

Brief Overview of the *Personal Safety Intervention Orders Act 2010*

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Scope of document

This document is intended to provide a brief overview of the most significant aspects of the *Personal Safety Intervention Orders Act 2010*. It is not a comprehensive summary of the Act and should not be relied upon.

Substantive law

1. Stalking intervention orders replaced by personal safety intervention orders

- *Personal Safety Intervention Orders Act 2010* (PSIO Act or the Act) repeals the *Stalking Intervention Orders Act 2008* (SIO Act) – s186

2. Key elements of the *Personal Safety Intervention Orders Act 2010*

- The grounds for granting an intervention order have been expanded to include 'prohibited behaviours' (see discussion below), along with the previous 'stalking' provisions
- The predictive test for granting an intervention order – that is, that the conduct is *likely to continue* – remains
- The court now has the power to order parties to attend a mediation assessment, which is conducted by a qualified dispute assessment officer from the Dispute Settlement Centre of Victoria (DSCV). If the matter is assessed as suitable for mediation, the court can order the parties to attend mediation
- There are significant changes in the way the Act deals with child respondents, including:
 - That an order cannot be made against a child who is under 10
 - Where the respondent is a student, or wants to become one, the court must consider whether any condition placed on an intervention order could prevent them from attending the school where they are, or want to become, a student
 - The ability for the court to order reports from the Department of Education and Early Childhood Development in relation to alternative education options if it is considering excluding a child from their school
- The Act has been drafted to provide greater consistency with the *Family Violence Protection Act 2008* (FVP Act) in respect of terminology and procedure

3. Purposes - s1

- Stated purposes of the Act are:
 - Protecting the safety of victims of assault, sexual assault, harassment, property damage or interference with property, stalking and serious

threats; and

- Promoting and assisting in the resolution of disputes through mediation where appropriate

4. Definitions – ss4-9

- Notable definitions include:
 - ‘Safety’ means safety from physical or mental harm - s4
 - ‘Prohibited behaviour’ is defined in s5 as:
 - Assault (defined in s6(1)); or
 - Sexual assault (defined in s6(2)); or
 - Harassment (defined in s7); or
 - Property damage or interference (defined in s7); or
 - Making a serious threat (defined in s9)
 - ‘Stalking’ - s10

5. Applicants for personal safety intervention orders

- The following people can apply for a personal safety intervention order – ss15, 16:
 - An affected person or anyone else with their written consent, where the affected person is an adult
 - If the affected person is a child – a parent of that child, or anyone else if they have the written consent of a parent or obtain leave from the court
 - The court must grant leave if it is in the best interests of the affected person to do so
 - If the affected person is a child *and* aged 14 or older, that child with leave of the court
 - The court *must not* grant leave unless it is satisfied that the child understands the nature and consequences of a personal safety intervention order
 - If the affected person has a guardian – that guardian, or anyone else with leave of the court
 - The court must grant leave if it is in the best interests of the affected person to do so
 - A police officer
- For an application made in respect of a child affected person, that application

may be included in an application for the protection of the child's parent if the applications arise out of the same or similar circumstances – s17

- Personal safety intervention orders may not be made against children under 10 years or, if they are, they are of no effect – s18

6. Mediation

- The Act encourages parties to participate in mediation where appropriate, that is, in the case of non-violent interpersonal disputes. Predatory type stalking is not appropriate for mediation
- The DSCV provides a state-wide dispute resolution service
- Mediation guidelines have been prepared between the Magistrates' Court and DSCV about the type of matters appropriate for mediation. These are available [here](#)
- Where appropriate, police can refer matters directly to the DSCV rather than to the court. Also, court staff can encourage people, in appropriate cases, to contact the DSCV before seeking an intervention order
- Where an application for an intervention order is made, then at a mention date, a hearing of an application for a personal safety intervention order or a hearing for the variation or revocation of such an order, the court may, if it considers mediation appropriate, direct:
 - Parties to attend a mediation assessment (conducted by a dispute assessment officer from the DSCV); or
 - Parties to attend mediation, where a matter has been assessed as suitable for mediation; or
 - Parties to attend:
 - A mediation assessment; and
 - If the matter is assessed as suitable for mediation, a mediation – s26
- If the court gives a direction under s26, it may adjourn the proceeding to enable the mediation assessment or mediation or both (as applicable) to occur – s26(3)
- This means that if the court directs the parties to attend a mediation assessment *and* mediation, they will not need to re-attend court between these two events
- The dispute assessment officer who conducts the mediation assessment will provide the court with a mediation assessment certificate, stating whether or not the proceeding is suitable for mediation
 - If the matter is assessed as suitable, mediation will be conducted
 - If it is not, the matter will return to court for the continuation of the application for an intervention order

- Directions to attend mediation assessments and/or mediation apply to all parties to the proceeding, except applicants who are police officers and applicants who are not the affected person and the court excludes from the direction – s26(4)
- If a court directs parties to mediation and an existing personal safety intervention order would prevent mediation occurring, the court *must* vary the conditions of the order to enable mediation to occur – s27
- If the court gives a mediation direction, when deciding whether to make a personal safety intervention order, or to vary or revoke such an order, the court may take into account:
 - The contents of any mediation assessment report and any mediation certificate; and
 - If any party did not attend a mediation assessment or mediation, that fact and the reasons for their non-attendance – s33

7. Grounds for personal safety intervention orders

Interim orders - s35

- *May* be made if:
 - It is necessary (on the balance of probabilities), pending a final decision about the application, to ensure the safety or preserve the property of an affected person; and
 - It is appropriate to make in all the circumstances
- *Must not* be made if there is an existing family violence intervention order for which:
 - The affected person is a protected person and the respondent is a respondent; or
 - The respondent is a protected person and the affected person is a respondent (in this instance, an interim personal safety intervention order *may* be made if the family violence intervention order is an *interim order*)

Final orders – s61

- *May* be made if:
 - The respondent has:
 - Committed prohibited behaviour against the affected person and is likely to do so again and that behaviour would cause a reasonable person to fear for their safety; or
 - Stalked the affected person and is likely to continue to do so or do so again; and
 - The respondent and the affected person are not family members; and

- It is appropriate in all the circumstances to do so (for example, if the respondent is a child or cognitively impaired it may be necessary their ability to understand and comply with the order - s61(2))
- *Must not* be made if there is an existing family violence intervention order involving the same parties

8. Consent orders

- The court can make a final order by consent or if it is unopposed, irrespective of whether it is satisfied of the grounds for the order and whether respondent admits the conduct alleged or not - s78(1)
- The court cannot make a final consent order against a child unless it is satisfied the grounds are made out - s78(2)
- The court can refuse to make a final consent order if it believes the order poses a risk to the safety of a party or a child - s78(5)

9. Duration of personal safety intervention orders

Interim order - s43

- Last until final determination of the application, or if a final order requires it, until the respondent is served with the final order
- Ends immediately if the court refuses to make a final order or revokes the interim order
- Ends immediately if an application is withdrawn

Final orders – ss77-79

- The court may specify the duration but if it doesn't, orders remain in force until they are revoked or set aside on appeal
- In determining the appropriate duration, the court must take into account:
 - Any assessment by the applicant of the level and duration of the risk from the respondent; and
 - If the applicant is not the protected person, the protected person's views, including their assessment of the level and duration of the risk from the respondent
- If the respondent is a child, the order *cannot* be for longer than 12 months unless there are exceptional circumstances

10. Conditions of orders

General - s67

- The court can impose *any* condition that appears necessary or desirable – see s67 for a list of possible conditions
- The list of possible conditions includes:

- Exclusion from 'residence' – see below
- Revocation or suspension of firearms licence or weapons approval – see below

Exclusion from residence – ss67(1)(c), 70-72

- Where the respondent is a child:
 - Before excluding that child from a residence, the court must consider the desirability of:
 - Minimising disruption to the protected person and any child living with them, as well as the importance of maintaining social networks and support which may be lost if the protected person and the child were required to leave the residence or were unable to return to or move into the residence
 - Continuity and stability in the care of any child living with the protected person
 - Allowing any childcare arrangements, education, training or employment of the protected person or any child living with them to continue without disruption
 - The child respondent being supported to gain access to appropriate educational and health services
 - Allowing the child respondent's education, training or employment to continue without interruption
 - Before excluding them from a residence, the court must be satisfied that the child will have appropriate alternative accommodation, care and supervision. N.B. also additional considerations for Aboriginal or Torres Strait Islander children
 - The court can get a report from the Department of Human Services (DHS) regarding accommodation, care and supervision options for a child respondent before making an order
 - If a child respondent is excluded, the court must notify DHS
- If a respondent is excluded, the court must ask them for their address and advise that police may seek information to locate them – s70
- Where parties are living in rented premises and an exclusion condition is made:
 - The protected person can change the locks - s70A *Residential Tenancies Act 1997*
 - The protected person can apply to VCAT for termination of the tenancy and a new tenancy to be made - ss233A-B *Residential Tenancies Act 1997*

Conditions about firearms and weapons – ss68-69

- The court must find out whether the respondent has a firearms authority or weapons exemption or approval
- For interim orders, the court can suspend a firearms authority or weapons exemption or approval
- For final orders, the court can cancel a firearms authority or revoke a weapons exemption or approval
- If the court specifically suspends or revokes a firearms authority or weapons exemption or approval, a person cannot appeal that decision under other Acts or seek to be declared a non-prohibited person

Conditions preventing a respondent attending school – ss73-75

- Where the respondent is, or wants to become, a student, before the court includes a condition on an intervention order that:
 - Prohibits them from being on the school's premises or anywhere within a specified distance of that premises; or
 - Prohibits them from being anywhere within a specified distance of the protected person; or
 - Prohibits them approaching the protected person,

It must consider whether that condition may prevent the respondent from attending the school where they are, or want to become, a student

- Before including such a condition, the court can get a report from the Department of Education and Early Childhood Development about options for alternative education and training

Police applications for final orders - s63

- Where police apply for a final order and the affected person doesn't consent to the making of such an order, the final order can only contain conditions which:
 - Prohibit the respondent from committing prohibited behaviour against the protected person
 - Prohibit the respondent from stalking the affected person
 - Prohibit the respondent from causing another person to engage in conduct prohibited by the order
 - Revoke or suspend a weapons approval held by the respondent or a weapons exemption applying to the respondent
 - Cancel or suspend the respondent's firearms authority
- This limitation *does not* apply if the affected person:

- Is a child and no adult affected person is included in the application, or the adult affected person consents to the order
- Has a guardian who has consented to the application
- Is cognitively impaired

11. Variation, revocation and extension

Variation and revocation – ss80-82

- The criteria for deciding whether to revoke or vary an order include:
 - The applicant's reasons;
 - The safety and views of the protected person (or the views of their guardian if they have one); and
 - Whether the protected person is legally represented – s80(2)
- The court can vary instead of revoking an order if it wishes – s80(3)
- Interim variations can be made – s81
- The court can provide additional protections when varying or revoking – s82
 - Before varying or revoking an order, the court must decide whether there has been any change in the need to protect another person who is protected by the order from being subjected to prohibited behaviour or stalking by the respondent
 - The court may refuse to vary or revoke an order, or may vary it in a different way to that sought in the application, if it is satisfied that it is necessary to do so to ensure the safety of another person who is protected by the order

Extension ss83-84

- The court can extend an order if the respondent is likely to commit prohibited behaviour or stalking against the protected person if the order is not extended
 - This may be done irrespective of whether the respondent committed prohibited behaviour or stalking against the protected person, or otherwise complied with the order, while the order was in force; or
- The court can make an interim extension for up to 28 days if the respondent has not been served with the extension application
 - This may be done multiple times if the respondent is not served with application within the interim extension period

Applications to vary, revoke, extend – ss85-89, 106

- Applications may be made by:

- A party to the proceeding in which order was made; or
- If the protected person is a child, their parent or any other person who has the written consent of a parent of the child; or
- If the protected person is a child of or above the age of 14, that child with the leave of the court; or
- A police officer or a guardian of a protected person, if they were not a party to the proceeding in which the order was made – s85(1)
- A respondent needs leave to seek variation or revocation:
 - Before granting leave, the court must be satisfied there has been a change in circumstances that may justify variation or revocation – s86
- Police can seek the variation or extension of an order without the protected person's consent – s87(1)
 - If this happens, the court:
 - Can only vary it to include conditions that could be included without the protected person's consent in an original application (see above); and
 - Can only extend the order if the only conditions on it are those that could be included without the protected person's consent in an original application (see above); and
 - Cannot remove any conditions – s87(2)
 - However, these limits do not apply in cases where the protected person is a child, is cognitively impaired or has a guardian who consented to the application – s87(3)
- Applicants who are not the protected person, the protected person's guardian (if any), the respondent or a police officer may only apply if they have the written consent of:
 - The protected person; or
 - If the protected person is a child, a parent of that child; or
 - The protected person's guardian – s88(1)
- On these applications, the court:
 - Can only vary an order to include conditions that could be included without the protected person's consent in an original application (see above); and
 - Can only extend the order if the only conditions on it are those that could be included without the protected person's consent in an original application (see above); and
 - Cannot remove any conditions – s88(2)

- The court can revoke, vary or extend an order made by any other court, including an order confirmed or varied by the County or Supreme Courts on appeal (but in this case, there must be new facts or circumstances) – s106

12. Vexatious litigants – ss160-173

- The Chief Magistrate, a Deputy Chief Magistrate and the President of the Children’s Court may declare a person a vexatious litigant if they have ‘habitually, persistently and without any reasonable ground instituted proceedings against the same person’ under this Act, the SIO Act, the FVP Act or the *Crimes (Family Violence) Act 1987* (the CFV Act) - ss160, 165
- Applications for declarations may be made by the Attorney-General without leave, or the following people with the leave of the court:
 - A person against whom applications have been made under this Act or the SIO Act; or
 - A person against whom applications or complaints have been made for, or in relation to, a stalking intervention order under the CFV Act; or
 - Any person referred to above who has also had applications made under the FVP Act or complaints or applications have also been made under the CFV Act for, or in relation to, an intervention order other than a stalking intervention order – s161
- Where a person is declared a vexatious litigant they need to obtain the leave of the court in order to institute proceedings - s165(2)

13. Restriction on publication of proceedings – ss123-125

- The Act significantly proscribes any publication that can identify children who are parties to or witnesses in a proceeding, or who are the subject of orders (this includes photographs)
 - Contravention is an offence with the following penalties:
 - For natural persons, 100 penalty units and/or 2 years imprisonment;
 - For bodies corporate, 500 penalty units – s123

14. Children’s Court jurisdiction - ss102-106

- If the affected person, protected person or respondent is a child, the Magistrates’ Court *and* the Children’s Court both have jurisdiction, but if the respondent is a child, the Children’s Court should hear the application, if practical - s103
- The Children’s Court can make orders involving adults where a related matter involving a child is before the Court - s104

15. Criminal proceedings – ss100, 115

- Contravention of a personal safety intervention order is an offence – s100

- Penalty is 2 years imprisonment and/or 240 penalty units
- New offences of failing to surrender firearm or firearms authority, ammunition or weapon when directed – s115(4)

Evidence and procedure

16. Proper venue – ss3, 12

- Proceedings for personal safety intervention orders must be issued at the proper venue of the court – ss3, 12, *Magistrates' Court Act 1989* s3(1) and *Children Youth & Families Act 2005* s3(1):
 - For interim orders, this is any civil registry court
 - Otherwise:
 - Any civil registry court; or
 - The venue the court determines most appropriate, having regard to factors including safety, preventing disclosure of parties' whereabouts, parties' ability to get to court, availability of support services and case flow; or
 - For the Magistrates' Court only, the Neighbourhood Justice Centre

17. Requirements for applications – ss13, 14, 22

- As to the technical requirements of the various types of applications that can be made under the Act, see the following sections:
 - Applications for intervention orders – s13
 - Phone and fax applications by police – s14
 - Applications for warrants - s22

18. Issuing summons or warrant – ss20, 21

- A summons can be issued whenever an application for an intervention order is made – s20
- A warrant can be issued:
 - Against adult respondents only; and
 - Where it is necessary to ensure the safety of affected person, preserve property of the affected person or to ensure the respondent attends court – s21(1)

19. Explanation of orders – ss40, 76

- Interim orders:

- The appropriate registrar must give the respondent and protected person a written explanation of the order. If the party is before the court, this must be accompanied by a clear oral explanation by the registrar, unless the magistrate has already done this – s40
- Final orders:
 - If the protected person or respondent or both are before the court, they must be given a clear oral explanation of the order as well as a written notice containing the same information -76

20. Mention date – s44

- A proceeding for a personal safety intervention order cannot proceed to a contested hearing for a final order unless the parties have had the chance to get legal advice and representation, they consent to proceeding, and it is fair and just to continue – s44

21. Rehearings – s99

- Respondents or vexatious litigants (declared under the PSIO Act) can apply for a rehearing only if:
 - They were not personally served with the application and they were not made aware of it under a substituted service order – s99(1)(a); or
 - There are exceptional circumstances making a rehearing fair and just – s99(1)(b)
- These applications for a rehearing *do not* operate to stay a final order or a vexatious litigant order – s99(3)

22. Evidence in personal safety intervention order proceedings – ss47, 48, 107

- In proceedings for intervention orders, the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary – s47(1)
 - However, the following evidentiary provisions apply to intervention order proceedings:
 - *Evidence Act 2008* ss13, 30, 31 and 41 and Part 3.10
 - *Evidence (Miscellaneous Provisions) Act 1958* Part I Division 8 and Part II Division 2A – s47(2)
 - The court may refuse to admit, or limit the use of, evidence if it is satisfied:
 - It is just and equitable to do so; or
 - The probative value of the evidence is substantially outweighed by the danger that the evidence may be unfairly prejudicial to a party, or misleading or confusing – s47(3)
- Evidence can be given by affidavit or sworn statement – s48

- Children who are not applicants or respondents cannot give evidence without leave – s49(1)
 - In deciding whether to grant leave, the court must consider the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to the child if they give evidence – s49(2)
- A child must not be present during proceedings if they are:
 - The affected person or protected person; or
 - A family member of the respondent, affected person or protected person – s107(1)
- This prohibition does not apply if the child is the respondent or if the court orders that the child may be present
 - In deciding whether to make such an order, the court must consider the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to the child if they are present – ss107(2), (3)

Alternative arrangements for intervention order proceedings

- If the court considers it necessary, to prevent a party or witness from being unduly distressed or embarrassed, it may order that:
 - Some or all of a proceeding must be heard in closed court – s51(1)(a)
 - Only specific people or classes of people can be present for some or all of a proceeding – s51(1)(b)
- The court may make any of the following alternative arrangements for a proceeding:
 - Permitting the proceeding to be conducted from somewhere outside the courtroom via CCTV or other like technology;
 - Using screens to remove the respondent from a party's or witness's direct line of vision;
 - Permitting a support person to be beside a party or a witness while they give evidence;
 - Requiring legal practitioners to sit down during proceedings;
 - Any other alternative arrangements the court considers appropriate – s52(1)
- In deciding whether to make any alternative arrangements, the court must consider the wishes of a witness, their age and maturity, the facilities available for the conduct of the proceeding and any other matters it considers appropriate –s52(3)

23. Service

- The manner for service is personal service or, if this is not reasonably practicable, any other means the court considers appropriate, or substituted service – s176
- A certificate of service or non-service must be filed – ss177-178
- Police can apply to Victorian public sector agencies for information to locate the respondent to enable them to be served – s181

24. Costs

- There is a presumption that parties bear their own costs - s111(1)
- But the court may make a costs order if:
 - Exceptional circumstances exist; or
 - The application was vexatious, frivolous or in bad faith – s111(3)
- If there are grounds for a costs order, the court can adjourn the proceeding and notify the parties that orders will be made at the next date unless contested – s111(4).

Transitional arrangements

- The Act preserves orders made under the SIO Act. References to the SIO Act and orders made or registered under that Act are taken to be references to the PSIO Act and orders made or registered under the PSIO Act - ss214-217, 223
- Applications for variation, revocation or extension of orders made under the SIO Act are to be dealt with under the PSIO Act – s188
- Applications for intervention orders or for variation, revocation or extension of intervention orders made prior to the commencement date of the PSIO Act, where proceedings have not yet commenced, are to be dealt with under the PSIO Act – s190
 - However, where proceedings have commenced but not yet concluded before the commencement of the PSIO Act, the SIO Act applies – s191
- Where an interim order is made under the SIO Act but proceedings for the hearing of the application for the final order have not yet commenced, the PSIO Act applies – s189
- If appeals have started but not yet been finalised they continue under the SIO Act – ss191(1)(b), 191(2)