

Changes to the laws about domestic violence – Tenancy Orders and Landlords

Overview

The State Government is providing better protection for people subjected to domestic and personal abuse. New laws that come into effect on Friday, 9 December will introduce Intervention Orders which aim to protect people not only from violence, but also threatening and controlling behaviour. These new laws will also broaden the range of people who can be protected by Intervention Orders.

The *Intervention Orders (Prevention of Abuse) Act 2009* (IO Act) reforms the previous system of domestic and personal violence restraining orders. The commencement of these laws completes the Government's promised review of the rape, sexual assault and domestic violence laws.

The new laws are likely to be used mostly to protect people against domestic abuse. However these laws also cover personal abuse, whether it takes place in a domestic relationship or not.

Restraining orders are replaced with Intervention Orders. Intervention Orders can be used to protect people from abuse by restricting what the defendant (the perpetrator of the abuse) does, as well as by requiring the defendant to work towards rehabilitation.

What kinds of abuse are covered?

A person can be protected from physical abuse, as well as acts of abuse such as damage to property, emotional or psychological harm and denying an individual financial, social or personal independence.

When can an intervention order be issued?

Intervention orders can be issued when someone has been abused or is at risk of being abused. The abuse does not need to have happened on any previous occasions. Although priority is given to hearing cases concerning persons at risk of "domestic abuse" an Intervention Order can also be made to protect persons at risk of "non-domestic abuse".



Which relationships are covered by the term 'domestic abuse' and "non-domestic abuse"?

The term domestic abuse covers abuse that occurs in relationships between spouses or partners (including former spouses or partners), between people in intimate relationships, between a person and their parent, child, grandchild, grandparent, brother or sister, between members of Aboriginal kinship groups, other culturally recognised family groups and between a carer and the person cared for.

Non-domestic abuse is when an act of abuse is committed by a defendant who is not, or has not, been in a domestic relationship with the person to be protected.

What can an intervention order do?

Intervention Orders protect people from abuse. They also protect children from hearing or seeing the abuse. Intervention Orders usually forbid someone (who is called the defendant) from doing something. They can also tell them that they must do other things.

For example, Intervention Orders often forbid people from making contact with another person. They can also stop someone from returning to the family home and they can limit how close that person can come to the protected person.

Housing options for victims (protected persons) and transfers of tenancy agreements

An Intervention Order can require the defendant to stay away (and move out) from the family home, even though they may own or rent it. In such cases the protected person can change the locks. If the home is rented and the locks are changed the protected person must give a copy of the key to the landlord.

If the defendant is excluded from a rented home, the landlord is not allowed to give the defendant a key or help the defendant get in if they know there is an Intervention Order preventing the defendant from entering the premises.

When a court confirms an Intervention Order, if the Intervention Order excludes the defendant from a home that was previously shared by them with the protected person, and if the home is rented, the court may also make a Tenancy Order.

A Tenancy Order transfers the defendant's interest in the tenancy agreement (that is the rental agreement) to the protected person or their nominee. The court can only make such a Tenancy Order if the nominee or the protected person could be reasonably expected to comply with the obligations under the tenancy agreement, such that the court would consider that in the circumstances, it would be unreasonable for the landlord to withhold consent to the assignment.

Tenancy agreements will include not only agreements for residential tenancies but also residential parks agreements and agreements for the tenancy of rooming houses.

This means the protected person or the nominee actually takes over the rental of the property.

Protected persons who choose to move out of the home will not be denied access to personal possessions or access to items such as the family car. The court or police will be able to order the defendant to return personal property or to allow the protected person to recover or use certain items. The protected person will be able to do these things under police protection or in the company of someone else they choose.

What does this mean for landlords?

There are a number of provisions in these new laws that affect landlords.

If a protected person is living in a rental property, and the court excludes a defendant from the property, the protected person is allowed to change the locks. However, the protected person **MUST** give a copy of that key to the landlord and the landlord will not incur any costs associated with changing of the locks.

Once a landlord knows that there is an Intervention Order excluding a defendant from rental premises, the landlord is not allowed to give the defendant a key or assist them to access the premises.

A Tenancy Order can only be made if there is an Intervention Order excluding a defendant from a home that was previously shared by them with the protected person and which is rented by them. The protected person would most likely be known to the landlord as having lived in their premises with the defendant. If an Intervention Order excludes the defendant from a property, a court has decided on all the evidence before it that the best result is for the protected person to remain in that home.

A court will only make a Tenancy Order if the protected person agrees, and the court is certain that the protected person, or their nominee, could reasonably be expected to comply with the obligations under the tenancy agreement, such that a landlord could reasonably be expected to consent to the assignment of the tenancy agreement.

Once a Tenancy Order is made, any security that has been paid under the tenancy agreement remains, and continues to be held by the landlord. It is then treated by the landlord no differently than if the defendant were still a tenant. This means that defendant is not entitled to recover his or her bond until the tenancy agreement finally expires; these monies are to be used as security for the proper performance of the new tenant's obligations under the agreement.

If, at the end of the tenancy, the defendant incurs a liability to landlord because of a breach of the tenancy agreement by the protected person, it is the protected person who is liable to indemnify the defendant for that loss, not the landlord.

The defendant remains responsible for liabilities that accrued before the Tenancy Order is made, unless they were incurred by the protected person, who must again indemnify the defendant for them.