

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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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 3 Interpretation
- 4 Application of Act outside State

### **Part 2—Objects of Act**

- 5 Objects of Act

### **Part 3—Intervention and associated orders**

#### **Division 1—General**

- 6 Grounds for issuing intervention order
- 7 Persons for whose protection intervention order may be issued
- 8 Meaning of abuse—domestic and non-domestic
- 9 Priority for certain interventions
- 10 Principles for intervention against abuse
- 11 Ongoing effect of intervention order
- 12 Terms of intervention order—general
- 13 Terms of intervention order—intervention programs
- 14 Terms of intervention order—firearms
- 15 Terms of intervention order—date after which defendant may apply for variation or revocation
- 15A Declaration that intervention order addresses domestic violence concern
- 16 Inconsistent Family Law Act or State child protection orders
- 17 Explanation for defendant and protected persons

#### **Division 2—Police orders**

- 18 Interim intervention order issued by police
- 19 Revocation of interim intervention order by Commissioner of Police

#### **Division 3—Court orders**

- 20 Application to Court for intervention order
- 21 Preliminary hearing and issue of interim intervention order
- 22 Adjournments

- 23 Determination of application for intervention order
- 24 Problem gambling order
- 25 Tenancy order

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

- 26 Intervention orders
- 26A Interim variation where application made by police
- 27 Problem gambling orders

#### Division 5—Evidentiary matters

- 28 Burden of proof
- 28A Use of recorded evidence where application made by police
- 29 Special arrangements for evidence and cross-examination

### Part 3A—National recognition of domestic violence orders

#### Division 1—Preliminary

- 29A Interpretation
- 29B Registered foreign orders
- 29C Domestic violence concern

#### Division 2—National recognition of DVOs

##### Subdivision 1—General principles

- 29D Recognition of DVOs
- 29E Variations to DVOs
- 29F Revocation of recognised DVO
- 29G Recognised DVO prevails over earlier comparable DVOs
- 29H Making of new orders

##### Subdivision 2—Enforcement of recognised DVOs

- 29I Recognised DVOs and variations are enforceable against defendant
- 29J Properly notified—meaning
- 29K Contravention of enforceable recognised DVO

##### Subdivision 3—Enforcement of non-local DVOs

- 29L Non-local DVO to be treated as local DVO
- 29M Licences, permits and other authorisations
- 29N Recognition of disqualification to hold firearms licence
- 29O Orders for costs

#### Division 3—Variation and revocation of recognised non-local DVOs

- 29P Power of Court to vary or revoke recognised non-local DVOs
- 29Q Application for variation or revocation of recognised non-local DVO
- 29R Decision about hearing of application

#### Division 4—Exchange of information

- 29S Issuing authorities may obtain DVO information
- 29T Issuing authorities must provide DVO information
- 29U Law enforcement agencies may obtain DVO information
- 29V Information to be provided to law enforcement agencies

## Division 5—Miscellaneous

29W Certificate evidence—notification

## Division 6—Transitional provisions

### Subdivision 1—Preliminary

29X Interpretation

29Y Enforcement of DVOs under other provisions

### Subdivision 2—DVOs to which scheme applies

29Z DVOs made in this jurisdiction

29ZA DVOs made in other jurisdictions

### Subdivision 3—Extension of scheme to older DVOs

29ZB DVOs declared to be recognised DVOs

29ZC DVOs declared to be recognised in other jurisdictions before commencement date

### Subdivision 4—Power to declare DVO to be recognised

29ZCA Interpretation

29ZD Power to declare DVO to be recognised

29ZE Application for order

29ZF Declarations relating to general violence orders

## Part 4—Foreign intervention orders

30 Registration of foreign intervention orders

## Part 5—Offences and enforcement

### Division 1—Offences

31 Contravention of intervention order

32 Landlord not to allow access to excluded defendant

33 Publication of report about proceedings or orders

### Division 2—Special police powers

34 Powers facilitating service of intervention order

35 Powers following service of intervention order

36 Power to arrest and detain for contravention of intervention order

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

### Division 3—Disclosure of information

38 Disclosure to police of information relevant to locating defendant

## Part 6—Miscellaneous

39 Delegation by intervention program manager

40 Dealing with items surrendered under intervention order

41 Evidentiary provision

42 Regulations

## Schedule 1—Transitional provisions

## Part 15—Transitional provisions

- 37 Continuance of restraining orders
- 38 Continuance of registered foreign restraining orders
- 39 Validation of certain intervention orders in force before commencement of section 6 of *Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015*

## 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;

*ammunition* has the same meaning as in the *Firearms Act 2015*;

*associated order* means a problem gambling order or tenancy order made in association with a final 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;

*cognitive impairment* includes—

- (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
- (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
- (c) a mental illness;

*Commissioner* has the same meaning as in the *Gambling Administration Act 1995*;

*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;

*domestic violence concern*—see sections 15A and 29C;

**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;

**final intervention order** means—

- (a) an interim intervention order (whether issued by a police officer or the Court) confirmed as a final intervention order by the Court under section 23; or
- (b) a final intervention order issued by the Court under section 23 in substitution for an interim intervention order;

**firearm** has the same meaning as in the *Firearms Act 2015*;

**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;

**interim intervention order** means—

- (a) an interim intervention order issued by a police officer under section 18; or
- (b) an interim intervention order issued by the Court under section 21;

**intervention order** means—

- (a) an interim intervention order; or
- (b) a final intervention order,

as the case requires;

**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**—

- (a) in relation to an interim intervention order—means the police officer who, or the Court that, issues the interim intervention order; and
- (b) in relation to a final intervention order—means the Court—
  - (i) that confirms the interim intervention order as a final intervention order under section 23; or

- (ii) that issues the final intervention order under section 23 in substitution for an interim intervention order,

(as the case may be);

**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;

**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; or
- (f) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Supported Residential Facilities Act 1992*; or
- (g) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982*;

**State child protection order** means an order made under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*;

**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; 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;
- (oa) forcing the person to marry another person;
- (ob) preventing the person from entering the person's place of residence;
- (oc) taking an invasive image (within the meaning of Part 5A of the *Summary Offences Act 1953*) of the person and threatening to distribute the image without the person's consent;
- (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**.

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## 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.

## 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 State child protection 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 State child protection 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, or within the vicinity of, premises at which a protected person resides or works;
  - (b) prohibit the defendant from being on, or within the vicinity of, 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);

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- (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, or within the vicinity of, 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.
- (4) The Court must endeavour to ensure that the defendant understands that—
  - (a) failure to comply with a requirement referred to in subsection (3) constitutes a contravention of the term of the intervention order imposed under this section; and
  - (b) the Court may, if the person is found guilty of any such contravention, order the defendant to make a payment of not more than the prescribed amount toward the cost of any intervention program the defendant may be required to undertake in accordance with the intervention order,

(but failure to comply with this subsection will not make an order under this section invalid).

#### **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, ammunition or part of a 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, ammunition or part of a firearm in the course of his or her employment.
- (2) The Court need not include the firearms terms in a final 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 a final 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 a final intervention order a term under subsection (1), the 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.

### **15A—Declaration that intervention order addresses domestic violence concern**

- (1) Whenever an issuing authority issues an intervention order, the issuing authority must decide whether the order addresses a domestic violence concern.
- (2) If the order does address a domestic violence concern, the issuing authority must declare the order to be an order that addresses a domestic violence concern.
- (3) The declaration must be included in the order.
- (4) An intervention order will be taken to address a domestic violence concern for the purposes of Part 3A if the order is made because the defendant has committed, or because it is feared the defendant will commit, an act of domestic abuse.

### **16—Inconsistent Family Law Act or State child protection 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 a State child protection order (being an order under section 38 of the *Children's Protection Act 1993* or a corresponding order made under section 53 of the *Children and Young People (Safety) Act 2017*) to the extent of any inconsistency (but the Youth Court may resolve the inconsistency by varying or revoking the order on application under the *Children and Young People (Safety) Act 2017*).

### **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—
  - (a) give a copy of an interim intervention order issued by a police officer to each person protected by the order; and
  - (b) either—
    - (i) notify the Principal Registrar in writing of the prescribed details of the order; or
    - (ii) give a copy of the order to the Principal Registrar.
- (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.
- (7a) A person who is required under subsection (7) to notify the Commissioner of Police of an address for service—
  - (a) who fails to provide the address within 7 days after being so requested; or
  - (b) who provides an address that is false,is guilty of an offence.  
Maximum penalty: \$750.  
Expiation fee: \$105.
- (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 in writing of the prescribed 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—
  - (a) give a copy of a notice of revocation of an interim intervention order issued by a police officer to each person protected by the order; and
  - (b) notify the Principal Registrar that the order has been revoked.
- (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 State child protection order in force in respect of the child—the Minister responsible for the administration of the *Children and Young People (Safety) Act 2017*.
- (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, State child protection 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.
- (4a) If the applicant is a police officer—
- (a) the Court is not bound by the rules of evidence but may inform itself as it thinks fit; and
  - (b) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (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 in accordance with this section.
- (8a) For the purposes of subsection (8), an interim intervention order is served on the defendant if—
  - (a) the order is served on the defendant personally; or
  - (b) the order is served on the defendant in some other manner authorised by the Court; or
  - (c) the defendant is present in the Court when the order is made.
- (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 proceedings to determine the application for a final intervention order under section 23.
- (10) The Principal Registrar must—
  - (a) give a copy of an interim intervention order issued by the Court to—
    - (i) each person protected by the order; and
    - (ii) if the applicant is not a police officer or a person protected by the order—the applicant; and
  - (b) either—
    - (i) notify the Commissioner of Police in writing of the prescribed details of the order; or
    - (ii) give a copy of the order to the Commissioner of Police.
- (11) The Principal Registrar must notify the relevant public sector agencies in writing of the prescribed 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) Subject to this section, on the hearing of an application for a final intervention order, the Court may—
  - (a) confirm the interim intervention order issued against the defendant as a final intervention order; or
  - (b) issue a final 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.
- (1a) If the Court determines that it is appropriate to confirm an interim intervention order as a final intervention order or to issue a final intervention order in substitution for an interim intervention order under subsection (1) and the defendant, or a person protected by the order, is a child or the parent of a child, the Court—
  - (a) must make the following inquiries:
    - (i) whether there is any relevant Family Law Act order or State child protection order;
    - (ii) how the final intervention order would be likely to affect contact (in accordance with a relevant Family Law Act order or State child protection order or otherwise) between—
      - (A) the protected person or the defendant; and
      - (B) any child of, or in the care of, either of those persons; and
  - (b) must take such steps as the Court considers necessary so as to avoid inconsistency between the order and any Family Law Act order or State child protection order of which the Court has knowledge (whether on its own inquiry or having been so informed).

- (2) An interim intervention order issued against a defendant may be confirmed as a final intervention order, or a final intervention order may be issued in substitution for an interim intervention order issued against a defendant, 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 or by conditions of bail.
- (3) If a defendant disputes some or all of the grounds on which a final intervention order is sought but consents to the order, the Court may confirm the interim intervention order issued against the defendant as a final intervention order, or issue a final intervention order in substitution for the interim intervention order issued against the defendant, 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 a final intervention order without any further requirement for service.
- (5) A final intervention order that is issued in substitution for an interim intervention order comes into force against the defendant when served on the defendant in accordance with this section (and until the order is so served the interim intervention order continues in force against the defendant).
- (5a) For the purposes of subsection (5), a final intervention order is served on the defendant if—
  - (a) the order is served on the defendant personally; or
  - (b) the order is served on the defendant in some other manner authorised by the Court; or
  - (c) the defendant is present in the Court when the order is made.
- (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—
  - (a) give a copy of a final intervention order, or notice of revocation of an interim intervention order, to—
    - (i) each person protected by the order; and
    - (ii) if the applicant is not a police officer or a person protected by the order—the applicant; and
  - (b) either—
    - (i) notify the Commissioner of Police in writing—
      - (A) of the prescribed details of a final intervention order; or
      - (B) that an interim intervention order (whether issued by a police officer or the Court) has been revoked; or
    - (ii) give a copy of the final intervention order, or notice of revocation of an interim intervention order, to the Commissioner of Police.
- (8) The Principal Registrar must notify the relevant public sector agencies in writing of the prescribed details of final 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 a final intervention order against a defendant or issues a final 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 Commissioner under that Act.
- (2) A problem gambling order must be served on the defendant in accordance with this section and is not binding on the defendant until so served.
- (2a) For the purposes of subsection (2), a problem gambling order is served on the defendant if—
  - (a) the order is served on the defendant personally; or
  - (b) the order is served on the defendant in some other manner authorised by the Court; or
  - (c) the defendant is present in the Court when the order is made.
- (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—
  - (a) give a copy of the order to—
    - (i) each person for whose benefit the order is made; and
    - (ii) if the applicant for the order is not a police officer or a person protected by the order—the applicant; and
  - (b) either—
    - (i) notify a person listed below in writing of the prescribed details of the order:
      - (A) the Commissioner;
      - (B) the Commissioner of Police;
      - (C) the proprietor or licensee of any premises specified in the order; or
    - (ii) give a copy of the order to a person referred to in subparagraph (i).

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## 25—Tenancy order

- (1) If—
- (a) the Court confirms an interim intervention order as a final intervention order against a defendant or issues a final intervention order against a defendant in substitution for an interim intervention order; and
  - (b) the final 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—
    - (i) the landlord is a community housing provider registered under the *Community Housing Providers National Law*; and
    - (ii) the premises constitute community housing within the meaning of that Law,

the assignee meets the eligibility requirements for such community housing and any membership or other requirements of the landlord associated with occupation of those premises; 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 South Australian Civil and Administrative 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
  - (c) if the defendant or a person protected by the order is a child and there is a State child protection order (being an order under section 38 of the *Children's Protection Act 1993* or a corresponding order made under section 53 of the *Children and Young People (Safety) Act 2017*) 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 a final 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 a final 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.



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- (5) The Court must, before varying or revoking an intervention order under this section—
- (a) allow the Commissioner of Police, 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 a final 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 in accordance with this section 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.
- (7a) For the purposes of subsection (7), an order in its amended form is served on the defendant if—
- (a) the order is served on the defendant personally; or
  - (b) the order is served on the defendant in some other manner authorised by the Court; or
  - (c) the defendant is present in the Court when the order is made.
- (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—
- (a) give a copy of the order as varied by the Court, or notice of revocation of the order, to—
    - (i) each person protected by the order; and
    - (ii) if the applicant is not a police officer or a person protected by the order—the applicant; and
  - (b) either—
    - (i) notify the Commissioner of Police in writing of the prescribed details of the order as varied by the Court, or that the order has been revoked; or
    - (ii) give a copy of the order as varied by the Court, or notice of revocation of the order, to the Commissioner of Police.
- (10) The Principal Registrar must notify the relevant public sector agencies in writing of—
- (a) the prescribed details of intervention orders varied by the Court; or
  - (b) the revocation of intervention orders by the Court.

## **26A—Interim variation where application made by police**

- (1) If—
  - (a) an application for variation of a final intervention order is made by a police officer under section 26; and
  - (b) the applicant requests that the Court make an interim variation of the intervention order, pending final determination of the application,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 variation of the intervention order if it appears to the Court that there are grounds for issuing the variation; or
  - (b) determine that the application should be dealt with under section 26 without the issuing of any interim variation order; or
  - (c) dismiss the application (on any ground considered sufficient by the Court).
- (4) The Court may issue an interim variation of the intervention order on the basis of evidence received in the form of an affidavit but, in that case—
  - (a) the deponent must, if the defendant so requires, appear personally to give oral evidence of the matters referred to in the affidavit at any hearing held for the purpose of finally determining the application for variation of the intervention order; 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 finally determining the application.
- (5) An interim variation of an intervention order issued by the Court must 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).
- (6) An interim variation of an intervention order issued by the Court comes into force against the defendant when served on the defendant in accordance with this section.
- (7) For the purposes of subsection (6), an interim variation of an intervention order is served on the defendant if—
  - (a) the order is served on the defendant personally; or
  - (b) the order is served on the defendant in some other manner authorised by the Court; or

- (c) the defendant is present in the Court when the order is made.
- (8) On an interim variation of an 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 proceedings to finally determine the application for variation of the final intervention order under section 26.
- (9) The Principal Registrar must—
- (a) give a copy of an interim variation of an intervention order issued by the Court to each person protected by the order; and
  - (b) either—
    - (i) notify the Commissioner of Police in writing of the prescribed details of the order; or
    - (ii) give a copy of the order to the Commissioner of Police.
- (10) The Principal Registrar must notify the relevant public sector agencies in writing of the prescribed details of an interim variation of an intervention order issued by the Court.
- (11) 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.

## **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 Commissioner 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.

### **28A—Use of recorded evidence where application made by police**

- (1) This section applies in addition to, and does not derogate from, any other power of the Court to receive evidence or to determine the form in which evidence may be received (including evidence in the form of a recording).

- (2) In any proceedings in which a police officer has applied for the making, or variation, of an intervention order—
- (a) the evidence of a relevant person may be admitted in the form of a recording made by a police officer if the Court is satisfied that the interests of justice require the admission of the evidence; and
  - (b) if evidence of a relevant person is admitted in the form of a recording pursuant to this section, the relevant person cannot be further examined, cross-examined or re-examined on the evidence so admitted without the permission of the Court.
- (3) Without limiting section 42, the regulations may—
- (a) prescribe additional requirements in relation to recordings under this section; and
  - (b) require that additional material be provided to the Court with a recording in certain circumstances (such as a transcript or translation); and
  - (c) prescribe requirements in relation to access to, or service of, recordings and other material; and
  - (d) prescribe requirements in relation to custody of recordings; and
  - (e) impose restrictions on copying or distribution of recordings.
- (4) In this section—

**recording** means an audio record or an audio visual record;

**relevant person**—a person is a relevant person in proceedings on an application for the making, or variation, of an intervention order if the intervention order is to be, or has been, issued for the protection of the person.

## **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) that extra allowance be made for breaks during, and time to be given for, the taking of evidence;
  - (g) if the witness has a physical disability or cognitive impairment—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 (including, if the witness has complex communication needs, with such communication assistance as may be specified by the Court under section 14A of the *Evidence Act 1929*).
- (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 3A—National recognition of domestic violence orders

### Division 1—Preliminary

#### 29A—Interpretation

In this Part, unless the contrary intention appears—

***corresponding law*** means a law, or part of a law, of a State or a Territory of the Commonwealth declared by the regulations to be a corresponding law for the purposes of this Part;

***domestic violence order*** or ***DVO*** means a local DVO, an interstate DVO or a foreign intervention order;

***foreign intervention order*** does not include an order (whether registered or not under Part 4) that is declared by the regulations not to be a foreign intervention order for the purposes of this Part;

***general violence order*** means—

- (a) an intervention order under this Act; or

- (b) a violence restraining order under the corresponding law of Western Australia, other than an order under that corresponding law declared by the regulations not to be a general violence order for the purposes of this paragraph;

***interim DVO*** means a DVO that is of an interim or a provisional nature and includes—

- (a) an interim intervention order under this Act; and
- (b) a DVO made by a police officer under a corresponding law; and
- (c) an emergency order made under the corresponding law of the Australian Capital Territory; and
- (d) a temporary protection order made under the corresponding law of Queensland; and
- (e) a DVO declared by the regulations to be an interim DVO;

***interstate DVO*** means an order, or order of a type, made under a corresponding law that is declared by the regulations to be an interstate DVO for the purposes of this Part;

***interstate law enforcement agency*** means—

- (a) a police force of a participating jurisdiction; or
- (b) an agency of a participating jurisdiction responsible for enforcing DVOs in that jurisdiction;

***issuing authority*** includes a court or person with power to make, vary or revoke a DVO under the law of a participating jurisdiction;

***issuing jurisdiction***, in respect of a DVO, means the jurisdiction in which the DVO is made;

***local law enforcement agency*** means South Australia Police;

***local DVO***—a reference to a ***local DVO*** is a reference to an intervention order (within the meaning of section 3(1)) that addresses a domestic violence concern;

***make*** includes issue;

***non-local DVO*** means an interstate DVO or a foreign intervention order;

***participating jurisdiction*** means this jurisdiction or a jurisdiction in which a corresponding law is in force;

***properly notified***—see section 29J;

***protected person*** means a person for whose protection or benefit a DVO is made;

***recognised DVO***—see section 29D;

***registered foreign order***—see section 29B;

***revoke*** includes cancel.

## **29B—Registered foreign orders**

- (1) A ***registered foreign order*** means a foreign order that is—
  - (a) a foreign intervention order registered under Part 4; or

- (b) an order declared by the regulations to be a registered foreign order for the purposes of this Part.
- (2) A registered foreign order is neither a local DVO nor an interstate DVO.
- (3) For the purpose of this Part, a registered foreign order—
  - (a) will be taken to be made in the jurisdiction in which it is registered as a registered foreign order; and
  - (b) will be taken to be made when it becomes a registered foreign order in that jurisdiction; and
  - (c) will be taken to have been varied or revoked if its registration as a registered foreign order is varied or revoked.
- (4) A power conferred by this Part to vary or revoke a registered foreign order is a power to vary or revoke registration of the order as a registered foreign order.

### **29C—Domestic violence concern**

- (1) A violence restraining order under the corresponding law of Western Australia will be taken to address a domestic violence concern for the purposes of this Part if the order is made because the defendant has committed, or because it is feared the defendant will commit, an act of family and domestic violence (within the meaning of that corresponding law).
- (2) A general violence order will be taken to be an order that addresses a domestic violence concern for the purposes of this Part if—
  - (a) it is declared to be an order that addresses a domestic violence concern by the issuing authority that makes the order; or
  - (b) a registrar of a court of the jurisdiction in which the order was made makes an order declaring the DVO to be a recognised DVO in that jurisdiction.
- (3) The Governor may make regulations for the purposes of this section including so as to modify what may be taken to address a domestic violence concern in a participating jurisdiction.

## **Division 2—National recognition of DVOs**

### **Subdivision 1—General principles**

#### **29D—Recognition of DVOs**

- (1) In this jurisdiction, each of the following DVOs is a *recognised DVO*:
  - (a) a local DVO;
  - (b) an interstate DVO made in another participating jurisdiction;
  - (c) a foreign order that is a registered foreign order in any participating jurisdiction.
- (2) A DVO becomes a recognised DVO when it is made.

**Note—**

A foreign order will be taken to be made when it is registered as a registered foreign order.

- (3) Subject to this Part, a DVO is a recognised DVO for the period for which it remains in force in the jurisdiction in which it is made.

### **29E—Variations to DVOs**

- (1) A variation to a recognised DVO that is done in this or another jurisdiction is a ***recognised variation*** in this jurisdiction in the circumstances provided for by this section.
- (2) A variation to a local DVO is a recognised variation in this jurisdiction if the variation is done—
- (a) in this jurisdiction by a court or any other person authorised to do so under this Act; or
  - (b) in another participating jurisdiction by a court under a corresponding law.
- (3) A variation to an interstate DVO or foreign order is a recognised variation in this jurisdiction if the variation is done—
- (a) in the issuing jurisdiction by a court or any other person authorised to do so under the law of the issuing jurisdiction; or
  - (b) in any participating jurisdiction by a court under this Part or a corresponding law.

**Note—**

The issuing jurisdiction for a foreign order is the jurisdiction in which the order is registered.

- (4) A variation is recognised from the time that it is done.

### **29F—Revocation of recognised DVO**

- (1) A DVO ceases to be a recognised DVO if the DVO is revoked in this or another jurisdiction and that revocation is recognised in this jurisdiction.
- (2) A revocation of a local DVO is recognised in this jurisdiction if the revocation is done—
- (a) in this jurisdiction by the Court under this Act; or
  - (b) in another participating jurisdiction by a court under a corresponding law.
- (3) A revocation of an interstate DVO or foreign order is recognised in this jurisdiction if the revocation is done—
- (a) in the issuing jurisdiction by a court or any other person authorised to do so under the law of the issuing jurisdiction; or
  - (b) in any participating jurisdiction by a court under this Part or a corresponding law.
- (4) The DVO ceases to be a recognised DVO from the time it is revoked.

### **29G—Recognised DVO prevails over earlier comparable DVOs**

- (1) A recognised DVO that is enforceable against a defendant in this jurisdiction (a ***new DVO***) supersedes—
- (a) any comparable recognised DVO made earlier than the new DVO; and



- (b) any comparable local DVO made earlier than the new DVO (whether or not the local DVO is a recognised DVO).
- (2) The earlier comparable DVO is superseded from the time the recognised DVO becomes enforceable against the defendant.
- (3) A recognised DVO that is superseded ceases to be a recognised DVO.
- (4) A local DVO that is superseded is revoked.
- (5) A DVO is not superseded to the extent that it relates to a protected person who is not a protected person under the new DVO.
- (6) Accordingly, a DVO continues to be a recognised DVO, and to have effect, to the extent that it relates to a person who is not a protected person under the new DVO.
- (7) A DVO made by a police officer does not supersede a comparable DVO made by a court (of any jurisdiction).
- (8) A DVO is *comparable* with another DVO if—
  - (a) the DVOs are made against the same defendant; and
  - (b) the DVOs are made for the protection of 1 or more of the same protected persons.

## **29H—Making of new orders**

- (1) Nothing in this Part prevents a person from applying for, or an issuing authority from making, a local DVO even though there is a recognised DVO in force that applies to the same defendant.
- (2) However, a police officer is not to make a local DVO if the police officer is aware that there is already a recognised DVO that is enforceable against the defendant which—
  - (a) applies to the same defendant and protected person; and
  - (b) was made by a court of any jurisdiction.

## **Subdivision 2—Enforcement of recognised DVOs**

### **29I—Recognised DVOs and variations are enforceable against defendant**

- (1) A recognised DVO, or a recognised variation to a recognised DVO, is enforceable against the defendant in this jurisdiction.
- (2) A recognised DVO that is a local DVO becomes enforceable against the defendant in this jurisdiction when the defendant is properly notified of the making of the DVO under the law of this jurisdiction.
- (3) A recognised DVO that is a non-local DVO (other than a foreign order) becomes enforceable against a defendant in this jurisdiction when the defendant is properly notified of the making of the DVO under the law of the jurisdiction in which the DVO was made.
- (4) A recognised DVO that is a foreign order becomes enforceable against a defendant in this jurisdiction from the time it becomes a recognised DVO.

- (5) A recognised variation to a recognised DVO becomes enforceable against the defendant in this jurisdiction when the defendant is properly notified of the variation under the law of the jurisdiction in which the variation is done.

### **29J—Properly notified—meaning**

- (1) The making of a local DVO is *properly notified* under this Act if—
- (a) a copy of the DVO is served on the defendant personally or in some other manner authorised by the Court; or
  - (b) the DVO is made by the Court and the defendant is present in the Court when the DVO is made.
- (2) The making of an interstate DVO is *properly notified* under the law of the jurisdiction in which it is made in the circumstances provided for by the corresponding law of that jurisdiction.
- (3) A variation to a recognised DVO that is done in this jurisdiction is *properly notified* under this Act if—
- (a) a copy of the variation is served on the defendant personally or in some other manner authorised by the Court; or
  - (b) the variation is done by the Court and the defendant is present in the Court when the DVO is varied.
- (4) A variation to a recognised DVO that is done in another jurisdiction is *properly notified* under the law of that jurisdiction in the circumstances provided for by the corresponding law of that jurisdiction.

### **29K—Contravention of enforceable recognised DVO**

- (1) A non-local DVO that is a recognised DVO and which is enforceable against a defendant in this jurisdiction may be enforced in this jurisdiction—
- (a) as if it were a local DVO; and
  - (b) as if the defendant had been properly notified of the making of the DVO under this Act.
- (2) A recognised variation to a non-local DVO that is a recognised DVO and which is enforceable in this jurisdiction may be enforced in this jurisdiction as if it were a variation to a local DVO.
- (3) A recognised variation to a recognised DVO made in another jurisdiction that is enforceable against the defendant in this jurisdiction may be enforced as if the defendant had been properly notified of the variation under this Act.
- (4) This section does not affect any law of this jurisdiction that requires a territorial nexus to exist between this jurisdiction and an offence for a person to be guilty of an offence under the law of this jurisdiction.

### **Subdivision 3—Enforcement of non-local DVOs**

#### **29L—Non-local DVO to be treated as local DVO**

- (1) A recognised DVO that is a non-local DVO has the same effect in this jurisdiction as a local DVO.

- (2) A prohibition, restriction or condition imposed by a non-local DVO has the same meaning as it would have in the jurisdiction in which the DVO was made, but may be enforced in this jurisdiction as if it were a prohibition, restriction or condition of a local DVO.

### **29M—Licences, permits and other authorisations**

- (1) A law of this jurisdiction (a *relevant law*) that restricts the grant of an authorisation, or that authorises or requires an authorisation to be suspended or revoked, if a person is or has been subject to a local DVO extends to a person who is or has been subject to any non-local DVO that is a recognised DVO (as if the non-local DVO were a local DVO).
- (2) For the purposes of a relevant law—
- (a) a non-local DVO that is a final DVO is to be treated in the same way as a local DVO that is a final DVO; and
  - (b) a non-local DVO that is an interim DVO is to be treated in the same way as a local DVO that is an interim DVO.
- (3) In this section—
- authorisation* includes a licence or permit;
- grant* includes issue.

### **29N—Recognition of disqualification to hold firearms licence**

- (1) If a non-local DVO that is a recognised DVO disqualifies a person from holding a non-local firearms licence, or type of non-local firearms licence, the person is also disqualified from holding a local firearms licence of the same type.
- (2) The Registrar of Firearms must revoke any local firearms licence held by a person, or refuse to issue a local firearms licence to a person, if the person is so disqualified from holding the firearms licence by a recognised DVO.
- (3) A recognised DVO disqualifies a person from holding a non-local firearms licence, or type of non-local firearms licence, if the DVO expressly—
- (a) disqualifies the person from holding a non-local firearms licence, or type of non-local firearms licence; or
  - (b) revokes or requires the person to surrender a non-local firearms licence, or type of non-local firearms licence, held by the person.
- (4) In this section—
- local firearms licence* means a licence, permit or other authorisation under the *Firearms Act 1977* or the *Firearms Act 2015*;
- non-local firearms licence* means a licence, permit or other authorisation to possess a firearm issued under the law of another jurisdiction or country.

### **29O—Orders for costs**

- (1) A non-local DVO, to the extent that it requires the payment of money, cannot be enforced in this jurisdiction.

- (2) The recognition of a DVO made in another jurisdiction does not confer power on a court or tribunal of this jurisdiction to award costs in respect of any proceedings relating to the DVO that occurred in another jurisdiction.
- (3) This section does not prevent the Court awarding costs in respect of any proceedings in this jurisdiction relating to the variation or revocation of a recognised DVO.

### **Division 3—Variation and revocation of recognised non-local DVOs**

#### **29P—Power of Court to vary or revoke recognised non-local DVOs**

- (1) The Court may vary or revoke a recognised DVO that is a non-local DVO in accordance with this Division as if the DVO were a local DVO.
- (2) The Court cannot vary or revoke a non-local DVO if it is a kind of DVO that cannot be varied or revoked by a court in the jurisdiction in which the DVO was made.
- (3) A variation to or revocation of a recognised DVO that is done under this Division is not limited in its operation to this jurisdiction.
- (4) This Division does not apply to the variation or revocation of a foreign order that is registered as a registered foreign order in this jurisdiction.
- (5) To avoid doubt, if the Court varies a recognised DVO that was made in another jurisdiction, the other jurisdiction continues to be treated, for the purposes of this Part, as the jurisdiction in which the DVO was made.

#### **29Q—Application for variation or revocation of recognised non-local DVO**

- (1) An application for the variation or revocation of a recognised DVO that is a non-local DVO may be made to the Court as if it were an application for variation or revocation of a local DVO by a person who would be able to make the application if the DVO were a local DVO.
- (2) An application—
  - (a) is to be made in accordance with any requirements that would apply if the DVO were a local DVO; and
  - (b) may be dealt with (subject to this Division) as if the DVO were a local DVO.

#### **29R—Decision about hearing of application**

- (1) On an application for variation or revocation of a non-local DVO, the Court may decide to hear the application or decline to hear the application.
- (2) In making that decision, the Court may consider the following matters (to the extent relevant):
  - (a) the jurisdiction in which the defendant and the protected person or persons under the DVO generally reside or are employed;
  - (b) any difficulty the respondent to the proceedings may have in attending the proceedings;
  - (c) whether there is sufficient information available to the Court in relation to the DVO and the basis on which it was made;

- (d) whether any proceedings are being taken in respect of an alleged contravention of the DVO and the jurisdiction in which those proceedings are being taken;
  - (e) the practicality of the applicant (if not the defendant under the DVO) applying for and obtaining a local DVO against the defendant with similar prohibitions or restrictions;
  - (f) the impact of the application on children;
  - (g) any other matter the Court considers relevant.
- (3) Without limiting the Court’s power to decline to hear an application, the Court may decline to hear the application if the Court is satisfied that there has been no material change in the circumstances on which the making of the order was based and that the application is in the nature of an appeal against the order.
- (4) For the purpose of exercising its functions under this Division, the Court may have regard to any information that the Court considers relevant about the making or variation of a DVO that is provided by an issuing authority of any other jurisdiction.

**Note—**

Division 4 enables the Court to obtain information about DVOs from other jurisdictions.

- (5) The Court must refuse to hear an application for variation or revocation made by the defendant during any period in which, under the law of the issuing jurisdiction for the DVO, the defendant is not entitled to apply for the variation or revocation of the DVO in the issuing jurisdiction.
- (6) In this section, the *respondent* to an application for variation or revocation of a DVO means—
- (a) in the case of an application made by the defendant under the recognised DVO—the protected person or persons under the recognised DVO; and
  - (b) in any other case—the defendant under the recognised DVO.

## **Division 4—Exchange of information**

### **29S—Issuing authorities may obtain DVO information**

An issuing authority of this jurisdiction may obtain information about a DVO from an issuing authority of another jurisdiction, or from a local or interstate law enforcement agency, and use that information for the purpose of exercising its functions under this Part.

### **29T—Issuing authorities must provide DVO information**

- (1) An issuing authority of this jurisdiction that makes, varies or revokes a DVO must provide to a court of another participating jurisdiction any information about the DVO that the court reasonably requests for the purpose of exercising its functions under a corresponding law.
- (2) An issuing authority of this jurisdiction that makes, varies or revokes a DVO must provide to a local or interstate law enforcement agency any information about the DVO that the law enforcement agency reasonably requests for the purpose of exercising its law enforcement functions.

### **29U—Law enforcement agencies may obtain DVO information**

A local law enforcement agency may obtain information about a DVO from an issuing authority of this or another jurisdiction, or from an interstate law enforcement agency, and use that information for the purpose of exercising its law enforcement functions.

### **29V—Information to be provided to law enforcement agencies**

A local law enforcement agency must provide to an interstate law enforcement agency any information it holds about a DVO that the interstate law enforcement agency reasonably requests for the purpose of exercising its law enforcement functions.

## **Division 5—Miscellaneous**

### **29W—Certificate evidence—notification**

- (1) An authorised officer of this jurisdiction may issue a certificate in writing certifying any of the following matters:
  - (a) that the making of a local DVO has been properly notified under this Act;
  - (b) that a variation to a DVO that was done in this jurisdiction has been properly notified under this Act.
- (2) The certificate is admissible in evidence in any proceedings and is evidence of the matters certified.
- (3) A certificate in writing purporting to be signed by an authorised officer of another jurisdiction and certifying any of the following matters is admissible in evidence in any proceedings and is evidence of the matters certified:
  - (a) that the making of a DVO in that jurisdiction has been properly notified under the law of that jurisdiction;
  - (b) that a variation to a DVO that was done in that jurisdiction has been properly notified under the law of that jurisdiction.
- (4) In any document, the words “authorised officer” after a signature are evidence that the person whose signature it purports to be is in fact an authorised officer.
- (5) In this section—

*authorised officer* of another jurisdiction means a person (whether or not designated as an authorised officer) who is authorised under the law of another jurisdiction to issue a certificate certifying that the making or variation of a DVO has been properly notified under the law of that jurisdiction;

*authorised officer* of this jurisdiction means—

- (a) a registrar of the Court; or
- (b) a police officer of or above the rank of sergeant.

## **Division 6—Transitional provisions**

### **Subdivision 1—Preliminary**

#### **29X—Interpretation**

In this Division—

*commencement date* means the date on which this Part commences.

#### **29Y—Enforcement of DVOs under other provisions**

- (1) Subject to subsection (3), this Part does not affect the enforceability in this jurisdiction, otherwise than under this Part, of any local DVO made before the commencement date.
- (2) Subject to subsection (3), this Part does not affect the enforceability in this jurisdiction, otherwise than under this Part, of any interstate DVO or foreign order registered in this jurisdiction, before the commencement date, under Part 4.
- (3) However, a DVO made in this jurisdiction before the commencement date can be superseded under section 29G, on or after the commencement date, by a recognised DVO that is made later.

### **Subdivision 2—DVOs to which scheme applies**

#### **29Z—DVOs made in this jurisdiction**

Division 2 applies to any local DVO or foreign DVO that is made in this jurisdiction on or after the commencement date.

#### **29ZA—DVOs made in other jurisdictions**

- (1) Division 2 applies to any DVOs made in another participating jurisdiction that are recognised DVOs in that jurisdiction under the corresponding law for that jurisdiction.
- (2) To avoid doubt, section 29D extends to the following DVOs:
  - (a) any interstate DVO that was made in another participating jurisdiction before the commencement date that is a recognised DVO in that jurisdiction;
  - (b) any foreign order that became a registered foreign order in another participating jurisdiction before the commencement date that is a recognised DVO in that jurisdiction.
- (3) Sections 29E and 29F extend to any variation or revocation of a DVO referred to in subsection (2), that was done in a participating jurisdiction before the commencement date, as if the DVO were a recognised DVO.
- (4) However, a non-local DVO, and any variation to a non-local DVO, does not become enforceable against the defendant in this jurisdiction, under this Part, until the commencement date (even if the making of the DVO, or variation, was properly notified before that date).

### **Subdivision 3—Extension of scheme to older DVOs**

#### **29ZB—DVOs declared to be recognised DVOs**

- (1) Each of the following DVOs is also taken to be a *recognised DVO*:
  - (a) a DVO that is declared by the Court to be a recognised DVO in this jurisdiction under Subdivision 4;
  - (b) a DVO that is declared by a registrar of a court of another participating jurisdiction to be a recognised DVO in that jurisdiction under a corresponding law.
- (2) A recognised DVO referred to in subsection (1) becomes enforceable against the defendant in this jurisdiction, under this Part, when the declaration is made (despite section 29H).

#### **29ZC—DVOs declared to be recognised in other jurisdictions before commencement date**

- (1) To avoid doubt, section 29ZB extends to a DVO declared by a registrar of a court of another participating jurisdiction to be a recognised DVO before the commencement date.
- (2) Sections 29E and 29F extend to any variation or revocation of a DVO referred to in subsection (1), that was done in a participating jurisdiction before the commencement date, as if the DVO were a recognised DVO.
- (3) However, the DVO, and any variation to the DVO, does not become enforceable against the defendant in this jurisdiction, under this Part, until the commencement date.

### **Subdivision 4—Power to declare DVO to be recognised**

#### **29ZCA—Interpretation**

In this Subdivision—

*Court* means—

- (a) the Magistrates Court of South Australia; or
- (b) the Youth Court of South Australia.

#### **29ZD—Power to declare DVO to be recognised**

- (1) The Court may, by order, declare any DVO made in any jurisdiction to be a recognised DVO in this jurisdiction.
- (2) A declaration may be made in relation to any DVO made in any jurisdiction that is in force in the issuing jurisdiction and is not a recognised DVO in this jurisdiction.
- (3) The jurisdiction in which the DVO was made does not have to be a participating jurisdiction.
- (4) The Court must make a declaration under this section if an application for the declaration is made in accordance with this Subdivision, unless the Court decides to refuse to make the declaration in the interests of justice.



- (5) Without limiting subsection (4), the Court may refuse to make the declaration if not satisfied that the defendant has been properly notified of the making of the DVO under the law of the jurisdiction in which the DVO was made.

**Note—**

Under section 29ZB, the DVO becomes enforceable against the defendant when the declaration is made. Notice of the declaration is not to be served on the defendant unless the person making the application consents to service.

- (6) However, the Court cannot declare a general violence order to be a recognised DVO in this jurisdiction unless the order was made in this jurisdiction.
- (7) Notice of a declaration is not to be served on the defendant unless the person who makes the application consents to service.

**Note—**

Under section 29B, a foreign order is taken to be made in any jurisdiction in which it is registered as a registered foreign order. Accordingly, this section extends to registered foreign orders.

### **29ZE—Application for order**

- (1) An application for a declaration that a DVO is a recognised DVO in this jurisdiction may be made by any person who would be able to make an application for variation of the DVO if the DVO were a recognised DVO.
- (2) The application must be made in accordance with the rules of the Court.

**Note—**

It is only necessary to make an application in 1 participating jurisdiction. Under section 29ZB, once a declaration is made in any participating jurisdiction, the DVO will be treated as a recognised DVO in all participating jurisdictions.

### **29ZF—Declarations relating to general violence orders**

- (1) An application for a declaration that a general violence order is a recognised DVO may be made as if the order were a DVO.
- (2) Before making the declaration, the Court must decide whether the order addresses a domestic violence concern (and, accordingly, is a DVO).
- (3) The Court is not to make the declaration unless the Court decides that the order addresses a domestic violence concern.

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

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

- (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 a final 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 notify the following persons in writing of the registration and the prescribed details of the registered order:
  - (a) the Commissioner of Police;
  - (b) each person protected by the order;
  - (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: \$2 000 or imprisonment for 2 years.

Expiation fee: \$315.

- (2) A person who contravenes any other term of an intervention order is guilty of an offence.

Maximum penalty:

- (a) in the case of a basic offence—imprisonment for 3 years;
- (b) in the case of an aggravated offence—imprisonment for 5 years.

- (2aa) Despite any other provision of this section, if a person contravenes a term of an intervention order (other than a term of an intervention order imposed under section 13) and either—

- (a) the contravention constitutes a second or subsequent such contravention; or
- (b) the act or omission alleged to constitute the contravention involved physical violence or a threat of physical violence,

the person is guilty of an offence against this subsection.

Maximum penalty:

- (a) in the case of a basic offence—imprisonment for 7 years;
- (b) in the case of an aggravated offence—imprisonment for 10 years.

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- (2ab) In determining whether a contravention of an intervention order is a second or subsequent such contravention for the purposes of subsection (2aa), any previous offence against subsection (2) or (2aa) (whether committed before or after the commencement of this subsection) of which the defendant has been found guilty will be taken into account, but only if the previous offence was committed or alleged to have been committed within the period of 5 years immediately preceding the date on which the offence under consideration was allegedly committed.
- (2a) If a person is found guilty of an offence under subsection (1), (2) or (2aa) where the act or omission alleged to constitute the offence involved physical violence or a threat of physical violence, the Court may, in addition to imposing a penalty for the offence—
- (a) order the convicted person to make a payment of not more than the prescribed amount toward the cost of any intervention program the person is required to undertake in accordance with the intervention order; and
  - (b) make any other order that the Court thinks fit.
- (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 11(7) of the *Sentencing Act 2017* does not apply in relation to an offence against subsection (1).
- (5) For the purposes of this section, an aggravated offence is an offence committed in circumstances where the offender knew or suspected, or ought reasonably to have known or suspected, that there was a reasonable likelihood that a child would see, hear or otherwise be exposed to the conduct constituting the offence or to any effects of that conduct.
- (6) If a person is charged with an aggravated offence under this section, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.
- (7) An offence against this section must be prosecuted, and dealt with by the Magistrates Court, as a summary offence but if the Court determines that a person found guilty of such an offence should be sentenced to a term of imprisonment exceeding 5 years, the Court must commit the person to the District Court for sentence.
- (8) In this section—
- basic offence**—where a subsection differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to a basic offence is a reference to the offence in its non-aggravated form.

### **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—
    - (i) remain at a particular place for so long as may be necessary for the order to be served; or
    - (ii) accompany the officer to the nearest police station 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.
- (3a) If a person accompanies a police officer to a police station in accordance with a requirement under subsection (3)(a)(ii), a police officer must ensure that the person is returned to the place at which the request was made, or taken to a place that is near to that place, unless to do so would be against the person's wishes or there is other good reason for not so doing.
- (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.

### **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) Any firearm, ammunition or part of a firearm surrendered to the Registrar of Firearms as required by the terms of an intervention order is to be dealt with under the *Firearms Act 2015* 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**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) prescribe forms for the purposes of this Act; and
  - (b) prescribe, or provide for the calculation of, costs, fees or charges for the purposes of this Act; and
  - (c) exempt any person or class of persons from the obligation to pay any costs, fees or charges so prescribed; and
  - (d) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, a regulation.
- (3) The regulations may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Court or the Minister or another person.

## 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.
- (5) For the avoidance of doubt, an intervention order continued in force under this clause that includes a term fixing a date for the expiry of the order will expire, or will be taken to have expired, on that date unless the Court has, before that date, varied the order under subclause (4) 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.

#### 39—Validation of certain intervention orders in force before commencement of section 6 of *Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015*

An intervention order in force immediately before the commencement of section 6 of the *Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015* that includes a term that purports to—

- (a) prohibit the person the subject of the order from being within the vicinity of premises at which a protected person resides or works; or
- (b) prohibit the defendant from being within the vicinity of specified premises frequented by a protected person,

will be taken to be valid and always to have been valid.



## 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> )
2012	12	<i>Statutes Amendment (Serious and Organised Crime) Act 2012</i>	10.5.2012	Pt 9 (s 43)—17.6.2012 ( <i>Gazette 14.6.2012 p2756</i> )
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> )
2014	26	<i>Statutes Amendment (SACAT) Act 2014</i>	11.12.2014	Pt 9 (s 99)—29.3.2015 ( <i>Gazette 5.3.2015 p883</i> )
2015	14	<i>Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015</i>	9.7.2015	Pt 2 (ss 4—22)—1.12.2015 ( <i>Gazette 19.11.2015 p4975</i> )
2015	46	<i>Firearms Act 2015</i>	17.12.2015	Sch 1 (cll 15 & 16)—1.7.2017 ( <i>Gazette 27.6.2017 p2619</i> )
2016	28	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2016</i>	16.6.2016	Pt 9 (ss 22—24)—16.6.2016: s 2(1)
2017	8	<i>Intervention Orders (Prevention of Abuse) (Recognition of National Domestic Violence Orders) Amendment Act 2017</i>	15.3.2017	25.11.2017 ( <i>Gazette 21.11.2017 p4653</i> )
2017	53	<i>Statutes Amendment (Sentencing) Act 2017</i>	28.11.2017	Pt 13 (s 22)—30.4.2018 ( <i>Gazette 6.2.2018 p612</i> )
2017	64	<i>Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017</i>	12.12.2017	Pt 15 (ss 116 to 121)—22.10.2018 ( <i>Gazette 19.12.2017 p5119</i> )
2018	1	<i>Disability Inclusion Act 2018</i>	14.6.2018	Sch 1 (cl 4)—1.7.2018 ( <i>Gazette 28.6.2018 p2618</i> )
2018	35	<i>Statutes Amendment and Repeal (Budget Measures) Act 2018</i>	22.11.2018	Pt 7 (ss 107 to 109)—1.12.2018 ( <i>Gazette 29.11.2018 p4058</i> )
2018	38	<i>Statutes Amendment (Domestic Violence) Act 2018</i>	6.12.2018	Pt 5 (ss 9, 10, 13 to 15)—31.1.2019 ( <i>Gazette 24.1.2019 p272</i> ); ss 11 & 12—1.9.2019 ( <i>Gazette 18.7.2019 p2744</i> )
2021	7	<i>Termination of Pregnancy Act 2021</i>	11.3.2021	Sch 1 (cl 5)—7.7.2022 ( <i>Gazette 23.6.2022 p1919</i> )
<b>2021</b>	<b>37</b>	<b><i>Statutes Amendment (Intervention Orders and Penalties) Act 2021</i></b>	<b>30.9.2021</b>	<b>Pt 2 (s 4)—4.4.2022 (<i>Gazette 27.1.2022 p115</i>)</b>

## 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)		
ammunition	inserted by 14/2015 s 4(1)	1.12.2015
	amended by 46/2015 Sch 1 cl 15(1)	1.7.2017
associated order	amended by 14/2015 s 4(2)	1.12.2015
<i>Children's Protection Act order</i>	<i>deleted by 64/2017 s 116</i>	<i>22.10.2018</i>
cognitive impairment	inserted by 28/2016 s 22	16.6.2016
Commissioner	inserted by 35/2018 s 107	1.12.2018
domestic violence concern	inserted by 8/2017 s 4	25.11.2017
final intervention order	inserted by 14/2015 s 4(3)	1.12.2015
firearm	inserted by 14/2015 s 4(3)	1.12.2015
	amended by 46/2015 Sch 1 cl 15(2)	1.7.2017
interim intervention order	inserted by 14/2015 s 4(4)	1.12.2015
intervention order	substituted by 14/2015 s 4(4)	1.12.2015
issuing authority	substituted by 14/2015 s 4(5)	1.12.2015
<i>registered housing co-operative</i>	<i>deleted by 65/2013 Sch 3 cl 3</i>	<i>1.4.2014</i>
relevant public sector agency	amended by 46/2011 Sch 3 cl 20	1.1.2012
	amended by 14/2015 s 4(6)	1.12.2015
	amended by 1/2018 Sch 1 cl 4	1.7.2018
	(e) omitted under <i>Legislation Revision and Publication Act 2002</i>	1.7.2018
State child protection order	inserted by 64/2017 s 116	22.10.2018
Pt 2		
s 5	amended by 14/2015 s 5	1.12.2015
Pt 3		
s 8		
s 8(4)	amended by 38/2018 s 9	31.1.2019

**Intervention Orders (Prevention of Abuse) Act 2009—4.4.2022 to 6.7.2022**

## Legislative history

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	amended by 7/2021 Sch 1 cl 5	uncommenced—not incorporated
s 9	amended by 12/2012 s 43	17.6.2012
s 10		
s 10(2)	amended by 64/2017 s 117(1), (2)	22.10.2018
s 12		
s 12(1)	amended by 14/2015 s 6(1), (2)	1.12.2015
s 12(6)	amended by 14/2015 s 6(3)	1.12.2015
s 13		
s 13(3)	amended by 14/2015 s 7(1)	1.12.2015
s 13(4)	inserted by 14/2015 s 7(2)	1.12.2015
s 14		
s 14(1)	amended by 14/2015 s 8(1), (2)	1.12.2015
s 14(2)	amended by 14/2015 s 8(3)	1.12.2015
s 15		
s 15(1)	amended by 14/2015 s 9(1)	1.12.2015
s 15(3)	amended by 14/2015 s 9(2)	1.12.2015
s 15A	inserted by 8/2017 s 5	25.11.2017
s 16		
s 16(2)	substituted by 64/2017 s 118	22.10.2018
s 18		
s 18(6)	substituted by 14/2015 s 10(1)	1.12.2015
s 18(7a)	inserted by 14/2015 s 10(2)	1.12.2015
s 18(9)	amended by 14/2015 s 10(3)	1.12.2015
s 19		
s 19(2)	substituted by 14/2015 s 11	1.12.2015
s 20		
s 20(1)	amended by 64/2017 s 119(1)	22.10.2018
s 20(3)	amended by 64/2017 s 119(2)	22.10.2018
s 21		
s 21(4a)	inserted by 14/2015 s 12(1)	1.12.2015
s 21(8)	amended by 8/2017 s 6(1)	25.11.2017
s 21(8a)	inserted by 8/2017 s 6(2)	25.11.2017
s 21(9)	amended by 14/2015 s 12(2)	1.12.2015
	amended by 38/2018 s 10	31.1.2019
s 21(10)	substituted by 14/2015 s 12(3)	1.12.2015
s 21(11)	amended by 14/2015 s 12(4)	1.12.2015
s 23		
s 23(1)	substituted by 14/2015 s 13(1)	1.12.2015
s 23(1a)	inserted by 14/2015 s 13(1)	1.12.2015
	amended by 64/2017 s 120	22.10.2018
s 23(2)	amended by 14/2015 s 13(2), (3)	1.12.2015
s 23(3)	amended by 14/2015 s 13(4), (5)	1.12.2015

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s 23(4)	amended by 14/2015 s 13(6)	1.12.2015
s 23(5)	amended by 14/2015 s 13(7)	1.12.2015
	amended by 8/2017 s 7(1)	25.11.2017
s 23(5a)	inserted by 8/2017 s 7(2)	25.11.2017
s 23(7)	substituted by 14/2015 s 13(8)	1.12.2015
s 23(8)	amended by 14/2015 s 13(9)	1.12.2015
s 24		
s 24(1)	amended by 14/2015 s 14(1)	1.12.2015
	amended by 35/2018 s 108	1.12.2018
s 24(2)	amended by 8/2017 s 8(1)	25.11.2017
s 24(2a)	inserted by 8/2017 s 8(2)	25.11.2017
s 24(5)	substituted by 14/2015 s 14(2)	1.12.2015
	amended by 35/2018 s 108	1.12.2018
s 25		
s 25(1)	amended by 14/2015 s 15	1.12.2015
s 25(2)	amended by 65/2013 Sch 3 cl 4	1.4.2014
s 25(5)	amended by 26/2014 s 99	29.3.2015
s 26		
s 26(1)	amended by 64/2017 s 121	22.10.2018
s 26(3)	amended by 14/2015 s 16(1)	1.12.2015
s 26(4)	amended by 14/2015 s 16(2)	1.12.2015
s 26(5)	amended by 14/2015 s 16(3)	1.12.2015
s 26(6)	amended by 14/2015 s 16(4)	1.12.2015
s 26(7)	amended by 8/2017 s 9(1)	25.11.2017
s 26(7a)	inserted by 8/2017 s 9(2)	25.11.2017
s 26(9)	substituted by 14/2015 s 16(5)	1.12.2015
s 26(10)	inserted by 14/2015 s 16(5)	1.12.2015
s 26A	inserted by 38/2018 s 11	1.9.2019
s 27		
s 27(2)	amended by 35/2018 s 109	1.12.2018
s 28A	inserted by 38/2018 s 12	1.9.2019
s 29		
s 29(2)	amended by 28/2016 s 23	16.6.2016
s 29ZCA	inserted by 38/2018 s 13	31.1.2019
Pt 3A	inserted by 8/2017 s 10	25.11.2017
Pt 4		
s 30		
s 30(3)	amended by 14/2015 s 17(1)	1.12.2015
s 30(6)	substituted by 14/2015 s 17(2)	1.12.2015
Pt 5		
s 31		
s 31(1)	<b>amended by 37/2021 s 4(1), (2)</b>	<b>4.4.2022</b>
s 31(2)	amended by 38/2018 s 14(1)	31.1.2019

## Intervention Orders (Prevention of Abuse) Act 2009—4.4.2022 to 6.7.2022

### Legislative history

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	<b>amended by 37/2021 s 4(3)</b>	<b>4.4.2022</b>
s 31(2aa)	inserted by 38/2018 s 14(2)	31.1.2019
	<b>amended by 37/2021 s 4(4)</b>	<b>4.4.2022</b>
s 31(2ab)	inserted by 38/2018 s 14(2)	31.1.2019
s 31(2a)	inserted by 14/2015 s 18(1)	1.12.2015
	amended by 38/2018 s 14(3)	31.1.2019
s 31(4)	amended by 14/2015 s 18(2)	1.12.2015
	amended by 53/2017 s 22	30.4.2018
<b>s 31(5)—(8)</b>	<b>inserted by 37/2021 s 4(5)</b>	<b>4.4.2022</b>
s 34		
s 34(3)	amended by 14/2015 s 19(1)	1.12.2015
s 34(3a)	inserted by 14/2015 s 19(2)	1.12.2015
s 36		
s 36(2) and (3)	<i>deleted by 14/2015 s 20</i>	<i>1.12.2015</i>
Pt 6		
s 40		
s 40(1)	amended by 14/2015 s 21	1.12.2015
	amended by 46/2015 Sch 1 cl 16	1.7.2017
s 42		
s 42(1)	s 42 redesignated as s 42(1) by 38/2018 s 15	31.1.2019
s 42(2) and (3)	inserted by 38/2018 s 15	31.1.2019
Sch 1		
<i>Pts 1—14</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>
Pt 15		
cl 37		
cl 37(5)	inserted by 28/2016 s 24	16.6.2016
cl 39	inserted by 14/2015 s 22	1.12.2015

### Historical versions

1.1.2012  
17.6.2012  
1.4.2014  
29.3.2015  
1.12.2015  
16.6.2016  
1.7.2017  
25.11.2017  
30.4.2018  
1.7.2018  
22.10.2018  
1.12.2018  
31.1.2019

1.9.2019