

Brief overview of the *Stalking Intervention Orders Act 2008*

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Introduction

The *Stalking Intervention Orders Act 2008* (the Act) basically preserves the system for stalking intervention orders that existed under s21A of the *Crimes Act 1958* and the *Crimes (Family Violence) Act 1987*, except in a few limited areas where it aligns with the new *Family Violence Protection Act 2008*.

Different law for stalking and family violence matters

On and from 8 December 2008, there will therefore be different law and procedure applying in stalking intervention order matters and family violence intervention order matters.

Changes to the previous stalking scheme

The areas where the Act does *not* replicate the previous system for stalking intervention orders, but rather aligns with the new *Family Violence Protection Act 2008* are:

- Firearms provisions
- Bail provisions
- Provisions regarding search of premises/vehicles and seizure of firearms
- Some terminology

The Act also contains some minor procedural differences to the previous scheme for stalking intervention orders.

Limitation on power to make final order

The Act has also placed a new limitation on the court's power to make a final intervention order where the respondent's course of conduct is in the context of a business, industrial dispute or political activity and is 'without malice'.

Scope of this document

This document discusses the most significant changes to the previous scheme for stalking intervention orders. It also addresses the transitional arrangements applying to the Act. It is not a summary of the new Act.

Changes to the previous stalking scheme

Definitions

There are a range of new definitions which more closely align terminology with that used in the *Family Violence Protection Act*. For example:

- 'Affected person' refers to the person for whom protection is sought. However, under the Act, 'affected person' also refers to the person actually protected by

an order - the Act does not use the term 'protected person' (which is the term used in the *Family Violence Protection Act* once an order has been made).

- 'Intervention order', 'final order' and 'interim order' are defined
- 'Party' to a proceeding specifically includes the affected person, whether or not they are the applicant.
- The term 'respondent' is used rather than defendant.

Firearms conditions

The Act specifically requires the court to enquire in relation to firearms authorities when making a final order as well as when making an interim order. When making an interim order the court can suspend a firearms authority and when making a final order it can cancel an authority. The Act then clarifies, what was the position *in practice* under the previous scheme, that no appeal lies against suspension or cancellation of firearms authorities and that this includes applications under s189 of the *Firearms Act 1996* to be deemed not to be a 'prohibited person' - s9. Note that the requirements and powers in s9 of the Act only apply to firearms – they do not apply to controlled weapons (whereas the similar provisions in the *Family Violence Protection Act* extend to *both* firearms and controlled weapons).

Bail

The Act removes the power to bail on summons. It also requires the registrar (where the bail application is heard by a court) or police officer (where the bail application is considered by a bail justice or police officer) to advise the affected person of the outcome of a bail application. If bail is granted, the same person must advise the affected person of any conditions that are intended to protect them and give them a copy of the undertaking of bail - s48.

Police powers – search and seizure

New and altered police search and seizure powers align with the powers police have under the new *Family Violence Protection Act*, except that the *Family Violence Protection Act* powers also extend to controlled weapons. These powers differ to previous police powers under the *Crimes (Family Violence) Act* in that:

- Power to enter and search without warrant is extended from covering only premises where a person resides or had resided to also including – s36:
 - Premises where the person allegedly committed stalking; or
 - Any vehicles registered in the person's name
- Police have a new power to direct surrender of firearms, authorities or ammunition where an intervention order has been made or there are grounds for an order to be made. A criminal penalty is prescribed for failure to comply with a direction – s35
- Police have a new capacity to apply for a search warrant for premises or a vehicle – ss37-39
 - The magistrate may issue the warrant if there are reasonable grounds for suspecting that an offence against the Act is being or is about to be committed or the person possesses a firearm, firearms authority or ammunition – s37(2)

- Police powers to seize firearms, firearms authorities and ammunition (s40) and the effect of seizure where a final order is made (s41) or not made (s42) are different to under the *Crimes (Family Violence) Act*.

Limitation on power to make final order

Section 7(4) provides that a court must not make a final order if satisfied on the balance of probabilities that the respondent has engaged in a course of conduct without malice:

- In the normal course of a lawful business, trade, profession or enterprise; or
- For the purpose of an industrial dispute; or
- For the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

Section 21A(4) of the *Crimes Act 1958* currently applies, and will continue to apply, a similar limitation to criminal proceedings for stalking but there was previously no such limitation on the power to make final intervention orders.

Transitional Arrangements

The transitional provisions applying to the Act are similar to those for the Family Violence Protection Act. They:

- Preserve orders made under the *Crimes (Family Violence Act)*. References to the *Crimes (Family Violence Act)* and orders made or registered under the *Crimes (Family Violence Act)* are taken to be references to the Act and orders made or registered under the Act – ss57-59, 62
- Applications for variation, revocation or extension of orders made under the *Crimes (Family Violence Act)* are to be dealt with under the Act – s58
- Applications for intervention orders or for variation, revocation or extension of intervention orders made prior to the commencement date but not yet finalised are to be dealt with under the Act in all situations, *other than* where a hearing has started but not yet concluded - in this case, the *Crimes (Family Violence) Act* applies. Even where an interim order has been made under the *Crimes (Family Violence) Act* but the final hearing has not yet started, the Act applies – ss59-61
- If appeals have started but not yet been finalised they continue under the *Crimes (Family Violence) Act* – s61(1)(b)
- If proceedings for breach of intervention order have started but not yet been finalised they continue under the *Crimes (Family Violence) Act* – s61(1)(c).