

Changes to the laws about domestic violence

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.

Intervention Orders can require someone to surrender weapons or undertake a program dealing with substance abuse, problem gambling, anger control or mental health. All Intervention Orders will contain conditions about firearms except in rare circumstances. If the abuse anticipated by the Intervention Order is likely to involve weapons, the order should require their surrender or contain terms that will reduce the likelihood of weapons being used.

Intervention Orders can also contain terms that protect children affected by the abuse, including children who hear or witness the abuse and ensure their continuing safety and security.

Housing options for victims (protected persons)

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 is an interim intervention order?

An interim Intervention Order can be issued by police, if there are grounds to do so and if the alleged defendant is present or in custody. If the defendant is not present, the police can instead apply to the court for an interim Intervention Order.

An interim Intervention Order is essentially a temporary or urgent order put in place by either the court or the police to immediately protect the person. Once an interim Intervention Order is made, the matter has to come back to court at a later date to be finalised. The court will consider the terms of the interim Intervention Order, hear evidence and then can confirm the final Intervention Order.

What happens when police issue an interim intervention order?

An interim Intervention Order issued by police is actually an application to the court for the final or confirmed Intervention Order. The interim Intervention Order notifies the defendant when the court hearing will be and summons the defendant to come to court for the hearing. When police issue an interim Intervention Order, there is no need for an immediate court hearing, the person is protected once the defendant has been given a copy of that interim Intervention Order by the police. The only hearing is a final hearing to determine what the court will do with the interim Intervention Order.

The police can require a defendant to stay in a particular place until either a interim Intervention Order (being issued by them or a court) or a final Intervention Order being issued by a court is prepared and served. If the defendant won't stay as required by police or it looks like he or she is not going to stay, the police may arrest and detain the defendant without warrant for as long as it takes to prepare and serve the orders, but for no longer than two hours unless approved by the court.

Additional police powers

In some cases protected persons may need immediate arrangements to be made to protect them against further abuse once the interim Intervention Order has been made. Police will be able to arrest and detain the defendant for up to six hours while these arrangements are made.

When an Intervention Order requires the defendant to surrender a weapon or article, police may search him or her and anything in his or her possession for that weapon or article or enter premises or a vehicle to take possession of it, and may use reasonable force to do so.

Police may also arrest and detain a person in custody without warrant for suspected breach of the interim Intervention Order or a confirmed Intervention Order, as long as the person is brought to court no more than 24 hours later, except at weekends and public holidays.

Who can help police find the defendant?

Public sector agencies and those under contract to provide services to such agencies, other than the Legal Services Commission of South Australia, are obliged, if requested by police, to provide any relevant information to help police find the defendant.

Who may apply to the court for an Intervention Order?

Police may apply for an Intervention Order, whether they have the consent of the alleged protected person or not.

Anyone needing protection from an act of domestic or personal abuse may apply for an Intervention Order. An adult may apply themselves or, with the court's permission, someone else can apply on their behalf. A child can apply in person if they are aged 14 years or more, with the permission of the court. Otherwise the child's application must be through a parent or guardian, someone the child usually lives with or another suitable person who has been approved by the court.

The Minister responsible for a child under a care arrangement can apply on behalf of or against such a child.

How long does an intervention order last?

All Intervention Orders, whether interim or confirmed, are ongoing: they continue in force, subject to any variation or substitution by the court, until revoked. They cannot be made for a specific period and they do not have a sunset clause or an end date.

How can an intervention order be changed or removed?

The defendant and anyone who can apply for an Intervention Order can apply to change its terms or to have it removed.

The defendant, however, may not do so until at least 12 months has elapsed since the Intervention Order was made or last varied, or after a later date set by the court. The court may dismiss the defendant's application without hearing from the protected person if it thinks the application vexatious or frivolous or if of the opinion that there has been no substantial change in relevant circumstances since the order was issued or last varied.

Before varying or revoking an Intervention Order the court must hear both the defendant and the protected person and must have regard to the same matters it must have regard to in considering whether or not to make an intervention order and in determining its terms.

Child defendants

Sometimes a child can abuse another member of the family, and can therefore be the subject of an Intervention Order. The Youth Court will be able to make Intervention Orders against children, using all the special safeguards afforded to children by that court.

Can a person be refused bail if it appears likely that he or she might, if released, breach an Intervention Order?

Yes. When deciding whether to release a person on bail, bail authorities must now take into account the possibility that the person may, if released, breach an Intervention Order.

Will a person get bail if they breach an Intervention Order?

There will now be a presumption against bail when a person is taken into custody for an offence of breaching an Intervention Order, if the act or omission alleged to constitute the breach involved physical violence or a threat of physical violence.

Protected person and witness protection

Under these new laws the identity of protected persons, children and witnesses will not be made publicly available. When in court, protected persons and witnesses will be able to give evidence from behind a screen or via C.C.T.V. and the defendant may not cross-examine them in person.

Where can I get more information?

Information can be obtained from www.dontcrosstheline.com.au including the *Intervention Orders (Prevention of Abuse) Act 2009*, Quick Find Chart which highlights the changes to existing laws and legal services contacts.