

South Australia

# **Intervention Orders (Prevention of Abuse) Act 2009**

An Act to provide for intervention orders and associated problem gambling and tenancy orders in cases of domestic and non-domestic abuse; and for other purposes.

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#### Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Intervention Orders (Prevention of Abuse) Act 2009*.

### **3—Interpretation**

(1) In this Act, unless the contrary intention appears—

*abuse* and *act of abuse*—see section 8;

*associated order* means a problem gambling order or tenancy order made in association with an intervention order (when an interim intervention order is confirmed as an intervention order or an intervention order is issued in substitution for an interim intervention order);

*case manager* means a person responsible for supervision of a defendant's participation in an intervention program;

*child* means a person who has not attained 18 years of age;

*Children's Protection Act order* means an order made under the *Children's Protection Act 1993*;

*contravene* includes fail to comply;

*Court* means the Magistrates Court of South Australia;

*defendant*—see section 6;

*domestic abuse*—see section 8(8);

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*Family Law Act order* means an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the *Family Law Act 1975* of the Commonwealth;

*firearms terms*—see section 14;

*foreign intervention order* means an order, notice or other form of requirement under the law of another State, a Territory of the Commonwealth or New Zealand declared by regulation to be a foreign intervention order;

*intervention order* includes an interim intervention order;

*intervention program* means a program that provides—

- (a) supervised treatment; or
- (b) supervised rehabilitation; or
- (c) supervised behaviour management; or
- (d) supervised access to support services; or
- (e) a combination of any 1 or more of the above,

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment;

**intervention program manager** means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such a person);

**issuing authority**, in relation to an intervention order, means the police officer or Court issuing the intervention order;

**non-domestic abuse**—see section 8(9);

**offensive material**—see subsection (2);

**Principal Registrar** means the Principal Registrar of the Court;

**problem gambling order**—see section 24;

**protected person** means a person for whose protection an intervention order is issued;

**public sector agency** has the same meaning as in the *Public Sector Act 2009*, but does not include the Legal Services Commission;

**registered housing co-operative** means a housing co-operative registered under the *South Australian Co-operative and Community Housing Act 1991*;

**relevant public sector agency** means—

- (a) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Children's Protection Act 1993*; or
- (b) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Education and Early Childhood Services (Registration and Standards) Act 2011*; or
- (c) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Family and Community Services Act 1972*; or
- (d) the South Australian Housing Trust;

**tenancy agreement** means an agreement under which a person grants another person, for valuable consideration, a right (which may, but need not be, an exclusive right) to occupy premises for residential purposes, and includes a residential parks agreement within the meaning of the *Residential Parks Act 2007*;

**tenancy order**—see section 25.

- (2) For the purposes of determining whether material is **offensive material**, the circumstances of a dealing with the material may be taken into account but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character.

#### 4—Application of Act outside State

This Act applies to an act of abuse whether it takes place in or outside this State and an intervention order may be issued against a person resident in or outside this State.

## Part 2—Objects of Act

### 5—Objects of Act

The objects of this Act are—

- (a) to assist in preventing domestic and non-domestic abuse, and the exposure of children to the effects of domestic and non-domestic abuse, by providing for—
  - (i) the issuing of intervention orders by police and the Court; and
  - (ii) the issuing of associated orders relating to problem gambling and tenancy agreements; and
  - (iii) the registration of foreign intervention orders; and
  - (iv) the enforcement of South Australian and foreign intervention orders; and
- (b) to provide special police powers of arrest, detention and search in connection with issuing, serving and enforcing intervention orders; and
- (c) to further protect persons suffering or witnessing domestic or non-domestic abuse by—
  - (i) providing for special arrangements for witnesses in proceedings under this Act; and
  - (ii) imposing limitations on publishing reports about proceedings or orders under this Act.

## Part 3—Intervention and associated orders

### Division 1—General

#### 6—Grounds for issuing intervention order

There are grounds for issuing an intervention order against a person (the *defendant*) if—

- (a) it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person; and
- (b) the issuing of the order is appropriate in the circumstances.

#### 7—Persons for whose protection intervention order may be issued

- (1) An intervention order may be issued for the protection of—
  - (a) any person against whom it is suspected the defendant will commit an act of abuse; or
  - (b) any child who may hear or witness, or otherwise be exposed to the effects of, an act of abuse committed by the defendant against a person.
- (2) An intervention order may be issued for the protection of a person even if that person is not an applicant for the order and the application is not made on his or her behalf.

- (3) If an issuing authority proposes to intervene against a defendant for the protection of more than 1 person, it may do so by issuing a single intervention order or by issuing multiple intervention orders, as it considers appropriate in the circumstances.

### **8—Meaning of abuse—domestic and non-domestic**

- (1) *Abuse* may take many forms including physical, sexual, emotional, psychological or economic abuse.
- (2) An act is an *act of abuse* against a person if it results in or is intended to result in—
- (a) physical injury; or
  - (b) emotional or psychological harm; or
  - (c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or
  - (d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.
- (3) *Emotional or psychological harm* includes—
- (a) mental illness; and
  - (b) nervous shock; and
  - (c) distress, anxiety, or fear, that is more than trivial.

(4) **Emotional or psychological harm—examples**

Without limiting subsection (2)(b), an act of abuse against a person resulting in emotional or psychological harm may be comprised of any of the following:

- (a) sexually assaulting the person or engaging in behaviour designed to coerce the person to engage in sexual activity;
- (b) unlawfully depriving the person of his or her liberty;
- (c) driving a vehicle in a reckless or dangerous manner while the person is a passenger in the vehicle;
- (d) causing the death of, or injury to, an animal;
- (e) following the person;
- (f) loitering outside the place of residence of the person or some other place frequented by the person;
- (g) entering or interfering with property in the possession of the person;
- (h) giving or sending offensive material to the person, or leaving offensive material where it will be found by, given to or brought to the attention of the person;
- (i) publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person;
- (j) communicating with the person, or to others about the person, by way of mail, telephone (including associated technology), fax or the Internet or some other form of electronic communication in a manner that could reasonably be expected to cause emotional or psychological harm to the person;

- (k) keeping the person under surveillance;
- (l) directing racial or other derogatory taunts at the person;
- (m) threatening to withhold the person's medication or prevent the person accessing necessary medical equipment or treatment;
- (n) threatening to institutionalise the person;
- (o) threatening to withdraw care on which the person is dependent;
- (p) otherwise threatening to cause the person physical injury, emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or domestic autonomy or to cause damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

(5) **Unreasonable and non-consensual denial of financial, social or personal autonomy—examples**

Without limiting subsection (2)(c), an act of abuse against a person resulting in an unreasonable and non-consensual denial of financial, social or personal autonomy may be comprised of any of the following:

- (a) denying the person the financial autonomy that the person would have had but for the act of abuse;
- (b) withholding the financial support necessary for meeting the reasonable living expenses of the person (or any other person living with, or dependent on, the person) in circumstances in which the person is dependent on the financial support to meet those living expenses;
- (c) without lawful excuse, preventing the person from having access to joint financial assets for the purposes of meeting normal household expenses;
- (d) preventing the person from seeking or keeping employment;
- (e) causing the person through coercion or deception to—
  - (i) relinquish control over assets or income; or
  - (ii) claim social security payments; or
  - (iii) sign a power of attorney enabling the person's finances to be managed by another person; or
  - (iv) sign a contract for the purchase of goods or services; or
  - (v) sign a contract for the provision of finance; or
  - (vi) sign a contract of guarantee; or
  - (vii) sign any legal document for the establishment or operation of a business;
- (f) without permission, removing or keeping property that is in the ownership or possession of the person or used or otherwise enjoyed by the person;
- (g) disposing of property owned by the person, or owned jointly with the person, against the person's wishes and without lawful excuse;

- (h) preventing the person from making or keeping connections with the person's family, friends or cultural group, from participating in cultural or spiritual ceremonies or practices, or from expressing the person's cultural identity;
  - (i) exercising an unreasonable level of control and domination over the daily life of the person.
- (6) If a defendant commits an act of abuse against a person, or threatens to do so, in order to cause emotional or psychological harm to another person or to deny another person financial, social or personal autonomy, the defendant commits an act of abuse against that other person.
- (7) A defendant may commit an act of abuse by causing or allowing another person to commit the act or to take part in the commission of the act.
- (8) If the act of abuse is committed by a defendant against a person with whom the defendant is or was formerly in a relationship, it is referred to in this Act as an act of **domestic abuse**; and for that purpose, 2 persons are in a relationship if—
  - (a) they are married to each other; or
  - (b) they are domestic partners; or
  - (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or
  - (d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or
  - (e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or
  - (f) 1 is a child and the other is a person who acts in *loco parentis* in relation to the child; or
  - (g) 1 is a child who normally or regularly resides or stays with the other; or
  - (h) they are brothers or sisters or brother and sister; or
  - (i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or
  - (j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or
  - (k) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other.
- (9) An act of abuse may be committed by a defendant against a person with whom the defendant is not, and was not formerly, in a relationship (including in circumstances where the defendant imagines such a relationship) and such an act of abuse is referred to in this Act as an act of **non-domestic abuse**.

## **9—Priority for certain interventions**

Proceedings relating to intervention against domestic abuse and proceedings brought by a bail authority under section 23A of the *Bail Act 1985* must, as far as practicable, be dealt with as a matter of priority.



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## 10—Principles for intervention against abuse

- (1) The following must be recognised and taken into account in determining whether it is appropriate to issue an intervention order and in determining the terms of an intervention order:
  - (a) abuse occurs in all areas of society, regardless of socio-economic status, health, age, culture, gender, sexuality, ability, ethnicity and religion;
  - (b) abuse may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of behaviour;
  - (c) it is of primary importance to prevent abuse and to prevent children from being exposed to the effects of abuse;
  - (d) as far as is practicable, intervention should be designed—
    - (i) to encourage defendants who it is suspected will, without intervention, commit abuse to accept responsibility and take steps to avoid committing abuse; and
    - (ii) to minimise disruption to protected persons and any child living with a protected person and to maintain social connections and support for protected persons; and
    - (iii) to ensure continuity and stability in the care of any child living with a protected person; and
    - (iv) to allow education, training and employment of a protected person and any child living with a protected person, and arrangements for the care of such a child, to continue without interruption; and
    - (v) if the defendant is a child—
      - (A) to ensure the child has appropriate accommodation, care and supervision; and
      - (B) to ensure the child has access to appropriate educational and health services; and
      - (C) to allow the education, training and employment of the child to continue without interruption.
- (2) The following must also be taken into account in determining whether it is appropriate to issue an intervention order and in determining the terms of an intervention order:
  - (a) any relevant Family Law Act order or Children's Protection Act order of which the issuing authority has been informed;
  - (b) how the intervention order would be likely to affect contact (in accordance with a relevant Family Law Act order or Children's Protection Act order or otherwise) between—
    - (i) the protected person or the defendant; and
    - (ii) any child of, or in the care of, either of those persons;
  - (c) any relevant agreement or order for the division of property under the *Family Law Act 1975* of the Commonwealth, or the *Domestic Partners Property Act 1996* or a corresponding law of another jurisdiction, of which the issuing authority has been informed;

- (d) if considering whether to prohibit the defendant from taking possession of property or to require the defendant to return property to a protected person or to allow a protected person to recover or have access to or make use of property—the income, assets and liabilities of the defendant and the protected person (to the extent that the issuing authority has been informed of those matters);
  - (e) any other legal proceedings between the defendant and protected person of which the issuing authority has been informed.
- (3) Before issuing an intervention order the issuing authority must consider whether, if the whereabouts of a person proposed to be protected by the order are not known to the defendant, the issuing of the order would be counterproductive.
  - (4) An issuing authority may take into account any other factor the authority considers relevant in the circumstances.

### **11—Ongoing effect of intervention order**

- (1) An intervention order is ongoing and continues in force (subject to any variation or substitution of the order under this Act) until it is revoked.
- (2) Consequently, an issuing authority may not fix a date for the expiry of an intervention order or otherwise limit the duration of an intervention order.

### **12—Terms of intervention order—general**

- (1) An intervention order may do any 1 or more of the following:
  - (a) prohibit the defendant from being on premises at which a protected person resides or works;
  - (b) prohibit the defendant from being on specified premises frequented by a protected person;
  - (c) prohibit the defendant from being in a specified locality;
  - (d) prohibit the defendant from approaching within a specified distance of a protected person;
  - (e) prohibit the defendant from contacting, harassing, threatening or intimidating a protected person or any other person at a place where the protected person resides or works;
  - (f) prohibit the defendant from damaging specified property;
  - (g) prohibit the defendant from taking possession of specified personal property reasonably needed by a protected person;
  - (h) prohibit the defendant from causing or allowing another person to engage in the conduct referred to in any of paragraphs (e) to (g);
  - (i) require the defendant to surrender specified weapons or articles that have been used, or that there is some reason to believe might be used, by the defendant to commit an act of abuse against a protected person;
  - (j) require the defendant to return specified personal property to a protected person;

- (k) require the defendant to allow a protected person to recover or have access to or make use of specified personal property and to allow the person to be accompanied by a police officer or other specified person while doing so;
  - (l) impose any other requirement on the defendant to take, or to refrain from taking, specified action.
- (2) An intervention order may specify—
  - (a) conditions under which a prohibition imposed by the order does not apply; and
  - (b) conditions that must be complied with in relation to a requirement imposed by the order.
- (3) If an intervention order is designed to prevent a form of abuse involving the use or threatened use of particular weapons or articles, the terms of the order should, as far as is practicable, include surrender of the weapons or articles or other measures designed to minimise the risk of the defendant using or threatening to use the weapons or articles to commit an act of abuse against the protected person.
- (4) If an interim intervention order requires the surrender of specified weapons or articles, the order must provide for their safe keeping until the determination of proceedings under section 23, but otherwise an intervention order may specify how surrendered weapons or articles are to be dealt with or disposed of.
- (5) An intervention order may be issued against the defendant in relation to premises or property despite the fact that the defendant has a legal or equitable interest in the premises or property.
- (6) If an intervention order prohibits the defendant from being on premises at which a protected person resides—
  - (a) the protected person may, despite any other Act or law, change any external door or window lock of the premises (and, if the premises are rented and a lock is so changed, the protected person must give a key to the lock to the landlord, except if the defendant is the landlord); and
  - (b) if the defendant is a party to a tenancy agreement for the premises—the defendant may not, despite any other Act or law, take any action to terminate the tenancy agreement before the determination of the proceedings under section 23.

### **13—Terms of intervention order—intervention programs**

- (1) An intervention order may require the defendant to undergo an assessment by the intervention program manager to determine—
  - (a) a form of intervention program that is appropriate for the defendant; and
  - (b) the defendant's eligibility for the services included on the program.
- (2) An intervention order issued by the Court may require the defendant to undertake an intervention program if the intervention program manager has advised the Court that—
  - (a) the defendant is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and

- (b) those services are available for the defendant at a suitable time and place.
- (3) If an intervention order contains a requirement under this section, the defendant must comply with requirements regulating his or her participation in the assessment or intervention program notified from time to time by the defendant's case manager and a failure to comply with such a requirement constitutes a contravention of the term of the intervention order imposed under this section.

#### **14—Terms of intervention order—firearms**

- (1) Subject to this section, an intervention order must include the following terms (the *firearms terms*):
  - (a) any firearm in the possession of the defendant and any licence or permit held by the defendant authorising possession of a firearm must be surrendered to the Registrar of Firearms;
  - (b) while an intervention order remains in force against the defendant—
    - (i) any licence or permit held by the defendant authorising possession of a firearm is suspended; and
    - (ii) the defendant is disqualified from holding or obtaining a licence or permit authorising possession of a firearm; and
    - (iii) the defendant is prohibited from possessing a firearm in the course of his or her employment.
- (2) The Court need not include the firearms terms in an intervention order (other than an interim intervention order) if satisfied that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

#### **15—Terms of intervention order—date after which defendant may apply for variation or revocation**

- (1) The Court may, when issuing or varying an intervention order (other than an interim intervention order), include a term fixing a date after which the defendant may apply for variation (or further variation) or revocation of the order.
- (2) The date must fall at least 12 months after the date of issue or variation of the order.
- (3) If the Court does not include in an intervention order (other than an interim intervention order) a term under subsection (1), the intervention order will be taken to include a term fixing the date falling 12 months after the date of issue or variation of the order as the date after which the defendant may apply for variation (or further variation) or revocation of the order.

#### **16—Inconsistent Family Law Act or Children's Protection Act orders**

- (1) An intervention order is invalid to the extent of any inconsistency with a Family Law Act order of a kind referred to in section 68R of the *Family Law Act 1975* of the Commonwealth (but the Court may resolve the inconsistency by exercising its power to revive, vary, discharge or suspend the Family Law Act order under that section).

- (2) An intervention order prevails over an order under section 38 of the *Children's Protection Act 1993* to the extent of any inconsistency (but the Youth Court may resolve the inconsistency by varying or revoking the order under that section on application under that Act).

### **17—Explanation for defendant and protected persons**

An issuing authority must endeavour to ensure that the defendant and protected persons understand—

- (a) the terms and effect of an intervention order and any associated order, including, in the case of an interim intervention order, that the order acts as a summons; and
- (b) if relevant, the effect of section 16; and
- (c) that a protected person cannot give permission for contravention of an order, (but failure to do so will not make an order invalid).

## **Division 2—Police orders**

### **18—Interim intervention order issued by police**

- (1) Subject to subsection (2), a police officer may issue an interim intervention order against a defendant if it appears to the police officer that there are grounds for issuing the order and the defendant is present before the police officer or in custody.
- (2) If the police officer issuing the order is not of or above the rank of sergeant, the officer must, before issuing the order, obtain the authorisation (either orally or in writing) of a police officer of or above that rank.
- (3) An interim intervention order issued by a police officer must—
  - (a) be in a form approved by the Commissioner of Police; and
  - (b) identify the defendant and the persons protected by the order; and
  - (c) specify the prohibitions and requirements imposed by the order; and
  - (d) require the defendant to appear before the Court at a specified time and place (within 8 days after the date of the order or, if the Court will not be sitting at the place within that period, within 2 days after the Court next commences sitting at the place).
- (4) An interim intervention order issued by a police officer comes into force against the defendant when served on the defendant personally.
- (5) On an interim intervention order issued by a police officer being served on the defendant, the police officer issuing the order will be taken to have made an application to the Court for an intervention order and the defendant will be taken to have been issued a summons to appear before the Court as specified in the order for the purposes of the hearing and determination of the application under section 23.
- (6) The Commissioner of Police must give a copy of an interim intervention order issued by a police officer to the Principal Registrar and each person protected by the order.
- (7) A person against whom an interim intervention order is issued by a police officer must notify the Commissioner of Police in writing of an address for service.

- (8) The Commissioner of Police must notify the Principal Registrar of any address for service provided under subsection (7).
- (9) The Principal Registrar must notify the relevant public sector agencies of the details of interim intervention orders issued by police officers.

### **19—Revocation of interim intervention order by Commissioner of Police**

- (1) The Commissioner of Police may revoke an interim intervention order issued by a police officer by written notice served on the defendant personally or by post at the address for service provided by the defendant under this Act.
- (2) The Commissioner of Police must give a copy of a notice of revocation of an interim intervention order to the Principal Registrar and each person protected by the order.
- (3) The Principal Registrar must notify the relevant public sector agencies of the revocation of interim intervention orders by the Commissioner of Police.

## **Division 3—Court orders**

### **20—Application to Court for intervention order**

- (1) The following persons may make an application to the Court for an intervention order:
  - (a) a police officer;
  - (b) a person against whom it is alleged the defendant may commit an act of abuse or a suitable representative of such a person given permission to apply by the Court;
  - (c) a child who it is alleged may hear or witness, or otherwise be exposed to the effects of, an act of abuse committed by the defendant against a person;
  - (d) if the defendant or a person proposed to be protected by the order is a child and there is a Children's Protection Act order under section 38 of the *Children's Protection Act 1993* in force in respect of the child—the Minister responsible for the administration of that Act.
- (2) If the person entitled to apply is a child, the application may be made—
  - (a) by the child with the permission of the Court, if the child has attained the age of 14 years; or
  - (b) on behalf of the child by—
    - (i) a parent or guardian of the child; or
    - (ii) a person with whom the child normally or regularly resides; or
    - (iii) some other suitable representative of the child given permission to apply by the Court.

- (3) The applicant must inform the Court of any relevant Family Law Act order, Children's Protection Act order or agreement or order for the division of property under the *Family Law Act 1975* of the Commonwealth, or the *Domestic Partners Property Act 1996* or a corresponding law of another jurisdiction, any pending application for such an order, and any other legal proceedings between a person proposed to be protected by the order and the defendant, of which the applicant is aware (but an intervention order is not invalid merely because the applicant fails to so inform the Court).
- (4) A single application relating to the same defendant may be made by any number of persons.

## **21—Preliminary hearing and issue of interim intervention order**

- (1) On an application for an intervention order in circumstances in which an interim intervention order has not been issued by a police officer, the Court must hold a preliminary hearing as soon as practicable and without summoning the defendant to appear.
- (2) If the application is made by telephone or other electronic means in accordance with rules of Court—
  - (a) the preliminary hearing may occur by oral questioning of the applicant and any other available witness or by other means contemplated by the rules; and
  - (b) if the Court is not satisfied that it is an appropriate case for completing the preliminary hearing without requiring the personal attendance of the applicant, the Court may adjourn the hearing to a time and place fixed by the Court and inform the applicant of the time and place so fixed.
- (3) At the preliminary hearing, the Court may—
  - (a) issue an interim intervention order against a defendant if it appears to the Court that there are grounds for issuing the order; or
  - (b) dismiss the application on the grounds that the application is frivolous, vexatious, without substance or has no reasonable prospect of success or on any other ground considered sufficient by the Court.
- (4) If the applicant alleges non-domestic abuse and is a person other than a police officer, the Court must, in determining whether to exercise the discretion to dismiss the application, take into account—
  - (a) whether it might be appropriate and practicable for the parties to attempt to resolve the matter through mediation or by some other means; and
  - (b) whether the application is in the nature of a cross application; and
  - (c) any other matters that the Court considers relevant.
- (5) There is a presumption against exercising the discretion to dismiss the application if the applicant alleges an offence involving personal violence or an offence of stalking under section 19AA of the *Criminal Law Consolidation Act 1935*.

- (6) The Court may issue an interim intervention order on the basis of evidence received in the form of an affidavit if the application is made by a police officer or a person introduced by a police officer but, in that case—
- (a) the deponent must, if the defendant so requires, appear personally at the proceedings for the determination of the application to give oral evidence of the matters referred to in the affidavit; and
  - (b) if the deponent does not appear personally to give evidence as so required—the Court may not rely on the evidence contained in the affidavit for the purpose of determining the application.
- (7) An interim intervention order issued by the Court must—
- (a) identify the defendant and the persons protected by the order; and
  - (b) specify the prohibitions and requirements imposed by the order; and
  - (c) require the defendant to appear before the Court at a specified time and place (within 8 days after the date of the order or, if the Court will not be sitting at the place within that period, within 2 days after the Court next commences sitting at the place).
- (8) An interim intervention order issued by the Court comes into force against the defendant when served on the defendant personally or in some other manner authorised by the Court.
- (9) On an interim intervention order issued by the Court being served on the defendant, the defendant will be taken to have been issued a summons to appear before the Court as specified in the order for the purposes of the hearing and determination of the application.
- (10) The Principal Registrar must give a copy of an interim intervention order issued by the Court to—
- (a) the Commissioner of Police; and
  - (b) each person protected by the order; and
  - (c) if the applicant is not a police officer or a person protected by the order—the applicant.
- (11) The Principal Registrar must notify the relevant public sector agencies of the details of interim intervention orders issued by the Court.
- (12) A person against whom an interim intervention order is issued by the Court must notify the Principal Registrar in writing of an address for service.
- (13) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

## **22—Adjournments**

- (1) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing of an application for an intervention order at which a defendant is required by an interim intervention order to appear to a later date if satisfied that the interim intervention order has not been served or that there is other adequate reason for the adjournment.



- (2) The date fixed for an adjourned hearing must be within 8 days after the date on which the adjournment is ordered, unless the Court is satisfied—
  - (a) that a later date is required to enable the interim intervention order to be served; or
  - (b) that there is other adequate reason for fixing a later date.
- (3) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

### **23—Determination of application for intervention order**

- (1) On the hearing of an application for an intervention order, the Court may—
  - (a) confirm the interim intervention order issued against the defendant as an intervention order; or
  - (b) issue an intervention order in substitution for an interim intervention order issued against the defendant; or
  - (c) dismiss the application and revoke the interim intervention order issued against the defendant.
- (2) An intervention order may be confirmed or issued in the absence of the defendant if the defendant failed to appear at the hearing of the application as required by the interim intervention order issued against the defendant or by conditions of bail.
- (3) If a defendant disputes some or all of the grounds on which an intervention order is sought but consents to the order, the Court may confirm or issue the order without receiving any further submissions or evidence as to the grounds.
- (4) If an interim intervention order is confirmed, the order continues in force against the defendant as an intervention order without any further requirement for service.
- (5) An intervention order that is issued in substitution for an interim intervention order comes into force against the defendant when served on the defendant personally or in some other manner authorised by the Court (and until the order is so served the interim intervention order continues in force against the defendant).
- (6) If an interim intervention order is revoked, the Principal Registrar must serve written notice of the revocation on the defendant personally or by post at the address for service provided by the defendant under this Act or in some other manner authorised by the Court.
- (7) The Principal Registrar must give a copy of an intervention order issued by the Court, or a notice of revocation of an interim intervention order, to—
  - (a) the Commissioner of Police; and
  - (b) each person protected by the order; and
  - (c) if the applicant is not a police officer or a person protected by the order—the applicant.
- (8) The Principal Registrar must notify the relevant public sector agencies of the details of intervention orders issued by the Court and of the revocation of interim intervention orders by the Court.

## **24—Problem gambling order**

- (1) If the Court confirms an interim intervention order as an intervention order against a defendant or issues an intervention order against a defendant in substitution for an interim intervention order, the Court may make an order (a *problem gambling order*) that the defendant is subject to a problem gambling family protection order under the *Problem Gambling Family Protection Orders Act 2004* imposing specified requirements or orders of a kind that could be imposed by the Independent Gambling Authority under that Act.
- (2) A problem gambling order must be served on the defendant personally or in some other manner authorised by the Court and is not binding on the defendant until so served.
- (3) If the problem gambling family protection order to which the defendant is subject includes an attachment order (within the meaning of the *Problem Gambling Family Protection Orders Act 2004*), the attachment order must be served on the third person specified in the order personally or in some other manner authorised by the Court and is not binding on the third person until so served.
- (4) A problem gambling order continues in force (subject to any variation of the order under this Act) until it is revoked.
- (5) If the Court orders that the defendant is subject to a problem gambling family protection order, the Principal Registrar must give a copy of the order to—
  - (a) the Independent Gambling Authority; and
  - (b) the proprietor or licensee of any premises specified in the order; and
  - (c) the Commissioner of Police; and
  - (d) each person for whose benefit the order is made; and
  - (e) if the applicant for the intervention order is not a police officer or a person protected by the order—the applicant.

## **25—Tenancy order**

- (1) If—
  - (a) the Court confirms an interim intervention order as an intervention order against a defendant or issues an intervention order against a defendant in substitution for an interim intervention order; and
  - (b) the intervention order prohibits the defendant from being on premises at which a protected person resides; and
  - (c) the defendant and protected person previously resided together on the premises; and
  - (d) the premises are subject to a tenancy agreement to which the defendant is a party,

the Court may make an order (a *tenancy order*) that the defendant will be taken to have assigned the defendant's interest in the tenancy agreement to a specified person or persons with the landlord's consent.

- (2) However, a tenancy order may only be made if the Court is satisfied that the assignee consents to the assignment and—
- (a) in a case where the landlord is a registered housing co-operative—the assignee is eligible for membership of the co-operative and willing to accept the responsibilities of membership; and
  - (b) in a case where the landlord is the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust—the assignee meets the eligibility requirements of the Trust; and
  - (c) in any case—the assignee could reasonably be expected to comply with the obligations under the tenancy agreement,

(so that it would be unreasonable for the landlord to withhold consent to the assignment).

(3) A tenancy order takes effect on the day on which it is made or on such later day as is specified in the order.

(4) If a tenancy order is made—

    - (a) the effect of the assignment is that the assignee is substituted for the assignor as tenant under the tenancy agreement (but the assignor remains responsible for liabilities that accrued before the date of the assignment); and
    - (b) the assignee is liable to indemnify the assignor for liabilities incurred by the assignor to the landlord because of a breach of the tenancy agreement by the assignee; and
    - (c) an amount paid by the assignor and held by way of security for the performance of obligations under the tenancy agreement will (unless the parties agree to the contrary) continue to be held as security for the proper performance by the assignee of obligations under the tenancy agreement.

(5) The Registrar must give a copy of a tenancy order to—

    - (a) the protected person; and
    - (b) the defendant; and
    - (c) the landlord; and
    - (d) if the assignee is not the protected person—the assignee; and
    - (e) the Registrar of the Residential Tenancies Tribunal.

## **Division 4—Variation or revocation of orders**

### **26—Intervention orders**

- (1) The Court may vary or revoke an intervention order on application by—
- (a) a police officer; or
  - (b) a person protected by the order or a suitable representative of such a person given permission to apply by the Court; or

**Intervention Orders (Prevention of Abuse) Act 2009—17.6.2012 to 31.3.2014**

Part 3—Intervention and associated orders

Division 4—Variation or revocation of orders

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- (c) if the defendant or a person protected by the order is a child and there is a Children's Protection Act order under section 38 of the *Children's Protection Act 1993* in force in respect of the child—the Minister responsible for the administration of that Act; or
  - (d) the defendant.
- (2) If the person entitled to apply is a child, the application may be made—
  - (a) by the child with the permission of the Court, if the child has attained the age of 14 years; or
  - (b) on behalf of the child by—
    - (i) a parent or guardian of the child; or
    - (ii) a person with whom the child normally or regularly resides; or
    - (iii) any other suitable representative of the child with the permission of the Court.
- (3) An application for variation or revocation of an intervention order (other than an interim intervention order) may only be made by the defendant after the date fixed by the order.
- (4) On an application for variation or revocation of an intervention order (other than an interim intervention order) by the defendant, the Court may, without receiving submissions or evidence from the protected person, dismiss the application—
  - (a) if satisfied that the application is frivolous or vexatious; or
  - (b) if not satisfied that there has been a substantial change in the relevant circumstances since the order was issued or last varied.
- (5) The Court must, before varying or revoking an intervention order under this section—
  - (a) allow the defendant and each person protected by the order a reasonable opportunity to be heard on the matter; and
  - (b) have regard to the same matters that the Court is required to have regard to in considering whether or not to make an intervention order and in considering the terms of an intervention order.
- (6) The Court may not vary an intervention order by removing the firearms terms unless satisfied that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.
- (7) If an intervention order is varied, the order in its amended form must be served on the defendant personally or in some other manner authorised by the Court and until so served—
  - (a) the variation is not binding on the defendant; but
  - (b) the order as in force prior to the variation continues to be binding on the defendant.
- (8) If an intervention order is revoked, the Principal Registrar must serve written notice of the revocation on the defendant personally or by post at the address for service provided by the defendant under this Act or in some other manner authorised by the Court.

- (9) If an intervention order is varied or revoked, the Principal Registrar must give notice of the variation or revocation to—
- (a) the Commissioner of Police; and
  - (b) each person protected by the order; and
  - (c) if the applicant for the intervention order is not a police officer or a person protected by the order—the applicant; and
  - (d) each of the relevant public sector agencies.

## **27—Problem gambling orders**

- (1) The Court may vary or revoke a problem gambling order—
- (a) on revoking the intervention order with which it is associated; or
  - (b) on application by a defendant subject to the intervention order with which it is associated or a person for whose benefit the problem gambling family protection order to which the defendant is subject under the order applies.
- (2) If on revoking an intervention order the Court does not revoke an associated problem gambling order, the problem gambling family protection order to which the defendant is subject under the order continues in force under the *Problem Gambling Family Protection Orders Act 2004* as if it had been issued under that Act and, consequently, is subject to variation or revocation by the Independent Gambling Authority under that Act.

## **Division 5—Evidentiary matters**

### **28—Burden of proof**

In proceedings under this Part, the Court is to decide questions of fact on the balance of probabilities.

### **29—Special arrangements for evidence and cross-examination**

- (1) The Court may order that special arrangements be made for taking the evidence of a person against whom it is alleged the defendant has committed or might commit an act of abuse or a child who it is alleged has been or might be exposed to the effects of an act of abuse committed by the defendant against a person.
- (2) Without limiting the kind of order that may be made under this section, the Court may make 1 or more of the following orders:
- (a) an order that the evidence be given outside the Court and transmitted to the Court by means of closed circuit television;
  - (b) an order that the evidence be taken outside the Court and that an audio visual record of the evidence be made and replayed in the Court;
  - (c) an order that a screen, partition or one-way glass be placed to obscure the view of a party to whom the evidence relates or some other person;
  - (d) an order that the defendant be excluded from the place where the evidence is taken, or otherwise be prevented from directly seeing and hearing the witness while giving evidence;

- (e) an order that the witness be accompanied by a relative or friend for the purpose of providing emotional support;
  - (f) if the witness suffers from a physical or mental disability—an order that the evidence be taken in a particular way (to be specified by the Court) that will, in the Court's opinion, facilitate the taking of evidence from the witness or minimise the witness's embarrassment or distress.
- (3) Special arrangements made under this section may relate to the evidence of the witness as a whole or to particular aspects of the evidence of the witness, such as cross-examination and re-examination.
- (4) Cross-examination of a person against whom it is alleged the defendant has committed or might commit an act of abuse or a child who it is alleged has been or might be exposed to the effects of an act of abuse committed by the defendant against a person is—
- (a) to be by counsel; or
  - (b) if the defendant is not legally represented in the proceedings—to be undertaken—
    - (i) by the defendant submitting to the Court, in the manner required by the Court, the questions the defendant proposes the witness be asked in cross-examination and the Court (or the Court's nominee) asking the witness those of the questions submitted that are determined by the Court to be allowable in cross-examination; or
    - (ii) as otherwise directed by the Court.

## **Part 4—Foreign intervention orders**

### **30—Registration of foreign intervention order**

- (1) The Principal Registrar may, subject to the rules of the Court, register a foreign intervention order in the Court.
- (2) If it is proposed that a foreign intervention order be registered in the Court, the Court may, after allowing each person protected by the order a reasonable opportunity to be heard on the matter, require the Principal Registrar to serve the order on the defendant.
- (3) If a foreign intervention order is registered under this section, the order will be taken for all purposes to be an intervention order issued under this Act.
- (4) A registered foreign intervention order required by the Court to be served on the defendant only comes into force against the defendant in this State when it is served on the defendant personally or in some other manner authorised by the Court.
- (5) A registered foreign intervention order not required by the Court to be served on the defendant comes into force against the defendant in this State on registration.
- (6) If a foreign intervention order is registered under this section, the Principal Registrar must give notice of the registration to—
- (a) the Commissioner of Police; and
  - (b) each person protected by the order; and
  - (c) each of the relevant public sector agencies.

## Part 5—Offences and enforcement

### Division 1—Offences

#### 31—Contravention of intervention order

- (1) A person who contravenes a term of an intervention order imposed under section 13 is guilty of an offence.  
Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (2) A person who contravenes any other term of an intervention order is guilty of an offence.  
Maximum penalty: Imprisonment for 2 years.
- (3) A person is not guilty of an offence of aiding, abetting, counselling or procuring the commission of an offence against this section if—
  - (a) the person is a person protected by the intervention order that has been contravened; and
  - (b) the conduct constituting contravention of the intervention order did not constitute contravention of the order in respect of another person protected by the order or of any other intervention order (of which the person was or ought reasonably to have been aware) in force against the defendant and protecting another person.
- (4) Section 10(6) of the *Criminal Law (Sentencing) Act 1988* does not apply in relation to an offence against subsection (1).

#### 32—Landlord not to allow access to excluded defendant

If—

- (a) an intervention order prohibits the defendant from being on rented premises at which a protected person resides; and
- (b) the landlord of the premises has been notified of the prohibition,

the landlord is guilty of an offence if he or she provides the defendant with a key to the premises or otherwise assists or permits the defendant to gain access to the premises.

Maximum penalty: \$10 000.

#### 33—Publication of report about proceedings or orders

A person must not publish by radio, television, newspaper or in any other way a report about proceedings under this Act, or an order issued or registered under this Act, if the report identifies, or contains information tending to identify—

- (a) any person involved in the proceedings (including a witness but not including a person involved in an official capacity or the defendant); or
- (b) any person protected by the order; or
- (c) a child of a person protected by the order or of the defendant,

without the consent of that person.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
- (b) in the case of a body corporate—\$120 000.

## **Division 2—Special police powers**

### **34—Powers facilitating service of intervention order**

- (1) If a police officer proposes to issue an interim intervention order against a person, the officer may—
  - (a) require the person to remain at a particular place for so long as may be necessary for the order to be prepared and served; and
  - (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with—arrest and detain the person in custody (without warrant) for—
    - (i) so long as may be necessary for the order to be prepared and served; or
    - (ii) 2 hours or such longer period as is approved by the Court,whichever is the lesser.
- (2) If a police officer proposes to apply to the Court for an intervention order against a person, the officer may—
  - (a) require the person to remain at a particular place for so long as may be necessary for the application to be determined and, if an interim intervention order is issued by the Court, for the order to be prepared and served; and
  - (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with—arrest and detain the person in custody (without warrant) for—
    - (i) so long as may be necessary for the application to be determined and, if an interim intervention order is issued, for the order to be prepared and served; or
    - (ii) 2 hours or such longer period as is approved by the Court,whichever is the lesser.
- (3) If a police officer has reason to believe that a person is subject to an intervention order that has not been served on the person, the officer may—
  - (a) require the person to remain at a particular place for so long as may be necessary for the order to be served; and
  - (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with—arrest and detain the person in custody (without warrant) for—
    - (i) so long as may be necessary for the order to be served; or
    - (ii) 2 hours or such longer period as is approved by the Court,



whichever is the lesser.

- (4) The Court may, on application by a police officer, extend a period of detention under this section if satisfied that it is appropriate to do so in the circumstances, but not so that the aggregate period of detention of the person exceeds 8 hours.

### **35—Powers following service of intervention order**

- (1) If a police officer believes on reasonable grounds that, in conjunction with serving an intervention order, it is necessary to arrest and detain the defendant in custody for a short period to prevent the immediate commission of abuse against a person protected by the order or to enable measures to be taken immediately for the protection of a person protected by the order, the police officer may arrest and detain the defendant in custody (without warrant) for—

- (a) so long as may be necessary to prevent the immediate commission of abuse against a person protected by the order or to enable measures to be taken immediately for the protection of a person protected by the order; or
- (b) 6 hours or such longer period as is approved by the Court,

whichever is the lesser.

- (2) The Court may, on application by a police officer, extend a period of detention under subsection (1) if satisfied that it is appropriate to do so in the circumstances, but not so that the aggregate period of detention of the person exceeds 24 hours.

### **36—Power to arrest and detain for contravention of intervention order**

- (1) If a police officer has reason to suspect that a person has contravened an intervention order, the officer may, without warrant, arrest and detain the person.
- (2) A person arrested and detained under this section must be brought before the Court as soon as practicable, and in any event, not more than 24 hours after arrest, to be dealt with for the alleged offence.
- (3) In calculating the time that has elapsed since arrest for the purposes of this section, no period falling on a Saturday, Sunday or public holiday will be counted.

### **37—Power to search for weapons and articles required to be surrendered by intervention order**

- (1) If an intervention order requires the defendant to surrender specified weapons or articles, a police officer may—
  - (a) search the defendant and anything in the defendant's possession for such a weapon or article; and
  - (b) enter any premises or vehicle where such a weapon or article is reasonably suspected to be and search for such a weapon or article,and take possession of the weapon or article.
- (2) A police officer may use reasonable force in the exercise of powers under this section (including reasonable force to break into or open any part of, or anything in or on any premises or vehicle).
- (3) In the exercise of powers under this section a police officer may be assisted by such persons as he or she considers necessary in the circumstances.

## **Division 3—Disclosure of information**

### **38—Disclosure to police of information relevant to locating defendant**

A public sector agency that is bound by the State's Information Privacy Principles, or a person providing services to a public sector agency under a contract that provides that the person is bound by the State's Information Privacy Principles, must, on request, make available to a police officer information under the control of the agency or person that could reasonably be expected to assist in locating a defendant on whom an intervention order is to be served.

## **Part 6—Miscellaneous**

### **39—Delegation by intervention program manager**

- (1) An intervention program manager may, by instrument in writing, delegate a power or function under this Act to—
  - (a) a particular person; or
  - (b) the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act personally in a matter; and
  - (c) is revocable at will.

### **40—Dealing with items surrendered under intervention order**

- (1) A firearm that has been surrendered to the Registrar of Firearms as required by the terms of an intervention order is to be dealt with under the *Firearms Act 1977* as if it had been surrendered under that Act.
- (2) Any other weapons or articles surrendered as required by the terms of an intervention order must be dealt with or disposed of as directed by the Court.

### **41—Evidentiary provision**

In proceedings for an offence against this Act, a certificate apparently signed by a case manager certifying that a specified defendant has contravened requirements regulating participation in an intervention program or an assessment by the intervention program manager constitutes proof of the matters so certified in the absence of proof to the contrary.

### **42—Regulations**

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

## **Schedule 1—Transitional provisions**

### **Part 15—Transitional provisions**

#### **37—Continuance of restraining orders**

- (1) A domestic violence restraining order in force under the *Domestic Violence Act 1994* immediately before the commencement of this clause continues in force as if it were an intervention order issued under this Act by the Court.
- (2) A restraining order in force under section 99 of the *Summary Procedure Act 1921* immediately before the commencement of this clause continues in force as if it were an intervention order issued under this Act by the Court.
- (3) A reference in this clause to a domestic violence restraining order, or a restraining order, in force at a particular time includes a reference to such an order that has been issued but not served on a defendant at that time.
- (4) If an intervention order continued in force under this clause includes a term under which the order expires and an application is made to vary or revoke the order, the Court must, if the order is to continue in force, vary the order so as to remove the term and make the order ongoing.

#### **38—Continuance of registered foreign restraining orders**

- (1) A foreign domestic violence restraining order registered under the *Domestic Violence Act 1994* immediately before the commencement of this clause continues in force as if it were a foreign intervention order registered under this Act.
- (2) A foreign restraining order registered under the *Summary Procedure Act 1921* immediately before the commencement of this clause and declared by the regulations to be an order to which this subclause applies continues in force as if it were a foreign intervention order registered under this Act.

## **Legislative history**

### **Notes**

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### **Legislation repealed by principal Act**

The *Intervention Orders (Prevention of Abuse) Act 2009* repealed the following:

*Domestic Violence Act 1994*

### **Legislation amended by principal Act**

The *Intervention Orders (Prevention of Abuse) Act 2009* amended the following:

*Bail Act 1985*

*Criminal Law Consolidation Act 1935*

*Criminal Law (Sentencing) Act 1988*

*Cross-border Justice Act 2009*

*District Court Act 1991*

*Evidence Act 1929*

*Firearms Act 1977*

*Magistrates Court Act 1991*

*Problem Gambling Family Protection Orders Act 2004*

*Summary Procedure Act 1921*

*Supreme Court Act 1935*

*Youth Court Act 1993*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2009	85	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	10.12.2009	9.12.2011 ( <i>Gazette 20.10.2011 p4269</i> ) except Sch 1 (cll 20(2), 22, 23 (insofar as it deletes s 99A of <i>Summary Procedure Act 1921</i> ), 24, 27(1), 28—30 & 33)—uncommenced—will not be brought into operation
2011	46	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>	8.12.2011	Sch 3 (cl 20)—1.1.2012 ( <i>Gazette 15.12.2011 p4986</i> )
<b>2012</b>	<b>12</b>	<b><i>Statutes Amendment (Serious and Organised Crime) Act 2012</i></b>	<b>10.5.2012</b>	<b>Pt 9 (s 43)—17.6.2012 (<i>Gazette 14.6.2012 p2756</i>)</b>
2013	65	<i>Community Housing Providers (National Law) (South Australia) Act 2013</i>	21.11.2013	Sch 3 (cll 3 & 4)—1.4.2014 ( <i>Gazette 6.2.2014 p547</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.1.2012
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>
s 3		
s 3(1)		
relevant public sector agency	amended by 46/2011 Sch 3 cl 20	1.1.2012
Pt 3		
<b>s 9</b>	<b>amended by 12/2012 s 43</b>	<b>17.6.2012</b>
Sch 1		
<i>Pts 1—14</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>

## Historical versions

1.1.2012