

Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices Second Monitoring Report

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Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices Second Monitoring Report

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Contents

Contributors vii

Acknowledgments vii

Glossary and abbreviations viii**Executive summary** xi

Key findings xi

1. Family violence intervention orders and safety notices in Victoria 1

The Council's previous work on family violence contravention offences 1

Sentencing in context: changes to law and practice 2

Scope of this report 3

Methodology and data 4

Family violence intervention orders granted 4

Family violence incidents 5

Sentencing for contravention of family violence intervention orders 5

Consultation 6

2. Use of family violence intervention orders and safety notices 7

Family violence intervention orders 7

Family violence safety notices 8

The scope of a family violence intervention order or a family violence safety notice 8

 The purpose of the *Family Violence Protection Act 2008* (Vic) 8

The meaning of 'family violence' and 'family member' 8

The number of family violence incidents and family violence orders 9

Commencement of orders 12

Applicants 13

Duration of orders 15

Protected persons 15

Respondents 16

3. Contraventions of family violence intervention orders and safety notices 17

Contravention offences 17

General contravention offence 17

Aggravated contravention offences 18

Contravention of an order or a notice intending to cause harm or fear for safety 18

Persistent contravention of notices and orders 18

Rate of contravention 19

Family violence intervention orders 19

Family violence safety notices 21

Persistent contravention of notices and orders 22

Contravention investigations 22

4. Sentencing for Contravention Offences 25

The sentencing framework 25

Available sentences 27

Imprisonment and jurisdictional limits 27

Community sentences 27

Combination imprisonment and community correction order sentences 28

Suspended sentences 29

Aggregate sentences 30

Principal sentencing outcomes 31

Family violence intervention orders 31

Family violence safety notices 33

Comparing sentencing trends for family violence intervention orders and family violence safety notices 34

Aggravated offences 34

Aggravated offences in the higher courts 34

Comparing sentencing trends for aggravated and non-aggravated contraventions of family violence intervention orders 35

Contravention of a family violence intervention order intending to cause harm or fear for safety 35

Contravention of a family violence safety notice intending to cause harm or fear for safety 36

Persistent contravention of notices and orders 37

Contravention-only cases and co-sentenced offence cases 37

General contravention offences 41

Aggravated contravention offences 41

Contravention-only cases 42

Co-sentenced offence cases 44

Co-sentenced offence cases with aggravated contraventions 46

Repeat contraventions 48

Discussion 48

Increase in the use of imprisonment and community correction orders 48

Increase in the use of fines and decrease in the use of low-end orders 49

Fines 49

Adjourned undertakings 50

Concluding remarks 50

Appendix 1: Consultation 51

Appendix 2: Guiding Principles 52

References 54

Bibliography 54

Legislation 55

Cases 55

Quasi-legislative materials 55

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Glossary and abbreviations

Adjourned undertaking	A sentence type that involves the adjournment of a criminal matter and the release of an offender, with or without conviction, for a specified period provided the offender gives an undertaking with attached conditions.
Affected family member (AFM)	A person who is the subject of an application for a family violence intervention order under the <i>Family Violence Protection Act 2008</i> (Vic) made to protect the person or the person's property.
Case	In this report, one or more charges against a person that are sentenced at the one hearing.
Charge	In this report, a single proven count of an offence.
Community-based order (CBO)	A now abolished sentence that involved the release of an offender into the community, with or without conviction, for a period of up to two years on an order with attached mandatory and program conditions.
Community correction order (CCO)	A sentence type that involves the release of an offender into the community, with or without conviction, for a period of up to the length of the maximum term of imprisonment for the sentenced offence on an order with attached mandatory and program conditions.
Community sentences	In this report, community-based orders, intensive correction orders, and community correction orders.
Convicted and discharged	A low-end order that involves recording a conviction against an offender and discharge without conditions.
Co-sentenced offence	An offence sentenced in the same case as the offence of interest.
Criminal Justice Diversion Program	A program that allows the court to adjourn proceedings against a person for a period of up to 12 months under a diversion plan with attached conditions. Although this disposition is not a sentencing order and operates prior to any finding of guilt and/or any sentence, it is treated in this report as a sentence type because it is a disposition available for particular offenders as an alternative to the imposition of a sentencing order.
Dismissal	A low-end order that involves the dismissal of the charge without recording a conviction against an offender and without conditions.

Diversion	An order made under the Criminal Justice Diversion Program.
Fine	A sentence that involves a court-ordered monetary penalty requiring an offender to pay a sum of money to the state.
FVIO	Family violence intervention order.
FVP Act	<i>Family Violence Protection Act 2008</i> (Vic).
FVSN	Family violence safety notice.
Higher courts	The County Court of Victoria and the Supreme Court of Victoria.
Imprisonment	In this report, a sentence of imprisonment that is served immediately, as distinct from a sentence of imprisonment that is partially or wholly suspended.
Intensive correction order (ICO)	A now abolished sentence that involved imprisonment of not more than 12 months served by way of release into the community for a period of not more than 12 months on an order with attached mandatory and program conditions.
Low-end order	A category of sentence type that includes adjourned undertakings, convicted and discharged, and dismissal.
Partially suspended sentence of imprisonment	A now abolished sentence of imprisonment that involved an offender serving a specified part of the sentence immediately and a specified part of the sentence by way of release into the community, provided that the offender did not commit another offence punishable by imprisonment during the operational period.
Principal proven offence	The offence attached to the charge that receives the most severe sentence in a case. Where two or more offences in the case have an equally severe sentence, the principal offence is the offence with the lowest ranking on the National Offence Index (a system of ranking offences according to the perceived seriousness of the offence developed by the Australian Bureau of Statistics).
Protected person	A person who is protected by a family violence intervention order or a family violence safety notice.
Recidivist	An offender convicted of at least one criminal act after the imposition of a sentence.
Reoffending	The extent to which an adult person, having been sentenced in any Victorian court, returns to court and is convicted for a subsequent offence or subsequent offences.

Respondent

A person against whom there has been a family violence intervention order, a family violence safety notice, or an application for a family violence intervention order.

Suspended sentence

A term of imprisonment that is suspended (that is, not activated) either wholly or in part for a specified period (the 'operational period'), subject to the condition that the offender does not commit another offence punishable by imprisonment during the operational period. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.

Total effective sentence

In a case involving a single charge, the sentence imposed for that charge, and in a case involving multiple charges, the final sentence resulting from orders of cumulation or concurrency for each of the sentencing orders received in the case.

Wholly suspended sentence of imprisonment

A now abolished sentence of imprisonment that involved an offender serving the whole of the sentence by way of release into the community subject to the condition that the offender did not commit another offence punishable by imprisonment during the operational period.

Executive summary

This report examines sentencing patterns for offences involving contravention of a family violence intervention order (FVIO) or a family violence safety notice (FVSN) made under the *Family Violence Protection Act 2008* (Vic). In particular, this report examines sentencing for the offences of:

- contravention of an FVIO;
- contravention of an FVSN;
- contravention of an FVIO intending to cause harm or fear for safety;
- contravention of an FVSN intending to cause harm or fear for safety; and
- persistent contravention of notices and orders.

This report examines sentencing for contravention of an FVIO and contravention of an FVSN over two three-year periods: 1 July 2009 to 30 June 2012, and 1 July 2012 to 30 June 2015 (the reference periods).

In addition, this report examines sentencing for contraventions intending to cause harm or fear for safety and persistent contravention of notices and orders for the period 2012–13 to 2014–15. These aggravated contravention offences were introduced on 17 April 2013 to address particularly serious or repeated instances of contravention.

This report is a continuation of the Sentencing Advisory Council's (the Council's) previous work on monitoring sentencing patterns for contravention of FVIOs and FVSNs. Previous reports include:

- *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (2009), which examines sentencing practices for the offence of breaching an FVIO under the *Crimes (Family Violence) Act 1987* (Vic) from July 2004 to June 2007 and includes a discussion on guiding principles for sentencing this offence; and
- *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention* (2013), which examines sentences for contravention of an FVIO over two periods (2004–05 to 2006–07 and 2009–10 to 2011–12) and contravention of an FVSN (from 2009–10 to 2011–12).

Key findings

The Council's analysis of FVIOs made by the Magistrates' Court reveals that the number and rate (per 100,000 people) of FVIOs issued continue to increase over time. There were 17,777 FVIOs made in 2009–10 and 27,478 made in 2014–15. The rate of FVIOs made over this period also increased from 328 to 467 (per 100,000 people) indicating that the increase in the number of FVIOs is not due to an increase in Victoria's population.

Victoria Police recorded:

- 35,666 family violence incidents in 2009–10 and laid charges in 22.3% of the incidents; and
- 70,906 family violence incidents in 2014–15 and laid charges in 38.2% of the incidents.

The number and percentage of FVIO applications made by Victoria police have increased, while the number of applications made by affected family members has declined very slightly.

A significant proportion of FVIOs are commenced through the issuing of FVSNs, reflecting Victoria Police's greater involvement.

In terms of sentencing for FVIO and FVSN contravention, there was an increase in the use of imprisonment and community sentences (including community correction orders (CCOs)), following the phased abolition of suspended sentences.

For FVIO contravention, during the reference period, there was:

- a 4.1 percentage point increase in the use of imprisonment and a 5.1 percentage point increase in the use of community sentences;
- a slight increase of 3.7 percentage points in the use of fines (the Council had previously expressed concern about the appropriateness of fines as a sentencing option for this offence in its 2009 report); and
- a 3.7 percentage point decrease in the use of low-end orders (including adjourned undertakings).

For FVSN contravention, during the reference period, there was:

- a slight increase of 1.8 percentage points in the use of imprisonment;
- a 10.2 percentage point increase in the use of community sentences; and
- a slight decrease of 1.8 percentage points in the use of fines and a 2.4 percentage point decrease in low-end orders.

Further investigation has revealed an increase in sentences of imprisonment and community sentences where FVIO and FVSN contraventions have co-sentenced offences in the case. This may indicate that the use of these sentences is driven by the presence of other criminal behaviour. An increase in fines has occurred in FVIO contraventions without co-sentenced offences. The imposition of low-end orders has decreased in FVIO and FVSN contraventions with co-sentenced offences, but has increased in FVSN contraventions without co-sentenced offences.

In terms of sentencing for aggravated contravention offences (FVIO or FVSN contravention intending to cause harm or fear for safety, and persistent contravention of notices and orders), during the reference period it was found that:

- the number of sentenced aggravated contravention offences increased steadily since their introduction on 17 April 2013, which indicates that prosecuting authorities are utilising these new offences;
- aggravated contravention offences were more likely to be sentenced to imprisonment or a CCO, and less likely to receive a fine, low-end order, or diversion, than non-aggravated contravention offences;
- offenders sentenced for the aggravated contravention offences were more likely to receive imprisonment or a CCO if there were co-sentenced offences present in the case, while courts were more likely to impose fines or low-end orders if the charge of aggravated contravention did not have co-sentenced offences;
- 66.4% of FVIO contraventions intending to cause harm or fear for safety received either a fine (36.5%) or a low-end order (29.9%) if there were no co-sentenced offences in the case; and
- 61.9% of persistent contraventions received either a fine (39.1%) or a low-end order (22.8%) if there were no co-sentenced offences in the case.

1. Family violence intervention orders and safety notices in Victoria

The Council's previous work on family violence contravention offences

- I.1 Since 1987, a victim of family violence¹ in Victoria has been able to apply to the Magistrates' Court (or the Children's Court)² for a family violence intervention order (FVIO).³ FVIOs are intended to protect affected family members from further family violence by prohibiting the respondent to the order from engaging in certain behaviours or by excluding the respondent from the family residence.
- I.2 In 2008, the *Family Violence Protection Act 2008* (Vic) (*FVP Act*) was introduced, broadening the definition of family violence and the grounds on which an FVIO could be obtained. The *FVP Act* also introduced police-issued family violence safety notices (FVSNs), enabling police to provide short-term protection for a victim until an FVIO is obtained.
- I.3 It is a criminal offence to contravene the conditions of an FVIO or an FVSN.
- I.4 The *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic) introduced into the *FVP Act* three new indictable aggravated contravention offences, specifically:
- contravention of notice intending to cause harm or fear for safety;
 - contravention of order intending to cause harm or fear for safety; and
 - persistent contravention of notices and orders.
- These offences address particularly serious or repeated contraventions of FVIOs and FVSNs, coming into effect on 17 April 2013.
- I.5 The Council produced its first report on sentencing practices for breach of FVIOs in June 2009 ('2009 report').⁴ That report presents an analysis of sentencing outcomes from 1 July 2004 to 30 June 2007 for breaches of intervention orders made under the *Crimes (Family Violence) Act 1987* (Vic), prior to the introduction of the *FVP Act*.
- I.6 In its 2009 report, the Council found that there was a predominance of low-end orders – such as fines and adjourned undertakings – for FVIO breach offences from July 2004 to June 2007. Mid- to high-end sentences – such as community-based orders and custodial orders – were less common. During the consultation process for the 2009 report, the Council met with magistrates, Victoria Police, legal practitioners, and specialist service providers.

1. The meaning of 'family violence' is summarised at [2.10]–[2.14], and further detail is contained in Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention: Monitoring Report* (2013) 7.

2. If the affected family member, the protected person, or the respondent is a child at the time the application is made, the Children's Court and the Magistrates' Court each have jurisdiction to deal with the application; however, if the respondent is a child, the application should be dealt with by the Children's Court if practicable: *Family Violence Protection Act 2008* (Vic) s 146.

3. *Crimes (Family Violence) Act 1987* (Vic).

4. Sentencing Advisory Council, *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (2009). The report was prepared pursuant to terms of reference issued in April 2008 by the then Attorney-General, the Hon Robert Hulls. The Council was asked to examine the sentencing of defendants and the penalties imposed for breach of FVIOs, the appropriate maximum penalties for breach of FVIOs and FVSNs (the Council reported on this matter in May 2008), and sentencing practices following the commencement of the *FVP Act*.

Among stakeholders, there was a general view that sentencing outcomes rarely reflected the seriousness of the breach offence.⁵

- 1.7 In response, the Council produced *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* ('the Guiding Principles').⁶ The Guiding Principles recommend that community protection – which includes victim protection – should be the primary purpose of sentencing for contravention, as the function of an intervention order is to protect the victim from future harm. The Guiding Principles also refer to the appropriateness of particular sentence types in the context of family violence offending. An extract of the Guiding Principles is set out in Appendix 2.
- 1.8 In September 2013, the Council published a monitoring report, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention* ('the 2013 report'),⁷ presenting data on sentencing for contravention of FVIOs and FVSNs following the commencement of the *FVP Act*. The 2013 report compared data from two reference periods: 1 July 2004 to 30 June 2007 and 1 July 2009 to 30 June 2012.
- 1.9 The Council's analysis in 2013 revealed that sentencing outcomes had changed considerably since the 2009 report. The Council reported that across most categories of sentencing for FVIO contravention, the use of fines had declined and the use of adjourned undertakings and community sentences had increased. The Council also found an increase in the imposition of custodial sentences in the case of repeat contravention offences.

Sentencing in context: changes to law and practice

- 1.10 As outlined in the 2013 report, the law and practice relating to family violence protection measures have changed considerably over the past decade. Reforms across the sector may have influenced recent sentencing practices for FVIO contravention. Many of these reforms followed a review of family violence laws by the Victorian Law Reform Commission in 2005–2006,⁸ and formed part of the integrated family violence service system developed by the Victorian Government in 2005.⁹
- 1.11 Since publication of the 2013 report, some of the most significant developments have been:
- the establishment of the Royal Commission into Family Violence inquiring into Victoria's response to family violence and providing practical recommendations on how the response can be improved – as at the time of publication, the Royal Commission is due to provide its report and recommendations to the government by 29 February 2016;
 - the release of the most recent Victorian Government strategy, *Ending Violence Against Women and Children*, in October 2014, proposing increased funding for initiatives and services, including legal aid services;¹⁰
 - the revision of Victoria Police's *Code of Practice for the Investigation of Family Violence* ('Family Violence Code of Practice') in June 2014, first introduced in 2004 and subsequently revised in 2010;¹¹

5. Sentencing Advisory Council (2009), above n 4, 133–134.

6. Sentencing Advisory Council, *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009).

7. Sentencing Advisory Council (2013), above n 1.

8. See Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006).

9. For a detailed discussion of the Victorian Government's family violence policies since 2001, see Victorian Government, Submission to Royal Commission into Family Violence, *Royal Commission into Family Violence*, May 2015.

10. Victorian Government, *Ending Violence Against Women and Children* (2014).

11. Victoria Police, *Code of Practice for the Investigation of Family Violence* (3rd ed., 2014).

- the appointment of Australia's first Family Violence Assistant Commissioner in March 2015 and the establishment of Victoria Police's Family Violence Command as a central point of accountability within Victoria Police for family violence; and
- the establishment of the Magistrates' Court Family Violence Taskforce in November 2014 and the announcement of the Magistrates' Court's *Response to Family Violence 2015–2017*, detailing six initiatives aimed at improving family violence services across the state, including professional development for magistrates delivered by the Judicial College of Victoria, and a fast-tracking listing model rolled out at the Magistrates' Court in Dandenong in December 2014¹² and at the Magistrates' Court in Broadmeadows and in Shepparton in August 2015.¹³

1.12 Significant reforms in place at the time of the 2013 report include:

- the introduction, in 2005, of a specialist Magistrates' Court Division and an integrated Specialist Family Violence Service offering family violence support services at certain venues of the Magistrates' Court – the Family Violence Court Division sits at Heidelberg and Ballarat, and the Specialist Family Violence Service operates at Melbourne, Frankston, Sunshine, and Werribee;¹⁴
- the introduction, in 2007, of a shared family violence risk assessment and risk management framework (otherwise known as the 'common risk assessment framework'), funded and administered by the Department of Health and Human Services – this framework, which is followed by Victoria Police, among other agencies, informs decision-making about FVIO applications (a second edition was published in 2012);¹⁵ and
- the introduction, in 2011, of Victoria Police's Enhanced Family Violence Service Delivery Model, involving a number of initiatives, including the establishment of specialist family violence teams across the state at locations with significant demand for family violence services.¹⁶

Scope of this report

1.13 This report is a continuation of the analysis in the 2013 report. It examines sentencing for FVIO and FVSN contravention over two three-year periods: 1 July 2009 to 30 June 2012, and 1 July 2012 to 30 June 2015.

1.14 The first reference period, 1 July 2009 to 30 June 2012, was examined in the 2013 report. The second reference period, 1 July 2012 to 30 June 2015, captures the sentences imposed for contraventions of FVIOs and FVSNs under the *FVP Act*, as well as the sentences imposed for the new aggravated contravention offences, namely 'contravention of notice intending to cause harm or fear for safety', 'contravention of order intending to cause harm or fear for safety', and 'persistent contravention of notices and orders'. These indictable offences were not covered in the 2013 report due to the recency of their introduction.

12. Magistrates' Court of Victoria, *Response to Family Violence 2015–2017* (Magistrates' Court of Victoria, 2014) <<http://www.magistratescourt.vic.gov.au/publication/mcv-response-family-violence-2015-2017>> at 18 September 2015.

13. Magistrates' Court of Victoria, *Practice Direction no. 7 of 2015 – Expansion of the Fast Tracking Listing Process to the Court at Broadmeadows and Shepparton* (2015) 1.

14. Further information about the aims and features of these divisions can be found in Magistrates' Court of Victoria, *Guide to the Specialist Courts and Court Support Services* (Magistrates' Court of Victoria, 2014) <<https://www.magistratescourt.vic.gov.au/publication/guide-specialist-courts-and-court-support-services>> at 28 October 2015.

15. Department of Human Services, *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1–3* (2nd ed., 2012).

16. Victoria Police, *Victoria Police Annual Report 2011–12* (2012) 45.

- I.15 This report focuses exclusively on intervention order contraventions occurring under the *FVP Act*.¹⁷
- I.16 The Council does not make any policy recommendations in this report. However, based on analysis and consultations, the Council discusses some of the likely reasons for the sentencing outcomes observed.
- I.17 This report focuses on sentencing outcomes in the Magistrates' Court, as the overwhelming majority (approximately 96%) of proven FVIO contravention charges are sentenced by that court.¹⁸ However, this report includes some discussion of sentencing practices for the very small number of aggravated FVIO charges heard in the higher courts.
- I.18 Sentencing for contravention offences in the Children's Court has been excluded because of the different sentencing principles applicable in that jurisdiction.
- I.19 The Council's analysis is divided into three subsequent chapters:
- Chapter 2 contains a brief examination of trends in the use of FVIOs and FVSNs;
 - Chapter 3 examines the rates of FVIO and FVSN contravention; and
 - Chapter 4 presents a comparison of sentencing outcomes over the two reference periods, and a discussion on the likely reasons for the sentencing outcomes observed by the Council.

Methodology and data

- I.20 This report assesses changes over time in various measures of responses by the criminal justice system to family violence, including FVIOs granted by the courts, family violence incidents recorded by police, and, in particular, sentencing practices in relation to contravention offences heard by the Magistrates' Court.
- I.21 Examining data for the period 1 July 2009 to 30 June 2015, this report particularly focuses on the last three years of this period (1 July 2012 to 30 June 2015).
- I.22 This report uses datasets supplied to the Council by a number of agencies, including the Magistrates' Court of Victoria, Court Services Victoria, and the Crime Statistics Agency Victoria.

Family violence intervention orders granted

- I.23 The number of FVIOs granted in the Magistrates' Court each year, including the mode of issue and the type of applicant, was obtained from data provided by the Magistrates' Court.
- I.24 In this report, each FVIO is counted once in the financial year it was first granted, regardless of whether the order commenced as an interim or a final FVIO. Interim FVIOs that were not converted into final FVIOs are also included in the data. Amendments made to the order by the court (for example, extending, varying, or revoking the FVIO) are not reflected in the statistics.

17. The *FVP Act* replaced the *Crimes (Family Violence) Act 1987* (Vic). A detailed analysis of the changes introduced can be found in the Council's previous reports: Sentencing Advisory Council (2009), above n 4; Sentencing Advisory Council (2013), above n 1. The current report does not consider intervention order breaches occurring under the *Crimes (Family Violence) Act 1987* (Vic) sentenced within the reference period, nor does it examine sentencing for contravention of personal safety intervention orders or stalking intervention orders. Personal safety intervention orders are issued under the *Personal Safety Intervention Orders Act 2010* (Vic) where a person fears for his or her safety because of the behaviour of a non-family member, provided other legislative criteria are also met. Stalking intervention orders were issued under the *Stalking Intervention Orders Act 2008* (Vic), which was repealed and replaced by the *Personal Safety Intervention Orders Act 2010* (Vic), commencing 5 September 2011.

18. This is based on examining the number of FVIO and FVSN contravention charges sentenced or diverted during the reference period in each Victorian court jurisdiction.

- I.25 Data in this report on the imposition of intervention orders are not fully comparable with the data in the 2013 report due to changes in the counting rules.
- I.26 First, data in the 2013 report did not effectively exclude intervention orders made by the Children's Court, which may have led to an overestimation of the number of intervention orders thought to have been granted by the Magistrates' Court. The inclusion of intervention orders granted by the Children's Court is estimated to have increased the number of intervention orders in the 2013 report by an average of 4.7% each year.
- I.27 Second, data in the 2013 report excluded interim FVIOs where the orders never became final FVIOs, which may have conversely led to an underestimation of the number of FVIOs issued in the Magistrates' Court. These changes in counting rules may have also affected the rate of FVIO contraventions observed in the 2013 report. Continued improvements in data quality mean that the Council is confident that these problems have been resolved with the data used in this report.
- I.28 Data on the number of FVIOs granted in the Magistrates' Court are from a separate dataset to the sentencing data. No linkage is provided between the two sources.

Family violence incidents

- I.29 Data on the number of family violence incidents recorded by police, including the number of FVSNs issued¹⁹ and the number of incidents that resulted in police laying charges, have been obtained from the Crime Statistics Agency.

Sentencing for contravention of family violence intervention orders

- I.30 Data on Magistrates' Court sentencing are from the Courtlink case management system provided to the Council by Court Services Victoria. The Council receives regular data extracts from this system and uses them to maintain a database of sentences.
- I.31 Data on Children's Court sentencing are also from the Courtlink system, but use of the data in this report has been limited to comparing the number of contravention offences in that jurisdiction with the number of contravention offences in the Magistrates' Court.
- I.32 Data on higher court sentencing are from the Higher Courts Sentencing Database, provided by Court Services Victoria.
- I.33 All sentencing data in this report represent sentencing at first instance, prior to any subsequent changes to the sentence such as those following an appeal. Charges finalised without a finding of guilt (other than charges finalised through the Criminal Justice Diversion Program) are not included in the data used for this report.
- I.34 The sentencing data are recorded separately from the data on FVIOs made by the Magistrates' Court. No linkage could be readily established between these datasets.
- I.35 This analysis of sentencing outcomes focuses on sentencing during the period from 1 July 2012 to 30 June 2015 but uses, as a comparator, sentencing during the period from 1 July 2009 to 30 June 2012 (also examined in the Council's 2013 report).

19. The number of FVSNs is based on a recorded count of where Victoria Police sought to issue an FVSN. There were insufficient data to determine whether an FVSN was actually issued, which may lead to some overcounting/inflation of the numbers.

- 1.36 In Chapter 3, the number of sentenced charges used to calculate the rate of contravention is based on the total number of contravention charges sentenced (or dealt with by way of diversion) from 1 July 2009 to 30 June 2015.
- 1.37 Sentencing outcomes in Chapter 4 were calculated by counting each case once if cases were sentenced (or diverted) for any of the five contravention offences examined in this report.²⁰ The sentence type displayed is the principal sentencing outcome (that is, the most severe sentence in the sentencing hierarchy) given to the relevant contravention charge in that case. Similarly, if a contravention charge has multiple sentences attached to it (for example, a combination of imprisonment and a community correction order), then only the most severe sentence is displayed (in this example, imprisonment). Both aggregate and non-aggregate forms of the sentences are treated equally when determining the most severe sentence for a contravention charge. These counting rules are consistent with the counting rules used in the Council's 2013 report, allowing a comparison of changes to sentencing over time.
- 1.38 One limitation of the quantitative data is that there is no information on the events that resulted in the granting of an intervention order or the issuing of a safety notice. Similarly, the quantitative data do not provide information on the nature of the offending that constituted the contravention offence.
- 1.39 Given these limitations in the quantitative data, the Council consulted with stakeholders about the nature of the contravention charges sentenced, and whether any particular contraventions are likely to attract certain sentences. The Council makes only tentative observations about each of these matters.

Consultation

- 1.40 In the course of preparing this report, the Council consulted with key stakeholders to gain further insight into the factors underlying sentencing outcomes for FVIO and FVSN contravention.
- 1.41 The Council conducted a roundtable²¹ with representatives from organisations and entities including Victoria Police, Victoria Legal Aid, the University of Melbourne, Monash University, the Department of Justice and Regulation, the Domestic Violence Resource Centre Victoria, the Magistrates' Court of Victoria, Women's Legal Service Victoria, the Victorian Aboriginal Legal Service, the Judicial College of Victoria, and the Royal Commission into Family Violence.

20. An individual case may be counted a maximum of five times: once for each different type of contravention offence examined in the report. For example, if a case has three contravention offences (such as contravention of an FVIO, contravention of an FVSN, and persistent contravention), then the case would be counted three times (once for each type of contravention), and the sentencing outcomes attached to each type of contravention would be included when discussing each relevant offence.

21. The attendees are listed in Appendix I.

2. Use of family violence intervention orders and safety notices

- 2.1 Two types of protection measures are available under the *Family Violence Protection Act 2008* (Vic) (*FVP Act*):
- a family violence intervention order (FVIO) – an interim²² or final order²³ made by either the Magistrates' Court or the Children's Court; and
 - a family violence safety notice (FVSN) – a temporary measure issued by police until an FVIO application is decided by the court.²⁴
- 2.2 The Council's 2013 report examined in some detail the trends in the use of FVIOs and FVSNs and the extent of FVIO and FVSN imposition from 1 July 2004 to 30 June 2007 and from 1 July 2009 to 30 June 2012. It was noted in the 2013 report that sentencing outcomes in relation to FVIO contravention had changed considerably since the publication of the Council's 2009 report, influenced by changes to the underlying trends in the use of FVIOs and FVSNs.

Family violence intervention orders

- 2.3 Under the *FVP Act*, the court may make an FVIO on an interim or a final basis. The court may make an interim FVIO where it is satisfied, on the balance of probabilities, that protection is necessary pending a final decision about the FVIO application.²⁵
- 2.4 The court may make a final FVIO where it is satisfied, on the balance of probabilities, that the respondent has committed family violence against a family member and is likely to continue to do so or do so again.²⁶ The court may specify the duration of the final FVIO. In doing so, the court must take into account certain factors, including that the safety of the protected person is paramount.²⁷ While an FVIO is a civil order, contravention of an FVIO is a criminal offence with a maximum penalty of Level 7 imprisonment (two years) and/or a Level 7 fine (240 penalty units).²⁸
- 2.5 Sentencing outcomes in relation to the contravention of interim and final FVIOs are considered in Chapter 4.²⁹

22. *Family Violence Protection Act 2008* (Vic) s 53.

23. *Family Violence Protection Act 2008* (Vic) s 74.

24. *Family Violence Protection Act 2008* (Vic) ss 24–26.

25. *Family Violence Protection Act 2008* (Vic) s 53.

26. *Family Violence Protection Act 2008* (Vic) s 74.

27. *Family Violence Protection Act 2008* (Vic) s 97.

28. *Family Violence Protection Act 2008* (Vic) s 123(2). A penalty unit equated to \$144.36 in the 2013–14 financial year, and \$147.61 in the 2014–15 financial year. As at 1 July 2015, 240 penalty units equate to approximately \$36,400. The value of a penalty unit for each financial year can be found at: Office of the Chief Parliamentary Counsel, *Penalty and Fee Units* (Victorian Legislation and Parliamentary Documents, 2015) <http://www.legislation.vic.gov.au/domino/web_notes/LDMS/pubhome.nsf/KW/Legislative%20Information!OpenDocument&ExpandSection=16,15#_Section16> at 19 November 2015.

29. Sentencing outcomes in relation to interim or final orders could not be separated in the data.

Family violence safety notices

- 2.6 FVSNs are issued by police without application to the court.³⁰ An FVSN is taken to be an application for an FVIO.³¹ Police may issue an FVSN if they believe on reasonable grounds that the notice is necessary to ensure the safety, or preserve the property, of the affected family member, or to protect a child who has been subjected to family violence.³²
- 2.7 The *Family Violence Protection Amendment Act 2014* (Vic) amended the *FVP Act* so that FVSNs can be applied for at any time.³³ Prior to November 2014, FVSNs could only be applied for outside court hours. If an immediate protection measure was required within court hours, the police were to consider applying for an interim FVIO.³⁴ FVSNs last until the FVIO application is adjourned or determined by the court at the first mention date.³⁵ Following recent amendments to the *FVP Act*, the first mention date must be within five working days after the service of an FVSN.³⁶
- 2.8 The procedural requirements applicable to interim and final FVIOs and FVSNs are discussed in further detail in the 2013 report.³⁷

The scope of a family violence intervention order or a family violence safety notice

The purpose of the *Family Violence Protection Act 2008* (Vic)

- 2.9 The purpose of the *FVP Act* is 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.³⁸

The meaning of ‘family violence’ and ‘family member’

- 2.10 The definition of ‘family violence’ under the *FVP Act* captures the breadth of physical and non-physical violence that may occur within family or ‘family-like’ relationships. The violent behaviour does not need to constitute a criminal offence in order to qualify as family violence.³⁹
- 2.11 Family violence includes behaviour by one family member towards another that is:
- physically, sexually, emotionally, psychologically, or economically abusive;
 - threatening or coercive; or
 - controlling or dominating such that a family member fears for his or her own or another’s safety or wellbeing.⁴⁰

30. *Family Violence Protection Act 2008* (Vic) ss 24, 26.

31. *Family Violence Protection Act 2008* (Vic) s 31.

32. *Family Violence Protection Act 2008* (Vic) s 26.

33. *Family Violence Protection Amendment Act 2014* (Vic) s 5(b).

34. *Family Violence Protection Act 2008* (Vic) s 24(f) (since repealed).

35. *Family Violence Protection Act 2008* (Vic) s 30.

36. *Family Violence Protection Act 2008* (Vic) s 31(3).

37. Sentencing Advisory Council (2013), above n 1, 5–6.

38. *Family Violence Protection Act 2008* (Vic) s 1.

39. *Family Violence Protection Act 2008* (Vic) s 5(3).

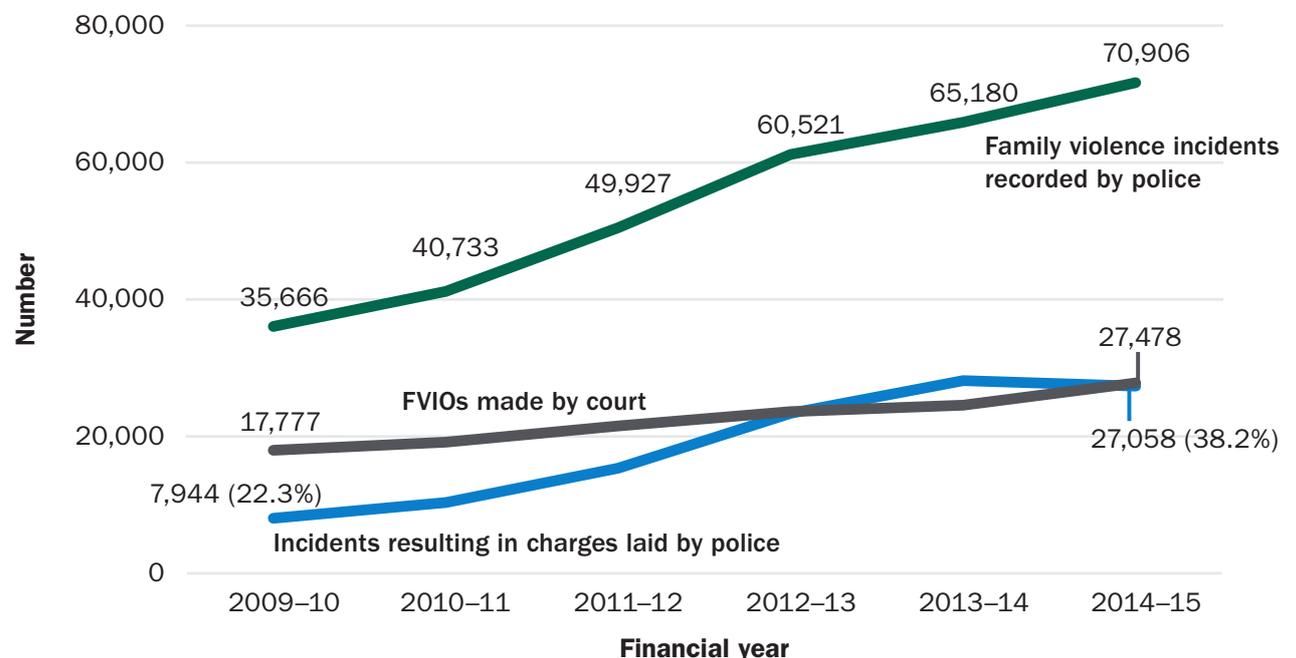
40. *Family Violence Protection Act 2008* (Vic) s 5(1).

- 2.12 'Family member' is defined broadly under the *FVP Act* to include current or former partners of the respondent, relatives of the respondent, children who reside with the respondent, or children of the respondent's current or former partner. The definition also encompasses relationships that are 'family-like' by reason of the social and economic ties between the parties.⁴¹
- 2.13 Importantly, the *FVP Act* expressly recognises that the exposure of children to family violence constitutes family violence in itself.⁴²
- 2.14 The purpose of the *FVP Act* is discussed in further detail in the 2013 report, as is the meaning of 'family violence' and 'family member', and available order and notice conditions.⁴³

The number of family violence incidents and family violence orders

- 2.15 Figure 1 shows the number of FVIOs made by the Magistrates' Court compared with the number of family violence incidents recorded by police and the number of these incidents that resulted in police laying charges between 2009–10 and 2014–15. The rate at which family violence incidents are reported may have some influence on the number of FVIOs made, as discussed at [2.17]–[2.27]. Family violence incidents are classified by Victoria Police in accordance with the definition of family violence in the *FVP Act*.

Figure 1: Number of family violence intervention orders made by the Magistrates' Court of Victoria and number of family violence incidents recorded by Victoria Police, 2009–10 to 2014–15⁴⁴



41. *Family Violence Protection Act 2008* (Vic) s 8.

42. *Family Violence Protection Act 2008* (Vic) s 5(1)(b).

43. Sentencing Advisory Council (2013), above n 1, 5–9.

44. Data on family violence incidents and incidents resulting in charges laid by police are from the Crime Statistics Agency. Data on the number of FVIOs imposed are from the Magistrates' Court of Victoria.

- 2.16 From 2009–10 to 2014–15, family violence incidents recorded by police continued on an upward trend, with the number of incidents almost doubling over the course of this period. The percentage of these incidents where police have laid charges has also increased, from 22.3% in 2009–10 to 38.2% in 2014–15.
- 2.17 The Royal Commission into Family Violence has precipitated a number of government initiatives, which may have influenced the increase in the number of family violence incidents reported and consequently the increase in the number of FVIOs issued. For example, in March 2015 Victoria Police established the Family Violence Command as a central point of accountability within Victoria Police for family violence operations. The Assistant Commissioner stated that an aim of the command is to increase reporting of family violence incidents.⁴⁵
- 2.18 As examined in the 2013 report, over the last 10 years Victoria Police has introduced two key five-year strategies aimed specifically at family violence reduction. The most recent strategy, addressing the period from 2009 to 2014, includes initiatives such as the revised Family Violence Code of Practice and provides for a state-wide network of specialist family violence officers and teams.⁴⁶
- 2.19 An increase in the rate at which police lay charges in relation to family violence incidents may be explained by increased reporting by victims and improvements to police procedures. However, it is possible that there has also been an increase in actual offending rates.
- 2.20 Stakeholders commented that reporting of family violence incidents may be influenced by increased media coverage of family violence matters,⁴⁷ as well as public statements made by the then Chief Commissioner on Victoria Police's prioritisation of family violence.⁴⁸
- 2.21 Between 2009–10 and 2014–15, the number of FVIOs increased steadily, with the levels in 2014–15 representing a 54.6% increase compared with levels in 2009–10.
- 2.22 The number of FVIOs did not increase at the same rate as the number of family violence incidents recorded by police. However, several factors may influence these variables, including that:
- family violence incidents encompass a wide range of behaviour and events, not all of which will lead to police laying charges or applying for an FVIO;⁴⁹
 - some family violence incidents may involve alleged offenders who are already under an existing FVIO, which may not result in the Magistrates' Court ordering a further FVIO;
 - a small group of repeat alleged offenders may account for a large proportion of the family violence incidents recorded by police – these incidents would not necessarily translate into a comparable increase in the number of FVIOs issued by the court; and
 - as discussed at [2.36], some FVIO applications are made by affected family members rather than by police, and such applications may be made prior to any police involvement in a family violence incident.

45. Dean McWhirter, 'Australia's First Family Violence Command', *Cops and Bloggers*, 17 March 2015 <<http://www.vicpolice.com.au/cops-and-bloggers/6176-australia%E2%80%99s-first-family-violence-command.html>> at 10 November 2015.

46. Victoria Police, *Living Free from Violence – Upholding the Right: Victoria Police Strategy to Reduce Violence Against Women and Children 2009–2014* (2009). The previous strategy covered the period from 2002 to 2007: Victoria Police, *Violence Against Women Strategy: The Way Forward* (2002).

47. Roundtable (7 October 2015).

48. Ken Lay, 'Re-thinking Violence Against Women', *Cops and Bloggers*, 23 July 2013 <<http://www.vicpolice.com.au/cops-and-bloggers/975-re-thinking-violence-against-women.html>> at 10 November 2015.

49. The *FVP Act* provides that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence: *Family Violence Protection Act 2008* (Vic) s 5(3).

2.23 In order to determine whether the increases in the FVIOs issued are simply a result of changes in the total Victorian population, the Council examined the number of FVIOs per 100,000 persons over the six-year period (see Figure 2).⁵⁰

2.24 Figure 2 shows that the rate of FVIOs has consistently increased over the reference period, from 328.0 per 100,000 people in 2009–10 to 466.8 per 100,000 in 2014–15.

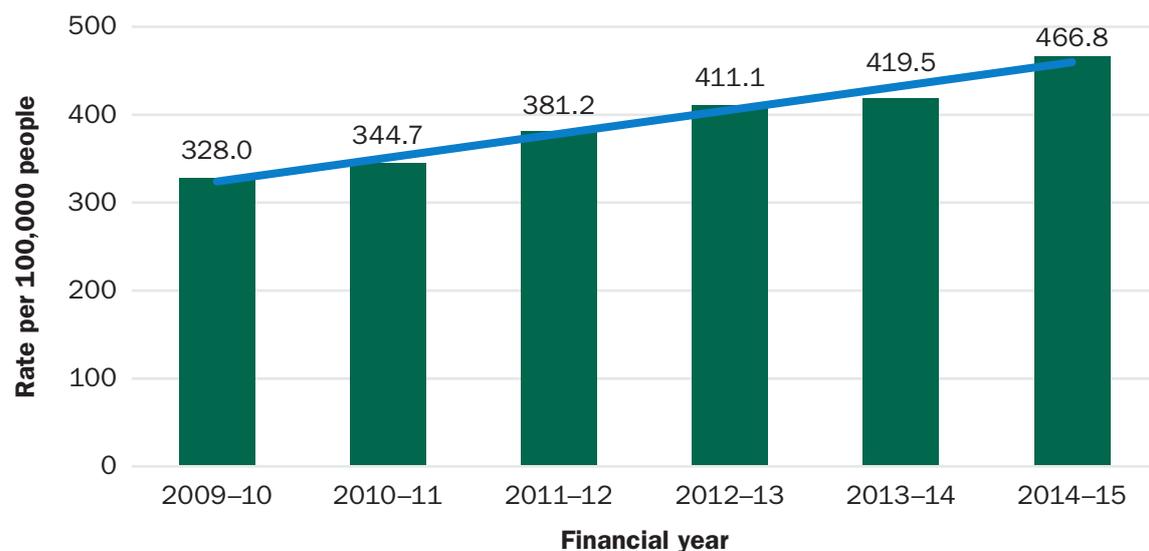
2.25 Taken together, Figures 1 and 2 demonstrate a clear trend of substantial growth in the imposition of FVIOs since 2009–10.

2.26 Under Victoria Police's Family Violence Code of Practice, in addition to criminal sanctions, police are to pursue civil options in a wide range of circumstances. Police are required to:

- apply for an FVIO wherever the safety, welfare, or property of a family member appears to be endangered by another family member (this assessment is guided by the common risk assessment framework referred to at [1.12]);
- apply for an FVIO even without the agreement of the affected family member if necessary;
- apply for an FVIO alongside any criminal action, provided there are grounds for the application and regardless of any bail conditions aimed at the protection of family members;
- assess separately the needs of any children and apply for an FVIO to protect children specifically where necessary; and
- extend the FVIO upon contravention or apply for a further FVIO if necessary.⁵¹

2.27 Figure 1 indicates that the number of family violence incidents is increasing at a greater rate than the number of FVIOs imposed. Nevertheless, the trend in FVIO imposition broadly mirrors the trend in reports of family violence to police. The reporting of family violence is likely to be a significant factor in the making of an FVIO, given that police now initiate the majority of FVIOs (see Figure 4).

Figure 2: Family violence intervention order rate (orders per 100,000 people), Magistrates' Court of Victoria, 2009–10 to 2014–15



50. The population figures used to calculate rates are the estimated resident population of Victoria in the December quarter of each year: Australian Bureau of Statistics, *Australian Demographic Statistics, December 2014*, cat. no. 3101.0 (2015).

51. Victoria Police (2014), above n 11, 28–29 ('What Police Do if a Contravention Is Reported'), 31 ('Civil Options Available for Protection of Affected Family Members (AFMs)'; 'When Should Police Make Application for a FVIO or FVSN?'), 37 ('Considerations When a Child Is Involved').

Commencement of orders

2.28 An FVIO may commence through the use of:

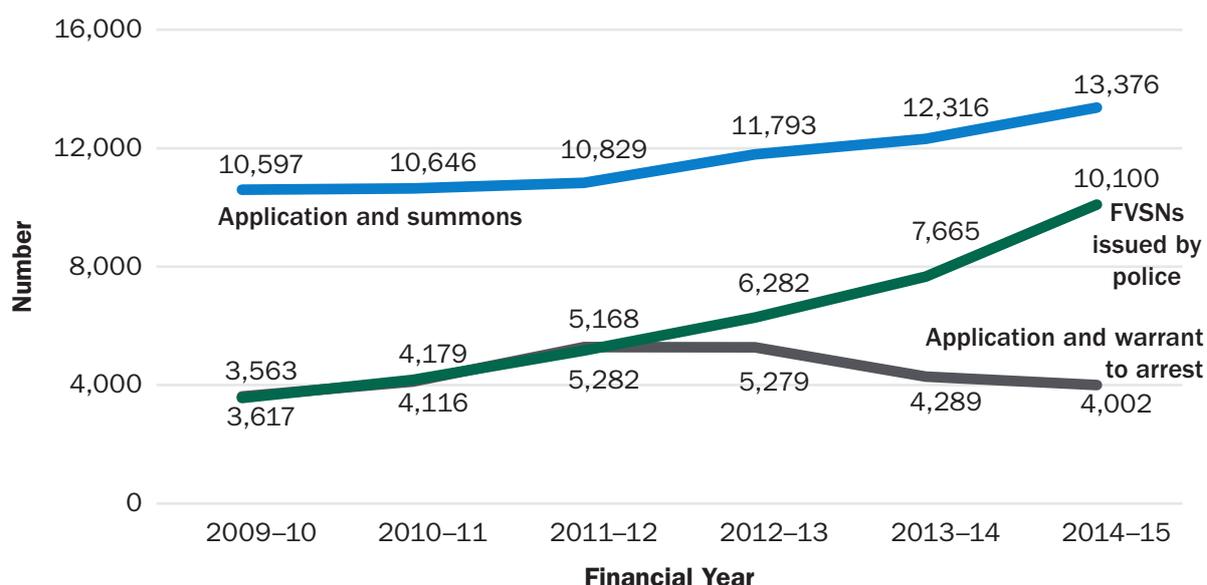
- an application and summons, which requires the respondent to attend at court for the hearing of the FVIO application;⁵²
- an application and warrant for the arrest of the respondent;⁵³ or
- an FVSN, which is taken to be an application for an FVIO and a summons for the respondent to attend at the first mention date for the FVIO application.⁵⁴

2.29 The Family Violence Code of Practice states that police should seek an application and summons where there is no immediate danger to the person or property of the affected family member but action is otherwise required to protect the affected family member from certain behaviours of the respondent.⁵⁵

2.30 The court may issue a warrant for the arrest of an adult respondent if this is necessary to ensure the safety, or preserve the property, of the affected family member, protect a child who has been subjected to family violence, or ensure that the respondent attends court for the hearing of the FVIO application.⁵⁶

2.31 Figure 3 shows the number of interim and final FVIOs made by the Magistrates' Court between 2009–10 and 2014–15 according to the original mode of issue. During this period, the use of application and summons⁵⁷ to commence FVIO hearings steadily increased, the use of FVSNs dramatically increased, and the use of application and warrant to arrest increased to 2011–12 before decreasing over the remaining reference period.

Figure 3: Number of family violence intervention orders made, by original mode of issue and financial year, 2009–10 to 2014–15



52. Family Violence Protection Act 2008 (Vic) s 49.

53. Family Violence Protection Act 2008 (Vic) s 50.

54. Family Violence Protection Act 2008 (Vic) s 31(1).

55. Victoria Police (2014), above n 11, 35–36 ('Application and Summons').

56. Family Violence Protection Act 2008 (Vic) s 50.

57. Data for the application and summons mode of issue include cases where the respondent is already in custody at the time that an application for an FVIO is made against him or her. Not every respondent in this category is in custody at the time an FVIO application is made.

- 2.32 In percentage terms, there was a marked change in the use of FVSNs to commence FVIO applications: in 2009–10 FVSNs were used to commence 20.0% of FVIO applications, but by 2014–15 FVSNs were used to commence 36.8% of FVIO applications. At the same time, there was a decline in the proportion of FVIOs initiated by application and summons (59.6% in 2009–10 declining to 48.7% in 2014–15) and by application and warrant to arrest (20.3% in 2009–10 declining to 14.6% in 2014–15). However, application and summons remains the most common way to initiate an FVIO.
- 2.33 The considerable increase in the use of FVSNs to commence FVIO applications may indicate an increased number of family violence incidents requiring the immediate protection of affected family members through the imposition of an FVSN. It is unclear whether this is due to an increase in the seriousness of incidents of this nature or a greater level of protection being afforded by police to victims of family violence.
- 2.34 Since November 2014, FVSNs can be applied for at any time.⁵⁸ The increase in the use of FVSNs in 2014–15 may also be influenced by this fact.
- 2.35 The corresponding decrease in the use of application and warrant to arrest to commence an FVIO application indicates that FVSNs are being used in lieu of the arrest of the alleged offender to afford immediate protection to victims of family violence incidents.

Applicants

- 2.36 An application for an FVIO may be made by:
- an affected family member;
 - a police officer acting on a family member's behalf;
 - a person who has the consent of an adult family member to apply on the family member's behalf; or
 - a person acting on behalf of a child where the affected family member is a child.⁵⁹

In practice, the majority of FVIOs are now initiated by police.

- 2.37 Where the applicant for an FVIO is a police officer, the FVIO may be made even if the affected family member has not consented to the making of the application. However, in such circumstances, the range of conditions available is necessarily limited (unless, for example, the family member is a child or cognitively impaired).⁶⁰
- 2.38 Under the *FVP Act*, the court may make an order for the protection of children on its own initiative.⁶¹

58. *Family Violence Protection Amendment Act 2014* (Vic) s 5(b), repealing section 24(f) of the *Family Violence Protection Act 2008* (Vic).

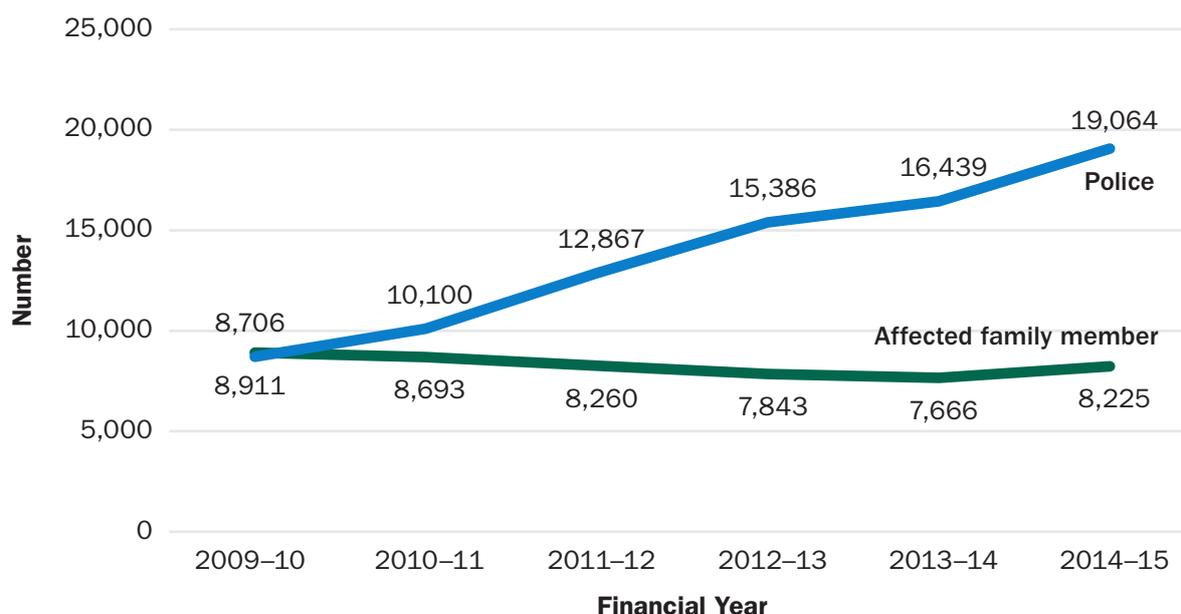
59. *Family Violence Protection Act 2008* (Vic) s 45.

60. *Family Violence Protection Act 2008* (Vic) s 75.

61. *Family Violence Protection Act 2008* (Vic) s 77.

- 2.39 Figure 4 shows the number of FVIOs made by the Magistrates' Court from 2009–10 to 2014–15 by applicant (applicants other than affected family members or police accounted for 0.7% of the percentage of applicants during the reference period and are not displayed).
- 2.40 Between 2009–10 and 2014–15, the number of FVIOs initiated by police increased in a linear fashion, from 8,706 to 19,064. Over the same period, the percentage of all applicants that were police also increased, from 49.0% to 69.4%. By contrast, the number of FVIOs initiated by affected family members declined slightly, from 8,911 in 2009–10 to 8,225 in 2014–15. Despite this decline, FVIOs initiated by family members continue to represent a substantial volume of work for the court.
- 2.41 The data clearly indicate that police now play a more proactive role than previously in relation to FVIO applications: by 2014–15, police initiated almost 70% of all FVIOs.
- 2.42 Although the increase in police-initiated FVIOs is likely to capture a substantial proportion of FVIOs that otherwise would have been initiated by family members, this increase is also likely to reflect applications made without the agreement of affected family members.
- 2.43 The increase in police-initiated FVIOs is consistent with the Family Violence Code of Practice, which envisages that police will make a significant proportion of all FVIO applications.⁶² Significantly, the Family Violence Code of Practice requires police to make an FVIO application without the agreement of affected family members if necessary. However, as discussed at [2.37], making an application in the absence of the consent of the affected family member may limit the conditions that can be placed on the order.⁶³
- 2.44 Stakeholders observed that in some circumstances it may be preferable for affected family members that police make the application for an FVIO, as this may partially deflect any blame the respondent has towards the affected family member for being placed under an FVIO.⁶⁴

Figure 4: Number of family violence intervention orders by applicant, Magistrates' Court of Victoria, 2009–10 to 2014–15



62. Victoria Police (2014), above n 11, 31–32 ('Who Can Apply for an Intervention Order').

63. *Family Violence Protection Act 2008* (Vic) s 75(2).

64. Roundtable (7 October 2015).

Duration of orders

- 2.45 A court may specify the period for which an FVIO is in force.⁶⁵ The *FVP Act* sets out mandatory considerations for the court in determining the length of an FVIO. When considering the duration of a final FVIO, the court must take the following into account:
- the safety of the protected person as paramount;
 - any assessment by the applicant of the level and duration of risk from the respondent; and
 - the protected person's views (where he or she is not the applicant), including his or her assessment of the level and duration of risk from the respondent.⁶⁶
- 2.46 The Council examined the duration of final FVIOs granted in the Magistrates' Court from 2009–10 to 2014–15. Only final FVIOs were examined, because interim FVIOs do not have a specific duration.⁶⁷
- 2.47 There were few changes to the trends in the duration of final FVIOs over the reference period, and the distributions remain similar to those examined in the Council's 2013 report.⁶⁸ The majority of final FVIOs were given a duration of between 12 months and less than 24 months (79.4% of final FVIOs). This increased slightly from 77.0% of final FVIOs in 2009–10 to 80.5% in 2014–15.
- 2.48 In its 2009 report, the Council suggested that the court may need to impose FVIOs with durations of more than 12 months in the first instance, given that the risk of further violence may not always abate over the first year.⁶⁹
- 2.49 Other FVIO durations were granted less frequently, such as durations of less than 12 months (10.5%), durations of 24 months and over (7.7%), and unknown or indefinite durations (2.3%). The average duration (excluding unknown or indefinite durations) was 13.4 months, while the median was 12 months.

Protected persons

- 2.50 The ratio of protected persons per order has decreased slightly, from 1.9 people per FVIO (interim or final) in 2009–10 to 1.7 people per FVIO in 2014–15. This is similar to the ratio of 1.8 people per FVIO for 2007–08 to 2011–12 in the 2013 report.⁷⁰
- 2.51 The distribution of gender, age group, and relationship to the respondent for protected persons did not shift significantly from 2009–10 to 2014–15. These findings remain consistent with those outlined in the 2013 report.⁷¹
- 2.52 The majority of protected persons were under the age of 18 (45.9%), followed by people aged between 25 and 44 (29.8%), and people aged 45 or older (14.8%). Those aged between 18 and 24 comprised the smallest group of protected persons (9.5%).

65. *Family Violence Protection Act 2008* (Vic) s 97.

66. *Family Violence Protection Act 2008* (Vic) s 97(2).

67. A total of 107,633 final FVIOs were granted by the Magistrates' Court (including cases that started as interim orders and later became final orders) during the reference period. An additional 25,466 FVIOs were interim orders that did not become final orders.

68. Sentencing Advisory Council (2013), above n 1, 16.

69. Sentencing Advisory Council (2009), above n 4, 87.

70. Sentencing Advisory Council (2013), above n 1, 18.

71. *Ibid* 18–22.

- 2.53 Between 2009–10 and 2014–15, approximately two-thirds of protected persons were female (65.4%), while the remaining one-third were male (34.6%). Female protected persons mainly comprised people aged between 25 and 44 years (37.2%) or people aged under 18 (35.1%). Male protected persons mainly comprised people aged under 18 (66.4%).
- 2.54 The majority of protected persons were either the child or the step-child of the respondent (41.5%), followed by current or former domestic partners (31.0%). Other types of relationships comprised smaller groups of protected persons such as intimate personal relations (7.3%), parents (6.1%), siblings (4.1%), in-laws (3.3%), and unknown/unspecified (6.6%). Female protected persons were most likely to be either current or former domestic partners (40.3%), or the child/step-child of the respondent (31.7%). Male protected persons were most likely to be the child/step-child of the respondent (60.0%).

Respondents

- 2.55 The distribution of gender and age groups for respondents to an FVIO did not shift significantly from the findings outlined in the 2013 report.⁷²
- 2.56 From 2009–10 to 2014–15, the majority of respondents to an FVIO were males (81.2%), while the remaining 18.8% of respondents were female. A similar percentage is found in the 2013 report.⁷³
- 2.57 The majority of respondents were aged between 25 and 44 (60.3%). People aged 45 and over were the next most common age group (22.3%), followed by people under the age of 25 (17.4%).
- 2.58 The age profile of respondents is consistent with the data on the relationship of protected persons to respondents. The majority of protected persons were children or step-children of the respondent (as outlined at [2.54]), and people in the age range most likely to have children within their care (persons aged 25 to 44) were the most common respondents to FVIOs.
- 2.59 Stakeholders observed that, in their experience, there has been an increase in instances of FVIOs relating to family violence between children (as respondents) and parents, as well as between siblings.⁷⁴ However, according to the Magistrates' Court data as outlined at [2.54], these types of relationships continued to account for a small percentage of the FVIOs granted. There may be a greater percentage of FVIOs involving these types of relationships in the Children's Court jurisdiction, which is not the focus of this report.

72. Sentencing Advisory Council (2013), above n 1, 23–24.

73. Ibid 23.

74. Roundtable (7 October 2015).

3. Contraventions of family violence intervention orders and safety notices

- 3.1 Contravention of a family violence intervention order (FVIO) or a family violence safety notice (FVSN) is a criminal offence proscribed by the *Family Violence Protection Act 2008* (Vic) (*FVP Act*). In addition to the general contravention offences,⁷⁵ three aggravated contravention offences, which commenced on 17 April 2013, target repeated, persistent, or particularly harmful contraventions of FVIOs and FVSNs.⁷⁶
- 3.2 The aggravated forms of contravention are:
- contravention of notice intending to cause harm or fear for safety;⁷⁷
 - contravention of order intending to cause harm or fear for safety;⁷⁸ and
 - persistent contravention of notices and orders.⁷⁹
- 3.3 These provisions apply only to contraventions alleged to have been committed on or after 17 April 2013, regardless of when the FVIO or FVSN was issued.⁸⁰

Contravention offences

General contravention offence

- 3.4 The *FVP Act* contains a general prohibition against contravention of an FVIO or an FVSN.⁸¹ The maximum penalty for the general contravention offence is Level 7 imprisonment (two years) and/or a Level 7 fine (240 penalty units).⁸²

75. *Family Violence Protection Act 2008* (Vic) ss 37, 123.

76. Victoria, *Parliamentary Debates*, Legislative Assembly, 15 November 2012, 5075–5077 (Robert Clark, Attorney-General).

77. *Family Violence Protection Act 2008* (Vic) s 37A.

78. *Family Violence Protection Act 2008* (Vic) s 123A.

79. *Family Violence Protection Act 2008* (Vic) s 125A.

80. *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic) s 29.

81. *Family Violence Protection Act 2008* (Vic) ss 37, 123.

82. *Family Violence Protection Act 2008* (Vic) ss 37, 123. As at 1 July 2015, 240 penalty units equate to approximately \$36,400.

Aggravated contravention offences

Contravention of an order or a notice intending to cause harm or fear for safety

- 3.5 Contravention offences intending to cause harm or fear for safety specifically prohibit contravention of an FVIO or an FVSN where a person intends to cause, or knows that the conduct will probably cause, physical or mental harm to the protected person or apprehension or fear for the safety of the protected person or that of any other person.⁸³ Mental harm includes psychological harm and suicidal thoughts.⁸⁴
- 3.6 These offences are aimed at contraventions that – while not constituting an offence other than the contravention – are particularly harmful to the victim.⁸⁵ Examples of the types of behaviour that may be captured by this offence include sending a funeral wreath to a protected person, or sending a death threat to a protected person via text message.⁸⁶
- 3.7 It is immaterial that one of the parties is outside Victoria at the time the conduct occurs. The provisions apply as long as one of the parties is in Victoria at the time the conduct occurs.⁸⁷
- 3.8 The maximum penalty for contravention of an order or a notice intending to cause harm or fear for safety is Level 6 imprisonment (five years) and/or a Level 6 fine (600 penalty units).⁸⁸

Persistent contravention of notices and orders

- 3.9 The persistent contravention offence is directed at repeat contravention. It targets offenders who have contravened an FVIO or an FVSN and have engaged in conduct that constitutes a contravention offence on at least two occasions within the preceding 28-day period.⁸⁹ Parliament regards such contraventions as particularly egregious because they occur within a short space of time and therefore demonstrate a disregard for the law.⁹⁰
- 3.10 In situations of repeated contravention of an FVIO or an FVSN, this offence allows police to charge recidivist offenders with an offence reflecting the particular nature of the offending behaviour.
- 3.11 The persistent contravention offence also provides an opportunity for the prosecution to present more information on family violence dynamics. Although each contravention must be proven separately to establish the offence, the contravention can be placed in its proper context when presented to the court to explain the persistent nature of the offending.

83. *Family Violence Protection Act 2008* (Vic) ss 37A, 123A.

84. *Family Violence Protection Act 2008* (Vic) ss 37A(1), 123A(1).

85. Explanatory Memorandum, Justice Legislation Amendment (Family Violence and Other Matters) Bill 2012 (Vic) 4.

86. Director of Public Prosecutions Victoria, *Director's Policy on Breaches of Family Violence Intervention Orders – New Indictable Offences* (DPP Prosecution Policies, 2015) <<http://www.opp.vic.gov.au/Resources/DPP-s-policies>> at 9 September 2015, 5. Such conduct could potentially be charged under the offence of making 'threats to kill': *Crimes Act 1958* (Vic) s 20.

87. *Family Violence Protection Act 2008* (Vic) ss 37A(3)–(4), 123A(3)–(4).

88. *Family Violence Protection Act 2008* (Vic) ss 37A, 123A. As at 1 July 2015, 600 penalty units equate to \$91,002.

89. *Family Violence Protection Act 2008* (Vic) s 125A. The offence is established whether or not the contraventions are in relation to the same protected person.

90. Explanatory Memorandum, Justice Legislation Amendment (Family Violence and Other Matters) Bill 2012 (Vic) 6.

- 3.12 The offence refers to the conduct occurring on at least two other occasions within the proceeding 28-day period. The word 'occasion' is also used in section 47A of the *Crimes Act 1958* (Vic) (persistent sexual abuse of a child under 16).⁹¹ The word was considered in the case of *Tognolini v The Queen*,⁹² where it was established that, for acts to have occurred on separate 'occasions', there needs to be a clear separation in time or circumstance between each act.⁹³
- 3.13 At trial, if a jury is not satisfied that the accused is guilty of the offence of persistent contravention but does find that the accused engaged in conduct during the period that constitutes an offence of contravention of an FVIO or an FVSN, the jury must acquit the accused of the offence of persistent contravention, but it may find the accused guilty of one of the general contravention offences.⁹⁴
- 3.14 A person convicted or acquitted of an offence against section 125A of the *FVP Act* cannot be subsequently prosecuted for another contravention offence in the *FVP Act* in respect of the same circumstances or the relevant 28-day period.⁹⁵
- 3.15 The maximum penalty for this offence is Level 6 imprisonment (five years) and/or a Level 6 fine (600 penalty units).⁹⁶
- 3.16 All of the aggravated offences are indictable offences triable summarily. This means that the offences may be heard and determined in the Magistrates' Court if the court considers it appropriate and the accused consents to a summary hearing.⁹⁷ The Director of Public Prosecutions anticipated that the Office of Public Prosecutions would prosecute only the most serious of the new aggravated offences in the higher courts, and that the majority of the offences charged would be tried summarily.⁹⁸

Rate of contravention

Family violence intervention orders

- 3.17 To estimate the contravention rate, the Council divided the number of FVIOs issued by the number of FVIOs contravened in each financial year (see Figure 5 for the underlying numbers). The Council was unable to calculate a precise contravention rate because data on FVIOs granted are held in a separate database to FVIO contraventions, and as such the data cannot be readily linked. Therefore, there was no way to determine which specific FVIOs were contravened and which were not as linking the data is critical for calculating a precise rate.
- 3.18 Apart from issues preventing charges being linked with orders, the precision of the contravention rate suffers from different counting rules: multiple contravention charges may relate to a single FVIO, and the rate of contraventions may be inflated due to a small number of repeat offenders. Accordingly, the Council makes only tentative conclusions about the rate of contravention charges over the period.

91. *Crimes Act 1958* (Vic) s 47A.

92. *Tognolini v The Queen* (2011) 32 VR 104.

93. *Tognolini v The Queen* (2011) 32 VR 104, 106 [4], 109 [22].

94. *Family Violence Protection Act 2008* (Vic) s 125A(4).

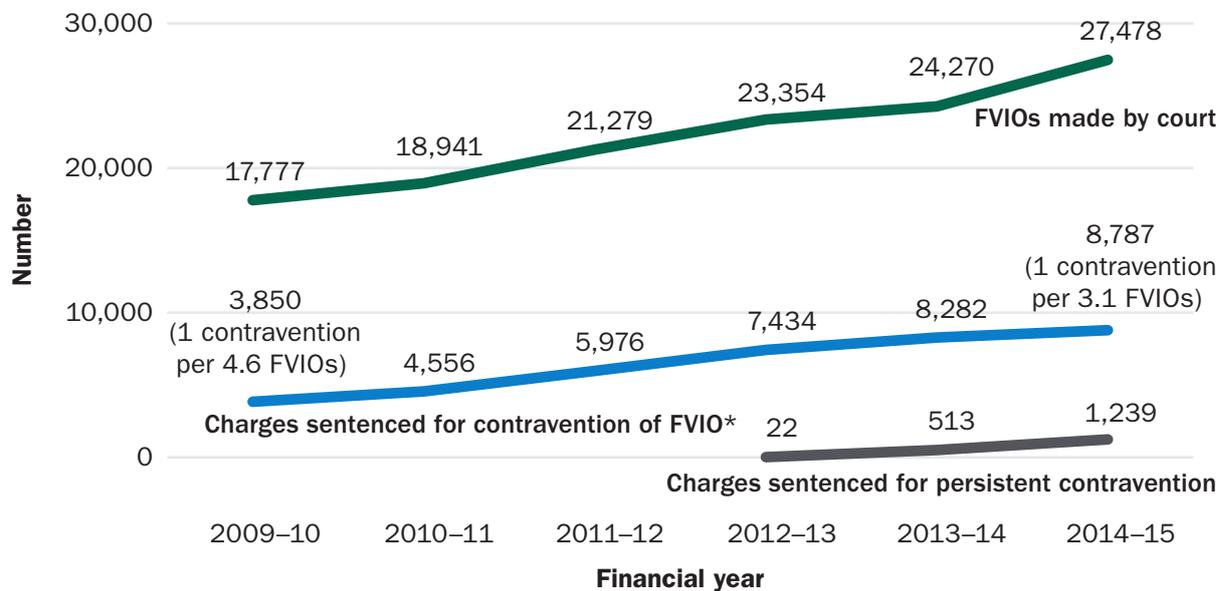
95. *Family Violence Protection Act 2008* (Vic) s 125A(5).

96. *Family Violence Protection Act 2008* (Vic) s 125A. As at 1 July 2015, 600 penalty units equate to \$91,002.

97. *Criminal Procedure Act 2009* (Vic) ss 28(1)(b), 29.

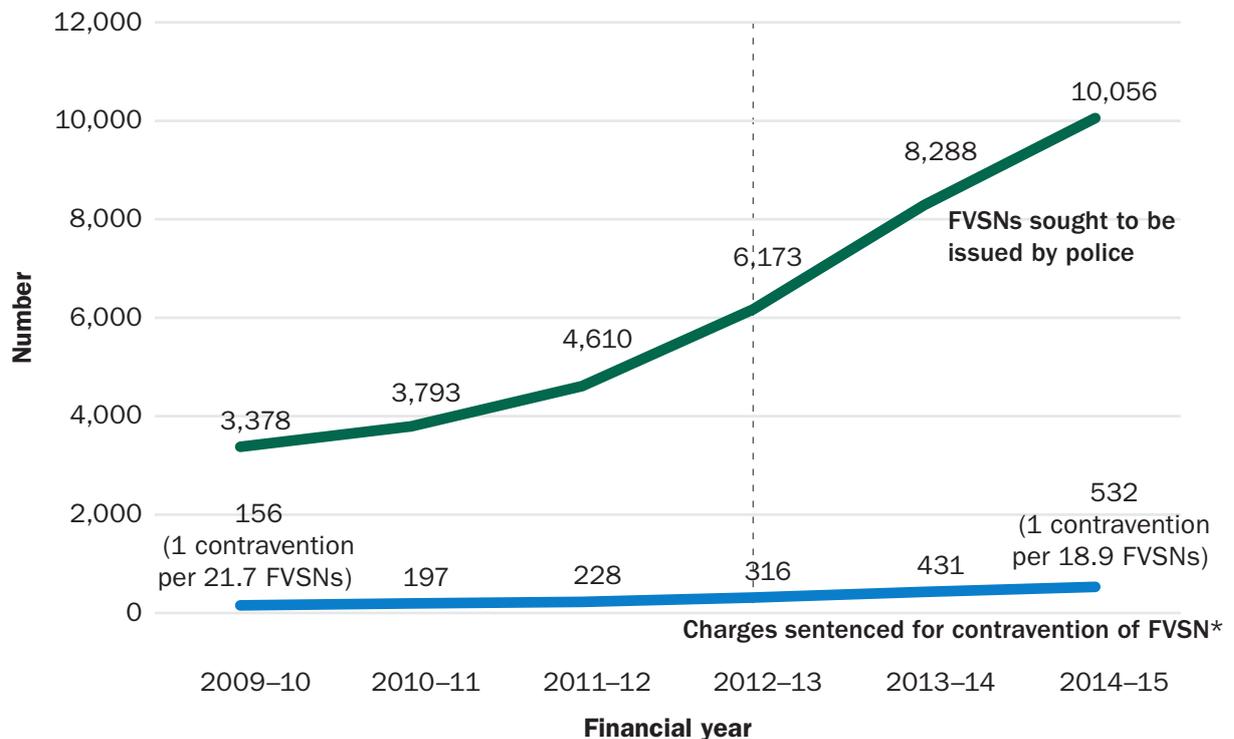
98. Director of Public Prosecutions Victoria (2015), above n 86, 10–11.

Figure 5: Number of family violence intervention orders made, number of sentenced charges of contravention of a family violence intervention order (including contraventions intending to cause harm or fear for safety), and number of sentenced charges of persistent contravention, Magistrates' Court of Victoria, 2009–10 to 2014–15



*Includes contravention of FVIO intending to cause harm or fear for safety – after 17 April 2013

Figure 6: Number of family violence safety notices sought to be issued by Victoria Police and number of sentenced charges of contravention of a family violence safety notice (including contraventions intending to cause harm or fear for safety), Magistrates' Court of Victoria, 2009–10 to 2014–15



*Includes contravention of FVSN intending to cause harm or fear for safety – after 17 April 2013

- 3.19 With these qualifications in mind, there was an increase in the estimated rate of contraventions (excluding charges of persistent contravention) sentenced during the reference period, from one contravention per 4.6 FVIOs in 2009–10 to one contravention per 3.1 FVIOs in 2014–15.
- 3.20 The data relating to the persistent contravention offence are presented separately due to difficulties associated with counting contraventions for this offence (see [3.25]–[3.28]). Assuming that all persistent contravention offences involved a contravention of an FVIO (as opposed to an FVSN), the ratio of contraventions would have increased to one contravention per 2.7 FVIOs in 2014–15.
- 3.21 The aggravated contravention FVIO offences did not completely account for the increase in the rate of contraventions. The rate of non-aggravated contraventions of FVIOs still increased from one contravention per 4.6 FVIOs to one per 3.6 FVIOs in 2014–15 (excluding both the offence of contravention of an FVIO intending to cause harm or fear for safety and the persistent contravention offence).

Family violence safety notices

- 3.22 The same methodological issues relating to calculation of contravention rates for FVIOs apply to the contravention rates for FVSNs. Additionally, the number of FVSNs is based on a count of these notices that police *sought* to issue. Consequently, there may be a slight overcount of the actual number of FVSNs issued each year. As such, the estimated rates presented here must be interpreted with caution. Figure 6 shows the number of sentenced FVSN contravention charges (including contraventions intending to cause harm or fear for safety) compared with the number of FVSNs made between 2009–10 and 2014–15.
- 3.23 There was one sentenced contravention charge for every 21.7 FVSNs issued in 2009–10, increasing slightly to one contravention for every 18.9 FVSNs issued in 2014–15. Given the limited duration of FVSNs, it is to be expected that this figure would not vary much over the period examined. An FVSN contravention charge will almost always relate to an FVSN made in the same year.
- 3.24 For the period 2009–10 to 4 February 2013, FVSNs lasted for a maximum of 72 hours (that is, the first mention date for the FVIO application was required to occur within 72 hours after service of the FVSN). Since 4 February 2013, FVSNs can last for a maximum of five working days.⁹⁹ However, the rate of FVSN contravention (including contraventions intending to cause harm or fear for safety) has remained relatively steady, at an average of one contravention for every 20 FVSNs during the reference period.

⁹⁹ Justice Legislation Amendment (Family Violence and Other Matters) Act 2012 (Vic) s 4; Family Violence Protection Act 2008 (Vic) s 31(3).

Persistent contravention of notices and orders

- 3.25 Persistent contravention offences are displayed in Figure 5 (alongside FVIO contraventions).
- 3.26 As stated at [3.1], the new offences came into effect on 17 April 2013.
- 3.27 The persistent contravention offence applies to contraventions of both FVIOs and FVSNs, and the data cannot be reliably separated into FVIO and FVSN contraventions. However, stakeholders commented that persistent contravention offences were far more likely to relate to contraventions of FVIOs than FVSNs, due to the limited duration of FVSNs.¹⁰⁰
- 3.28 Stakeholders also suggested that the persistent contravention offence be presented separately from other contravention offences because one charge of persistent contravention encompasses multiple separate contraventions of an FVIO or an FVSN (as discussed at [3.9]). Stakeholders also commented that the non-persistent contravention offences might themselves be 'representative' or 'rolled-up' charges of a contravention offence, wherein several instances of contravention are encompassed in a single charge.¹⁰¹ This means that the rates of contravention displayed in Figures 5 and 6 are likely to underestimate the actual rates of contravention.¹⁰²

Contravention investigations

- 3.29 As the Court of Appeal stated in *DPP v Johnson*,¹⁰³ intervention orders can only protect victims if they are effectively enforced.
- 3.30 Victoria Police's Family Violence Code of Practice¹⁰⁴ requires a full investigation of all reported contraventions, regardless of the perceived seriousness of the contravention.
- 3.31 The Family Violence Code of Practice was revised in 2014, amending the wording of the policy to state:
- FVIOs and FVSNs must be strictly interpreted and enforced. There is no such lawful term as a 'technical' contravention and police *must* lay charges for any contravention.
- A contravention should not be ignored; the family could be unsafe and lack of attention conveys to the respondent and the AFM that the order is not taken seriously. It could lead to continued abuse, further police involvement in subsequent contraventions, and possible harm to the AFM and/or their children.¹⁰⁵
- 3.32 This represents a narrowing of the discretion described in the Family Violence Code of Practice in 2010, which states that police should 'consider' laying charges for any contravention.¹⁰⁶

100. Roundtable (7 October 2015).

101. A 'representative' charge refers to a particular offence being a sample of offending that occurred in a wider context: *R v SBL* [1999] 1 VR 706; *R v RGG* [2008] VSCA 94 (6 June 2008). A 'rolled-up' charge is a charge in an indictment that alleges that the accused has committed more than one offence of the same type between specified dates: *Sentencing Act 1991 (Vic)* s 9.

102. Roundtable (7 October 2015).

103. *DPP v Johnson* (2011) 35 VR 25. See further: Sentencing Advisory Council (2013), above n 1, 27–28.

104. Victoria Police (2014), above n 11.

105. *Ibid* 28 (emphasis added).

106. Victoria Police, *Code of Practice for the Investigation of Family Violence* (2nd ed., 2010) 27–28. This is broadly consistent with the original edition: Victoria Police, *Code of Practice for the Investigation of Family Violence* (2004) 34–36.

- 3.33 During consultation, however, Victoria Police stated that this change to the Family Violence Code of Practice in 2014 was made to clarify policy expectations that had already been implemented some years prior. The emphasis in previous versions of the Code of Practice was also on the requirement that police pursue charges for all contraventions of FVIOs and FVSNs. As a consequence, the amendments to the Code in 2014 did not coincide with any significant changes to police procedures at that time.¹⁰⁷
- 3.34 The revised Family Violence Code of Practice also clarifies that contravention offences are offences against statute and not against the victim, reinforcing the principle that the prosecution does not require the consent of the affected family member to pursue a charge of a contravention offence.¹⁰⁸
- 3.35 In undertaking a risk assessment and determining whether criminal proceedings should be commenced, police must consider:
- the context of the alleged contravention, including any history of violence in the relationship;
 - the victim's own assessment of his or her level of fear; and
 - the evidence-based risk and vulnerability indicators, including any prior FVIO contravention and/or escalation in the severity or frequency of violence.¹⁰⁹
- 3.36 The 2014 edition of the Family Violence Code of Practice states that only one primary aggressor should be identified, and that cross applications should not be made for intervention orders. If it is unclear who the primary aggressor is, police should identify the affected family member as the party who appears to be the most fearful and in need of protection.¹¹⁰
- 3.37 Significant technological developments in society at large have also assisted protected persons on FVIOs and FVSNs to document and report contraventions, particularly where the contravention is itself technology facilitated. As noted in the Council's 2013 report, social media, SMS messages, and CCTV recordings are increasingly being used to establish FVIO contraventions.¹¹¹
- 3.38 The *FVP Act* contains a power of arrest without warrant for contravention of an FVIO or an FVSN.¹¹² Where a person is arrested on suspicion of any of the contravention offences in the course of which he or she is alleged to have used or threatened to use violence, that person will be required to show cause why his or her detention in custody is not justified if:
- the person has in the past 10 years been convicted or found guilty of an offence and in the course of the offence the person has threatened violence; or
 - the court is satisfied that the person has threatened to use violence against the protected person on another occasion.¹¹³

107. Consultation with Victoria Police, Roundtable (7 October 2015).

108. Victoria Police (2014), above n 11, 28.

109. *Ibid* 18–19.

110. *Ibid* 17.

111. Sentencing Advisory Council (2013), above n 1, 45.

112. *Family Violence Protection Act 2008 (Vic)* ss 38, 124.

113. This requirement is subject to certain qualifications: *Bail Act 1977 (Vic)* s 4(4)(ba).

3.39 Stakeholders commented that this can affect sentencing outcomes, given that those offenders who are not granted bail would come to be sentenced having already spent time in custody, and the pre-sentence detention served would be taken into account when the magistrate decides on a sentence.¹¹⁴ Time spent on remand prior to sentence could not be identified in the Council's sentencing data. However, an examination of the 3,155 cases that received imprisonment for any of the contravention offences revealed that 403 (or 12.8%) received sentences of imprisonment combined with a community correction order (CCO). The percentage of sentences of imprisonment combined with a CCO increased from 2.0% (of 358 cases that received imprisonment across the five contravention offences in 2011–12) to 25.6% (of 1,032 cases that received imprisonment in 2014–15). Stakeholders indicated that sentences combining a term of imprisonment with a CCO may become more frequent as a result of time spent on remand, in order to acknowledge time spent in pre-sentence detention within the sentencing outcome.¹¹⁵

114. Roundtable (7 October 2015).

115. Roundtable (7 October 2015).

4. Sentencing for Contravention Offences

- 4.1 This chapter presents a comparison of sentencing outcomes over two three-year reference periods: 1 July 2009 to 30 June 2012 and 1 July 2012 to 30 June 2015. It examines the offences of contravention of a family violence intervention order (FVIO) and contravention of a family violence safety notice (FVSN), as well as the aggravated offences of contraventions intending to cause harm or fear for safety, and persistent contraventions of notices and orders.

The Council's analysis reveals that between the two reference periods:

- the use of imprisonment, community sentences, and fines for offences of contravention of an FVIO has increased, while the use of suspended sentences and low-end orders has decreased;
- the use of imprisonment and community sentences for offences of contravention of an FVSN has also increased, while the use of suspended sentences, fines, and low-end orders has decreased;
- the number of cases with an aggravated version of a contravention offence has increased steadily since being introduced in 2012–13, indicating that the police are utilising these recently introduced offences to capture aggravated or repeated contravention behaviour;
- the number of sentenced non-aggravated offences of contravention of an FVIO has also increased;
- offences of aggravated contraventions of FVIOs are much more likely to receive more severe sentence types than non-aggravated versions of the offence, which may indicate that these offences are being used as intended; and
- cases where contravention offences (including aggravated contravention offences) are accompanied by other offences are likely to receive a more severe sentence than contravention cases without other co-sentenced offences.

The sentencing framework

- 4.2 The sentencing of adults in Victoria is governed by the provisions of the *Sentencing Act 1991* (Vic) and sentencing principles developed at common law. The *Family Violence Protection Act 2008* (Vic) (FVP Act) does not set out any sentencing principles specific to FVIO or FVSN contravention.
- 4.3 The *Sentencing Act 1991* (Vic) provides that sentences in Victoria may only be imposed for one or more of the following purposes:
- to punish the offender;
 - to denounce the offender's conduct;
 - to facilitate the offender's rehabilitation;
 - to protect the community by reducing the offender's capacity to commit further offences; and
 - to deter the offender or other people from committing the same or similar offences (otherwise known as 'specific' and 'general' deterrence).¹¹⁶

¹¹⁶ *Sentencing Act 1991* (Vic) s 5(1).

- 4.4 In seeking to achieve any of these purposes, a court must ordinarily apply sentencing principles such as totality (if an offender is being sentenced for multiple offences, the total sentence imposed must reflect the overall criminality of the offending behaviour), proportionality (the sentence must be proportionate to the seriousness of the offending behaviour), and parsimony (the court must use the least severe sentencing option to achieve the purpose or purposes of sentencing in each particular case).¹¹⁷ These purposes can overlap.
- 4.5 The sentencing process is a balancing exercise. The sentence imposed by the court is not a direct response to any single factor, such as the nature and gravity of the offence, nor any single purpose, such as rehabilitation. Rather, a judge or a magistrate engages in an 'instinctive synthesis' to determine the sentence ultimately imposed after balancing all of the factors that may be present in the circumstances of a case.¹¹⁸
- 4.6 The Council observed in its 2009 report that appropriately balancing these purposes is a delicate task in the context of family violence offences, as measures intended to protect victims can place them at increased risk.
- 4.7 In its 2009 report, the Council specifically cautioned against the use of fines as a sentencing disposition in the context of contravention of FVIOs and FVSNs, concluding that fines are generally unable to fulfil the purposes of community protection and rehabilitation in relation to FVIO contravention. Further, fines may compound the harm experienced by the victim by withdrawing resources from the family as a whole. Fines may be particularly inappropriate where family law property disputes also exist; in those circumstances, the imposition of a fine may exacerbate the risk of further violence if the offender is already aggrieved about financial matters.¹¹⁹ The Council's *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* ('the Guiding Principles') state that when considering imposing a fine in the context of contravention of an FVIO or an FVSN, courts should consider any likely impact of a fine on the victim.
- 4.8 Further, stakeholders noted that fines have a limited potential to influence behavioural change.¹²⁰
- 4.9 The Council suggested in its 2009 report that community and victim protection should be the paramount purposes of sentencing for FVIO contravention offences. As the primary function of an FVIO is to protect the victim from future harm, the Council proposed that the four other purposes of sentencing should be balanced against the purpose of community and victim protection.¹²¹ The purposes of specific and general deterrence may assume particular importance where the offender has contravened an FVIO on multiple occasions.¹²²
- 4.10 General deterrence is considered to be of 'fundamental importance' in cases of domestic violence.¹²³ Furthermore, it is an aggravating factor if such violence is committed in contravention of an FVIO or an FVSN.¹²⁴

117. *Sentencing Act 1991* (Vic) s 5(3).

118. *Markarian v The Queen* (2005) 228 CLR 357.

119. Sentencing Advisory Council (2013), above n 1, 47. Further examination of the issues around the use of fines in this area of sentencing is contained in Sentencing Advisory Council (2009), above n 4, 51–55.

120. Roundtable (7 October 2015).

121. Sentencing Advisory Council (2009), above n 4, 135, 145–151 (Appendix 1).

122. *DPP v Johnson* (2011) 35 VR 25, 34 [42]–[43] (Redlich JA).

123. *Pasinis v The Queen* [2014] VSCA 97 (22 May 2014) [57].

124. *Marrah v The Queen* [2014] VSCA 119 (18 June 2014) [25].

4.11 As the Court of Appeal stated in *Filiz v The Queen*:

Senior counsel for the applicant rightly conceded that general deterrence is a significant sentencing factor in this case ... most particularly in relation to violent offending against a former domestic partner. Of particular significance is the fact that the applicant was already subject to a Family Violence Intervention Order. Offending of this nature is too often perpetrated by men whose response to the breakdown of a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. This Court has made it clear that such offending will attract serious consequences and even harsher penalties where it involves the breach of an order which exists for the victim's protection.¹²⁵

Available sentences

- 4.12 The full range of sentencing dispositions under the *Sentencing Act 1991* (Vic), up to and including the maximum penalty provided in the *FVP Act*, is available for the general contravention offences and the aggravated offences.
- 4.13 A number of legislative reforms over the reference period, however, have substantially changed the sentencing landscape in Victoria, consequently influencing the observed sentencing trends in FVIO and FVSN contraventions.

Imprisonment and jurisdictional limits

- 4.14 The maximum term of imprisonment that a magistrate can impose for a single charge is two years.¹²⁶ For indictable offences heard in the higher courts, the court can impose any term of imprisonment within the maximum term of imprisonment applicable to the offence.

Community sentences

- 4.15 The type and availability of community sentences changed in January 2012. Prior to 16 January 2012, two main types of community sentences were imposed for FVIO contravention over the reference period examined. These were community-based orders (CBOs) and intensive correction orders (ICOs).
- 4.16 CBOs generally required the performance of unpaid community work. They also provided for the offender's attendance at rehabilitative or treatment programs. In the case of FVIO contravention, one potential rehabilitative condition was the offender's attendance at a behavioural change program. CBOs permitted varying degrees of offender supervision.¹²⁷
- 4.17 Although technically considered a custodial sentence, ICOs provided for a similar range of conditions to CBOs. An ICO could be imposed where the court considered that sentencing the offender to a term of imprisonment was justified, but the court determined that it was desirable for the sentence of imprisonment to be served by way of intensive correction in the community, under supervision. The option of imprisonment remained available to the court if, for example, the offender could no longer, or would not, comply with the ICO.¹²⁸
- 4.18 CBOs and ICOs were abolished under the *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) and replaced with community correction orders (CCOs). CBOs and ICOs were available until 16 January 2012, and CCOs have been available since this date.

¹²⁵. *Filiz v The Queen* [2014] VSCA 212 (11 September 2014) [21].

¹²⁶. *Sentencing Act 1991* (Vic) s 113A.

¹²⁷. *Sentencing Act 1991* (Vic) pt 3 div 3 (Division now repealed).

¹²⁸. *Sentencing Act 1991* (Vic) pt 3 div 2 sub-div (2) (Subdivision now repealed).

- 4.19 CCOs permit a broader range of rehabilitative, supervisory, monitoring, and offender behaviour conditions than CBOs and ICOs. These conditions allow for treatment and rehabilitation in relation to health, education, or employment; supervision and management by community corrections officers; and/or court monitoring of CCO compliance. In addition, a CCO may prohibit the offender from contacting certain persons, exclude the offender from a particular residence, or impose a curfew on the offender – each of these conditions may be particularly relevant to sentencing for FVIO contravention. The Magistrates' Court may impose a CCO for a maximum period of two years on a single charge.¹²⁹ The County and Supreme Courts may impose a CCO for a maximum period of two years or the maximum period of imprisonment available for the offence, whichever is greater.¹³⁰
- 4.20 Parliament intended CCOs to replace not only existing community sentences including CBOs and ICOs, but also suspended sentences.¹³¹ CCOs were established in the context of the phasing out of suspended sentences with the aim of providing 'a transparent sentence that can be understood by everyone in the community'.¹³² However, data collected by the Council suggest that CCOs have not yet been fully utilised.¹³³
- 4.21 In December 2014, the Court of Appeal issued its first guideline judgment, *Boulton & Ors v The Queen*,¹³⁴ providing guidelines for courts to consider in sentencing an offender to a CCO.

Combination imprisonment and community correction order sentences

- 4.22 In August 2012, the courts' ability to suspend a sentence of imprisonment when combined with a CCO was removed.¹³⁵ Following the abolition of suspended sentences in September 2014, the maximum term of imprisonment with which a CCO could be combined was increased from three months to two years.¹³⁶
- 4.23 As a result of this change, and in combination with the principles described in the guideline judgment *Boulton & Ors v The Queen*, the courts now have far greater flexibility in ordering a sentence of imprisonment combined with a CCO. In the higher courts, a CCO may be of a length up to the maximum term of imprisonment for the relevant offence.¹³⁷ In the Magistrates' Court, a CCO may be up to a maximum of two years for one offence,¹³⁸ four years for two offences,¹³⁹ and five years in respect of three or more offences.¹⁴⁰
- 4.24 If a magistrate orders an offender to serve a combined sentence involving a term of imprisonment and a CCO, different maximum terms apply. In such a case, the length of the term of imprisonment for all charges cannot exceed two years. Further, for these combined sentences, the overall sentence (that is, the total length of the term of imprisonment and the length of the CCO) must not exceed five years.¹⁴¹

129. *Sentencing Act 1991* (Vic) s 38(1)(a)(i).

130. *Sentencing Act 1991* (Vic) s 38(1)(b).

131. Victoria, *Parliamentary Debates*, Legislative Assembly, 15 September 2011, 3292 (Robert Clark, Attorney-General).

132. Victoria, *Parliamentary Debates*, Legislative Assembly, 15 September 2011, 3292 (Robert Clark, Attorney-General).

133. Research submitted to the Court of Appeal in *Boulton & Ors v The Queen* [2014] VSCA 342 (22 December 2014) [47]–[48].

134. *Boulton & Ors v The Queen* [2014] VSCA 342 (22 December 2014).

135. *Road Safety and Sentencing Acts Amendment Act 2012* (Vic) s 8.

136. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 18.

137. *Sentencing Act 1991* (Vic) s 38(1)(b)(i).

138. *Sentencing Act 1991* (Vic) s 38(1)(a)(i).

139. *Sentencing Act 1991* (Vic) s 38(1)(a)(ii).

140. *Sentencing Act 1991* (Vic) s 38(1)(a)(iii).

141. This means that an offender sentenced in the Magistrates' Court for two charges committed at the same time (assuming, for example, a five-year maximum penalty for the offences that constitute those charges) would face a maximum combined sentence of two years' imprisonment followed by a maximum three-year community correction order: *Sentencing Act 1991* (Vic) s 44 (1B).

- 4.25 Sentences of imprisonment combined with a CCO are not observed until 2011–12 for contraventions of FVIOs and FVSNs, and they are not observed until 2013–14 for the three aggravated offences. Their use is still infrequent but is increasing over time.
- 4.26 In the period from 2011–12 to 2014–15, a sentence of imprisonment combined with a CCO was imposed in:
- 2.0% (n = 296 of 15,106) of cases of FVIO contravention;
 - 2.2% (n = 24 of 1,107) of cases of FVSN contravention;
 - 8.5% (n = 104 of 1,229) of cases of FVIO contravention intending to cause harm or fear for safety (since 2013–14);
 - 4.8% (n = 4 of 83) of cases of FVSN contravention intending to cause harm or fear for safety (since 2013–14); and
 - 7.7% (n = 105 of 1,366) of cases of persistent contravention (since 2013–14).
- 4.27 The use of imprisonment combined with a CCO went from:
- 2.1% (n = 7 of 339) of cases receiving imprisonment in 2011–12 to 24.9% (n = 179 of 718) in 2014–15 for FVIO contravention;
 - 3.4% (n = 1 of 29) of cases receiving imprisonment in 2011–12 to 28.6% (n = 14 of 49) in 2014–15 for FVSN contravention;
 - 18.2% (n = 18 of 99) of cases receiving imprisonment in 2013–14 to 34.7% (n = 86 of 248) in 2014–15 for FVIO contravention intending to cause harm or fear for safety; and
 - 22.4% (n = 24 of 107) of cases receiving imprisonment in 2013–14 to 27.6% (n = 81 of 293) in 2014–15 for persistent contravention.

The number of cases of contravention of an FVSN intending to cause harm or fear for safety that received a combination of imprisonment and a CCO was too low (four cases since 2013–14) to reliably calculate the increase over time.

Suspended sentences

- 4.28 A suspended sentence is a term of imprisonment that is suspended for a specified period (described as the 'operational period'), subject to the offender not being convicted during that operational period of an offence for which the maximum penalty includes a sentence of imprisonment.¹⁴²
- 4.29 Suspended sentences were progressively abolished in 2013 and 2014. From 1 September 2014, Victorian courts could no longer impose suspended sentences for offences committed after that date.¹⁴³
- 4.30 Suspended sentences were available in the Magistrates' Court for the general and aggravated contravention offences until 1 September 2014, covering the first reference period and part of the second reference period examined in this report.

142. *Sentencing Act 1991* (Vic) s 27(2B) (now repealed).

143. Suspended sentences were removed as a sentencing option in the higher courts for all offences committed on or after 1 September 2013 by the *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic). From 1 September 2014, suspended sentences were no longer available in the Magistrates' Court for all offences committed on or after that date. The removal of suspended sentences is not retrospective. Suspended sentences still may be imposed in the Magistrates' Court for offences committed before 1 September 2014, the County and Supreme Courts for offences (other than serious or significant offences) committed before 1 September 2013, and the County and Supreme Courts for serious or significant offences committed before 1 May 2011.

- 4.31 The Council expressed reservations in the Guiding Principles about the appropriateness of a suspended sentence for contravention of an FVIO.¹⁴⁴
- 4.32 Amendments to the *Sentencing Act 1991* (Vic) commencing in September 2014 provided that a CCO may be considered an appropriate sentence in cases where a wholly suspended sentence may have been imposed prior to that order being abolished.¹⁴⁵

Aggregate sentences

- 4.33 Instead of imposing a sentence for each charge in a case, in certain circumstances¹⁴⁶ a court may impose an aggregate sentence of imprisonment¹⁴⁷ or an aggregate fine¹⁴⁸ (or both).¹⁴⁹ The maximum aggregate sentence of imprisonment that can be ordered by a magistrate in a case with multiple charges is five years.¹⁵⁰
- 4.34 Stakeholders at the Council's roundtable expressed some concern about the inclusion of aggregate sentences in the data, as this could mean that the sentences for the contravention charge may reflect the sentence imposed on co-sentenced charges in the case, rather than the sentence imposed for the contravention offence itself. However, other stakeholders commented that if a case had co-sentenced offences, then it may indicate that the contravention was more serious (such as involving physical contact or violence) and the aggregate sentence given would reflect this.¹⁵¹
- 4.35 Aggregate sentencing remains a frequently used option for sentencing contravention offences in the Magistrates' Court. As a consequence, aggregate sentencing is included when discussing sentencing patterns in this chapter. During the period from 2009–10 to 2014–15, aggregate sentences were used in:
- 31.9% (n = 6,212 of 19,461) of cases of FVIO contravention;
 - 29.1% (n = 404 of 1,388) of cases of FVSN contravention;
 - 37.5% (n = 465 of 1,240) of cases of FVIO contravention intending to cause harm or fear for safety (since 2012–13);
 - 27.4% (n = 23 of 84) of cases of FVSN contravention intending to cause harm or fear for safety (since 2012–13); and
 - 33.9% (n = 469 of 1,384) of cases of persistent contravention (since 2012–13).
- 4.36 The discussion at [4.70]–[4.115] analyses sentencing for cases that only have contravention charges compared with cases that have co-sentenced offences in order to disentangle the effects of aggregate sentencing.

144. Sentencing Advisory Council (2009), above n 4, 35.

145. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 17.

146. These circumstances are where an offender is convicted by a court of two or more offences that are founded on the same facts, or form, or are part of a series of offences of the same or a similar character: *Sentencing Act 1991* (Vic) s 9(1).

147. *Sentencing Act 1991* (Vic) s 9.

148. *Sentencing Act 1991* (Vic) s 51. The court may impose one fine in respect of those offences as long as it does not exceed the sum of the maximum fines that could be imposed in respect of each of those offences, subject to certain qualifications.

149. *Sentencing Act 1991* (Vic) s 49.

150. *Sentencing Act 1991* (Vic) s 113B.

151. Roundtable (7 October 2015).

Principal sentencing outcomes

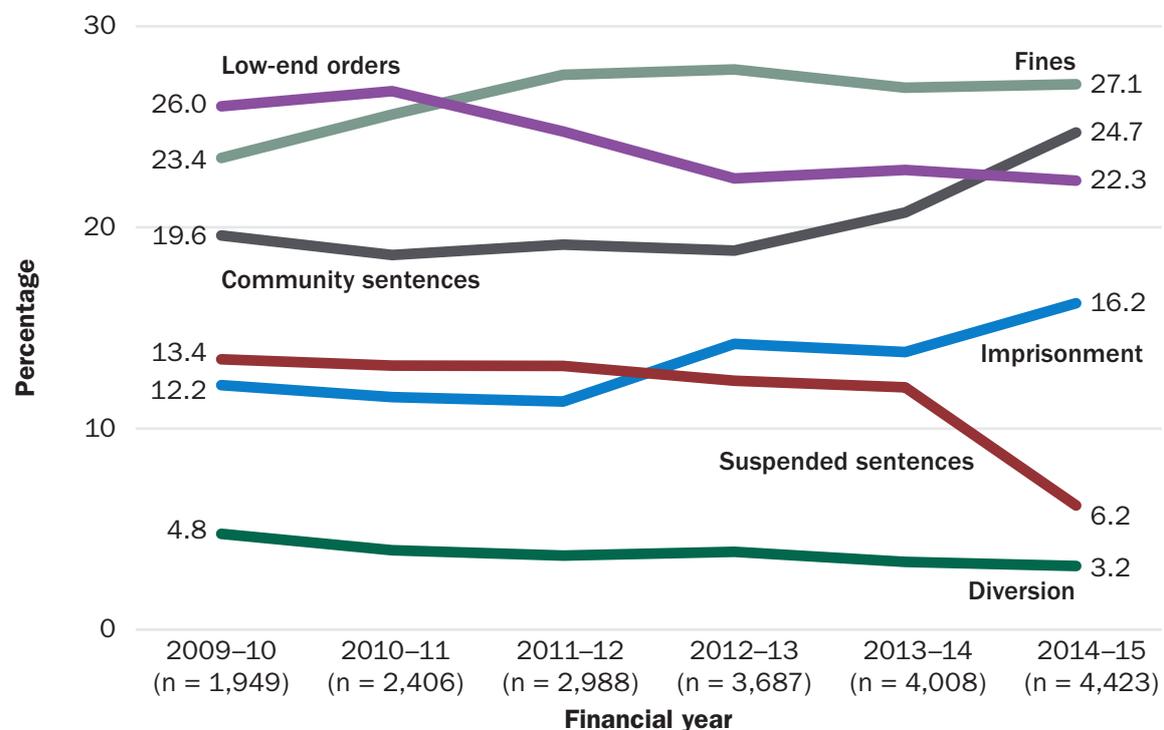
Family violence intervention orders

4.37 There was a large increase in the number of cases sentenced for non-aggravated FVIO contraventions from 2009–10 to 2014–15 (from 1,949 cases to 4,423 cases), including between 2013–14 and 2014–15 (from 4,008 cases to 4,423 cases). This increase occurred despite the new aggravated offences introduced on 17 April 2013.

4.38 The Council's analysis of sentencing practices in this chapter focuses on changes in the proportion of cases that received each sentence type. This approach provides an indication of changes in sentencing practices because it accounts for changes in the total number of cases sentenced. In this analysis, each case that contained at least one proven charge of FVIO contravention is counted once. The sentence captured is the sentence attached to FVIO contravention charges. Where multiple FVIO charges occur in a case, the principal sentence is the most severe sentence attached to these charges. Where only one FVIO charge occurs in a case, the principal sentence is the sentence attached to that charge.¹⁵²

4.39 Figure 7 compares the principal sentences imposed for FVIO contravention over the reference period from 2009–10 to 2014–15. The Council has separately analysed the sentencing outcomes in 'contravention-only' cases and co-sentenced offence cases at [4.70]–[4.115].

Figure 7: Percentage of cases sentenced for contravention of a family violence intervention order by principal sentence attached to the charge, Magistrates' Court of Victoria, 2009–10 to 2014–15¹⁵³



¹⁵² See also [1.37] for additional information on the counting rules used in this chapter.

¹⁵³ The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as hospital security orders, combined custody and treatment orders, drug treatment orders, and youth justice centre orders. The sentences presented in Figure 7 are the sentences imposed for the principal FVIO contravention offence (that is, the FVIO contravention offence that received the most severe sentence in a case). An alternative analysis is to examine the total effective sentence imposed in a case, that is, the final sentence resulting from orders of cumulation or concurrency for each of the sentencing orders in a case. For the period from 1 July 2009 to 30 June 2015, the total effective sentences imposed in FVIO contravention cases and the sentences imposed for the principal FVIO contravention offence were broadly similar.

- 4.40 Across all FVIO contravention cases, the use of imprisonment, community sentences (including the current CCO and the repealed ICO and CBO), and fines increased in the period between 2009–10 and 2014–15, while suspended sentences, low-end orders (including adjourned undertakings, convicted and discharged, and dismissals), and diversion plans declined. Each of these sentence types is discussed in detail below.
- 4.41 The use of sentences of imprisonment increased over the reference period, particularly between 2011–12 and 2012–13 (from 11.3% to 14.2%) and between 2013–14 and 2014–15 (from 13.8% to 16.2%). This latter increase is likely due to the phase-out of partially and wholly suspended sentences as outlined at [4.28]–[4.32]. Use of these sentences dramatically declined between 2013–14 and 2014–15 (from 12.1% to 6.2%).¹⁵⁴
- 4.42 While some suspended sentences are likely to have been replaced by sentences of imprisonment in 2014–15, others appear to have been replaced by community sentences (that is, CCOs, which have replaced ICOs and CBOs), the use of these increasing between 2013–14 and 2014–15 (from 20.7% to 24.7%).
- 4.43 The start of the increase in use of community sentences, however, occurred in 2012–13 and 2013–14 and therefore preceded the phase-out of suspended sentences. It is likely that the increase in 2013–14 occurred because of the greater flexibility provided by the CCO than by the community sentences it replaced on 16 January 2012. It appears that the CCO was used as an alternative to a range of other sentences in small numbers, including imprisonment, fines, and suspended sentences, all of which declined in use between 2012–13 and 2013–14.
- 4.44 Fines were one of the most frequently used sentences for FVIO contraventions. Fines increased between 2009–10 and 2011–12 (from 23.4% to 27.6%) but remained relatively steady during the remainder of the reference period.
- 4.45 Low-end orders, such as adjourned undertakings, convicted and discharged, and dismissals, were the most frequently used principal sentence type for FVIO contraventions between 2009–10 and 2010–11 (from 26.0 to 26.8%) before a steady percentage decrease in subsequent years, to 22.3% in 2014–15. It is likely that, between 2011–12 and 2014–15, some of the offenders who previously would have received a low-end order received a fine instead. Further, a small portion of low-end orders may also have transitioned into CCOs.
- 4.46 In summary, Figure 7 shows a shift away from suspended sentences towards imprisonment and CCOs, and a shift away from low-end orders towards monetary penalties such as fines, and possibly towards CCOs.
- 4.47 The sentences outlined in Figure 7 are those imposed for contravention of either interim or final FVIOs. The Council was not able to separate the sentencing data in respect of each order. It is possible that the sentences imposed for interim FVIO contravention may differ from those imposed for final FVIO contravention. An interim FVIO is more likely to be contravened in close proximity to the making of the order. A proximate contravention is likely to be regarded as an aggravating factor in sentencing, which may result in a greater proportion of mid- to high-end orders for interim FVIO contravention than for final FVIO contravention.
- 4.48 In order to determine whether the sentencing trends for FVIO contravention are consistent with sentencing trends across the Magistrates' Court as a whole, the Council examined the sentences imposed in all cases in the Magistrates' Court over the same reference periods. The trends across all cases were similar to the trends for FVIO contravention cases, with declines

¹⁵⁴ Suspended sentences were progressively abolished in all Victorian courts: see above n 143. Future datasets will better identify which sentences are replacing suspended sentences.

in the use of suspended sentences, and increases in the use of imprisonment, community sentences, and fines across the six-year period. A notable exception was an increase in the use of low-end orders for Magistrates' Court cases overall, but a decrease in the use of low-end orders for FVIO contravention cases.

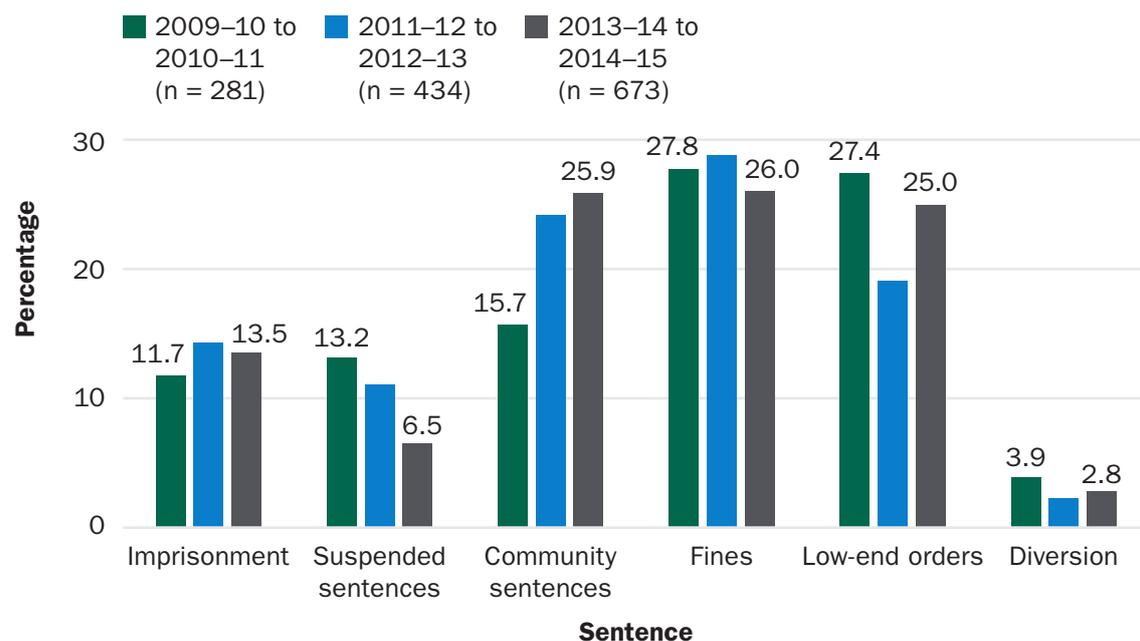
- 4.49 This suggests that, while changes in sentencing for FVIO contravention from 2009–10 to 2014–15 were affected by wider changes in sentencing legislation (such as the abolition of suspended sentences), factors unique to sentencing FVIO contraventions also influenced sentencing patterns over the reference period.

Family violence safety notices

- 4.50 The number of cases sentenced for contravention of an FVSN increased over the reference period, from 281 cases in 2009–10 and 2010–11 to 673 cases in 2013–14 and 2014–15. This may be due to the increase in the timeframe within which the first mention date must be listed after the service of the FVSN. Prior to 4 February 2013, the first mention date had to be within 72 hours after service of the FVSN, and now the first mention date must be within five working days after service of the FVSN (see [3.24]).¹⁵⁵

- 4.51 Despite the increase in the number of FVSN contravention cases, the number each year was small (averaging 231 cases), particularly in comparison with FVIO contravention cases (averaging 3,244 cases). As a result, annual changes in sentencing practices were exaggerated. In order to reduce the variability in sentencing practices caused by small numbers, the Council divided the six-year reference period into three two-year blocks: 1 July 2009 to 30 June 2011, 1 July 2011 to 30 June 2013, and 1 July 2013 to 30 June 2015. Figure 8 presents sentencing practices for FVSN contravention offences for each of the three blocks.

Figure 8: Percentage of cases sentenced for contravention of a family violence safety notice by principal sentence attached to the charge, Magistrates' Court of Victoria, 2009–10 to 2014–15¹⁵⁶



155. *Family Violence Protection Act 2008 (Vic)* ss 30, 31(s).

156. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as combined custody and treatment orders, drug treatment orders, and youth justice centre orders.

4.52 The sentencing distribution for FVSN contravention changed over the reference period in ways that mirrored the changes for FVIO contravention. In particular, use of suspended sentences declined, while use of community sentences and imprisonment increased. Similar factors are likely to be at play for FVSN contraventions: the phase-out of suspended sentences and the introduction of the flexible CCO as a community sentence.

Comparing sentencing trends for family violence intervention orders and family violence safety notices

- 4.53 The sentence distribution for FVIO and FVSN contraventions during the reference period is broadly similar,¹⁵⁷ implying that the factors underlying the sentencing of each offence are also broadly similar. However, FVSN contraventions were slightly less likely to receive a suspended sentence (9.3%) and more likely to receive some form of community sentence (23.3%) than FVIO contraventions (11.2% for suspended sentences and 20.7% for community sentences).
- 4.54 Since an FVSN contravention occurs only a short time after issue of the notice, a suspended sentence (which had no conditions attached) may not have been considered an appropriate sentencing disposition compared with some form of community sentence (which has conditions attached to the offender's behaviour). However, stakeholders commented that the differences in use of suspended sentences and community sentences between FVIO and FVSN contraventions were fairly minor, and that contraventions are usually sentenced according to the nature of the contravening behaviour rather than whether the contravention related to an FVIO or an FVSN.¹⁵⁸
- 4.55 Furthermore, any apparent decrease in the severity of penalties for FVSN and FVIO contravention could be due to the most serious examples of those offences now being charged under the aggravated offence provisions.

Aggravated offences

Aggravated offences in the higher courts

- 4.56 Although aggravated contravention offences may be sentenced in the higher courts, an examination of the data found that only 10 cases were sentenced in the County or Supreme Court between the commencement of the aggravated contravention offences on 17 April 2013 and the end of the reference period for this report on 30 June 2015.
- 4.57 In each of these cases, the aggravated contravention offence was sentenced alongside other offences. Many of the co-sentenced offences were indictable offences attracting greater maximum penalties. In most of the cases examined, the aggravated contravention offence occurred in the context of an episode of violent offending against the protected person. In none of the cases was the aggravated contravention offence the principal proven offence (that is, the offence that received the most severe sentence in the case).
- 4.58 Given the low number of offences sentenced in the higher courts in the reference period, it is difficult to draw conclusions about sentencing outcomes for these aggravated offences in the higher courts.
- 4.59 Generally speaking, the sentencing outcomes in co-sentenced offence cases in the higher courts will be more severe, given the higher level of criminality concerned.

157. Imprisonment (FVIO 13.6%, FVSN 13.4%), fines (FVIO 26.7%, FVSN 27.2%), low-end orders (FVIO 23.7%, FVSN 23.6%), and diversion (FVIO 3.7%, FVSN 2.9%).

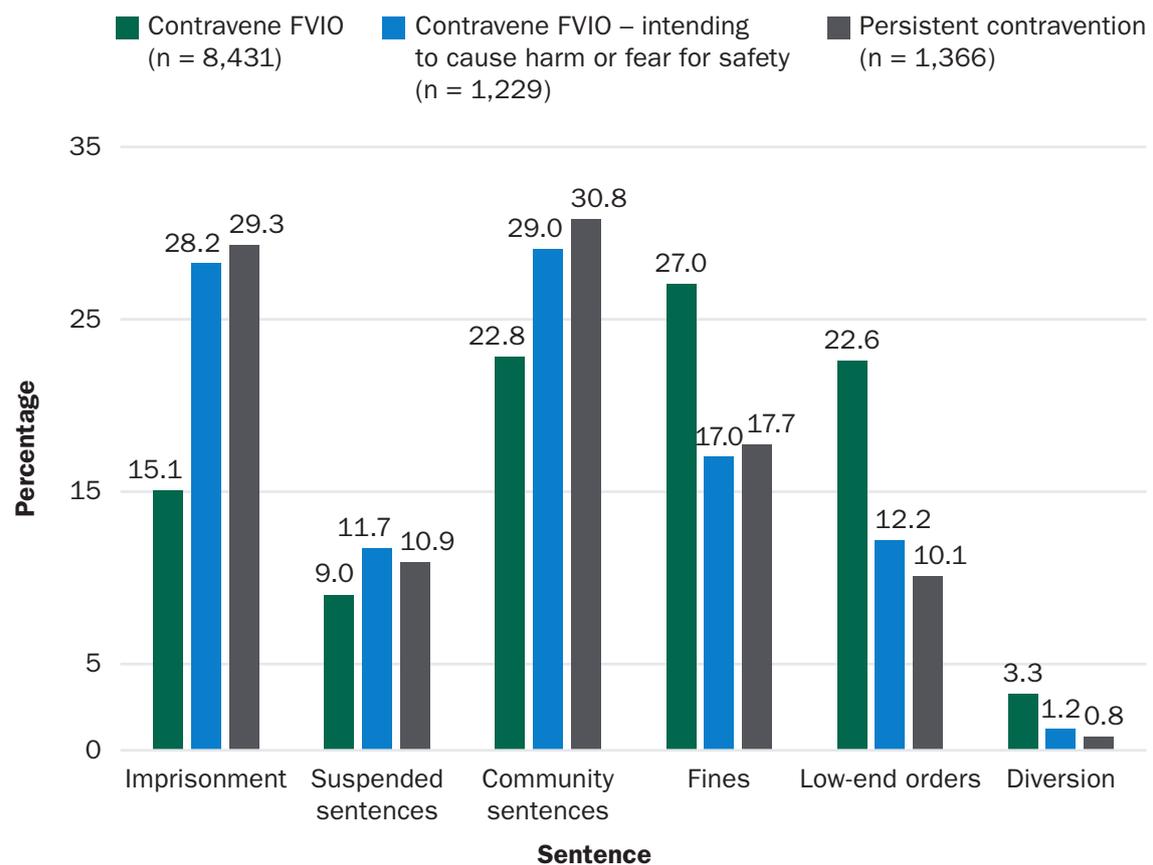
158. Roundtable (7 October 2015).

Comparing sentencing trends for aggravated and non-aggravated contraventions of family violence intervention orders

Contravention of a family violence intervention order intending to cause harm or fear for safety

4.60 Given the aggravated contravention offences are, by definition, more serious than the non-aggravated offences, the Council expected that sentencing practices would tend to be more severe for the aggravated contravention offences. Figure 9 presents principal sentencing patterns in the Magistrates' Court for cases where at least one of the offences in the case was a contravention offence relating to an FVIO. The time period for comparing these offences was limited to 2013–14 and 2014–15 to ensure that sufficient numbers of aggravated offences were being sentenced in the courts to make a meaningful comparison.¹⁵⁹

Figure 9: Percentage of cases sentenced for contravention of a family violence intervention order, contravention of a family violence intervention order intending to cause harm or fear for safety, and persistent contravention by principal sentence attached to the contravention charge, Magistrates' Court of Victoria, 2013–14 to 2014–15¹⁶⁰



159. Both contravention of an FVIO intending to cause harm or fear for safety and persistent contravention began appearing in the Magistrates' Court for sentencing during 2012–13. Only a very low number of cases were sentenced for these offences during that year (11 cases for contravention of an FVIO intending to cause harm or fear for safety and 18 cases for persistent contravention).

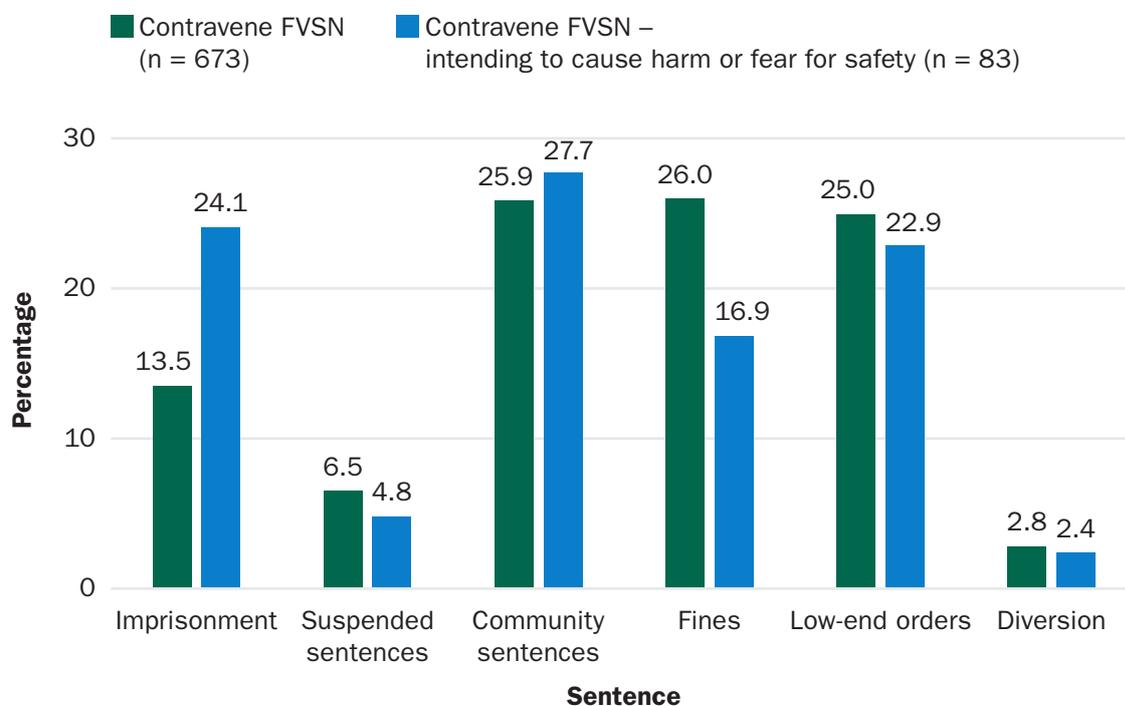
160. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as drug treatment orders and youth justice centre orders.

- 4.61 The aggravated offences of contravening an intervention order intending to cause harm or fear for safety and persistent contravention of notices and orders were more likely to receive sentences of imprisonment (28%–29% of cases with these offences) or a CCO (29%–31% of aggravated offences) than the non-aggravated FVIO contraventions. The imposition of higher end penalties for the aggravated contravention offences reflects the added criminality encompassed by those charges and the likely need for sentencing dispositions involving an intervention that may prevent further offending.
- 4.62 Non-aggravated FVIO contraventions sentenced during 2013–14 and 2014–15 were more likely to receive a fine (27.0% compared with a lower rate of 17%–18% for aggravated contraventions) or a low-end order (22.6% compared with 10%–12% for aggravated contraventions).

Contravention of a family violence safety notice intending to cause harm or fear for safety

- 4.63 Figure 10 presents principal sentencing patterns in the Magistrates' Court for cases where at least one of the offences in the case was a contravention offence relating to an FVSN. The time period for comparing these offences was limited to 2013–14 and 2014–15 to ensure that sufficient numbers of aggravated offences were being sentenced in the courts to make a meaningful comparison.¹⁶¹

Figure 10: Percentage of cases sentenced for contravention of a family violence safety notice and contravention of a family violence safety notice intending to cause harm or fear for safety by principal sentence attached to the contravention charge, Magistrates' Court of Victoria, 2013–14 to 2014–15¹⁶²



161. Only the 2013–14 to 2014–15 period was examined to ensure a sufficient number of cases were available. Contravention of an FVSN intending to cause harm or fear for safety began appearing in the Magistrates' Court for sentencing during 2012–13, but only one case was sentenced for this offence in that year.

162. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as drug treatment orders and youth justice centre orders.

- 4.64 As with FVIO contraventions, FVSN contraventions intending to cause harm or fear for safety tended to result in increased sentencing severity. Compared with non-aggravated FVSN contraventions, FVSN contraventions intending to cause harm or fear for safety were more likely to receive imprisonment, slightly more likely to receive community sentences, less likely to receive fines, and slightly less likely to receive low-end orders and diversions.
- 4.65 The low number of offences of FVSN contravention intending to cause harm or fear for safety indicates that caution is required in interpreting the sentencing patterns. However, the available cases do indicate that the courts are treating this offence more seriously than the non-aggravated FVSN contravention offence.

Persistent contravention of notices and orders

- 4.66 The aggravated offence of persistent contravention of notices and orders was compared with the offence of contravention of an FVIO. The charge applies to contraventions of both FVIOs and FVSNs, and therefore the data cannot be separated between FVIO and FVSN contraventions. However, during consultation stakeholders have said that persistent contravention charges are more likely to involve contraventions of FVIOs than FVSNs, simply due to the limited duration of FVSNs.¹⁶³
- 4.67 As displayed in Figure 9, persistent contravention offences were more likely to receive imprisonment or a CCO than either the general FVIO contravention offence or the FVIO contravention intending to cause harm or fear for safety. Persistent contravention was also the least likely of the contravention offences to receive a low-end order or diversion.
- 4.68 Some stakeholders also queried whether the types of low-end orders imposed in sentencing for persistent contravention offences were of a different nature from those imposed in sentencing for the other contravention offences. In particular, stakeholders queried whether adjourned undertakings were the most frequently used type of low-end order for this offence. Overall, persistent contraventions were the least likely to receive a low-end order (10.1% or 138 of 1,366 cases). However, of these 138 cases, 97.1% or 134 cases received an adjourned undertaking.
- 4.69 Other contravention offences were more likely to attract low-end orders (ranging from 12.2% of FVIO contraventions intending to cause harm or fear for safety to 25.0% of FVSN contraventions). However, these offences had lower proportions of adjourned undertakings as part of the low-end orders. This ranged from 63.2% (n = 12 of 19) of low-end orders comprising adjourned undertakings for FVSN contravention intending to cause harm or fear for safety to 92.7% (n = 139 of 150) of low-end orders comprising adjourned undertakings for FVIO contravention intending to cause harm or fear for safety. Therefore, even though low-end orders are not frequently utilised for persistent contraventions, when low-end orders are used, they are more likely to be adjourned undertakings than for the other contravention offences.

Contravention-only cases and co-sentenced offence cases

- 4.70 In order to gauge the influence on sentencing of non-contravention offences in contravention cases, the Council analysed sentencing outcomes in two scenarios:
- where the contravention offence was the only offence sentenced ('contravention-only cases'); and
 - where other sentenced offences appeared in the same case with the contravention offence ('co-sentenced offence cases').

¹⁶³. Roundtable (7 October 2015).

4.71 This analysis was conducted in order to determine whether there has been:

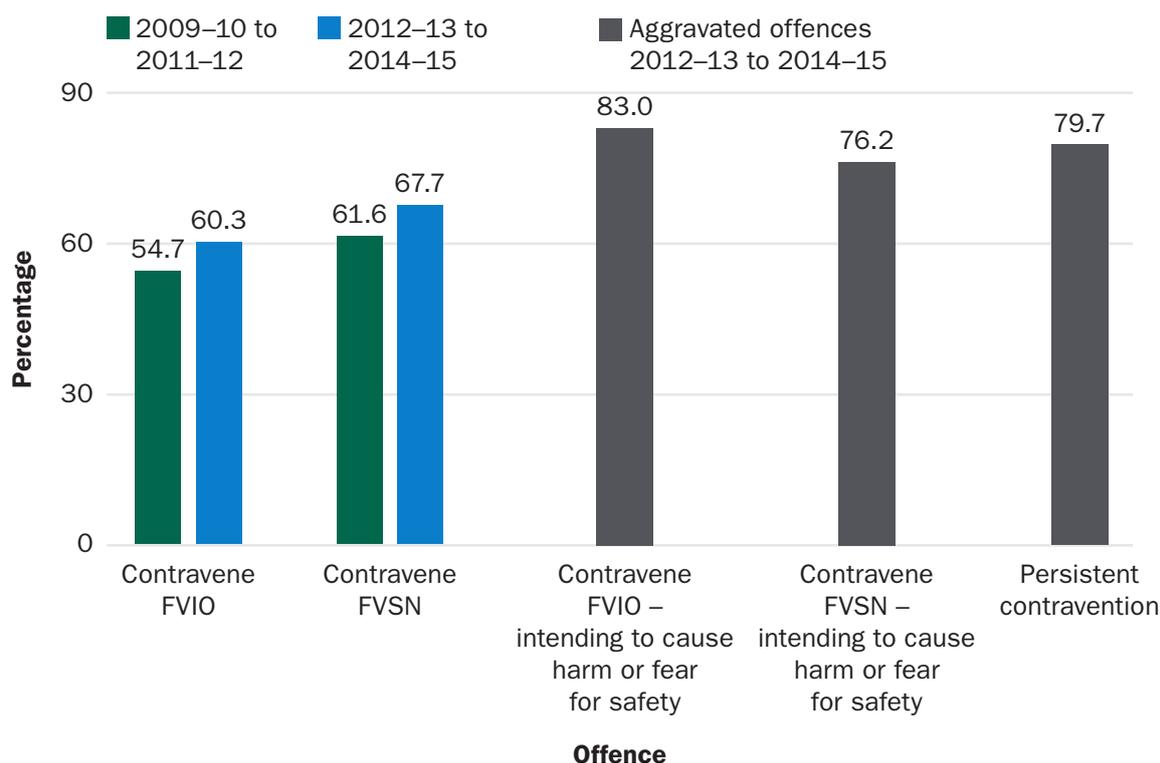
- an increase in co-sentenced offence cases (which may lead to the imposition of more severe sentences for FVIO contravention) over the most recent period;
- an increase in the use of fines and a decrease in the use of low-end orders observable in contravention-only cases (that is, when controlling for the effects of wider criminality); and
- ongoing differences in sentencing outcomes between contravention-only cases and co-sentenced offence cases.

4.72 Generally speaking, it is to be expected that the sentencing outcomes in co-sentenced offence cases will be more severe than those in contravention-only cases, given the higher level of criminality shown by the offender. Co-sentenced offences may relate directly to the contravention offence; for example, the case may involve making threats to kill, criminal damage, or assault. Alternatively, co-sentenced offences may be unrelated to the contravention offence. It is common for the Magistrates' Court to sentence several, sometimes unrelated offences during the one hearing. There was no information available to confirm whether the co-sentenced offences in the case related to the same circumstances as the contravention offence.

4.73 Figure 11 presents the percentage of contravention cases with co-sentenced offences over the two reference periods.

4.74 There has been some change in the proportion of FVIO contravention cases that comprise either contravention-only cases or co-sentenced offence cases. Between the two reference periods, co-sentenced offence cases increased slightly, from 54.7% to 60.3% of all FVIO contravention cases.

Figure 11: Percentage of contravention cases with co-sentenced offences, Magistrates' Court of Victoria, 2009–10 to 2011–12 and 2012–13 to 2014–15



- 4.75 There was a slight increase in the number of FVSN contravention cases with co-sentenced offences between the two reference periods: from 61.6% in 2009–10 and 2011–12 to 67.7% in 2012–13 and 2014–15.
- 4.76 The aggravated offences of contravention intending to cause harm or fear for safety and persistent contravention, introduced during 2012–13, were more likely to be accompanied by co-sentenced offences, ranging from 76.2% of cases of FVSN contravention intending to cause harm or fear for safety to 83.0% of cases of FVIO contravention intending to cause harm or fear for safety. By comparison, only 60.3% of general FVIO contravention offences and 67.7% of FVSN contravention offences had co-sentenced offences during the same reference period.
- 4.77 An increase in the severity of the contravention behaviour is likely to be reflected in an increase in the number of cases with co-sentenced offences, and/or an increase in the average number of charges of the aggravated contravention offences.
- 4.78 Further, over the two reference periods, there have been some slight changes in the frequency of the most common co-sentenced offences sentenced alongside the FVIO and FVSN contravention charges, as Table 1 shows. Any appreciable change in the nature of the most common co-sentenced offences may partly explain any changes in sentencing patterns of the contravention offences between the two reference periods.

Table 1: Most frequently occurring offences in cases containing at least one count of a contravention offence, 2009–10 to 2011–12 and 2012–13 to 2014–15

2009–10 to 2011–12				2012–13 to 2014–15		
Rank	Offence	Percentage	Number of cases	Offence	Percentage	Number of cases
Contravention of a family violence intervention order						
1	Contravention of a family violence intervention order	100.0	7,343	Contravention of a family violence intervention order	100.0	12,118
2	Unlawful assault	17.9	1,311	Unlawful assault	22.0	2,670
3	Criminal damage	14.8	1,087	Criminal damage	17.3	2,094
4	Fail to answer bail	10.2	749	Fail to answer bail	14.4	1,745
5	Causing injury recklessly	9.9	730	Causing injury recklessly	9.7	1,181
Contravention of a family violence intervention order intending to cause harm or fear for safety						
1				Contravention of a family violence intervention order intending to cause harm or fear for safety	100.0	1,240
2				Contravention of a family violence intervention order	41.1	510
3				Unlawful assault	33.7	418
4				Criminal damage	27.4	340
5				Causing injury recklessly	15.0	186

2009–10 to 2011–12				2012–13 to 2014–15		
Rank	Offence	Percentage	Number of cases	Offence	Percentage	Number of cases
Contravention of a family violence safety notice						
1	Contravention of a family violence safety notice	100.0	463	Contravention of a family violence safety notice	100.0	925
2	Criminal damage	22.2	103	Unlawful assault	25.3	234
3	Contravention of a family violence intervention order	20.7	96	Criminal damage	20.1	186
4	Unlawful assault	19.4	90	Contravention of a family violence intervention order	19.5	180
5	Fail to answer bail	12.7	59	Fail to answer bail	17.1	158
Contravention of a family violence safety notice intending to cause harm or fear for safety						
1				Contravention of a family violence safety notice intending to cause harm or fear for safety	100.0	84
2				Unlawful assault	31.0	26
3				Criminal damage	25.0	21
4				Contravention of a family violence intervention order	17.9	15
5				Causing injury recklessly	17.9	15
Persistent contravention of notices and orders						
1				Persistent contravention of notices and orders	100.0	1,384
2				Contravention of a family violence intervention order	45.9	635
3				Unlawful assault	22.3	307
4				Criminal damage	20.3	281
5				Commit indictable offence on bail	17.6	244

General contravention offences

- 4.79 Contraventions of FVIOs sentenced between 1 July 2012 and 30 June 2015 were slightly more likely to be accompanied by charges of unlawful assault (from 17.9% to 22.0%), criminal damage (from 14.8% to 17.3%), and failing to answer bail (from 10.2% to 14.4%) than cases sentenced between 1 July 2009 and 30 June 2012.
- 4.80 Contraventions of FVSNs sentenced between 1 July 2012 and 30 June 2015 were slightly more likely to be accompanied by charges of unlawful assault (from 19.4% to 25.3%) or failing to answer bail (from 12.7% to 17.1%) than cases sentenced between 1 July 2009 and 30 June 2012.

Aggravated contravention offences

- 4.81 Contraventions of FVIOs and FVSNs intending to cause harm or fear for safety could only be measured for the 1 July 2012 to 30 June 2015 period. One recurring feature for these cases is the presence of unlawful assault, criminal damage, and causing injury recklessly, which occur in a greater proportion than in the non-aggravated contravention cases.
- 4.82 For example, from 1 July 2012 to 30 June 2015, unlawful assault was a co-sentenced offence in 33.7% of cases of FVIO contravention intending to cause harm or fear for safety compared with 22.0% of non-aggravated cases of FVIO contravention, and in 31.0% of cases of FVSN contravention intending to cause harm or fear for safety compared with 25.3% of non-aggravated FVSN contraventions.
- 4.83 Persistent contravention offences were likely to appear with other offences that involved disobeying court orders, including non-aggravated FVIO contraventions in 45.9% of cases and committing an indictable offence while on bail in 17.6% of cases.
- 4.84 The appearance of certain types of co-sentenced offences, paired with both aggravated and non-aggravated contraventions, may be linked to the varying degrees of seriousness in the circumstances of each contravention. In turn, this may lead to different sentencing outcomes, depending on the type of contravention and the type of co-sentenced offences, if any, that appear in the same case.
- 4.85 Stakeholders commented that the most frequently occurring co-sentenced offences appear likely to have been offences committed against or in relation to the affected family member.¹⁶⁴
- 4.86 Stakeholders also noted the absence of the offence of making ‘threats to kill’¹⁶⁵ and ‘stalking’¹⁶⁶ from Table 1, commenting that, in their experience, conduct constituting these offences often accompanies the commission of the contravention offences. It was suggested that a reason for the absence of these offences might be that prosecuting authorities do not proceed on both charges of contravention and stalking, and that ultimately one or the other is withdrawn.¹⁶⁷ Further examination of the data reveals that both making threats to kill and stalking do appear as co-sentenced offences, but they are not within the five most common co-sentenced offences.¹⁶⁸

¹⁶⁴. Roundtable (7 October 2015).

¹⁶⁵. *Crimes Act 1958* (Vic) s 20.

¹⁶⁶. *Crimes Act 1958* (Vic) s 21A.

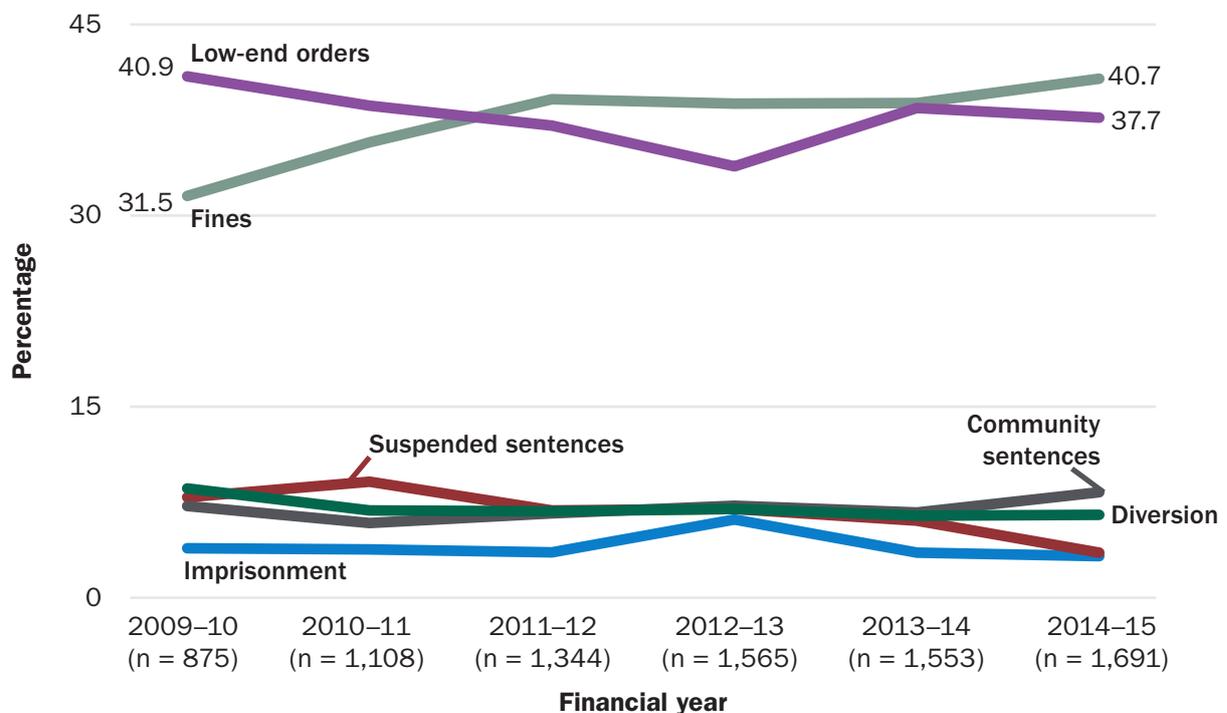
¹⁶⁷. Roundtable (7 October 2015).

¹⁶⁸. From 1 July 2009 to 30 June 2012, making threats to kill was co-sentenced in 6.7% of cases of FVIO contravention and 7.3% of cases of FVSN contravention, while stalking was co-sentenced in 4.7% of cases of FVIO contravention and 3.2% of cases of FVSN contravention. From 1 July 2012 to 30 June 2015, making threats to kill was co-sentenced in 6.9% of cases of FVIO contravention, 12.8% of cases of FVIO contravention intending to cause harm or fear for safety, 8.1% of cases of FVSN contravention, 13.1% of cases of FVSN contravention intending to cause harm or fear for safety, and 10.5% of cases of persistent contravention. Stalking was co-sentenced in 4.0% of cases of FVIO contravention, 5.4% of cases of FVIO contravention intending to cause harm or fear for safety, 2.2% of cases of FVSN contravention, 3.6% of cases of FVSN contravention intending to cause harm or fear for safety, and 14.0% of cases of persistent contravention.

Contravention-only cases

- 4.87 Figures 7 and 8 examine sentencing for FVIO and FVSN contravention regardless of whether a case has co-sentenced offences. However, this section examines contravention cases without co-sentenced offences in order to see whether sentencing patterns are different from cases with co-sentenced offences.
- 4.88 Figure 12 compares the sentences imposed in contravention-only cases over the reference period for the non-aggravated offence of contravention of an FVIO.
- 4.89 Fines and low-end orders were the most frequently used sentences during the reference period by a very substantial margin. The use of fines increased steadily, from 31.5% in 2009–10 to 40.7% in 2014–15, while the use of low-end orders decreased, from 40.9% in 2009–10 to 37.7% in 2014–15. The decrease in low-end orders in 2009–10 and 2011–12 seems to coincide with an increase in the use of fines for this same period.
- 4.90 Magistrates imposed fines and low-end orders at substantially higher rates for contravention-only cases than for all contravention cases. In 2014–15, for example, 78.4% of contravention-only cases received a fine or a low-end order, compared with just 49.4% of all contravention cases (Figure 7). It is clear that fines and low-end orders are the preferred sentencing option when no other offending besides the contravention offence has been proven.
- 4.91 The use of other sentences for contravention-only cases remained relatively rare during the reference period.

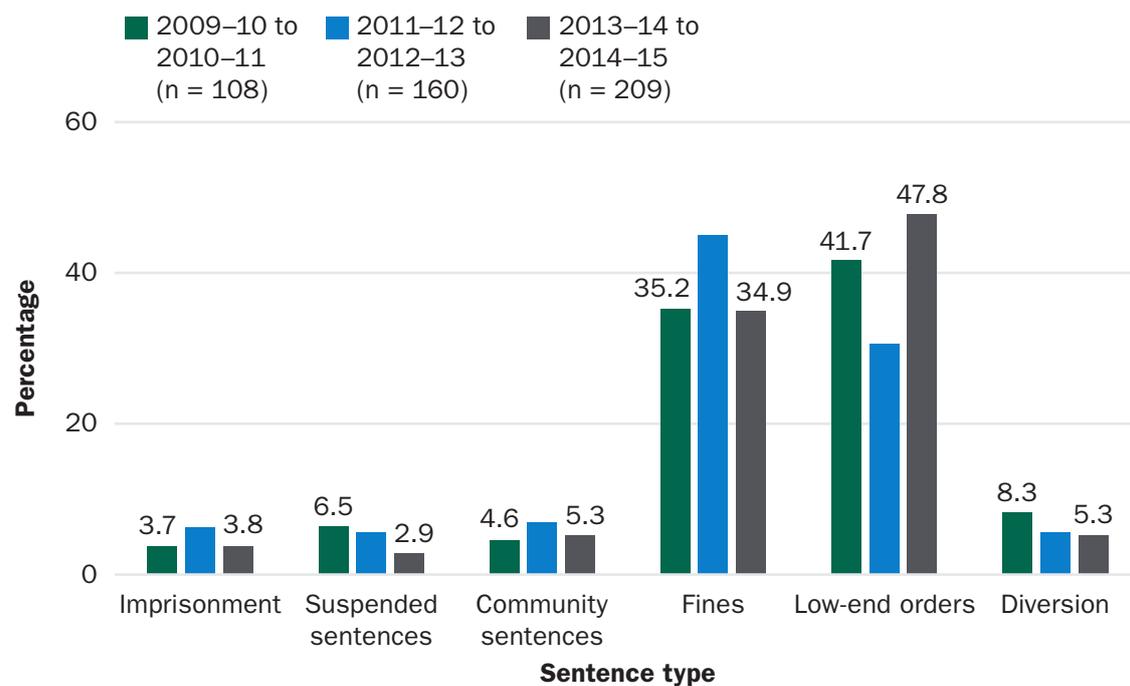
Figure 12: Cases of contravention of a family violence intervention order with no other offences – percentage of cases by principal sentence type for the contravention charge, Magistrates' Court of Victoria, 2009–10 to 2014–15¹⁶⁹



169. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as youth justice centre orders.

- 4.92 Figure 13 compares the sentences imposed in contravention-only cases over the reference period for the non-aggravated offence of contravention of an FVSN.¹⁷⁰
- 4.93 As with FVIOs, fines and low-end orders were the most frequently used sentences for contravention-only FVSN cases during the reference period by a very substantial margin. The use of fines increased from 35.2% in 2009–10 and 2010–11 to 45.0% in 2011–12 and 2012–13 before decreasing to 34.9% in 2013–14 and 2014–15. Low-end orders decreased from 41.7% in 2009–10 and 2010–11 to 30.6% in 2011–12 and 2012–13 before increasing to 47.8% in 2013–14 and 2014–15. Increases in the use of fines for FVSN contraventions seem to coincide more closely with a corresponding decrease in the use of low-end orders, and vice versa, compared with the relationship between these orders in FVIO contraventions (see Figure 12).
- 4.94 The use of other sentences remained relatively rare during the reference period. Of these, suspended sentences and diversions seemed to decrease.

Figure 13: Cases of contravention of a family violence safety notice with no other offences – percentage of cases by principal sentence type for the contravention charge, Magistrates' Court of Victoria, 2009–10 to 2014–15

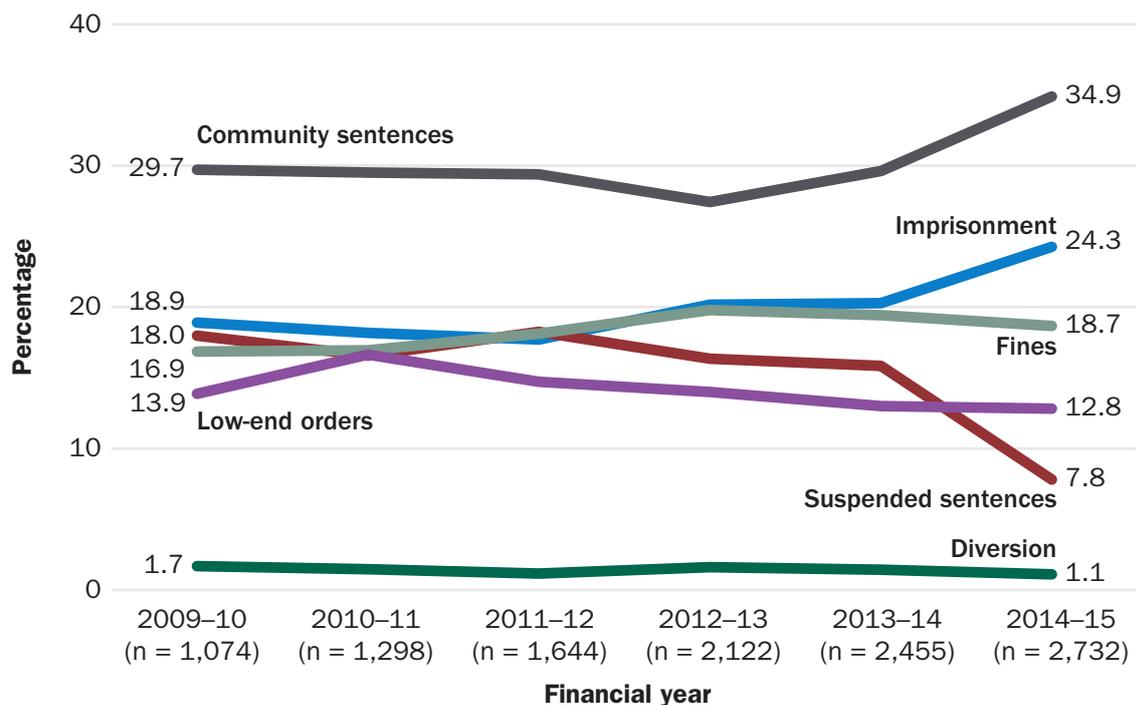


170. The same data issues described at [4.51] mean that the time period has had to be divided into two-year blocks to be able to discern changes in sentencing.

Co-sentenced offence cases

- 4.95 Figures 7 and 8 examine sentencing for FVIO and FVSN contravention regardless of whether a case had co-sentenced offences. However, this section examines contravention cases with co-sentenced offences in order to see whether sentencing patterns are different from cases without co-sentenced offences.
- 4.96 In this report, the Council has analysed the sentences imposed for FVIO and FVSN contravention where there are co-sentenced offences in the same case (a 'same case' analysis). An alternative is to analyse sentencing outcomes only where the co-sentenced offences occurred on the same date as the contravention offence (a 'same date' analysis).
- 4.97 On one view, offences occurring on the same date as the contravention offence may be more likely to relate to the contravention behaviour. However, contravention-related offending, and any other relevant acts of family violence, may occur over the course of several days or weeks. Accordingly, a 'same date' analysis may not capture that offending. The Council therefore considers that a 'same case' analysis is a reliable measure of the effects of wider criminality on sentencing for FVIO and FVSN contravention.
- 4.98 Figure 14 compares the sentences imposed in cases over the reference period where an FVIO contravention had co-sentenced offences.
- 4.99 In general, cases of FVIO contravention with co-sentenced offences were given a wider variety of sentences than cases without co-sentenced offences (Figure 12). This may reflect the variety of co-sentenced offences that can appear in the case, some of which may make the contravention more serious in nature.

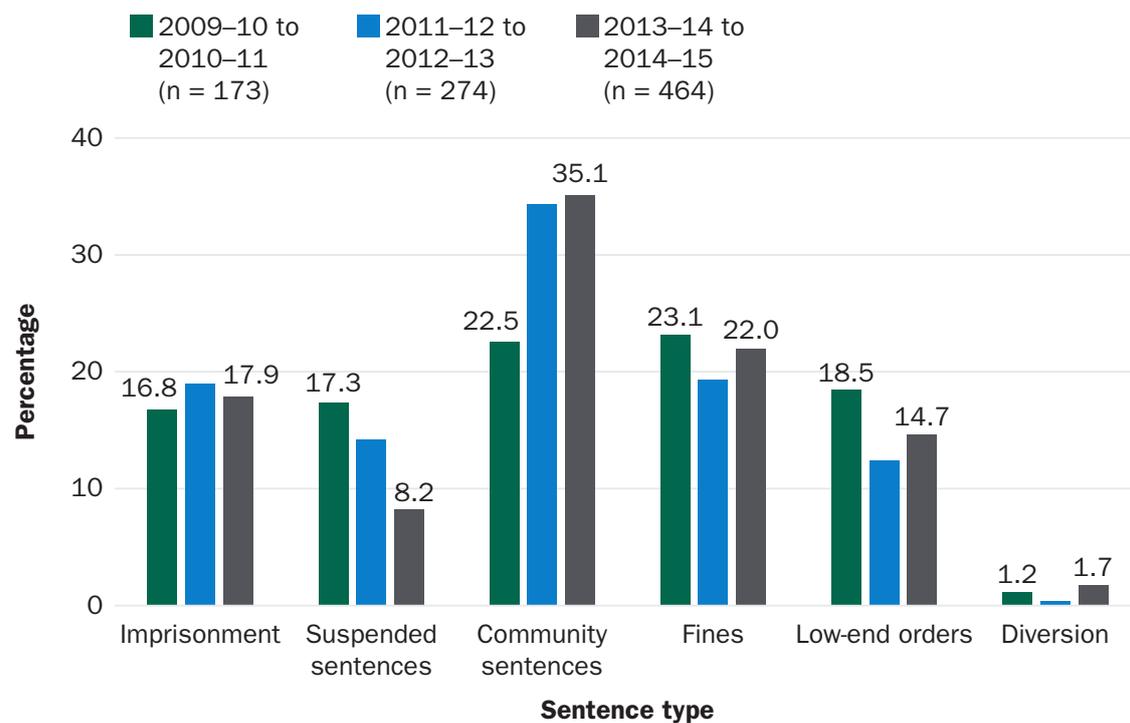
Figure 14: Cases of contravention of a family violence intervention order with at least one other type of offence – percentage of cases by principal sentence type for the contravention charge, Magistrates' Court of Victoria, 2009–10 to 2014–15¹⁷¹



171. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as hospital security orders, combined custody and treatment orders, drug treatment orders, and youth justice centre orders.

- 4.100 Community sentences were the most frequently used principal sentence for these contravention cases, increasing from 29.7% in 2009–10 to 34.9% in 2014–15.
- 4.101 Both imprisonment and fines increased steadily during the reference period. Imprisonment increased from 18.9% in 2009–10 to 24.3% in 2014–15, while fines increased from 16.9% to 18.7%.
- 4.102 Conversely, suspended sentences and low-end orders decreased in usage: suspended sentences from 18.0% in 2009–10 to 7.8% in 2014–15, and low-end orders from 13.9% to 12.8% over the same period.
- 4.103 Diversion was the disposition used the least, remaining steady over the reference period.
- 4.104 Figure 15 compares the sentences imposed in cases over the reference period where an FVSN contravention had co-sentenced offences.

Figure 15: Cases of contravention of a family violence safety notice with at least one other type of offence – percentage of cases by principal sentence type for the contravention charge, Magistrates' Court of Victoria, 2009–10 to 2014–15¹⁷²



172. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as combined custody and treatment orders, drug treatment orders, and youth justice centre orders.

- 4.105 Similar to FVIO contravention, cases of FVSN contravention with co-sentenced offences received a wider variety of sentences than cases without co-sentenced offences (Figure 13).
- 4.106 Community sentences were the most frequently used principal sentence for contravention cases with co-sentenced offences, increasing from 22.5% in 2009–10 and 2010–11 to 35.1% in 2013–14 and 2014–15 (Figure 15). Community sentences increased the most in 2011–12 and 2012–13, which also coincided with a corresponding decrease in the use of fines and low-end orders during these years.
- 4.107 Imprisonment increased slightly, from 16.8% in 2009–10 and 2010–11 to 17.9% in 2013–14 and 2014–15.
- 4.108 Of the remaining sentences, suspended sentences and low-end orders decreased in usage: suspended sentences from 17.3% in 2009–10 and 2010–11 to 8.2% in 2013–14 and 2014–15, and low-end orders from 18.5% to 14.7% over the same period. Fines slightly decreased, from 23.1% to 22.0%.

Co-sentenced offence cases with aggravated contraventions

- 4.109 Figures 16 and 17 compare the sentences imposed in cases where FVIO contravention intending to cause harm or fear for safety and persistent contravention differ depending on whether these cases have co-sentenced offences. FVSN contravention intending to cause harm or fear for safety was not analysed in a similar manner due to the low number ($n = 84$) of cases with this offence.
- 4.110 As these offences began to be sentenced in 2012–13, it was not possible to examine changes in sentencing trends across time. Instead, the only comparison made is between the contravention offences with co-sentenced offences and those without.
- 4.111 Figures 16 and 17 both show that aggravated contravention charges with co-sentenced offences were more likely to receive either imprisonment (32.5% for contravention of FVIO intending to cause harm or fear for safety and 33.8% for persistent contravention) or a community sentence (32.7% for contravention of FVIO intending to cause harm or fear for safety and 33.8% for persistent contravention), with other sentences used relatively infrequently.
- 4.112 Conversely, contraventions without co-sentenced offences were more likely to receive a fine (36.5% for contravention of FVIO intending to cause harm or fear for safety and 39.1% for persistent contravention) or a low-end order (29.9% for contravention of FVIO intending to cause harm or fear for safety and 22.8% for persistent contravention).
- 4.113 Stakeholders expressed particular concern at the finding that 36.5% of offences of FVIO contravention intending to cause harm or fear for safety sentenced without co-sentenced offences received a fine, given the gravity of the conduct captured by the charge.¹⁷³
- 4.114 That 39.1% of charges of persistent contravention sentenced without co-sentenced offences received fines was also of note. However, it was observed that, in some stakeholders' experience, persistent contravention offences can involve, for example, multiple text messages sent over a short period of time in the context of a relationship ending.
- 4.115 Overall, these findings confirm that the increase in imprisonment and community sentences in FVIO and FVSN contravention cases (including for the newly introduced aggravated offences) has been predominantly driven by cases where there is wider criminality, rather than the contravention offence alone. There is a stark difference between the frequent use of community sentences and imprisonment in co-sentenced offence cases and the infrequent use of these sentences in contravention-only cases.

173. Roundtable (7 October 2015).

Figure 16: Cases of contravention of a family violence intervention order intending to cause harm or fear for safety – percentage of cases by principal sentence type by whether case had co-sentenced offence, Magistrates' Court of Victoria, 2012-13 to 2014-15¹⁷⁴

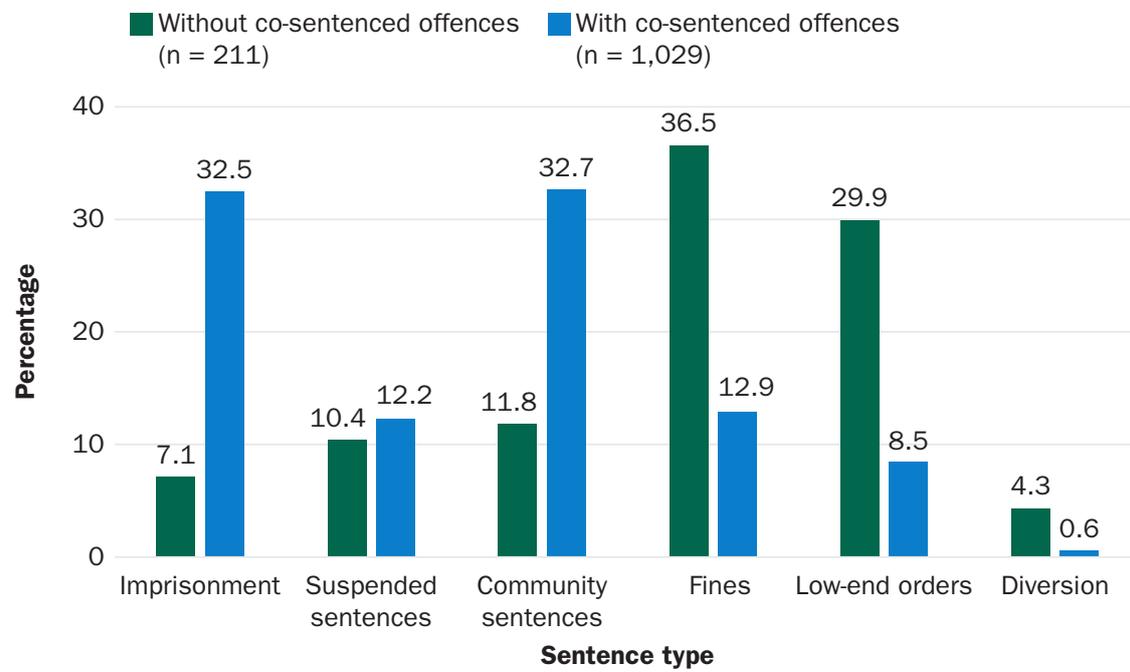
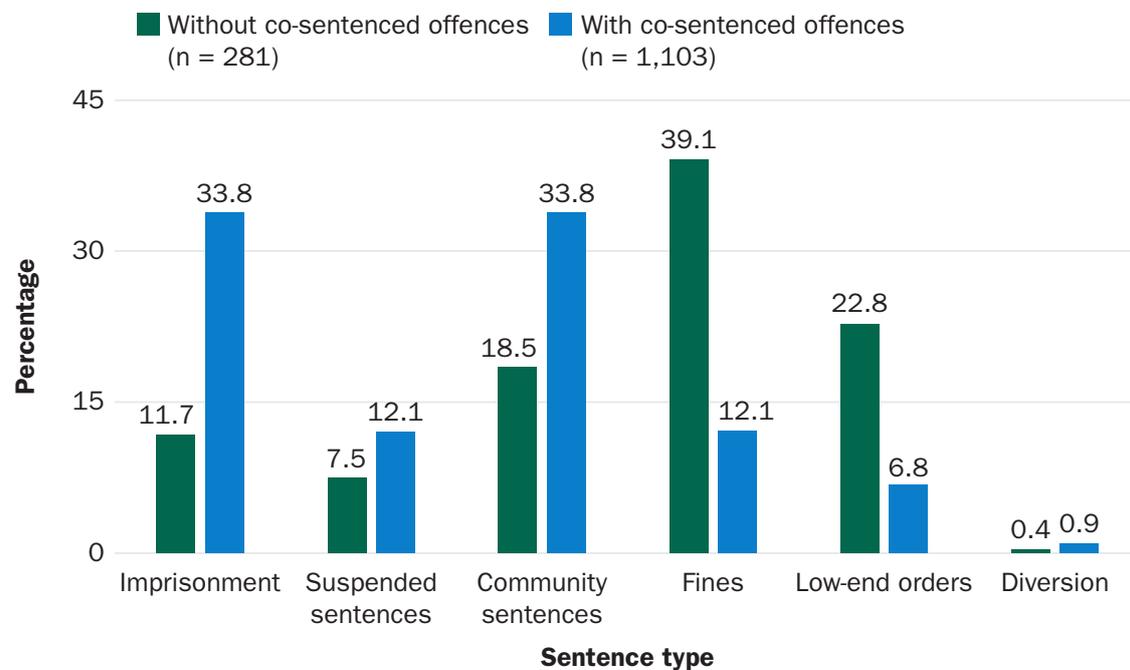


Figure 17: Cases of persistent contravention of notices and orders – percentage of cases by principal sentence type by whether case had co-sentenced offence, Magistrates' Court of Victoria, 2012-13 to 2014-15¹⁷⁵



174. The percentages for each period may not total 100% as 'other' sentences are not shown. Less than 1% of sentences fall into the 'other' category for the reference period. They include rarely used sentences such as drug treatment orders and youth justice centre orders.

175. Ibid.

Repeat contraventions

- 4.116 The Council's 2013 report examined sentencing for repeat contravention, noting that sentencing outcomes for repeat contravention were more severe.¹⁷⁶ The aggravated offence of persistent contravention of notices and orders makes such an examination difficult in this report, as 'repeat contravention' may now be captured under the single offence of persistent contravention of notices and orders. However, the sentencing patterns for the persistent contravention offence confirm that this offence receives more severe sentences, even compared with the two other aggravated contravention offences of intending to cause harm or fear for safety (see Figures 9 and 10).
- 4.117 An alternative to examining repeated instances of contravention is to study the broader range of offences (for example, assault, traffic offences, and so on) that offenders may commit before and after the commission of a contravention offence, to investigate whether different groups or clusters of offenders emerge from the data. The Council may examine this topic as part of future research.

Discussion

Increase in the use of imprisonment and community correction orders

- 4.118 The use of imprisonment increased over the reference period for both of the non-aggravated contravention offences. For FVIO contraventions between 2009–10 and 2014–15, sentences of imprisonment increased from 12.2% to 16.2%. Community sentences (solely comprising CCOs since 16 January 2012) also increased for FVIO contraventions, particularly between 2012–13 and 2014–15 (from 18.9% to 24.7%).
- 4.119 The use of imprisonment and community sentences also increased for FVSN contraventions. Imprisonment increased from 11.7% in 2009–10 and 2010–11 to 13.5% in 2013–14 and 2014–15, while community sentences increased from 15.7% to 25.9% over the same periods.
- 4.120 Over the period from 2013–14 to 2014–15, the aggravated offences of FVIO contravention intending to cause harm or fear for safety and persistent contravention of notices and orders were more likely to receive imprisonment (28%–29% of cases with these offences) or a CCO (29%–31% of aggravated offences) than the non-aggravated FVIO contravention offence.
- 4.121 The use of combined imprisonment and CCO sentences remained relatively small from 2011–12 to 2014–15, but grew from 2.0% of all contravention cases receiving imprisonment in 2011–12 to 25.6% in 2014–15. In 2014–15, a CCO accompanied 34.7% of imprisonment sentences for FVIO contravention intending to cause harm or fear for safety, 28.6% of imprisonment sentences for FVSN contravention, 27.6% of imprisonment sentences for persistent contravention, and 24.9% of imprisonment sentences for FVIO contravention.
- 4.122 Stakeholders noted that these results, showing more severe sentences for the aggravated offences, were consistent with the policy intent behind their introduction, appropriately reflecting the added criminality encompassed by those offences and the likely need for higher end sentencing dispositions.¹⁷⁷

176. Sentencing Advisory Council (2013), above n 1, 38–41.

177. Roundtable (7 October 2015).

Increase in the use of fines and decrease in the use of low-end orders

Fines

- 4.123 Fines were one of the most frequently used sentences for FVIO contraventions, increasing between 2009–10 and 2011–12 from 23.4% to 27.6%, but remaining relatively steady for the rest of the reference period. Low-end orders, such as adjourned undertakings, convicted and discharged, or dismissals, were the most frequently used principal sentence type for FVIO contraventions during 2009–10 and 2010–11 (from 26.0% to 26.8%), before a steady decrease in subsequent years, to 22.3% in 2014–15.
- 4.124 The aggravated contravention offences sentenced during 2013–14 and 2014–15 were:
- less likely to receive a fine (17%–18% for aggravated contraventions compared with a higher rate of 27.0% for the non-aggravated FVIO contravention offence) and;
 - less likely to receive a low-end order (10%–12% for aggravated contraventions compared with 22.6% for the non-aggravated FVIO contravention offence).
- 4.125 Stakeholders expressed concern that the proportion of aggravated offences receiving fines (while lower than the proportion for non-aggravated offences) was still greater than expected.
- 4.126 The Council observed a decline in the use of fines and an increase in the use of adjourned undertakings and community sentences between the two reference periods examined in the 2013 report (1 July 2004 to 30 July 2007, and 1 July 2009 to 30 June 2012). This was apparent across all measures of sentencing examined (that is, sentencing outcomes for all FVIO contraventions, sentencing outcomes in contravention-only cases and co-sentenced offence cases, and sentencing outcomes for repeat FVIO contravention).¹⁷⁸
- 4.127 In its 2009 report, the Council cautioned against the use of fines as a sentencing disposition in the context of FVIO and FVSN contravention, concluding that fines were generally unable to fulfil the purposes of community protection and rehabilitation in relation to FVIO contravention.¹⁷⁹ Further, fines may compound the harm experienced by the victim. Where the offender and victim are in a relationship of financial interdependence, a fine is likely to punish the victim as well as the offender by withdrawing resources from the family as a whole.¹⁸⁰
- 4.128 One possible explanation for the prevalence of fines for the non-aggravated contravention offences is that, as there has been a decline in the notion of the ‘technical contravention’ through the influence of the Family Violence Code of Practice,¹⁸¹ there may have been a corresponding increase in the number of relatively less serious contravention offences coming before the courts. This may account for the large proportion of fines and low-end orders, particularly where the contravention offence is not accompanied by co-sentenced offending.¹⁸²
- 4.129 Stakeholders noted that the prevalence of fines for the aggravated contravention offences without co-sentenced offences was a ‘striking’ and ‘concerning’ finding.¹⁸³ These concerns were particularly focused on the 36.5% of cases of FVIO contravention intending to cause harm or fear for safety (and where the case had no co-sentenced offences) that received fines.

178. Sentencing Advisory Council (2013), above n 1, 29–42.

179. Sentencing Advisory Council (2009), above n 4, 50–55.

180. Sentencing Advisory Council (2013), above n 1, 47.

181. The Family Violence Code of Practice emphasises that there ‘is no such lawful term as “technical” contravention’, and that police are required to investigate all alleged FVIO and FVSN contraventions regardless of the perceived seriousness of the contravention: Victoria Police (2014), above n 11, 28.

182. Roundtable (7 October 2015).

183. Roundtable (7 October 2015).

Adjourned undertakings

- 4.130 The Council concluded in its 2009 report that adjourned undertakings may be suitable for FVIO contravention if rehabilitative conditions are attached (such as attendance at a men's behavioural change program) and the offender's participation in any such program is supervised. Adjourned undertakings, however, do not necessarily require the completion of a behavioural change program and may simply require the offender to comply with the conditions of the FVIO.¹⁸⁴
- 4.131 Stakeholders noted that the waiting times for men's behavioural change programs were lengthy, and there was some concern about the quality and efficacy of the programs available. Furthermore, stakeholders noted the limited opportunity to monitor offender compliance with an adjourned undertaking.¹⁸⁵
- 4.132 Stakeholders also noted that the movement away from adjourned undertakings and towards CCOs could be reflective of the court taking a more supervisory role, utilising the opportunities for pre-sentence reports to be obtained and for judicial monitoring, as well as other conditions available under the CCO regime.¹⁸⁶

Concluding remarks

- 4.133 Data analysis reveals that, since the Council's 2013 report, there have been several changes in sentencing practices for FVIO contravention. In summary, there has been an expected shift away from suspended sentences towards imprisonment and CCOs, which is a result of the changes to the legislative sentencing framework outlined at [4.15]–[4.32].
- 4.134 Fines remain one of the most frequently used sentences for FVIO contravention and appear to be replacing low-end orders, such as adjourned undertakings.
- 4.135 The aggravated offences were more likely to receive sentences at the higher end of the sentencing hierarchy (such as imprisonment or a CCO), and less likely to receive fines, in accordance with the higher maximum penalties for those offences.
- 4.136 Cases with co-sentenced offences were also more likely to receive sentences at the higher end of the sentencing hierarchy, regardless of whether the contravention related to an FVIO or an FVSN, or involved an aggravated contravention. This is to be expected given the greater level of criminality represented by the co-sentenced offences.
- 4.137 Cases without co-sentenced offences, notably including aggravated contraventions, were instead more likely to receive fines or low-end orders.
- 4.138 With regard to the imposition of fines, some stakeholders expressed reservations about the appropriateness of this sentencing disposition in the context of sentencing for contravention offences, stating that fines are unlikely to address the underlying causes of the offending behaviour, especially where the contravention is an aggravated offence. It may also have a financial impact on the victim.
- 4.139 While sentencing for family violence order contraventions remains an ongoing challenge for the criminal justice system, stakeholders commented that there appears to have been some encouraging signs of progress, particularly in relation to the observed differences in sentencing between the aggravated contravention offences and the general contravention offences. The prevalence of fines, however, remains an area of concern.

184. Sentencing Advisory Council (2009), above n 4, 56–60.

185. Roundtable (7 October 2015).

186. *Sentencing Act 1991* (Vic) pt 3A.

Appendix 1: Consultation

Roundtable (7 October 2015)

Berry Street

CASA Forum

Criminal Law Policy, Department of Justice and Regulation

Domestic Violence Resource Centre Victoria

Domestic Violence Victoria

Dr Renata Alexander, Monash University

Federation of Community Legal Centres Victoria

Judicial College of Victoria

Professor Cathy Humphreys, The University of Melbourne

Magistrates' Court of Victoria

No To Violence

Royal Commission into Family Violence

Safe Steps Family Violence Response Centre

Victoria Police

Victoria Police Family Violence Command

Victoria Legal Aid

Victorian Aboriginal Legal Service

White Ribbon

Women's Legal Service Victoria

Appendix 2: Guiding Principles

Appendix 2 is reproduced from Sentencing Advisory Council, *Sentencing Practices for Breach of Family Violence Intervention Orders* (2009) 150–151. The complete *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009) is available from www.sentencingcouncil.vic.gov.au.

3. The Sentencing Range and the Appropriateness of Particular Sanctions

- 3.1 The following section is intended to be a guide to the relevant sentencing range and the use of sentencing dispositions for contraventions of family violence intervention orders, based on the presence of particular factors. The link between the sentencing ranges identified and the sanctions grouped with them should not be read prescriptively. The identification of certain factors within one of the sentencing ranges does not mean that the suggested sanctions will be the only 'correct' sentences in any given case.
- 3.2 The ranges are simply intended to provide some assistance to magistrates by grouping the factors discussed into a cohesive framework within which the individual circumstances of each case can be considered.
- 3.3 The most common sanctions in the sentencing hierarchy are all included in the table opposite. However, considering the Council's reservations about the use of suspended sentences generally, despite its place in the hierarchy, there would be very few cases in which a suspended sentence would be the appropriate sentence for breach of a family violence intervention order.

Sentencing Range and Factors

Considerations for Each Sanction

Low

Nature of the breach is not serious and it has minimal impact on the victim

Single instance offending

Offender has no prior family violence convictions (or very few non-family violence convictions)

Adjourned Undertaking with/without Conviction (Low)

In considering whether it is appropriate to attach a program condition, the court should take into account whether there are adequate mechanisms in place to ensure compliance. If there are no adequate mechanisms in place to ensure compliance, the court should consider ongoing court supervision of the undertaking.

The court should also consider attaching a condition directed at protecting the victim, for example if there is not a continuing intervention order on foot, a restraint on the offender approaching or contacting the victim.

Fine (Low)

The court should consider whether a fine will impact negatively on the victim, for example if imposing a fine may affect the offender's ability to pay child support payments or provide other financial support that the offender would normally provide to the household.

Community-Based Order (Low and Medium)

When imposing a community-based order, a court could consider attaching:

- a condition directed at the offender's conduct such as a men's behavioural change program;
- the possibility of a community service order, fixing the number of hours (up to 20 hours per week) according to the gravity of the offence;
- a supervision order, for those offenders who demonstrate a high risk of re-offending; or
- a condition directed at protecting the victim, for example if there is not a continuing intervention order on foot, a restraint on the offender approaching or contacting the victim.

Medium

Nature of breach is moderate and it has a moderate impact on the victim

More than one instance of offending

Breach occurs in or near the victim's home

Breach is in the presence of children

Breach occurs only a short time after the making of the order or an earlier breach

Offender has some relevant prior convictions

Victim is particularly vulnerable

Intensive Correction Order (Medium)

When imposing an intensive correction order, a court could consider attaching a special condition directed at the offender's conduct such as a men's behavioural change program; programs that are not based within Corrections Victoria may be attached to the order.

High

Nature of breach is serious and it has a serious impact on the victim (not limited to physical violence)

Persistent or regular offending

Breach occurs only a short time after the making of the order or an earlier breach

Breach directly involves children

Offender has many relevant previous convictions

Victim's ongoing safety is compromised

Breach involves a home invasion

Victim is particularly vulnerable

Wholly (Medium) and Partially (High) Suspended Sentence

In deciding whether a suspended sentence is an appropriate sanction for a breach of an intervention order, the court should consider whether the offender requires some level of intervention to prevent further offending (such as a men's behavioural change or other rehabilitative or treatment program). If so, a suspended sentence would not be the appropriate sanction.

Further, if the court is of the view that the immediate safety of the victim is an issue, a suspended sentence is unlikely to be an appropriate sanction.

Immediate Custodial (High)

Given the potentially serious and long-lasting effects of both physical and non-physical breach behaviour, immediate terms of imprisonment should not be confined to breaches involving physical violence. Where any non-physically violent behaviour caused or was intended to cause a high degree of harm and anxiety, a court should consider an immediate custodial sentence.

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