

South Australia

Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015

An Act to amend the *Intervention Orders (Prevention of Abuse) Act 2009*; and to make related amendments to the *Bail Act 1985*, the *Criminal Law (Sentencing) Act 1988* and the *Evidence Act 1929*.

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Schedule 1—Related amendments

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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) (Miscellaneous) Amendment Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *abuse* and *act of abuse* insert:

ammunition has the same meaning as in the *Firearms Act 1977*;

- (2) Section 3(1), definition of *associated order*—delete "an intervention order (when an interim intervention order is confirmed as an intervention order or an intervention order is issued in substitution for an interim intervention order)" and substitute:

a final intervention order

- (3) Section 3(1)—after the definition of *Family Law Act order* insert:

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 1977*;

- (4) Section 3(1), definition of *intervention order*—delete the definition and substitute:

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;

- (5) Section 3(1), definition of *issuing authority*—delete the definition and substitute:

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);

- (6) Section 3(1), definition of *relevant public sector agency*—after paragraph (d) insert:

or

- (e) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Disability Services Act 1993*; 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*;

5—Amendment of section 5—Objects of Act

Section 5(a)(i)—delete "by police and the Court"

6—Amendment of section 12—Terms of intervention order—general

- (1) Section 12(1)(a)—after "being on" insert:

, or within the vicinity of,

(2) Section 12(1)(b)—after "being on" insert:

, or within the vicinity of,

(3) Section 12(6)—after "being on" insert:

, or within the vicinity of,

7—Amendment of section 13—Terms of intervention order—intervention programs

(1) Section 13(3)—delete "and a failure to comply with such a requirement constitutes a contravention of the term of the intervention order imposed under this section"

(2) Section 13—after subsection (3) insert:

(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).

8—Amendment of section 14—Terms of intervention order—firearms

(1) Section 14(1)(a)—delete "any firearm" and substitute:

any firearm, ammunition or part of a firearm

(2) Section 14(1)(b)(iii)—after "firearm" insert:

, ammunition or part of a firearm

(3) Section 14(2)—delete "an intervention order (other than an interim intervention order)" and substitute:

a final intervention order

9—Amendment of section 15—Terms of intervention order—date after which defendant may apply for variation or revocation

(1) Section 15(1)—delete "an intervention order (other than an interim intervention order)" and substitute:

a final intervention order

(2) Section 15(3)—delete "an intervention order (other than an interim intervention order) a term under subsection (1), the intervention" and substitute:

a final intervention order a term under subsection (1), the

10—Amendment of section 18—Interim intervention order issued by police

- (1) Section 18(6)—delete subsection (6) and substitute:
 - (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.
- (2) Section 18—after subsection (7) insert:
 - (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.
- (3) Section 18(9)—delete "of the details" and substitute:

in writing of the prescribed details

11—Amendment of section 19—Revocation of interim intervention order by Commissioner of Police

Section 19(2)—delete subsection (2) and substitute:

- (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.

12—Amendment of section 21—Preliminary hearing and issue of interim intervention order

- (1) Section 21—after subsection (4) insert:
 - (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.

- (2) Section 21(9)—delete "the hearing and determination of the application" and substitute:

hearing and determining an application for a final intervention order under section 23

- (3) Section 21(10)—delete subsection (10) and substitute:

(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.

- (4) Section 21(11)—delete "of the details" and substitute:

in writing of the prescribed details

13—Amendment of section 23—Determination of application for final intervention order

- (1) Section 23(1)—delete subsection (1) and substitute:

- (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 Children's Protection Act order;

- (ii) how the final intervention order would be likely to affect contact (in accordance with a relevant Family Law Act order or Children's Protection Act order or otherwise) between—
 - (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 Children's Protection Act order of which the Court has knowledge (whether on its own inquiry or having been so informed).
- (2) Section 23(2)—delete "An intervention order may be confirmed or issued" and substitute:

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,
- (3) Section 23(2)—delete "issued against the defendant"
- (4) Section 23(3)—delete "an intervention order" and substitute:

a final intervention order
- (5) Section 23(3)—delete "confirm or issue the order" and substitute:

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,
- (6) Section 23(4)—delete "an intervention order" and substitute:

a final intervention order
- (7) Section 23(5)—delete "An intervention order" and substitute:

A final intervention order
- (8) Section 23(7)—delete subsection (7) and substitute:
 - (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.
- (9) Section 23(8)—delete "of the details of intervention orders" and substitute:
 - in writing of the prescribed details of final intervention orders

14—Amendment of section 24—Problem gambling order

- (1) Section 24(1)—delete "an intervention order" wherever occurring and substitute in each case:
 - a final intervention order
- (2) Section 24(5)—delete subsection (5) and substitute:
 - (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 Independent Gambling Authority;
 - (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).

15—Amendment of section 25—Tenancy order

Section 25(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (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

16—Amendment of section 26—Intervention orders

- (1) Section 26(3)—delete "an intervention order (other than an interim intervention order)" and substitute:
 - a final intervention order
- (2) Section 26(4)—delete "an intervention order (other than an interim intervention order)" and substitute:
 - a final intervention order
- (3) Section 26(5)(a)—after "allow" insert:
 - the Commissioner of Police,
- (4) Section 26(6)—delete "an intervention order" and substitute:
 - a final intervention order
- (5) Section 26(9)—delete subsection (9) and substitute:
 - (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.

17—Amendment of section 30—Registration of foreign intervention orders

- (1) Section 30(3)—delete "an intervention order" and substitute:
 - a final intervention order
- (2) Section 30(6)—delete subsection (6) and substitute:
 - (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.

18—Amendment of section 31—Contravention of intervention order

- (1) Section 31—after subsection (2) insert:
 - (2a) If a person is found guilty of an offence under subsection (1) or (2) 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.
- (2) Section 31(4)—delete "Section 10(6)" and substitute:

Section 10(5)

19—Amendment of section 34—Powers facilitating service of intervention order

- (1) Section 34(3)(a)—delete paragraph (a) and substitute:
 - (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
- (2) Section 34—after subsection (3) insert:
 - (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.

20—Amendment of section 36—Power to arrest and detain for contravention of intervention order

Section 36(2) and (3)—delete subsections (2) and (3)

21—Amendment of section 40—Dealing with items surrendered under intervention order

Section 40(1)—delete "A firearm that has been" and substitute:

Any firearm, ammunition or part of a firearm

22—Amendment of Schedule 1—Transitional provisions

Schedule 1, Part 15, after clause 38 insert:

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.

Schedule 1—Related amendments

Part 1—Amendment of the *Bail Act 1985*

1—Amendment of section 21B—Intervention programs

Section 21B(2)—delete subsection (2) and substitute:

- (2) Before imposing any such condition, the court must—
 - (a) satisfy itself that—
 - (i) the person is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
 - (ii) those services are available for the person at a suitable time and place; and
 - (b) give consideration to any representations made by the person in relation to the program.

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

2—Amendment of section 10—Sentencing considerations

- (1) Section 10(3)(c)—delete paragraph (c)
- (2) Section 10—after subsection (3) insert:
 - (4) If a defendant has participated in an intervention program, a court may treat the defendant's participation in the program, and the defendant's achievements in the program, as relevant to sentence.
 - (5) However, the fact that a defendant—
 - (a) has not participated in, or has not had the opportunity to participate in, an intervention program; or

- (b) has performed badly in, or has failed to make satisfactory progress in, such a program,

is not relevant to sentence.

3—Amendment of section 19A—Intervention orders may be issued on finding of guilt or sentencing

Section 19A(2)(a)—delete paragraph (a) and substitute:

- (a) has effect—
 - (i) as a restraining order under the *Summary Procedure Act 1921*; or
 - (ii) as a final intervention order issued by the court under the *Intervention Orders (Prevention of Abuse) Act 2009*,

as the case may require; and

Part 3—Amendment of *Evidence Act 1929*

4—Amendment of section 13B—Cross-examination of certain witnesses

Section 13B(5), definition of *offence to which this section applies*—after paragraph (a) insert:

- (ab) an aggravated offence under section 20 of the *Criminal Law Consolidation Act 1935*, where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(g) of that Act; or