

When there is an intervention order against you

What is an intervention order?

An intervention order is an order made by a police officer or a magistrate which restricts how you can behave towards another person. You are called a **respondent** and the other person is called a **protected person** in the order.

The police officer or magistrate decides the conditions that will apply to you. Intervention orders can say that you must not assault, threaten, harass or intimidate the protected person. They may also say that you must not contact the protected person (including in person or by telephone or electronic means) or go near their home or workplace. You may even be ordered to move out of premises you own or rent. The order can prevent you from damaging or taking property, or require you to return or allow access to property. It will also prevent you from having firearms or a firearms licence.

When can an order be made against me?

An intervention order may be made if it is reasonable to suspect that you will, without an intervention order, commit an act of abuse against the protected person and the issuing of the order is appropriate in the circumstances.

An **act of abuse** is defined broadly and can include any act that causes or is intended to cause a protected person:

- physical injury, or
- emotional or psychological harm, such as distress, anxiety or fear (that is more than trivial), or
- the unreasonable denial of financial, social or personal autonomy, or
- damage to their property.

Abuse can include indirect abuse, such as telling someone you might harm the protected person.

Any child who may be exposed to the effects of an act of abuse against the protected person may also be protected by an intervention order.

Police-issued orders

If the police attend an incident and they suspect you have committed or will commit an act of abuse, they can issue an **interim** (temporary) **intervention order** on the spot. They may do this even if the protected person does not want them to. They may require you to stay with them while they prepare the order. If they suspect you will not follow this requirement, they may arrest and detain you for up to 2 hours. The order will come into force as soon as it is given to you. It will direct you to **go to court** at a specified place and time (usually within 8 days) for a court hearing. If an interim order is made against you, you must comply with all of the conditions set out in the order.

Questioning by the police

If the police suspect you may have committed an offence, they may question you. You can be required to provide your personal details to them (including your name, address and date of birth). You can also be required to answer questions about your identity, if you are the driver of a motor vehicle, the motor vehicle owner's identity, and about firearms.

However, you do not have to answer any other police questions, including questions about what happened between you and the protected person. If you deny the allegations against you, you may wish to tell the police this at the outset. Remember that you have the **right to silence**, and anything that you say to the police may be recorded and used as evidence. If the police charge you with an offence, you should **get legal advice**.

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Court-issued orders

A person, or the police on behalf of a person, may also apply directly to the court for an intervention order. If they do, the court can make an **interim intervention order** at a preliminary hearing. You are not involved in the preliminary hearing, but the order will not come into force until you receive a copy. The order will tell you when to come to court for a hearing, so that the court can hear from you. This is usually within 8 days.

The court may also issue an intervention order upon finding you guilty or sentencing you for a related criminal offence against the protected person, such as assault. In these circumstances, a **final intervention order** is issued and there are no further hearings in relation to the order.

Will it give me a criminal record?

No. You are not being charged with breaking the law. An intervention order is a court order restricting how you can behave towards the protected person. However, **once an intervention order is made, it is a crime to disobey (or "contravene") the order**. The police can arrest and charge you with contravening the order. Serious penalties may apply, including **imprisonment for up to 10 years**.

If you work with children or vulnerable people, an intervention order may be assessed as part of your work clearance, but it will not necessarily prevent clearance.

What happens at the first court hearing?

At the hearing you can tell the magistrate whether you want to dispute the order or any of its conditions. If you are unsure how the order might affect you and whether you want to dispute it, you can ask for an **adjournment** (to reschedule the hearing to a later date) to allow you time to get legal advice. The court will usually only allow one adjournment. At the first hearing, the court may:

- **dismiss the application** and end the order
- **change the conditions** of the order and make it **final**
- **confirm the conditions** of the order and make it **final**
- continue an order and **set a date for a pre-trial conference**. (See 'How do I dispute the order?')

If you are, or were, in a domestic relationship with the protected person, the magistrate may refer you to an **abuse prevention program**. This can be a condition of your intervention order. (See 'What else can be ordered?')

How to present yourself to the court

Dress neatly. Turn your mobile phone off or on silent. While the matter may be stressful, stay calm and courteous. Address the magistrate as "Your Honour" or "Sir/Madam". The magistrate will ask you whether you want to dispute the order and whether there is anything else you wish to say. Anything you say in court will be recorded.

What happens if I don't attend court?

If you do not attend the hearing, the magistrate may **confirm the interim order and make it final** in your absence. Orders made in your absence are difficult to change. If you do not want to dispute the order or any of its conditions, and the court hearing is only for the intervention order, then you do not have to go to court. You will not be arrested for failing to attend court.

What if the proposed order is unreasonable?

The purpose of the order is to keep the protected person safe. If the magistrate forms the view that it is necessary to restrict your activities to achieve this, then the magistrate will do so. However, if you think the order will place unreasonable restrictions on your activities that are not necessary for the protected person's safety, you should explain this to the magistrate. If the conditions of the order will stop you from earning your living or doing other necessary things, for example, you should speak up. You might want to suggest ways the order could reasonably be changed to solve the problem.

Agreeing to an order without admission

You can agree to the order even if you do not admit to the allegations made against you in the application. You may decide not to dispute the order if you have no need to see the protected person or go to places where they might be.

Before agreeing to an order and allowing it to be made final, **get legal advice**. A final intervention order:

- is ongoing (it has no end date),
- is difficult to change, and
- can, if contravened, result in criminal charges.

How do I dispute the order?

The only way to dispute the order is to **attend the court hearing** and **tell the magistrate**. The magistrate will set a date for a pre-trial conference. You should **get legal advice** before the conference.

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The pre-trial conference is a further opportunity:

- for the person or the police to give you their evidence,
- to say if you want to dispute the order in any way, and
- to reach an agreement if possible.

If an agreement cannot be reached at the conference, the matter will be set for **trial**. You will need to consider any witnesses you might wish to call to give evidence because their availability will inform the suitability of the trial date(s) and its length.

The protected person's evidence

The evidence of the protected person will often have been presented at the preliminary hearing in writing (in an affidavit) or in person at court. A police application may also be supported by recorded evidence.

You should request a copy of the protected person's affidavit, any transcript of their evidence, and recorded evidence. Challenging the protected person's evidence usually involves 'cross-examining' them (asking them questions about their evidence). In relation to recorded evidence, you (or your lawyer) will need the court's permission to cross-examine the protected person.

If you have a lawyer representing you at trial, your lawyer will cross-examine the protected person. If you do not have a lawyer, you cannot question the protected person directly. You must give any questions you wish to ask to the magistrate, who will then decide which questions are allowed. The magistrate or someone the magistrate nominates will then ask the questions for you.

Do I need a lawyer?

You can have a lawyer to handle the case for you if you wish. **Legal aid is not granted for intervention order cases** as they are not criminal matters. Some community legal centres may be able to provide representation. (Visit www.clcsa.org.au for more information.)

The Law Society can provide names of private lawyers who do this type of work. Call 8229 0200 or visit www.lawsocietysa.asn.au to access the See a Lawyer Referral Service. Legal fees vary and you should ask about the cost when making the appointment or at the first appointment.

You do not need to have a lawyer if you do not want one. Even if you decide to represent yourself, you should get legal advice from the Legal Services Commission, a community legal centre or a private lawyer.

Can an order stop me from going home?

Yes. An intervention order can stop you from going to premises you own or rent or the place where you normally live. If your personal possessions are still in the home, you can ask the magistrate to make an order about their return or collection. Do not rely on a friend or family member to collect your possessions and bring them to you unless the magistrate has specifically allowed it. Some intervention orders include conditions to prevent this action.

An intervention order does not change who owns the home, it only stops you from going there. When a relationship has broken down, the Federal Circuit and Family Court of Australia (FCFCOA) can share out the property. You should **get legal advice** about this. Similarly, an intervention order does not change a tenancy agreement. However, the protected person may apply to the South Australian Civil and Administrative Tribunal (SACAT) to change it, such as by removing your name.

What about contact with my children?

If your children are also protected persons under the order or living with the protected person, then the order may stop you from having contact with them.

If the children are not protected persons under the order and there are no parenting orders in place, you can ask the magistrate to consider the children's need to see you in deciding the conditions of the order. An order can be made that allows some kind of contact between you and the protected person about children's arrangements (it may be through another person) and/or allows you to attend counselling or family dispute resolution together.

If there are parenting orders in place, the magistrate must take these orders into account. However, when making an interim order, the magistrate may temporarily change or stop an existing parenting order. When making a final order, a magistrate may change a parenting order, but only if there is evidence that was not presented to the FCFCOA at the time it made the original parenting order.

If you feel that the final intervention order does not make adequate arrangements for parenting your children, you may apply for a parenting order from the FCFCOA. You should not try to contact the children if the intervention order stops you. Contravening the intervention order is a crime with serious penalties. Contravening the order could also have a negative effect on a parenting application.

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If you need a parenting order, you should **get legal advice** about this without delay, especially if you were in regular contact with your children before the intervention order was made. Once you have a parenting order, this overrides the intervention order where it is inconsistent.

What else can be ordered?

Every intervention order requires the respondent to give up their **firearms** and firearms licence. If you need a firearm as part of your job, you should get legal advice before the order is made final.

A magistrate may order you to be assessed for and undertake an **abuse prevention program**. This program may provide you with supervised treatment, rehabilitation, behaviour management and access to relevant support services. This may help you with your relationships. If you perform well in the program, it may also help at sentencing if you have been charged with a related criminal offence against the protected person.

If the court believes there is a reasonable likelihood of harm to family members because of your gambling, it may also issue a **problem gambling order**.

Can I appeal against the order?

Once a magistrate has made an order, you can appeal it, but you will need to be granted **permission to appeal**. You must lodge a request for permission to appeal (together with the appeal itself) with the Supreme Court within **21 days**. Get legal advice before doing so, because you may have to pay **legal costs** to the other side if you lose. The order still applies while the appeal is being decided.

How long does the order last?

A final intervention order is **ongoing** and continues in force until it is changed (varied) or stopped (revoked).

Can I apply to change or stop the order later?

You must wait at least **12 months** after the order is made to apply to vary or revoke it. The court may fix a period that is longer than 12 months before you may apply.

An application to vary or revoke an intervention order will only succeed if you can prove that circumstances have changed such that the order or a particular condition is no longer necessary for the safety of the protected person. You do this by completing an application form at the court and making a sworn written statement about the changed situation.

A hearing will be scheduled at which you will need to convince the court that the order can be changed without risk to the protected person. The police and the protected person will be given an opportunity to have their say.

Does the order apply interstate?

Intervention orders issued in South Australia that are declared by the court to address a **domestic violence concern** are automatically recognised and enforceable across Australia. The same applies to such intervention orders issued interstate. Intervention orders that do not address a domestic violence concern are not currently automatically recognised interstate.

What if they change their mind?

A protected person may change their mind after an intervention order has been finalised. They may decide that an order that previously allowed you to have contact should be changed to stop any contact. Conversely, they may want to resume a relationship with you despite the intervention order prohibiting contact.

Even if the protected person wants to contact you, you must not contravene the intervention order before it has been formally varied by a court. This is a crime with serious penalties, including imprisonment.

If the protected person invites you around or does anything else to encourage you to contravene the order, you must refuse to speak to them and keep away to avoid a criminal charge for contravening the order. You can keep a record of the protected person's invitations and other actions and report them to the police, who may then remind the protected person of the conditions of the order.

If the protected person wants to change an intervention order, they can apply to the court or ask the police to do so at any time. This will initially occur at a preliminary hearing, at which you are not present. Any changes will not come into force until you get a copy of the varied order. You may then attend a court hearing (usually within 8 days) if you wish to dispute any change.

If the police do not make the application on behalf of the protected person, a copy of the application must be given to you before it is heard by the court. You will then have the opportunity to be present at the first hearing. The final decision to vary an intervention order is made by the court, after hearing all of the evidence.