (Family Violence) (Police Holding Powers) Bill 2005 and is discussed further at para 5.62.

the order. Even if an extension is granted, it still requires an extra attendance at court. One possible way to resolve this issue would be to automatically extend an interim order where the final hearing has been postponed. The applicant would not need to attend court and there would be no risk that the order would not last until the final hearing date.

### **VIEWS FROM SUBMISSIONS**

7.30 The vast majority of submissions supported an automatic extension of interim orders where the respondent has not been served with the order.<sup>885</sup> Submissions noted that re-attending court is stressful for applicants and may lead to them discontinuing the application.<sup>886</sup> The Federation of Community Legal Centres stated that applicants should not need to re-attend court to get an extension where an order has not been served. This is especially the case where the respondent may be avoiding service. The

When a document issued by the court cannot be served on a person, the court will use another method of letting the person know about the document, such as leaving it with a family member, and this is known as **substituted service**.

federation suggested that an interim order should be automatically extended twice while the police make further attempts at service. Where they have still not managed to serve the respondent after two automatic extensions, it should be standard police practice to then make an application for substituted service.

7.31 Two of the 17 submissions that addressed this issue were opposed to administrative extensions of interim orders, stating that the court should be able to consider whether an extension is necessary or appropriate.<sup>887</sup>

### **COMMISSION'S RECOMMENDATIONS**

7.32 The commission agrees with the majority of submissions that an interim order should be automatically extended where the final hearing date has been postponed. This change will reduce the number of times an applicant needs to appear in court and provide greater certainty that the interim order will last until the application for the final order is determined. The automatic extension should be made by a registrar once

885 Submissions 22 (Kim Robinson, social worker), 25 (Barbara Roberts), 27 (Robinson House BBWR), 30 (Violence Against Women Integrated Services), 40 (Whittlesea Domestic Violence Network), 46 (Royal Children's Hospital), 49 (Domestic Violence and Incest Resource Centre), 54 (Andrew Compton), 62 (Eastern Community Legal Centre), 63 (Darebin Family Violence Working Group), 64 (Federation of Community Legal Centres (Vic)), 72 (Victoria Police), 79 (Department of Human Services), 86 (Magistrates' Court of Victoria).

886 Submissions 22 (Kim Robinson, social worker), 64 (Federation of Community Legal Centres (Vic)), 74 (Women's Legal Service Victoria).

887 Submissions 41 (Victoria Legal Aid), 65 (Associate Professor John Willis, La Trobe University).

it is determined that the final hearing date will be altered (eg where the police have informed the registrar that they have been unable to serve the order on the respondent). Registrars must be required to inform applicants that the order has not been served and that their interim order has been extended to the new hearing date.

7.33 The commission agrees with the Federation of Community Legal Centres that automatic extensions should not be unlimited. Automatic extensions should be allowed twice. If a final hearing still cannot proceed after two automatic extensions because the police have been unable to serve the respondent, the commission recommends the police apply to the court for substituted service. If the respondent has been served but there is a need for an extension for another reason, then the applicant should be required to attend court and seek an extension from a magistrate. This recommendation seeks to prevent an interim order being extended indefinitely without a final hearing occurring.

7.34 The commission does not agree with the submissions that suggested the court reconsider whether an interim order is necessary or appropriate every time an extension is required. This decision was already made by the court when the interim order was made. It is therefore an administrative matter to ensure that the interim order does not expire before a final hearing occurs. It should also be remembered that an interim order that has not been served on the respondent has no legal effect, so is not restraining the behaviour of the respondent.



#### RECOMMENDATION(S)

70. Where an interim order has been made and the final hearing needs to be postponed, the interim order should be automatically extended up to two times until the new hearing date. This should be an administrative procedure which is done by the registrar when the hearing date needs to change, for example where police have been unable to serve the interim order on the respondent.
71. Where an interim order is automatically extended due to an inability to serve the respondent, the registrar should inform the applicant of the automatic extension and send the applicant a copy of the extended interim order.

**RECOMMENDATION(S)**

72. Where there have been two automatic extensions of an interim intervention order due to an inability to serve the respondent and police are still unable to serve the order, the police should apply for an order for substituted service.