

Authorised Version No. 007
Personal Safety Intervention Orders Act
2010

No. 53 of 2010

Authorised Version incorporating amendments as at
3 March 2014

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purposes	1
2 How purposes are to be achieved	1
3 Commencement	2
PART 2—INTERPRETATION	3
4 Definitions	3
5 Meaning of <i>prohibited behaviour</i>	11
6 Meaning of <i>assault</i> and <i>sexual assault</i>	11
7 Meaning of <i>harassment</i>	12
8 Meaning of <i>property damage or interference</i>	12
9 Meaning of <i>serious threat</i>	13
10 Meaning of <i>stalking</i>	13
11 Act not to apply to certain conduct	16
PART 3—APPLICATIONS FOR PERSONAL SAFETY INTERVENTION ORDERS	17
Division 1—Applications for personal safety intervention orders	17
12 Where application for personal safety intervention order may be made	17
13 How application is to be made	17
14 Application may be made by electronic communication after hours or in remote areas	17
15 Who may apply for personal safety intervention order	18
16 Application for leave	19
17 Application for protection of child may be included in application for protection of child's parent	19
18 Applications against children aged under 10 years	20
19 Service of application	20

<i>Section</i>	<i>Page</i>
20 Registrar may issue summons on application for personal safety intervention order	21
21 Magistrate or registrar may issue warrant on certain applications for personal safety intervention orders	21
22 Application on oath, by affidavit or certified if warrant to issue	22
23 Bail on appearance on arrest	22
Division 2—Mediation	23
24 Definitions	23
25 Court official may provide mediation information	23
26 Court may give mediation directions	23
27 Where personal safety intervention order would prevent mediation occurring	24
28 Mediation assessment certificate	25
29 Conduct of mediation assessment	26
30 Mediation certificates	26
31 Mediator must terminate mediation if no longer suitable	27
32 No contempt or offence for lack of attendance at assessment or mediation	27
33 Court may take certificates and lack of attendance into account when making orders	27
34 Attorney-General may issue guidelines for mediation assessment and mediation	28
Division 3—Interim orders	28
35 Court may make interim order	28
36 Interim order where existing family violence intervention order	30
37 Interim order may be made in absence of respondent etc.	31
38 Application to be supported by oral evidence or affidavit unless requirement waived	31
39 Interim order may apply to more than one affected person	32
40 Explanation of interim order	32
41 Interim order made on electronic application	34
42 Hearing to be listed for decision about final order as soon as practicable	34
43 Expiry of interim order	35
Division 4—Proceedings for personal safety intervention orders	35
44 Mention date	35
45 Hearing may relate to more than one application	36
46 Circumstances where affected person to be heard separately	37
47 Evidence	38
48 Evidence may be given by affidavit or sworn statement	39
49 Evidence given by children	39
50 Court may issue warrant to arrest for witness who fails to appear	40

<i>Section</i>	<i>Page</i>
51 Court may close proceeding to public	40
52 Alternative arrangements for proceeding	41
Division 5—Assessment reports in proceedings in the Children's Court	42
53 Children's Court may order assessment of respondent or affected person	42
54 Notification of requirement to submit assessment report	42
55 Warning to be given to persons being interviewed	43
56 Disputed report	43
57 Content of assessment report	44
58 Secretary to forward report to Children's Court	44
59 Attendance at court of author of assessment report	44
60 Confidentiality of assessment reports	45
Division 6—Making final orders	46
61 Power of court to make final order	46
62 No final order if existing family violence intervention order	48
63 Power to make final order if affected person has not consented to application or order—police applicants	49
64 Consent orders	49
Division 7—Conditions on personal safety intervention orders	51
Subdivision 1—General	51
65 Definition	51
66 Court to consider possibility of mediation in deciding conditions	51
67 Conditions to be included in a personal safety intervention order	52
68 Court to enquire about firearms and weapons	53
69 Suspension or cancellation of firearms authority etc.	53
70 Excluded person to provide new address	54
Subdivision 2—Conditions excluding child respondent from residence	55
71 Exclusion of child respondent from residence	55
72 Court may ask Secretary to Department of Human Services for report	56
Subdivision 3—Conditions preventing a respondent attending school	57
73 Meaning of <i>training</i>	57
74 Court to consider whether conditions may prevent respondent attending school	57
75 Court may request report from Department of Education and Early Childhood Development	58

<i>Section</i>	<i>Page</i>
Division 8—Explanation of final order	59
76 Explanation of final order	59
Division 9—Duration of final order	60
77 Court may specify period for which order in force	60
78 Period for which order remains in force if respondent a child	61
79 Duration of order	61
Division 10—Variation, revocation and extension of personal safety intervention orders	61
Subdivision 1—Variation and revocation of personal safety intervention orders	61
80 Power of court to vary or revoke personal safety intervention order	61
81 Court may make interim order on application for variation of personal safety intervention order	62
82 Additional protection in varying or revoking orders	63
Subdivision 2—Extension of final order	63
83 Power of court to extend final order	63
84 Interim extension order	64
Subdivision 3—Application to vary, revoke or extend personal safety intervention order	65
85 Who may apply to vary, revoke or extend personal safety intervention order	65
86 Application made by respondent for variation or revocation of personal safety intervention order	66
87 Application made by police officer	67
88 Consent required if applicant is not protected person, guardian, respondent or police officer	68
89 Protected person's views to be heard separately in certain circumstances	68
Subdivision 4—Service of applications for variations, revocations or extensions of orders	69
90 Persons on whom application must be served	69
Division 11—Appeals and rehearings	70
Subdivision 1—Appeals to County Court and Supreme Court	70
91 Who may appeal	70
92 Court to which appeal must be made	71
93 Notice of appeal	71
94 Stay of relevant decision	72
95 Appeals not to commence if certain persons object	73

<i>Section</i>	<i>Page</i>
96 Conduct of appeal	73
97 No further appeal	74
98 Application of certain Acts to appeals	74
Subdivision 2—Rehearings	75
99 Rehearing of certain proceeding	75
Division 12—Contravention of personal safety intervention order	76
100 Offence for contravention of personal safety intervention order	76
101 Arrest for contravention of personal safety intervention order	76
PART 4—JURISDICTION OF COURTS AND PROCEEDINGS	77
Division 1—Jurisdiction of courts	77
102 Definitions	77
103 Jurisdiction of courts if affected person, protected person or respondent is a child	77
104 Jurisdiction of Children's Court to deal with related applications	77
104A Jurisdiction of Children's Court to deal with applications related to child protection proceedings	78
105 Transfer of applications	79
106 Jurisdiction to revoke, vary or extend orders	79
Division 2—Provisions about proceedings under this Act	80
107 Restriction on presence of children	80
108 Adjournment to seek legal advice	80
109 Applicant who is police officer may be represented by another police officer	81
110 Certification	81
111 Costs	82
112 Concurrent criminal proceedings	83
113 Personal safety intervention order against carer	83
PART 5—ENFORCEMENT POWERS	84
113A Definitions	84
114 Entry and search of premises	84
115 Surrender of firearms and weapons	85
116 Power of police officer to search premises for firearms etc. without warrant	86
116A Applications for interstate orders—additional requirements for direction or search without warrant	87
117 Warrants to search premises and vehicles	88
118 Announcement before entry	90
119 Copy of the warrant to be given to occupier	91
120 Seizure of firearms etc.	91

<i>Section</i>	<i>Page</i>
121 Effect of surrender or seizure of firearm, weapon or other article if final order made against person	92
122 Effect of surrender or seizure of firearm, weapon or other article if no final order etc.	94
PART 6—RESTRICTION ON PUBLICATION OF PROCEEDINGS	96
123 Restriction on publication of proceeding in Magistrates' Court	96
124 Exception to restriction on publication	97
125 Identifying particulars	97
PART 7—RELATIONSHIP WITH OTHER ACTS	99
126 Application of Magistrates' Court Act 1989 and rules	99
127 Relationship with Firearms Act 1996 and Control of Weapons Act 1990	99
128 Application of principles under Children, Youth and Families Act 2005 to decisions under this Act	100
129 Personal safety intervention orders prevail over child protection orders	100
130 Notice to be given to Secretary to Department of Human Services	101
130A Relationship with certain orders under the Sentencing Act 1991	101
PART 8—RELATIONSHIP WITH FAMILY VIOLENCE PROTECTION ACT 2008	102
Division 1—General	102
132 Definitions	102
133 Concurrent applications may be heard together	102
134 Family violence intervention order to prevail	103
Division 2—Certain applications under Family Violence Protection Act 2008 to be heard under this Act where parties are not family members	103
135 Application of Division	103
136 Court may determine parties to application for family violence intervention order are not family members	104
137 No further determination if determination made by County Court or Supreme Court	105
138 Effect of determination under section 136(2)(b)—general	105
139 Search warrants issued under Family Violence Protection Act 2008	106
140 Firearms etc seized or surrendered under Family Violence Protection Act 2008	107

<i>Section</i>	<i>Page</i>
141 Determination where proceeding in Family Violence Court Division	108
142 Existing interim family violence intervention order must be revoked	108
143 Determination made on application to vary existing interim family violence intervention order	109
144 Determination made on application to revoke existing interim family violence intervention order	109
145 Determination made when hearing application for final family violence intervention order	109
146 Revocation of interim family violence intervention order under this Division	110
147 Applications for associated final orders under Family Violence Protection Act 2008	111
148 Explanation of determination	112
PART 9—INTERSTATE AND NEW ZEALAND ORDERS	113
Division 1—Interstate orders	113
149 Registration of corresponding interstate orders	113
150 Notice to be given of registration of corresponding interstate orders	113
151 Registered corresponding interstate orders may be enforced as final orders	114
152 Variation, extension or revocation of corresponding interstate order by interstate court	114
153 Variation, extension or revocation of corresponding interstate order by Victorian Court	114
154 Notice of proposed variation, extension or revocation of corresponding interstate order	115
155 Notice to be given of variation, extension or revocation of corresponding interstate order	115
Division 2—Corresponding New Zealand Orders	116
156 Registration of corresponding New Zealand orders	116
157 Notice to be given of registration of corresponding New Zealand orders	116
158 Effect of registration of corresponding New Zealand orders	117
159 Variation, revocation or extension of corresponding New Zealand order	117

<i>Section</i>	<i>Page</i>
PART 10—VEXATIOUS LITIGANTS	118
160 Constitution of court	118
161 Who may apply for order that person is a vexatious litigant	118
162 Attorney-General may request documents from courts	119
163 Notice of application by Attorney-General to be served on protected person	120
164 Notice of application to be served on person proposed to be declared vexatious litigant	120
165 Order declaring person to be vexatious litigant	120
166 Leave to make an application under this Act	121
167 Appeal against order declaring person to be vexatious litigant	122
168 Application for leave to appeal under Division 11 of Part 3 by vexatious litigant	123
169 Court may vary, set aside or revoke	124
170 Notice of order to be given to Attorney-General	125
171 Attorney-General to publish copy of order in Government Gazette	125
172 Notice of order to be served on courts	126
173 Annual report	126
PART 11—SERVICE OF DOCUMENTS	127
174 Service of personal safety intervention orders	127
175 Copy of personal safety intervention order may be given to school	127
176 Manner of service	128
177 Proof of service	128
178 Inability to serve document	129
179 Person may cause document to be served	129
180 Certificate of service	130
181 Disclosure of information by organisations	130
PART 12—MISCELLANEOUS	132
182 Supreme Court—limitation of jurisdiction	132
183 Rules of court and practice directions for Magistrates' Court	132
184 Rules of court and practice directions for Children's Court	133
185 Regulation making power	135
PART 13—REPEAL OF STALKING INTERVENTION ORDERS ACT 2008 AND TRANSITIONAL PROVISIONS	136
Division 1—Repeal of Stalking Intervention Orders Act 2008	136
186 Repeal of Stalking Intervention Orders Act 2008	136

<i>Section</i>	<i>Page</i>
Division 2—Transitional provisions	136
187 Definitions	136
188 Final orders	136
189 Interim orders	137
190 Applications for intervention orders	137
191 Proceedings	138
192 Interstate and New Zealand orders	138
193 Acts committed before commencement day relevant	139
194 Directions under the repealed Act to surrender firearms	139
195 Search warrants issued under repealed Act	140
196 Police complainants and police prosecutors— Crimes (Family Violence) Act 1987	140
Division 3—Children, Youth and Families Amendment Act 2013	141
197 Transitional provision— Children, Youth and Families Amendment Act 2013	141
<hr style="width: 20%; margin: 0 auto;"/>	
ENDNOTES	143
1. General Information	143
2. Table of Amendments	144
3. Explanatory Details	146

Authorised Version No. 007
Personal Safety Intervention Orders Act
2010

No. 53 of 2010

Authorised Version incorporating amendments as at
3 March 2014

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to protect the safety of victims of assault, sexual assault, harassment, property damage or interference with property, stalking and serious threats; and
- (b) to promote and assist in the resolution of disputes through mediation where appropriate.

2 How purposes are to be achieved

This Act aims to achieve its purposes by—

- (a) providing an effective and accessible system of personal safety intervention orders; and
- (b) encouraging the use of mediation to assist in the resolution of disputes where appropriate; and
- (c) creating an offence for contravention of a personal safety intervention order.

3 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision referred to in subsection (1) does not come into operation before 1 January 2012, it comes into operation on that day.
-

PART 2—INTERPRETATION

4 Definitions

In this Act—

adult means a person who is 18 years of age or over;

affected person means—

- (a) a person the subject of an application for a personal safety intervention order to protect the person or the person's property;
- (b) a person who is seeking leave, or for whom leave is being sought, from the court to make an application for a personal safety intervention order as referred to in section 15(c)(ii) or (iii) or (d)(i);

appropriate registrar, for a court, means the registrar for that court or at the proper venue of the court;

assault has the meaning given in section 6(1);

child means a person who is under the age of 18 years;

child protection order means an order for which the Children's Court has jurisdiction under section 515(1) of the **Children, Youth and Families Act 2005** to hear and determine an application;

Note

Under section 515(1)(o) of the **Children, Youth and Families Act 2005**, the Children's Court's jurisdiction includes hearing and determining applications for certain proceedings transferred to the Court under interstate laws.

cognitive impairment has the same meaning as in section 3 of the **Evidence (Miscellaneous Provisions) Act 1958**;

contested application means an application that is the subject of a contested hearing;

contested hearing, in relation to an application under this Act, means a hearing by a court in which a party to the proceeding is contesting the final determination of the application;

corresponding interstate law means a law of another State or a Territory relating to the protection of persons from prohibited behaviour or stalking that—

- (a) substantially corresponds to this Act; or
- (b) is prescribed for the purposes of this definition;

corresponding interstate order means an order that—

- (a) is made under a corresponding interstate law; and
- (b) substantially corresponds to a final order;

corresponding New Zealand law means a law of New Zealand relating to the protection of persons from prohibited behaviour or stalking that—

- (a) substantially corresponds to this Act; or
- (b) is prescribed for the purposes of this definition;

corresponding New Zealand order means an order that—

- (a) is made under a corresponding New Zealand law; and
- (b) substantially corresponds to a final order;

court means—

- (a) the Magistrates' Court; or
- (b) if the application is being dealt with in the Children's Court, that court;

court official means—

- (a) the appropriate registrar; or
- (b) a deputy registrar of the court; or
- (c) any person employed in any of the offices of the court;

S. 4 def. of
court official
inserted by
No. 52/2013
s. 70.

Deputy Chief Magistrate means the Deputy Chief Magistrate of the Magistrates' Court;

dispute assessment officer means a person who is appointed or employed by a mediation provider to undertake mediation assessments;

exclusion condition means a condition in a personal safety intervention order referred to in section 67(2)(c);

family member has the meaning given in section 8 of the **Family Violence Protection Act 2008**;

family violence intervention order means a family violence intervention order within the meaning of section 11 of the **Family Violence Protection Act 2008**;

final order means an order made under section 61 and includes—

- (a) an order made under section 61 as varied under section 80; and
- (b) an order made under section 61 as extended under section 83; and
- (c) an order made under section 61 and confirmed on appeal to the County Court or Supreme Court;

firearms authority means a licence, permit or other authority under the **Firearms Act 1996** to possess, carry or use firearms;

first mention date, in relation to an application for a personal safety intervention order, means the first date on which the proceeding for the application is listed before the court;

guardian, in relation to a person, means (except in the definition of *parent*) a guardian under the **Guardianship and Administration Act 1986** who has power, whether specifically or generally—

- (a) to make decisions, take action, consent or do things for the person under this Act; or
- (b) to decide where or with whom the person is to live or with whom the person is to have contact;

harassment has the meaning given in section 7;

interim order means an order—

- (a) made under section 35, and includes an order made under section 35 as varied under section 80; and
- (b) made under section 81 that varies a personal safety intervention order;

mediation assessment means an assessment as to whether a matter is suitable for mediation, conducted in accordance with Division 2 of Part 3;

mediation direction means a direction given under section 26(1);

mediation provider means an organisation declared under section 21K of the **Evidence (Miscellaneous Provisions) Act 1958** to be a dispute settlement centre;

mediator means a person declared under section 21K of the **Evidence (Miscellaneous Provisions) Act 1958** to be a mediator;

mental harm means grief, anxiety, distress or trauma;

mention date, in relation to an application under this Act, means—

- (a) the first mention date; or
- (b) another date on which the proceeding is listed before the court other than for a contested hearing;

parent, of a child, includes—

- (a) a person who has responsibility for the long-term welfare of the child and has, in relation to the child, all the parental powers, rights and duties that are vested by law or custom in the guardian of a child; and

- (b) a person with whom the child normally or regularly resides;

party, to a proceeding under this Act, includes—

- (a) the affected person or protected person for the proceeding, whether or not the person is the applicant for the proceeding; and
- (b) if the affected person or protected person is not the applicant for the proceeding, the applicant; and
- (c) the respondent;

personal safety intervention order means—

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

police officer means a member of the police force;

possession, in relation to a firearm, has the same meaning as it has in the **Firearms Act 1996**;

prohibited behaviour has the meaning given in section 5;

proper venue—

- (a) in relation to a proceeding in the Magistrates' Court, has the meaning given by section 3(1) of the **Magistrates' Court Act 1989**; and
- (b) in relation to a proceeding in the Children's Court, has the meaning given by section 3(1) of the **Children, Youth and Families Act 2005**;

property, in relation to a person, includes—

- (a) property of the person; and
- (b) property that is situated in premises in which the person lives or works whether or not it is the person's property; and
- (c) property that is being used by the person whether or not it is the person's property;

property damage or interference has the meaning given in section 8;

protected person means a person who is protected by a personal safety intervention order;

publish means—

- (a) publish in any newspaper; or
- (b) publish by means of television, radio or the Internet;

registrar means—

- (a) in relation to the Magistrates' Court, the principal registrar of the Court, a registrar of the Court or a deputy registrar of the Court; or
- (b) in relation to the Children's Court, the principal registrar of the Court, a registrar of the Court or a deputy registrar of the Court; or
- (c) in relation to the County Court, a registrar of the Court or a deputy registrar of the Court; or
- (d) in relation to the Supreme Court, the prothonotary of the Court or a deputy prothonotary of the Court;

relevant decision, for Subdivision 1 of Division 11 of Part 3, has the meaning set out in section 91;

respondent means a person against whom—

- (a) an application for a personal safety intervention order has been made; or
- (b) a personal safety intervention order has been made;

safety means safety from physical or mental harm;

school means a registered school within the meaning of the **Education and Training Reform Act 2006**;

Secretary means the Secretary to the Department of Justice;

serious threat has the meaning given in section 9;

sexual assault has the meaning given in section 6(2);

stalking has the meaning given in section 10;

student means a person who is currently enrolled as a student at a school;

weapon means an article that is—

- (a) a prohibited weapon under the **Control of Weapons Act 1990**; or
- (b) a controlled weapon under paragraph (b) of the definition of *controlled weapon* in section 3(1) of the **Control of Weapons Act 1990**;

weapons approval means an approval under section 8C of the **Control of Weapons Act 1990**;

weapons exemption means an exemption granted under section 8B of the **Control of Weapons Act 1990** in respect of a person or a class of persons.

5 Meaning of *prohibited behaviour*

For the purposes of this Act, prohibited behaviour is—

- (a) assault; or
- (b) sexual assault; or
- (c) harassment; or
- (d) property damage or interference; or
- (e) making a serious threat.

6 Meaning of *assault* and *sexual assault*

(1) For the purposes of this Act—

assault means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force—

- (a) is—
 - (i) without lawful excuse; and
 - (ii) with intent to inflict, or being reckless as to the infliction of, bodily injury, pain, discomfort, damage, insult or deprivation of liberty; and
- (b) results in the infliction of any such consequence (whether or not the consequence inflicted is the consequence intended or foreseen).

(2) For the purposes of this Act—

sexual assault means an assault of a sexual nature.

(3) In subsection (1)—

application of force includes—

- (a) application of heat, light, electric current or any other form of energy; and
- (b) application of matter in solid, liquid or gaseous form.

7 Meaning of *harassment*

For the purposes of this Act, *harassment* means a course of conduct by a person towards another person that is demeaning, derogatory or intimidating and includes such conduct that is carried on by or through a third person.

Examples

A makes derogatory taunts to B, including racial taunts or taunts about B's sexual orientation or gender identity.

A sexually harasses B.

A, a former employee of B, repeatedly telephones B at her workplace and makes insulting remarks about B to the person who answers the telephone.

A encourages another child to taunt B.

8 Meaning of *property damage or interference*

For the purposes of this Act, *property damage or interference* means repeated, intentional—

- (a) damage to, or destruction of, any property of a person, including a person's pet;
- (b) substantial interference with any property of a person, including withholding any property of a person;

- (c) threats to damage, destroy or substantially interfere with any property of a person.

Examples

Withholding the person's food or medication;

Preventing the person accessing his or her wheelchair;

Threatening to kill or injure the person's pet.

9 Meaning of *serious threat*

For the purposes of this Act, a *serious threat* means—

- (a) a threat to kill, within the meaning of section 20 of the **Crimes Act 1958**;
- (b) a threat to inflict serious injury, within the meaning of section 21 of the **Crimes Act 1958**.

10 Meaning of *stalking*

- (1) A person (the *first person*) stalks another person (the *second person*) if the first person engages in a course of conduct—
- (a) with the intention of causing physical or mental harm to the second person, including self-harm, or of arousing apprehension or fear in the second person for his or her own safety or that of any other person; and
- (b) that includes any of the following—
- (i) following the second person or any other person;
- (ii) contacting the second person or any other person by post, telephone, fax, text message, email or other electronic communication or by any other means whatsoever;

S. 10(1)(a)
amended by
No. 20/2011
s. 9(1).

Personal Safety Intervention Orders Act 2010
No. 53 of 2010
Part 2—Interpretation

s. 10

- (iii) publishing on the Internet or by an email or other electronic communication to any person a statement or other material—
 - (A) relating to the second person or any other person; or
 - (B) purporting to relate to, or to originate from, the second person or any other person;
- (iv) causing an unauthorised computer function (within the meaning of Subdivision 6 of Division 3 of Part I of the **Crimes Act 1958**) in a computer owned or used by the second person or any other person;
- (v) tracing the second person's or any other person's use of the Internet or of email or other electronic communications;
- (vi) entering or loitering outside or near the second person's or any other person's place of residence or place of business or any other place frequented by the second person or the other person;
- (vii) interfering with property in the second person's or any other person's possession (whether or not the first person has an interest in the property);
- (viii) making threats to the second person;
- (viii) using abusive or offensive words to or in the presence of the second person;

S. 10(1)
(b)(viii)
inserted by
No. 20/2011
s. 9(2).

S. 10(1)
(b)(viii)
inserted by
No. 20/2011
s. 9(2).

Personal Safety Intervention Orders Act 2010
No. 53 of 2010
Part 2—Interpretation

s. 10

-
- (viic) performing abusive or offensive acts in the presence of the second person;
- (viid) directing abusive or offensive acts towards the second person;
- (viii) giving offensive material to the second person or any other person or leaving it where it will be found by, given to or brought to the attention of, the second person or the other person;
- (ix) keeping the second person or any other person under surveillance;
- (x) acting in any other way that could reasonably be expected—
- (A) to cause physical or mental harm to the second person, including self-harm; or
 - (B) to arouse apprehension or fear in the second person for his or her own safety or that of any other person.
- (2) For the purposes of this Act, the first person has the intention to cause physical or mental harm to the second person, including self-harm, or to arouse apprehension or fear in the second person for his or her own safety or that of any other person if—
- (a) the first person knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or

**S. 10(1)
(b)(viic)
inserted by
No. 20/2011
s. 9(2).**

**S. 10(1)
(b)(viid)
inserted by
No. 20/2011
s. 9(2).**

**S. 10(1)(b)(x)
substituted by
No. 20/2011
s. 9(3).**

**S. 10(2)
amended by
No. 20/2011
s. 9(4).**

(b) the first person in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.

S. 10(3)
inserted by
No. 20/2011
s. 9(5).

(3) In this section—

mental harm includes—

- (a) psychological harm; and
- (b) suicidal thoughts.

11 Act not to apply to certain conduct

This Act does not apply to conduct engaged in by a person performing official duties for the following purposes that, but for this section, would constitute grounds for making an order under this Act—

- (a) the enforcement of the criminal law;
- (b) the administration of any Act;
- (c) the enforcement of a law imposing a pecuniary penalty;
- (d) the execution of a warrant;
- (e) the protection of the public revenue.

**PART 3—APPLICATIONS FOR PERSONAL SAFETY
INTERVENTION ORDERS**

**Division 1—Applications for personal safety intervention
orders**

**12 Where application for personal safety intervention
order may be made**

An application for a personal safety intervention order must be made at the proper venue of the Magistrates' Court or Children's Court.

13 How application is to be made

- (1) An application for a personal safety intervention order must—
 - (a) include the information prescribed by rules made under this Act; and
 - (b) if the applicant is a police officer, be made on oath or by affidavit or certified in accordance with subsection (2); or
 - (c) if the applicant is not a police officer, be made on oath or by affidavit.
- (2) For the purposes of subsection (1)(b), an application certified by a police officer must—
 - (a) be signed by the police officer; and
 - (b) include the police officer's name, rank and station.

**14 Application may be made by electronic
communication after hours or in remote areas**

- (1) This section applies if—
 - (a) a police officer intends to make an application for a personal safety intervention order; and
 - (b) the police officer is seeking an interim order until the final order may be determined; and

(c) either—

- (i) the application is made before 9 a.m. or after 5 p.m. on a weekday, or is made on a Saturday, Sunday or a public holiday; or
 - (ii) the distance from the nearest venue of the court where the court is sitting is so great that it is impracticable to make the application in person.
- (2) The application may be made by telephone, fax or other electronic communication.
- (3) Before applying by telephone, fax or other electronic communication, the police officer must complete an application, that is made on oath or by affidavit or is certified, that sets out—
- (a) the grounds on which the personal safety intervention order is sought; and
 - (b) the reason an interim order is sought until the final order may be decided.
- (4) The application completed under subsection (3) must be filed by the police officer with the court before the first mention date for the application.

15 Who may apply for personal safety intervention order

An application for a personal safety intervention order may be made by—

- (a) an affected person; or
- (b) if the affected person is an adult, any other person with the written consent of the affected person; or

- (c) if the affected person is a child—
 - (i) a parent of the child; or
 - (ii) any other person with the written consent of a parent of the child or with the leave of the court; or
 - (iii) the affected person with the leave of the court if the affected person is of or above the age of 14 years; or
- (d) if the affected person has a guardian—
 - (i) the guardian; or
 - (ii) any other person, with the leave of the court; or
- (e) a police officer.

Note

However, see section 63 which provides that a final order can be made without the consent of the affected person but only with limited conditions.

16 Application for leave

- (1) If an application for leave is made under section 15(c)(ii) or (d)(ii), the court must grant leave if it is satisfied that it is in the best interests of the affected person to do so.
- (2) If an application for leave is made under section 15(c)(iii), the court must not grant leave unless it is satisfied the child understands the nature and consequences of a personal safety intervention order.

17 Application for protection of child may be included in application for protection of child's parent

- (1) An application for a personal safety intervention order for an affected person who is a child may be included in an application for the protection of the child's parent if the applications arise out of the same or similar circumstances.

- (2) An application referred to in subsection (1) may, on the application of the applicant or the respondent, be heard separately if the court thinks fit having regard to any advantages of the matters being heard together.

18 Applications against children aged under 10 years

If a person makes an application for a personal safety intervention order against a child who, at the date of making the application, is aged under 10 years—

- (a) if the court knows that the child was aged under 10 years, the court must not make a personal safety intervention order against the child;
- (b) if the court makes the personal safety intervention order against the child, the order has no effect.

19 Service of application

As soon as practicable after an application for a personal safety intervention order is made, the appropriate registrar for the court must serve the application on—

- (a) the respondent; and
- (b) if the applicant for the order is not the affected person—
 - (i) the affected person; or
 - (ii) if the affected person is a child and the application was made with the consent of the child's parent, that parent; or
 - (iii) if the affected person is a child and the application was made with the leave of the court, a parent of the child with whom the child normally or regularly lives; or

- (iv) if the affected person has a guardian—the guardian.

Note

See section 179(1), which provides that a person may serve a document by causing it to be served.

20 Registrar may issue summons on application for personal safety intervention order

If an application for a personal safety intervention order has been made to the court, the appropriate registrar for the court may issue a summons requiring the respondent to attend at the court for the hearing of the application.

21 Magistrate or registrar may issue warrant on certain applications for personal safety intervention orders

- (1) A magistrate or an appropriate registrar for the court may issue a warrant for the arrest of an adult respondent, as if the application for a personal safety intervention order alleged the commission of an offence, if the magistrate or registrar believes on reasonable grounds it is necessary—
- (a) to ensure the safety of the affected person; or
 - (b) to preserve any property of the affected person; or
 - (c) to ensure the respondent attends court at a mention date for the application.
- (2) If a warrant has been issued to arrest a respondent, a police officer may arrest the respondent although the execution copy of the warrant is not in the police officer's possession at the time of the arrest.

22 Application on oath, by affidavit or certified if warrant to issue

If the applicant for a personal safety intervention order seeks a warrant to issue in the first instance for the arrest of the respondent—

- (a) the application for the warrant must be in writing and be made on oath or by affidavit or be certified; and
- (b) the application for the personal safety intervention order and the warrant must be in the same document and contain the prescribed particulars.

23 Bail on appearance on arrest

- (1) The **Bail Act 1977** applies to and in respect of a respondent to an application for a personal safety intervention order arrested under a warrant as if the respondent were an accused person charged with an offence to whom section 4 of the **Bail Act 1977** applies.
- (2) For the purposes of subsection (1), the appropriate person must—
 - (a) advise the affected person of the outcome of the application for bail; and
 - (b) if bail is granted—
 - (i) advise the affected person of any conditions imposed on the respondent that are intended to protect the affected person; and
 - (ii) give the affected person a copy of the undertaking of bail.

S. 23(2)(b)(i)
amended by
No. 20/2011
s. 10(1).

(3) In subsection (2)—

appropriate person means—

- (a) if the application for bail is considered by a court (other than a bail justice), the appropriate registrar of the court; and
- (b) if the application for bail is considered by a bail justice or a police officer, the police officer.

Division 2—Mediation

24 Definitions

In this Division—

mediation assessment certificate means a certificate provided by a mediation provider under section 28;

mediation certificate means a certificate provided by a mediation provider under section 30;

return date means any date on which a proceeding is listed before the court.

25 Court official may provide mediation information

A court official may provide information about mediation to a person, whether or not the person has made an application for a personal safety intervention order.

S. 25
(Heading)
amended by
No. 52/2013
s. 71(1).

S. 25
amended by
No. 52/2013
s. 71(2).

26 Court may give mediation directions

- (1) At a mention date or a hearing of an application for a personal safety intervention order or for the variation or revocation of a personal safety intervention order, if the court considers in the circumstances of the case that mediation may be appropriate, the court may give—

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- (a) a direction that requires the parties to attend a mediation assessment; or
 - (b) subject to subsection (2), a direction that requires the parties to attend mediation; or
 - (c) a direction that requires the parties to attend—
 - (i) a mediation assessment; and
 - (ii) if the matter is assessed as suitable for mediation, a mediation.
- (2) The court must not give a direction under subsection (1)(b) unless it has received a mediation assessment certificate that specifies that the matter is suitable for mediation.
- (3) If the court gives a direction under subsection (1), it may adjourn the proceeding to allow for the mediation assessment, the mediation or the mediation assessment and mediation (as the case requires) to occur.
- (4) A direction given under subsection (1) applies to all parties to the proceeding except—
- (a) an applicant who is a police officer; and
 - (b) an applicant who is not the affected person and who the court has excluded from the direction.

27 Where personal safety intervention order would prevent mediation occurring

If—

- (a) the court gives a mediation direction under section 26(1)(b) or (c); and

- (b) an existing personal safety intervention order would prevent mediation occurring—

the court must vary the conditions of the personal safety intervention order to enable mediation to occur.

28 Mediation assessment certificate

- (1) If the court gives a mediation direction under section 26(1)(a) or (c), the mediation provider must, by the next return date or any earlier time or date specified by the court, issue a mediation assessment certificate.
- (2) A mediation assessment certificate must specify that—
 - (a) the mediation assessment has not yet been scheduled; or
 - (b) the mediation assessment has been scheduled, but has not yet occurred; or
 - (c) the mediation assessment has commenced but has not been completed; or
 - (d) the mediation assessment was scheduled and any or all of the parties did not attend; or
 - (e) all parties attended the mediation assessment and the matter has been assessed as suitable for mediation; or
 - (f) all parties attended the mediation assessment and the matter has been assessed as unsuitable for mediation.
- (3) For the purposes of subsection (2)(d), the certificate must specify which party did not attend.

29 Conduct of mediation assessment

In conducting a mediation assessment, the dispute assessment officer must have regard to any guidelines issued under section 34.

30 Mediation certificates

(1) If—

- (a) the court has given a mediation direction under section 26(1)(b) or (c); and
- (b) the matter has been assessed as suitable for mediation—

the mediation provider must, by the next return date or any earlier date specified by the court, issue a mediation certificate.

(2) The mediation certificate must specify that—

- (a) mediation has not yet been scheduled; or
- (b) mediation has been scheduled, but has not yet occurred; or
- (c) mediation has commenced but has not been completed; or
- (d) mediation was scheduled and any or all of the parties did not attend; or
- (e) all parties attended the mediation and—
 - (i) mediation has successfully settled the matter; or
 - (ii) mediation has partially settled the matter; or
 - (iii) mediation has not settled the matter; or
- (f) the matter is no longer appropriate for mediation.

(3) The mediation certificate may include other information that the parties consent to provide to the court.

- (4) For the purposes of subsection (2)(d), the certificate must specify which party failed to attend.

31 Mediator must terminate mediation if no longer suitable

If, after the matter has been assessed as suitable for mediation, the mediator considers, having regard to any guidelines issued under section 34, that the matter is no longer suitable for mediation, the mediator must—

- (a) terminate the mediation; and
- (b) issue a mediation certificate in accordance with section 30(2)(f).

32 No contempt or offence for lack of attendance at assessment or mediation

A party who does not attend a mediation assessment or, if the matter has been assessed as suitable for mediation, the mediation—

- (a) does not commit an offence; and
- (b) is not in contempt of court.

33 Court may take certificates and lack of attendance into account when making orders

If the court has given a mediation direction, when deciding whether to make a personal safety intervention order, or vary or revoke a personal safety intervention order, the court may take into account—

- (a) the contents of any mediation assessment certificate; and

- (b) if the matter was assessed as suitable for mediation, the contents of any mediation certificate; and
- (c) if any party did not attend a mediation assessment or mediation—
 - (i) the fact that the party did not attend the mediation assessment or mediation; and
 - (ii) the party's reasons for not attending.

34 Attorney-General may issue guidelines for mediation assessment and mediation

- (1) The Attorney-General may issue guidelines relating to the matters to which a dispute assessment officer or mediator must have regard in assessing whether a matter is or continues to be suitable for mediation.
- (2) Any guidelines issued under this section must be published on the Internet site of the Department of Justice.

Division 3—Interim orders

35 Court may make interim order

- (1) The court may make an interim order if a person has applied to the court for a personal safety intervention order and the court is satisfied—
 - (a) on the balance of probabilities, that an interim order is necessary pending a final decision about the application—
 - (i) to ensure the safety of the affected person; or
 - (ii) to preserve any property of the affected person; and

- (b) that it is appropriate to make the order in all the circumstances of the case.

Note

See section 33, which provides that the court may take into account mediation assessment or mediation certificates and a party's lack of attendance at a mediation assessment or mediation when deciding whether to make a personal safety intervention order.

- (2) The court may also make an interim order if a person has applied to the court for a personal safety intervention order and the parties to the proceeding have consented to, or do not oppose, the making of an interim order for the application.
- (3) The court may make an order under subsection (2)—
- (a) without being satisfied as to any matter referred to in subsection (1); and
 - (b) whether or not the respondent admits to any or all of the particulars of the application.
- (4) Without limiting subsection (1)(b), in deciding whether it is appropriate to make an interim order the court may consider—
- (a) if the respondent is a child, the respondent's ability to do the following, taking into account his or her age and maturity—
 - (i) understand the nature and effect of an interim order; and
 - (ii) comply with the conditions of the interim order;
 - (b) if the court is satisfied that the respondent has a cognitive impairment, the respondent's ability to do the following, taking into account his or her cognitive impairment—
 - (i) understand the nature and effect of an interim order; and

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- (ii) comply with the conditions of the interim order.
- (5) The court may make an interim order whether or not—
- (a) some or all of the prohibited behaviour or stalking alleged in the application for the personal safety intervention order occurred outside Victoria, so long as the affected person was in Victoria at the time at which that alleged conduct occurred;
 - (b) the affected person was outside Victoria at the time at which some or all of the prohibited behaviour or stalking alleged in the application for the personal safety intervention order occurred, so long as that alleged conduct occurred in Victoria.

Note

See Division 7 which provides for the inclusion of conditions in a personal safety intervention order, including an interim order. See also Division 7 which provides for the inclusion of conditions suspending a firearms authority, weapons approval or weapons exemption in the case of an interim order and cancelling a firearms authority, weapons approval or weapons exemption in the case of a final order.

36 Interim order where existing family violence intervention order

- (1) The court must not make an interim order if there is an existing family violence intervention order for which—
- (a) the affected person is a protected person and the respondent is a respondent; or
 - (b) the respondent is a protected person and the affected person is a respondent.

- (2) Despite subsection (1), the court may make an interim order if there is an existing interim family violence intervention order for which the respondent is a protected person and the affected person is a respondent.

Example

B is an affected person for an application for a personal safety intervention order against A. However, A is already a protected person under an interim family violence intervention order, and B is a respondent for that order. The court could still make an interim order to protect B from A.

- (3) In this section, *interim family violence intervention order* means an interim order within the meaning of the **Family Violence Protection Act 2008**.

37 Interim order may be made in absence of respondent etc.

An interim order may be made—

- (a) whether or not the respondent has been served with a copy of the application for a personal safety intervention order; and
- (b) whether or not the respondent is present when the interim order is made.

38 Application to be supported by oral evidence or affidavit unless requirement waived

- (1) The court must not make an interim order, other than an order referred to in section 35(2), unless—
- (a) the application is supported by oral evidence or an affidavit; or
 - (b) the application is made under section 14 by telephone, fax or other electronic communication and the court waives the requirement under paragraph (a).

- (2) Nothing in subsection (1)(a) obliges the affected person to give evidence before the interim order is made.

39 Interim order may apply to more than one affected person

An interim order may be made for more than one affected person if the court is satisfied under section 35 in relation to each of the affected persons.

40 Explanation of interim order

- (1) If a court makes an interim order, the appropriate registrar of the court must give the respondent and the protected person a written explanation of the order, in the prescribed form, that explains the following matters—
- (a) the purpose, terms and effect of the interim order;
 - (b) the consequences and penalties that may follow if the respondent fails to comply with the terms of the interim order;
 - (c) when the interim order expires and the means by which the interim order may be varied;
 - (d) that the interim order is a civil order of the court and the protected person cannot give permission to contravene the interim order;
 - (e) the process for deciding the final order.
- (2) A written explanation under subsection (1) may be accompanied by written information about any relevant services that may be available to the protected person or respondent, including counselling services, drug and alcohol services, disability services, financial counselling services, mental health services and advocacy services.

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- (3) If the court has given a mediation direction, a written explanation under subsection (1) must be accompanied by written information about mediation assessments and mediation.
 - (4) A written explanation under subsection (1) and any additional information under subsections (2) and (3) must be—
 - (a) if the protected person or respondent is before the court, given to the protected person or respondent and accompanied by a clear oral explanation of the matters contained in the explanation and any additional information; and
 - (b) if the protected person or respondent is not before the court, served on the protected person or respondent and accompanied by any additional information the court considers necessary to explain the interim order.
 - (5) Despite subsection (4)(a), the appropriate registrar is not required to give the protected person or respondent an oral explanation if the registrar is satisfied that, on making the order, the magistrate gave the protected person or respondent a clear oral explanation of the matters set out in subsection (1) and any additional information under subsections (2) and (3).
 - (6) A failure by the appropriate registrar to explain an interim order in accordance with this section does not affect the validity of the interim order.
 - (7) A failure by the appropriate registrar to provide information about mediation assessments and mediation in accordance with this section does not affect the validity of the mediation direction.

41 Interim order made on electronic application

If the court makes an order under section 35 on an application made by telephone, fax or other electronic communication, the court must inform the police officer of—

- (a) the terms of the order; and
- (b) the period of operation of the order; and
- (c) the venue of the court for the first mention date for the application for the personal safety intervention order; and
- (d) the date and time of the first mention date for the application for the personal safety intervention order.

Note

See section 5(2) of the **Magistrates' Court Act 1989** which provides that the Magistrates' Court may sit and act at any time and place.

42 Hearing to be listed for decision about final order as soon as practicable

- (1) If the court makes an interim order, the court must ensure the hearing is listed for a decision about the final order as soon as practicable unless the court has also given a mediation direction.
- (2) If the court makes an interim order and has given a mediation direction, the court must ensure the hearing is listed for a decision about the final order as soon as practicable, allowing a reasonable time for mediation assessment, mediation or mediation assessment and mediation, as the case requires, to take place.

43 Expiry of interim order

An interim order ends—

- (a) if the court makes a final order and the final order includes an order that the interim order continues until the final order is served on the respondent, when the final order is served on the respondent; or
- (b) if the court makes a final order and the final order does not include an order about the interim order continuing as referred to in paragraph (a), at the time the final order is made; or
- (c) if the court refuses to make a final order in relation to the application, at the time of the court's refusal; or
- (d) if the interim order is revoked by the court, at the time of the revocation; or
- (e) if the application for the personal safety intervention order is withdrawn, at the time of the withdrawal.

Note

See section 80 which provides for the variation of personal safety intervention orders, including interim orders.

Division 4—Proceedings for personal safety intervention orders

44 Mention date

- (1) The court must not proceed to hear a contested application for a final order on a mention date unless the court is satisfied that—
 - (a) all the parties to the proceeding have had an opportunity to seek legal advice and legal representation; and

- (b) all the parties to the proceeding consent to the hearing of the contested application on the mention date; and
 - (c) it is fair and just to all the parties to hear the application on the mention date.
- (2) Subsection (1) does not prevent the court making a final order on a mention date if—
- (a) all the parties to the proceeding have consented to, or are not opposed to the making of, the order in accordance with section 64; or
 - (b) the court is satisfied the respondent has been served with a copy of the application for a personal safety intervention order and has not attended court on the mention date.

45 Hearing may relate to more than one application

- (1) Any number of applications for personal safety intervention orders may be heard together if the court thinks fit.
- (2) The decision under subsection (1) to hear a number of applications for personal safety intervention orders together may be made—
 - (a) on the application of the applicants or the respondents; or
 - (b) on the court's own initiative if the court considers it in the interests of justice to do so.

Note

Applications for personal safety intervention orders may be heard together with applications for family violence intervention orders under section 133.

46 Circumstances where affected person to be heard separately

- (1) This section applies if—
- (a) an application for a personal safety intervention order is made under—
 - (i) section 15(c)(i) or (ii) by a parent or other person in respect of an affected person who is a child; or
 - (ii) section 15(d)(i) or (ii) by the guardian or other person in respect of an affected person; or
 - (iii) section 15(e) by a police officer; and
 - (b) the affected person objects to the application.

Note

In relation to resolving an issue between the guardian and the affected person, see sections 30 and 61 of the **Guardianship and Administration Act 1986**. Section 30 provides that the guardian may seek advice from the Victorian Civil and Administrative Tribunal and section 61 provides for the reassessment of a guardianship order by the Tribunal.

- (2) At the hearing for the final order, the views of the affected person must be heard separately from the views of the applicant.
- (3) Without limiting subsection (2), the views of the affected person may be heard through an independent legal representative acting on behalf of the person.
- (4) This section applies despite anything in section 49 or 107.

47 Evidence

- (1) Subject to this Act, in a proceeding for a personal safety intervention order the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary.

Note

This section does not apply to a proceeding for an offence under this Act.

- (2) The following provisions apply to a proceeding for a personal safety intervention order—
 - (a) sections 13, 30, 31 and 41 and Part 3.10 of the **Evidence Act 2008**;
 - (b) Division 8 of Part I and Division 2A of Part II of the **Evidence (Miscellaneous Provisions) Act 1958**.

Note

Section 13 of the **Evidence Act 2008** provides for circumstances in which a person lacks capacity to give evidence. Section 30 of the **Evidence Act 2008** provides for a witness to give evidence through an interpreter. Section 31 of the **Evidence Act 2008** provides for the giving of evidence by a witness who is deaf or mute. Section 41 of the **Evidence Act 2008** provides for the court's powers to disallow improper questions. Part 3.10 of the **Evidence Act 2008** provides for the application of privileges. Division 8 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958** provides for confidentiality of mediation conferences conducted under that Division. Division 2A of Part II of the **Evidence (Miscellaneous Provisions) Act 1958** provides for confidential communications in relation to proceedings with respect to sexual offences.

- (3) The court may refuse to admit, or may limit the use to be made of, evidence if the court is satisfied—

- (a) it is just and equitable to do so; or
- (b) the probative value of the evidence is substantially outweighed by the danger that the evidence may be unfairly prejudicial to a party or misleading or confusing.

48 Evidence may be given by affidavit or sworn statement

- (1) The court may admit in a proceeding under this Act evidence given by a person by affidavit or sworn statement.
- (2) Subsection (1) applies despite any rules of evidence to the contrary or anything to the contrary in this Act or any other Act (other than the **Charter of Human Rights and Responsibilities**).
- (3) A party to the proceeding may, with the leave of the court, require a person giving evidence by affidavit or by sworn statement to attend the hearing of the proceeding to be called as a witness and to be cross-examined.

49 Evidence given by children

- (1) A child, other than a child who is an applicant for a personal safety intervention order or a respondent, must not give evidence for the purposes of a proceeding under this Act unless the court grants leave for the child to do so.
- (2) In deciding whether to grant leave under subsection (1) the court must have regard to the following—
 - (a) the desirability of protecting children from unnecessary exposure to the court system; and
 - (b) the harm that could occur to the child if the child gives evidence.

- (3) This section applies despite anything to the contrary in the **Evidence Act 2008**.

50 Court may issue warrant to arrest for witness who fails to appear

Section 194 of the **Evidence Act 2008** applies to a proceeding for a personal safety intervention order as if the reference in that section to a civil or criminal proceeding were a reference to a proceeding for a personal safety intervention order.

Note

Section 194 of the **Evidence Act 2008** provides that the court may issue a warrant to arrest a witness who fails to appear at a hearing when called or to arrest a witness who is avoiding service of a subpoena or summons or who has been served with a subpoena or summons but is unlikely to comply with it.

51 Court may close proceeding to public

- (1) If the court considers it necessary to do so to prevent a party or a witness in a proceeding under this Act from being caused undue distress or embarrassment, the court may—
- (a) order that the whole or part of the proceeding be heard in closed court; or
 - (b) order that only persons or classes of persons specified in the order may be present during the whole or any part of the proceeding.
- (2) If the court makes an order under subsection (1), the court must cause a copy of the order to be posted on a door of, or in another conspicuous place at, the place at which the court is being held.
- (3) A person must not contravene an order made and posted under this section.

Penalty: 1000 penalty units or imprisonment for 3 months.

S. 51(2)
amended by
No. 52/2013
s. 72.

52 Alternative arrangements for proceeding

- (1) The court may direct that any of the following alternative arrangements be made for a proceeding in respect of a personal safety intervention order—
 - (a) permitting the proceeding to be conducted from a place other than the courtroom by means of closed circuit television or other facilities that enable communication between that place and the courtroom;
 - (b) using screens to remove the respondent from a party's or witness's direct line of vision;
 - (c) permitting a person to be beside a party or witness while the party or witness is giving evidence for the purpose of providing emotional support to the party or witness;
 - (d) requiring legal practitioners to be seated during the proceeding;
 - (e) any other alternative arrangements the court considers appropriate.
- (2) The court may make a direction under subsection (1) on its own initiative or on the application of a party to the proceeding.
- (3) In making a direction under subsection (1) the court must have regard to—
 - (a) the wishes expressed by the witness; and
 - (b) the age and maturity of the witness; and
 - (c) the facilities available for the conduct of the proceeding; and
 - (d) any other matters the court considers relevant.

- (4) Any place outside the courtroom where a witness is permitted to give evidence under this section is taken to be part of the courtroom while the witness is there for the purpose of giving evidence.
- (5) The court may, at any time in the course of the proceeding, vary or revoke a direction made under subsection (1) on its own initiative or on the application of a party to the proceeding.

Division 5—Assessment reports in proceedings in the Children's Court

53 Children's Court may order assessment of respondent or affected person

- (1) In a proceeding for a personal safety intervention order or the variation or revocation of a personal safety intervention order the Children's Court may order the Secretary to provide an assessment report in respect of a respondent or an affected person or protected person.
- (2) The Children's Court must not make an order under subsection (1) unless the person in respect of whom the report will be prepared—
 - (a) if that person is a child, has legal representation; and
 - (b) in any case, consents to the making of the order.

54 Notification of requirement to submit assessment report

If the Children's Court orders the Secretary to submit an assessment report, the registrar at the venue of the Court at which the order is made must, within one working day after the making of the order—

- (a) orally notify him or her of the making of the order; and
- (b) forward a copy of the order to him or her.

55 Warning to be given to persons being interviewed

The author of an assessment report must at the beginning of any interview being conducted by him or her in the course of preparing the report inform the person being interviewed that any information that he or she gives may be included in the report.

56 Disputed report

- (1) If any matter in an assessment report is disputed by the person who is the subject of the report, the Children's Court must not take the disputed matter into consideration when deciding whether to make a personal safety intervention order unless satisfied that the matter is true on the balance of probabilities.
- (2) If—
 - (a) an assessment report, or any part of it, is disputed by the person who is the subject of the report; and
 - (b) the author of the report does not attend the hearing of the proceeding despite having been required to attend under section 59(1)—

the Children's Court must not take the report or the part in dispute into consideration when determining the proceeding unless the person consents to the report or the part in dispute being admitted into evidence.

57 Content of assessment report

An assessment report must include—

- (a) the matters that the Children's Court considers relevant to the proceeding, including any psychological or psychiatric assessment of the person who is the subject of the report; and
- (b) any other matter that the Children's Court directs to be included.

58 Secretary to forward report to Children's Court

- (1) If the Children's Court orders the Secretary to submit an assessment report to the court, he or she must do so within 21 days and not less than 3 working days before the hearing.
- (2) If the Secretary is of the opinion that information contained in the report will be or may be prejudicial to the physical or mental health of the person who is the subject of the report, the Secretary may forward a statement to the Children's Court to that effect with the report.

59 Attendance at court of author of assessment report

- (1) The author of an assessment report ordered under section 53 may be required to attend to give evidence at the hearing of the proceeding by a notice given in accordance with subsection (2) by—
 - (a) the person in respect of whom the report has been prepared; or
 - (b) with the leave of the court, a party to the proceeding; or
 - (c) the Children's Court.

- (2) A notice under subsection (1) must be—
- (a) in writing; and
 - (b) filed in the proper venue of the court as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (3) On the filing of a notice under subsection (1), the registrar must immediately arrange for the author of the report to be notified that his or her attendance is required on the return date.
- (4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the Children's Court under subsection (1), he or she fails, without sufficient excuse, to attend as required.
- (5) The author of a report who has been required under subsection (1) by the person or a party to attend at the hearing of a proceeding—
- (a) must, if required by the person or party (as the case requires), be called as a witness; and
 - (b) if called as a witness, may be cross-examined on the contents of the report by the person or a party, whether or not that person required the author of the report to attend.

S. 59(2)(b)
amended by
No. 52/2013
s. 73(1).

S. 59(3)
amended by
No. 52/2013
s. 73(2).

60 Confidentiality of assessment reports

- (1) The Children's Court may impose conditions on access to an assessment report, including conditions about who can access the report or part of the report.
- (2) Subject to any contrary direction by the court, a person who prepares or receives or otherwise is given or has access to an assessment report, or any part of such a report, must not, without the consent of the person who is the subject of the report, disclose any information contained in that

report or part report (as the case requires) to any person who is not entitled to receive or have access to that report or that part (as the case requires).

Penalty: 10 penalty units.

- (3) A reference in this section to a report includes a reference to a copy of a report

Division 6—Making final orders

61 Power of court to make final order

- (1) The court may make a final order if the court is satisfied, on the balance of probabilities, that—
- (a) the respondent has—
 - (i) committed prohibited behaviour against the affected person and—
 - (A) is likely to continue to do so or do so again; and
 - (B) the respondent's prohibited behaviour would cause a reasonable person to fear for his or her safety; or
 - (ii) stalked the affected person and is likely to continue to do so or do so again; and
 - (b) the respondent and the affected person are not family members; and
 - (c) it is appropriate in all the circumstances of the case to make a final order.

Note

See section 33, which provides that the court may take into account mediation assessment or mediation certificates and a party's lack of attendance at a mediation assessment or mediation when deciding whether to make a personal safety intervention order.

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- (2) Without limiting subsection (1)(c), in deciding whether it is appropriate to make a final order the court may consider—
- (a) if the respondent is a child, the respondent's ability to do the following, taking into account his or her age and maturity—
 - (i) understand the nature and effect of a final order; and
 - (ii) comply with the conditions of the final order;
 - (b) if the court is satisfied that the respondent has a cognitive impairment, the respondent's ability to do the following, taking into account his or her cognitive impairment—
 - (i) understand the nature and effect of a final order; and
 - (ii) comply with the conditions of the final order.
- (3) A final order may be made in respect of more than one affected person if—
- (a) the court is satisfied in accordance with subsection (1) in respect of each affected person; or
 - (b) consent has been given, or the making of the order has not been opposed, in accordance with section 64 by—
 - (i) all the parties to the proceeding; and
 - (ii) if the application for the final order was brought with the consent of an affected person's parent or guardian, that parent or guardian.

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- (4) Despite subsection (1), the court must not make a final order if satisfied on the balance of probabilities that the respondent engaged in the prohibited behaviour or stalking without malice—
- (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
 - (b) for the purpose of an industrial dispute; or
 - (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.
- (5) The court may make a final order whether or not—
- (a) some or all of the prohibited behaviour or stalking constituting grounds for making the order occurred outside Victoria, so long as the affected person was in Victoria at the time at which that conduct occurred;
 - (b) the affected person was outside Victoria at the time at which some or all of the prohibited behaviour or stalking constituting grounds for making the order occurred, so long as that conduct occurred in Victoria.

62 No final order if existing family violence intervention order

The court must not make a final order under section 61 or 64 if there is an existing family violence intervention order for which—

- (a) the affected person is a protected person and the respondent is a respondent; or

- (b) the respondent is a protected person and the affected person is a respondent.

Example

B is a protected person under a family violence intervention order; C is a respondent for that order. The court cannot make a final order to protect C from B or to protect B from C.

63 Power to make final order if affected person has not consented to application or order—police applicants

S. 63
(Heading)
amended by
No. 16/2011
s. 8(1).

- (1) If the applicant for a final order is a police officer, the court may make the order under section 61 even if the affected person has not consented to the making of the application.
- (2) However, if the affected person does not consent to the making of the final order, the final order may include only conditions referred to in section 67(2)(a), (b), (f), (g) or (h).
- (3) Subsection (2) does not apply if—
- (a) the affected person is a child and—
 - (i) no adult affected person is included in the application; or
 - (ii) the adult affected person included in the application consents to the making of the order; or
 - (b) the affected person has a guardian and the guardian has consented to the application; or
 - (c) the affected person is cognitively impaired.

S. 63(2)
amended by
No. 16/2011
s. 8(2).

S. 63(3)(a)
substituted by
No. 16/2011
s. 8(3).

64 Consent orders

- (1) If the parties to a proceeding for a final order, or the variation, extension or revocation of a final order, consent to the making of the order or do not oppose the making of the order, the court may make the order—
- (a) without being satisfied as to any matter referred to in—

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- (i) section 61; or
 - (ii) in the case of a proceeding for a variation, revocation or extension of a final order, section 80 or 83; and
- (b) whether or not the respondent admits to any or all of the particulars of the application.
- (2) However—
- (a) if the respondent is a child, the court may—
 - (i) make a final order to which the parties consent or have not opposed only if the court is satisfied as to all relevant matters referred to in section 61; or
 - (ii) in the case of a proceeding for a variation, revocation or extension of a final order, make an order varying, revoking or extending the final order to which the parties consent or have not opposed only if the court is satisfied as to all relevant matters referred to in section 80 or 83;
 - (b) if the respondent is an adult, the court may refuse to make a final order to which the parties consent or have not opposed if the court believes that in all the circumstances of the case it is not appropriate to make the order, having regard to the matters set out in section 61(2).
- (3) If the application for the personal safety intervention order or the variation, revocation or extension of the personal safety intervention order was made with the consent of an affected person's parent or guardian, that parent or guardian is taken to be a party for the purposes of consenting to or not opposing the making of the order.

- (4) Before making a final order or varying, revoking or extending a final order under subsection (1), the court may conduct a hearing in relation to the particulars of the application if, in the court's opinion, it is in the interests of justice to do so.
- (5) A court may refuse to make a final order to which the parties to the proceeding have consented or have not opposed if the court believes that the order may pose a risk to the safety of one of the parties or a child of the protected person or respondent.
- (6) Section 82 continues to apply in relation to any other person protected by the personal safety intervention order, whether or not the court decides to make an order varying, revoking or extending a final order under subsection (1).

Division 7—Conditions on personal safety intervention orders

Subdivision 1—General

65 Definition

In this Division—

residence, in relation to a protected person, means a place of residence that is shared, has been shared or is proposed to be shared by the person and the respondent for the application for a personal safety intervention order.

66 Court to consider possibility of mediation in deciding conditions

In deciding the conditions to be included in a personal safety intervention order, the court must consider including conditions that will not prevent mediation occurring.

67 Conditions to be included in a personal safety intervention order

- (1) The court may include in a personal safety intervention order any conditions that appear to the court necessary or desirable in the circumstances.
- (2) Without limiting subsection (1), a personal safety intervention order may include conditions—
 - (a) prohibiting the respondent from committing prohibited behaviour against the protected person; and
 - (b) prohibiting the respondent from stalking the protected person; and
 - (c) excluding the respondent from the protected person's residence; and
 - (d) prohibiting the respondent from approaching, telephoning or otherwise contacting the protected person, unless in the company of a police officer, dispute assessment officer, mediator or a specified person; and

Examples

- 1 Emailing the protected person.
 - 2 Sending text messages to the protected person.
- (e) prohibiting the respondent from being anywhere within a specified distance of the protected person or a specified place, including the place where the protected person lives; and
 - (f) prohibiting the respondent from causing another person to engage in conduct prohibited by the order; and

- (g) revoking or suspending a weapons approval held by the respondent or a weapons exemption applying to the respondent as provided by section 69; and
 - (h) cancelling or suspending the respondent's firearms authority as provided by section 69.
- (3) If the respondent is a child, the court may only make a condition excluding the respondent from the protected person's residence in accordance with section 71.
- (4) In the case of a personal safety intervention order against a respondent who is a student, this section applies subject to Subdivision 3.

68 Court to enquire about firearms and weapons

If the court intends to make a personal safety intervention order, the court must enquire as to whether the respondent—

- (a) holds a firearms authority; or
- (b) is a person in respect of whom a weapons exemption applies; or
- (c) holds a weapons approval.

69 Suspension or cancellation of firearms authority etc.

If the court makes a personal safety intervention order, the court may—

- (a) if the personal safety intervention order is an interim order, include a condition in the order suspending the respondent's firearms authority or weapons approval or suspending the application of the weapons exemption to the respondent; or
- (b) if the personal safety intervention order is a final order, include a condition in the order cancelling the respondent's firearms authority or revoking the respondent's

weapons approval or revoking the application of the weapons exemption to the respondent.

70 Excluded person to provide new address

- (1) If the court includes an exclusion condition in a personal safety intervention order, the court must—
 - (a) ask the respondent to provide an address for the service of documents; and
 - (b) advise the respondent that if a police officer is unable to locate the respondent to serve the respondent with a document under this Act the police officer may, under section 181, seek information about the respondent from public sector organisations.
- (2) Without limiting subsection (1)(a), the address may be an email address.

Note

See the **Electronic Transactions (Victoria) Act 2000** which provides that written information that is required or permitted to be given to a person (other than the delivery of information or a document required to be effected only by personal service) may, with the person's consent, be given by means of an electronic communication. See also section 506(5) of the **Residential Tenancies Act 1997** which provides for the service by email of documents under that Act.

- (3) The respondent is not obliged to comply with the request to provide an address.
- (4) If the respondent provides an address under subsection (1) other than the address where the respondent lives or works and another person living at the address advises the court that the person does not consent to the use of the address for the service of documents under this Act, the address is not a valid address for the service of the documents.

Subdivision 2—Conditions excluding child respondent from residence

71 Exclusion of child respondent from residence

- (1) This section applies if the court decides to make a personal safety intervention order against a respondent who is a child.
- (2) In making a decision about whether to include an exclusion condition in the personal safety intervention order, the court must have regard to all the circumstances of the case, including the following—
 - (a) the desirability of minimising disruption to the protected person and any child living with the protected person and the importance of maintaining social networks and support which may be lost if the protected person and the child were required to leave the residence or were unable to return to or move into the residence;
 - (b) the desirability of continuity and stability in the care of any child living with the protected person;
 - (c) the desirability of allowing any childcare arrangements, education, training or employment of the protected person or any child living with the protected person to continue without interruption or disturbance;
 - (d) the desirability of the respondent being supported to gain access to appropriate educational services and health services;
 - (e) the desirability of allowing the education, training or employment of the respondent to continue without interruption.

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- (3) The court may include an exclusion condition in the order only if it is satisfied that if the respondent is excluded from the residence the respondent will have appropriate alternative accommodation and appropriate care and supervision.
- (4) If the respondent is an Aboriginal or Torres Strait Islander child, for the purposes of deciding under subsection (3) whether the respondent will have appropriate alternative accommodation and appropriate care and supervision, the court must have regard to the following—
- (a) as a priority, an Aboriginal or Torres Strait Islander child should live within the child's Aboriginal or Torres Strait Islander extended family or relatives or, if that is not possible, other extended family or relatives;
 - (b) the need for the child to keep the child's culture and identity through contact with the child's community.
- (5) If the court includes an exclusion condition in the personal safety intervention order, the court must notify the Secretary to the Department of Human Services that the order has been made.

72 Court may ask Secretary to Department of Human Services for report

- (1) For the purposes of considering a matter referred to in section 71(2), (3) or (4), the court may ask the Secretary to the Department of Human Services to give the court a report about the options available for the appropriate accommodation, care and supervision of the child if the exclusion condition were included in the personal safety intervention order.

- (2) If the Secretary receives a request under subsection (1)—
- (a) the Secretary must give the report to the court in the period ordered by the court or, if no period is ordered, within the prescribed time; and
 - (b) for a request relating to a child under the age of 17 years, section 30 of the **Children, Youth and Families Act 2005** applies in relation to the request for the report as if the request were a report received under section 28 of that Act.

Subdivision 3—Conditions preventing a respondent attending school

73 Meaning of *training*

In this Subdivision—

training means training—

- (a) whether by way of course, instruction or practical training in the knowledge and skills required for a vocation; and
- (b) that is undertaken within a school.

74 Court to consider whether conditions may prevent respondent attending school

- (1) If the respondent is a student or wishes to become a student, before including in a personal safety intervention order a condition that—
- (a) prohibits the respondent from being on the school's premises or anywhere within a specified distance of the school's premises; or
 - (b) prohibits the respondent from being anywhere within a specified distance of the protected person; or

(c) prohibits the respondent approaching the protected person—

the court must consider whether that condition may prevent the respondent attending the school at which the respondent is a student, or wishes to become a student.

(2) The following persons may, with leave of the court, give evidence as to whether a condition referred to in subsection (1) would prevent the respondent attending the school—

(a) the principal, a teacher or a representative of the school at which the respondent is a student or wishes to become a student; or

(b) a representative of the Department of Education and Early Childhood Development.

75 Court may request report from Department of Education and Early Childhood Development

(1) In deciding whether to include in a personal safety intervention order a condition referred to in section 74(1), the court may ask the Secretary to the Department of Education and Early Childhood Development to give the court a report that contains—

(a) options for alternative education or training for the respondent;

(b) any information that may assist the court in assessing whether a condition referred to in subsection (1) would prevent the respondent attending the school.

(2) For the purposes of subsection (1)(b), *information* means information—

(a) that is held by the Department of Education and Early Childhood Development; or

- (b) that has been provided to the Department of Education and Early Childhood Development under the **Education and Training Reform Act 2006**; or
 - (c) that is held by a Government school (within the meaning of the **Education and Training Reform Act 2006**).
- (3) If the Secretary to the Department of Education and Early Childhood Development receives a request under subsection (1), the Secretary must give the report to the court in the period ordered by the court or, if no period is ordered, within the prescribed time.
- (4) To avoid doubt, nothing in this section allows or requires a report requested under subsection (1) to contain information about the appropriateness of making the personal safety intervention order.

Division 8—Explanation of final order

76 Explanation of final order

- (1) If the court makes a final order and the respondent or protected person (or both) are before the court, the court must explain to the respondent and the protected person (or whichever of them is before the court)—
- (a) the purpose, terms and effect of the final order, including the effect of the order on any firearms authority or weapons approval held by the respondent or weapons exemption which applies to the respondent; and
 - (b) the consequences and penalties that may follow if the respondent fails to comply with the terms of the final order; and

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- (c) that the final order is a civil order of the court and the protected person cannot give permission to contravene the final order.
- (2) An explanation under subsection (1) must be a clear oral explanation.
- (3) Also, the court must give the protected person and the respondent a written notice containing—
- (a) the information referred to in subsection (1); and
 - (b) the prescribed information.
- (4) A written notice under subsection (3) may be accompanied by written information about any relevant services that may be available to the protected person or respondent, including counselling services, drug and alcohol services, disability services, financial counselling services, mental health services and advocacy services.
- (5) A failure by the court to explain a final order or give a written notice in accordance with this section does not affect the validity of the order.

Division 9—Duration of final order

77 Court may specify period for which order in force

- (1) The court may specify in a final order the period for which the order is in force.
- (2) In making a decision as to the period for which the final order is to be in force, the court must take into account—
- (a) any assessment by the applicant of the level and duration of the risk from the respondent; and

- (b) if the applicant is not the protected person, the protected person's views, including the protected person's assessment of the level and duration of the risk from the respondent.
- (3) The court may also take into account any matters raised by the respondent that are relevant to the duration of the order.

78 Period for which order remains in force if respondent a child

If the respondent is a child, the period specified in the final order for which the order is to remain in force must not be more than 12 months unless there are exceptional circumstances.

79 Duration of order

A final order remains in force—

- (a) if a period is specified in the order, for the specified period unless it is sooner revoked by the court or set aside on appeal; or
- (b) if no period is specified in the order, until it is revoked by the court or set aside on appeal.

Division 10—Variation, revocation and extension of personal safety intervention orders

Subdivision 1—Variation and revocation of personal safety intervention orders

80 Power of court to vary or revoke personal safety intervention order

- (1) The court may order the variation or revocation of a personal safety intervention order on an application under this Division.

- (2) In deciding whether to make an order under subsection (1), the court must have regard to all the circumstances of the case and, in particular, the following—
- (a) the applicant's reasons for seeking the variation or revocation;
 - (b) the safety of the protected person;
 - (c) the protected person's views about the variation or revocation;
 - (d) whether or not the protected person is legally represented;
 - (e) if the protected person has a guardian, the guardian's views.

Note

See section 33, which provides that the court may take into account mediation assessment or mediation certificates and a party's lack of attendance at a mediation assessment or mediation when deciding whether to vary or revoke a personal safety intervention order.

- (3) If the court decides not to grant an application for the revocation of a personal safety intervention order, the court may instead order the variation of the intervention order in the way the court considers appropriate.

81 Court may make interim order on application for variation of personal safety intervention order

- (1) If a person makes an application for a variation of a personal safety intervention order under this Division, the court may make an interim order varying the personal safety intervention order.

- (2) For the purposes of subsection (1), Division 3 applies (with any necessary changes) to the making of an interim order varying a personal safety intervention order as if it were the making of an interim order under that Division.

Note

Division 1 applies to applications for variations, revocations or extensions of personal safety intervention orders. See the definition of *personal safety intervention order* in section 4.

- (3) Section 87(2) does not apply to the making of an interim order under subsection (1).

82 Additional protection in varying or revoking orders

- (1) Before varying or revoking a personal safety intervention order, the court must decide whether there has been any change in the need to protect another person protected by the order from being subjected to prohibited behaviour or stalking by the respondent for the personal safety intervention order.
- (2) The court may refuse to vary or revoke the personal safety intervention order, or may vary the order in a way that differs from the variation sought in the application, if the court is satisfied, on the balance of probabilities, that it is necessary to do so to ensure the safety of another person protected by the order.

Subdivision 2—Extension of final order

83 Power of court to extend final order

- (1) The court may order the extension of a final order on an application under this Division.
- (2) The court may order the extension of a final order if the court is satisfied, on the balance of probabilities, that if the order is not extended the respondent is likely to commit prohibited behaviour or stalking against the protected person.

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- (3) Subsection (2) applies whether or not the respondent has—
- (a) committed prohibited behaviour or stalking against the protected person while the final order was in force; or
 - (b) complied with the order while it has been in force.

84 Interim extension order

- (1) If a person applies for an extension of a final order before the expiry of the order and the respondent has not yet been served with notice of the application, the court may, if it considers necessary, make an interim order in the absence of the respondent extending the final order (an *interim extension order*).
- (2) An interim extension order expires 28 days after it is made, unless the respondent is earlier served with the notice of the application and a copy of the interim extension order.
- (3) The court may make more than one interim extension order if it has not been possible to serve the respondent with notice of the application and a copy of the interim extension order.
- (4) If, within 28 days of making the interim extension order, the respondent is served with notice of the application and a copy of the interim extension order, the interim extension order remains in force until—
 - (a) if the court extends the final order and the final order includes an order that the interim extension order continues until the final order is served on the respondent, when the final order is served on the respondent; or

- (b) if the court extends the final order and the final order does not include an order about the interim extension order continuing as referred to in paragraph (a), at the time the final order is made; or
- (c) if the court refuses to extend the final order in relation to the application, at the time of the court's refusal; or
- (d) if the interim extension order is revoked by the court, at the time of the revocation; or
- (e) if the application for the extension of the final order is withdrawn, at the time of the withdrawal.

Subdivision 3—Application to vary, revoke or extend personal safety intervention order

85 Who may apply to vary, revoke or extend personal safety intervention order

- (1) An application to vary, revoke or extend a personal safety intervention order may be made to the court by—
 - (a) a party to the proceeding in which the order was made; or

Note

See the definition of *party* in section 4 which provides that the protected person is a party to the proceeding, whether or not the person is the applicant for the proceeding.

- (b) if the protected person is a child—
 - (i) a parent of the child; or
 - (ii) any other person with the written consent of a parent of the child; or
- (c) if the protected person is a child who is 14 years of age or more, the protected person with the leave of the court; or

- (d) if a police officer was not a party to the proceeding in which the personal safety intervention order was made, a police officer; or
 - (e) if the protected person has a guardian and the guardian was not a party to the proceeding in which the personal safety intervention order was made, the guardian.
- (2) For the purposes of subsection (1)(a), if a party to the proceeding in which the personal safety intervention order was made was a police officer or an officer of another organisation—
- (a) the application may be made by any other police officer or officer of the organisation; and
 - (b) that police officer or officer is taken to be a party to the original proceeding.
- (3) When a person makes an application under this section, a court official may provide information about mediation to that person.

S. 85(3)
amended by
No. 52/2013
s. 74.

86 Application made by respondent for variation or revocation of personal safety intervention order

- (1) For the purposes of section 85(1)(a), the respondent for a personal safety intervention order may apply for the variation or revocation of the order only if the court has given leave for the respondent to make the application.
- (2) The court may grant leave under subsection (1) only if the court is satisfied that—
- (a) there has been a change in circumstances since the personal safety intervention order was made; and
 - (b) the change may justify a variation or revocation of the order.

87 Application made by police officer

- (1) If the applicant for the variation or extension of a personal safety intervention order is a police officer, the application may be made without the consent of the protected person.
- (2) However, if the protected person does not consent to the variation or extension of the personal safety intervention order—
 - (a) the personal safety intervention order may be varied only to include conditions referred to in section 67(2)(a), (b), (f), (g) or (h); and
 - (b) the personal safety intervention order may be extended if the order is only subject to conditions referred to in paragraph (a); and
 - (c) conditions must not be removed from the personal safety intervention order.
- (3) Subsection (2) does not apply if—
 - (a) the protected person is a child and—
 - (i) no adult is protected by the personal safety intervention order; or
 - (ii) the adult protected by the personal safety intervention order consents to the variation or extension of the order; or
 - (b) the protected person has a guardian and the guardian has consented to the application; or
 - (c) the protected person is cognitively impaired.
- (4) To avoid doubt, it is declared that a police officer is not obliged, if asked by the protected person, to make an application for the variation or revocation of a personal safety intervention order or the extension of a final order.

**S. 87(2)
amended by
No. 16/2011
s. 9(1).**

**S. 87(3)(a)
substituted by
No. 16/2011
s. 9(2).**

88 Consent required if applicant is not protected person, guardian, respondent or police officer

- (1) If the applicant for the variation, revocation or extension of a personal safety intervention order is not the protected person, the protected person's guardian, the respondent for the order or a police officer, the application may only be made with the written consent of—
- (a) the protected person; or
 - (b) if the protected person is a child, a parent of the child; or
 - (c) if the protected person has a guardian, the guardian.
- (2) On an application under subsection (1)—
- (a) the personal safety intervention order may be varied only to include conditions referred to in section 67(2)(a), (b), (f), (g) or (h); and
 - (b) the personal safety intervention order may be extended if the order is only subject to conditions referred to in paragraph (a); and
 - (c) conditions must not be removed from the intervention order.

89 Protected person's views to be heard separately in certain circumstances

- (1) This section applies if—
- (a) an application for a variation, revocation or extension of a personal safety intervention order is made—
 - (i) by a parent or other person with the parent's consent in respect of a protected person who is a child; or

- (ii) by a protected person's guardian or other person with the guardian's consent in respect of a protected person; or
- (iii) by a police officer; and
- (b) the protected person objects to the application.

Note

In relation to resolving an issue between the guardian and the affected person, see sections 30 and 61 of the **Guardianship and Administration Act 1986**. Section 30 provides that the guardian may seek advice from the Victorian Civil and Administrative Tribunal and section 61 provides for the reassessment of a guardianship order by the Tribunal.

- (2) At the hearing for the variation, revocation or extension of the personal safety intervention order, the views of the protected person must be heard separately from the views of the applicant.
- (3) Without limiting subsection (2), the views of the protected person may be heard through an independent legal representative acting on behalf of the person.
- (4) This section applies despite anything in section 49 or 107.

Subdivision 4—Service of applications for variations, revocations or extensions of orders

90 Persons on whom application must be served

The appropriate registrar for the court must serve a copy of an application made under this Division on the following persons, other than the applicant—

- (a) each party to the proceeding under which the personal safety intervention order was made;

Note

See the definition of *party* in section 4 which includes the protected person, whether or not the person is the applicant.

- (b) if the protected person is a child, a parent of the child;
- (c) if the protected person has a guardian, the guardian.

Division 11—Appeals and rehearings

Subdivision 1—Appeals to County Court and Supreme Court

91 Who may appeal

- (1) A party to a proceeding under this Act may appeal against an order of the court in the proceeding or a refusal of the court to make an order (a *relevant decision*).
- (2) Despite subsection (1)—
- (a) an appeal against an order referred to in section 95 may be made only with the consent of the relevant person under that section; and
- (b) a person declared to be a vexatious litigant by an order under Part 10 may not appeal under this Subdivision against the making of the order; and

Note

See section 167 which provides for the right of a person declared under Part 10 to be a vexatious litigant to appeal against the order making the declaration.

- (c) a person declared to be a vexatious litigant may appeal against a relevant decision (other than a decision referred to in paragraph (b)) only if granted leave under section 168.

92 Court to which appeal must be made

The appeal must be made to—

- (a) the County Court; or
- (b) if the court that made the relevant decision was the Children's Court constituted by the President of the Court, the Trial Division of the Supreme Court.

93 Notice of appeal

- (1) A person makes an appeal under this Subdivision by filing notice of the appeal with the court that made the relevant decision.
- (2) The notice must—
 - (a) include the prescribed particulars; and
 - (b) be signed by the appellant; and
 - (c) be filed within 30 days after the day the relevant decision was made.
- (3) The appropriate registrar for the court must serve notice of the appeal on—
 - (a) the other parties to the proceeding in which the relevant decision was made; and
 - (b) if the appeal relates to a personal safety intervention order for a protected person who is a child and the application for the order was made with the consent of a parent, that parent; and
 - (c) if the appeal relates to a personal safety intervention order for a protected person who is a child and the order was made without the child's consent, a parent of the child with

whom the child normally or regularly resides; and

(d) if the appeal relates to a personal safety intervention order for a protected person who has a guardian, the guardian.

S. 93(4)
amended by
No. 52/2013
s. 75(a).

(4) The appropriate registrar for the court must also cause the notice of appeal to be transmitted—

S. 93(4)(a)
amended by
No. 52/2013
s. 75(b).

(a) to the County Court if the appeal is to that Court; and

S. 93(4)(b)
amended by
No. 52/2013
s. 75(b).

(b) to the Supreme Court if the appeal is to that Court.

94 Stay of relevant decision

- (1) An appeal made to the County Court or the Supreme Court under this Subdivision does not stay the operation of the relevant decision.
- (2) However, the court that made the relevant decision may, on the application of a party to the proceeding, stay the operation of the relevant decision or any part of the relevant decision pending the determination of the appeal.
- (3) In staying the operation of the relevant decision or any part of the relevant decision, the court may impose bail conditions on the appellant, as if the appellant were an accused person being released from custody on bail, if the court considers it necessary—
 - (a) for the protection of a protected person; or
 - (b) to require a party to the proceeding to attend court for the appeal.

95 Appeals not to commence if certain persons object

- (1) If the relevant decision relates to a personal safety intervention order and the application for the order was made by a person other than the protected person, the County Court or the Supreme Court must not start or continue the hearing of the appeal if—
 - (a) the appeal is made by the applicant for the personal safety intervention order; and
 - (b) any of the following persons objects to the appeal—
 - (i) the protected person;
 - (ii) for an application made in relation to a protected person who is a child and with the consent of a parent, the parent;
 - (iii) for an application made in relation to a protected person who has a guardian, the guardian.
- (2) Nothing in this section prevents an appeal on the basis of a jurisdictional error.

96 Conduct of appeal

- (1) The appeal is by way of a rehearing by the County Court or the Supreme Court.

Note

See section 92 which provides that the appeal is to the County Court unless the relevant decision was made by the Children's Court constituted by the President of the Court, in which case the appeal is to the Trial Division of the Supreme Court.

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- (2) On the appeal, the County Court or Supreme Court may—
- (a) confirm the relevant decision; or
 - (b) set aside the relevant decision; or
 - (c) vary the relevant decision and make any other order the Magistrates' Court or Children's Court could have made and exercise any other powers that the Magistrates' Court or Children's Court may have exercised; or
 - (d) make a determination under section 176E(2) of the **Family Violence Protection Act 2008** and make any order the Magistrates' Court or Children's Court could have made and exercise any other powers that the Magistrates' Court or Children's Court may have exercised under Division 2 of Part 9A of that Act; or
 - (e) give a mediation direction under Division 2 of Part 3.

97 No further appeal

- (1) There is no appeal against the decision of the County Court or the Supreme Court under section 96.
- (2) Nothing in this section prevents an appeal from the County Court or the Supreme Court on the basis of a jurisdictional error.

98 Application of certain Acts to appeals

The provisions of this Act, the **Magistrates' Court Act 1989** or the **Children, Youth and Families Act 2005** (as the case requires) so far as applicable and with any modifications and adaptations as are necessary extend and apply to appeals under this Division.

Subdivision 2—Rehearings

99 Rehearing of certain proceeding

- (1) A relevant person may, in accordance with the rules, apply to the court for a rehearing of the proceeding only if—
 - (a) the application for the order—
 - (i) was not personally served on the respondent; and
 - (ii) was not brought to the respondent's attention under an order for substituted service; or
 - (b) there are exceptional circumstances and a rehearing is fair and just in all the circumstances of the case.
- (2) If the court is satisfied, on the balance of probabilities, that the grounds referred to in subsection (1) have been established, the court may rehear the matter.
- (3) An application under this section does not operate as a stay of the final order or order declaring a person to be a vexatious litigant.
- (4) If an applicant under this section fails to attend at the time fixed for the hearing of the application and the application is struck out, the applicant may reapply only with the leave of the court.
- (5) In this section—

relevant person means—

 - (a) the respondent for a final order; or
 - (b) a person declared to be a vexatious litigant under Part 10.

Division 12—Contravention of personal safety intervention order

100 Offence for contravention of personal safety intervention order

- (1) This section applies if a person against whom a personal safety intervention order has been made—
- (a) has been served with a copy of the order; or
 - (b) has had an explanation of the order given to the person in accordance with section 40 or 76.
- (2) The person must not contravene the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

101 Arrest for contravention of personal safety intervention order

If a police officer believes on reasonable grounds that a person has committed an offence against section 100, the officer may, without warrant, arrest and detain the person.

PART 4—JURISDICTION OF COURTS AND PROCEEDINGS

Division 1—Jurisdiction of courts

102 Definitions

In this Division—

Children's Court includes the Neighbourhood Justice Division of that Court;

Magistrates' Court includes the Neighbourhood Justice Division of that Court.

103 Jurisdiction of courts if affected person, protected person or respondent is a child

- (1) If the affected person, the protected person or the respondent is a child at the time the application is made, the Family Division of the Children's Court and the Magistrates' Court each have jurisdiction under this Act with respect to the application.
- (2) However, if the respondent is a child the application should, if practicable, be dealt with by the Children's Court.

104 Jurisdiction of Children's Court to deal with related applications

- (1) This section applies if—
 - (a) the Children's Court has jurisdiction to deal with an application under this Act because either the affected person, the protected person or the respondent is a child at the time the application is made; and
 - (b) the application has been made or transferred to the Children's Court; and
 - (c) an affected person, protected person or the respondent for a related application or a related order is an adult.

(2) The Children's Court also has jurisdiction under this Act in relation to the related application or related order.

(3) In this section—

related application means an application for an order on the grounds of the same or similar circumstances, and includes an application to vary, revoke or extend an order;

related order means an order made on the grounds of the same or similar circumstances.

S. 104A
inserted by
No. 52/2013
s. 76.

104A Jurisdiction of Children's Court to deal with applications related to child protection proceedings

(1) This section applies if—

- (a) an application under this Act is related to a child protection proceeding in the Children's Court; and
- (b) each affected person or protected person and each respondent for the application is an adult.

(2) The Children's Court also has jurisdiction under this Act in relation to the application.

(3) For the purposes of subsection (1), an application is related to a child protection proceeding if—

- (a) the child who is the subject of the child protection proceeding is the child of, or is under the care and supervision of, the affected person or protected person, or the respondent for the application; and
- (b) the application under this Act raises issues relating to the safety of the child that are the same as, or similar to, the issues forming the basis for the child protection proceeding.

(4) In this section—

child protection proceeding means a proceeding relating to a child protection order.

105 Transfer of applications

- (1) If an application is made under this Act to the Magistrates' Court and the Magistrates' Court considers that, in all the circumstances of the case, the matter should be dealt with by the Children's Court, the Magistrates' Court may discontinue the proceeding and order that it be transferred to the Children's Court.
- (2) If an application is made under this Act to the Children's Court and the Children's Court considers that, in all the circumstances of the case, the matter should be dealt with by the Magistrates' Court, the Children's Court may discontinue the proceeding and order that it be transferred to the Magistrates' Court.

106 Jurisdiction to revoke, vary or extend orders

- (1) A court has jurisdiction to revoke, vary or extend a personal safety intervention order made by it or any other court.
- (2) Without limiting subsection (1), the Magistrates' Court or Children's Court may, on an application made under this Act, revoke, vary or extend a personal safety intervention order confirmed or varied by the County Court or Supreme Court on appeal under Division 11 of Part 3.
- (3) However, the Magistrates' Court or Children's Court may revoke or vary a personal safety intervention order referred to in subsection (2) only if the Court is satisfied there are new facts or circumstances relevant to the order.

Division 2—Provisions about proceedings under this Act

107 Restriction on presence of children

- (1) A child must not be present during a proceeding under this Act if the child is—
 - (a) the affected person or protected person for the proceeding; or
 - (b) a family member of the respondent or the affected person or protected person in the proceeding; or
 - (c) in relation to a proceeding for an offence against this Act, the victim in relation to the alleged offence or the child of the alleged victim.
- (2) Subsection (1) does not apply if—
 - (a) the child is the respondent or accused for the proceeding; or
 - (b) the court makes an order allowing the child to be present.
- (3) Before making an order under subsection (2)(b), the court must consider—
 - (a) the desirability of protecting children from unnecessary exposure to the court system; and
 - (b) the harm that could occur to the child if the child is present while the court is conducting the proceeding.

108 Adjournment to seek legal advice

- (1) A court hearing a proceeding under this Act may, on its own initiative or on the application of a party to the proceeding, adjourn the hearing of the proceeding to give a party a reasonable opportunity to obtain legal advice.

- (2) The court may resume the proceeding if it is satisfied that the party has had a reasonable opportunity to obtain legal advice, whether or not that advice has been obtained.

109 Applicant who is police officer may be represented by another police officer

If a police officer is, in the police officer's professional capacity, a party to a proceeding under this Act, the police officer may be represented by—

- (a) another police officer; or
- (b) another person nominated by the Chief Commissioner of Police.

Note

See section 123 of the **Police Regulation Act 1958** which provides for immunity for police officers in certain circumstances in relation to acts done or omitted to be done in the course of the officer's duty.

110 Certification

- (1) If under this Act a person is required or permitted to certify a document—
- (a) the person must certify that the information contained in the document is true and correct to the best of the person's knowledge; and
 - (b) the document must include a statement that the person understands that making the certification knowing the document to be false in any particular constitutes an offence punishable by 120 penalty units.
- (2) A person must not certify a document under this Act if the person knows it to be false in any particular.

Penalty: 120 penalty units.

111 Costs

- (1) Each party to a proceeding for a personal safety intervention order under this Act must bear the party's own costs of the proceeding.
- (2) For a proceeding for an order under Part 10 to declare a person to be a vexatious litigant—
 - (a) if the person is declared to be a vexatious litigant, that person must bear the cost of the proceeding, other than the Attorney-General's costs if the Attorney-General is a party to the proceeding; and
 - (b) if the person is not declared to be a vexatious litigant, each party must bear the party's own costs.
- (3) Despite subsections (1) and (2)—
 - (a) the court may make an order about costs if the court decides that exceptional circumstances warrant otherwise in a particular case; or
 - (b) if the court is satisfied in a particular case that the making of any application under this Act was vexatious, frivolous or in bad faith, the court may award costs against the applicant.
- (4) If the court decides there are grounds to award costs against a person but the person is not present in court, the court may—
 - (a) adjourn the proceeding; and
 - (b) give the parties to the proceeding notice that an order for costs will be made on the next mention date unless the party against whom the costs will be awarded contests the making of the order on the mention date.

112 Concurrent criminal proceedings

- (1) The court may make a personal safety intervention order in relation to a person even though the person has been charged with an offence arising out of the same conduct referred to in the application.
- (2) The personal safety intervention order may be made at any time before or after the commencement of proceedings for the offence.

113 Personal safety intervention order against carer

If a court makes a personal safety intervention order against a carer to protect the carer's client, the appropriate registrar for the court must cause a copy of the order to be served on the employer or organisation for whom the carer provides the care to the client.

PART 5—ENFORCEMENT POWERS

113A Definitions

S. 113A
inserted by
No. 77/2013
s. 32.

In this Part—

interstate interim order means an order that—

- (a) is made under a corresponding interstate law; and
- (b) substantially corresponds to an interim order;

interstate order means—

- (a) a corresponding interstate order; or
- (b) an interstate interim order.

114 Entry and search of premises

- (1) A police officer may, without warrant, enter and search any premises where the officer on reasonable grounds believes a person to be if—
 - (a) the officer reasonably believes a person is on the premises in contravention of a personal safety intervention order; or
 - (b) the officer has the express or implied consent of an occupier of the premises to do so.
- (2) In order to enter premises under subsection (1), a police officer may, if it is necessary to do so, use reasonable force.
- (3) This section does not limit any other power that a police officer may have to enter premises under this or any other Act or at common law.

115 Surrender of firearms and weapons

- (1) This section applies if—
- (a) either—
 - (i) a personal safety intervention order has been made against a person or a police officer is satisfied, on the balance of probabilities, that there are grounds under section 35(1)(a) or 61(1)(a) for making an order against a person; or
 - (ii) a police officer intends to serve, or has served, on a person an interstate order or an application for an interstate order made against the person; and
 - (b) the police officer is aware the person has a firearm, a firearms authority, ammunition or a weapon in the person's possession.
- (2) Subject to section 116A, the police officer may—
- (a) direct the person to immediately surrender the firearm, firearms authority, ammunition or weapon to the police officer; or
 - (b) by written notice served on the person, direct the person to surrender the firearm, firearms authority, ammunition or weapon to a police officer at a specified place within a specified time or, if no time is specified, within 48 hours after the direction is given to the person.
- (3) A direction under subsection (2) must include the prescribed particulars.

S. 115(1)(a)
substituted by
No. 77/2013
s. 33(1).

S. 115(2)
amended by
No. 77/2013
s. 33(2).

- (4) A person given a direction under subsection (2) must not, without lawful excuse, fail to comply with the direction.

Penalty: In the case of a failure to comply with a direction to surrender a firearm,
60 penalty units;

In the case of a failure to comply with a direction to surrender a firearms authority, ammunition or a weapon,
30 penalty units.

116 Power of police officer to search premises for firearms etc. without warrant

- (1) This section applies if—

(a) either—

(i) a personal safety intervention order has been made against a person or a police officer is satisfied, on the balance of probabilities, that there are grounds under section 35(1)(a) or 61(1)(a) for making an order against a person; or

(ii) a police officer intends to serve, or has served, on a person an interstate order or an application for an interstate order made against the person; and

(b) the police officer is aware, or has reasonable grounds to suspect, the person is in possession of a firearm, a firearms authority, ammunition or a weapon.

- (2) Subject to section 116A, the police officer may, without warrant, enter and search—

(a) any premises at which the person resides or has resided; or

S. 116(1)(a)
substituted by
No. 77/2013
s. 34(1).

S. 116(2)
amended by
No. 77/2013
s. 34(2).

- (b) the premises at which the person committed or allegedly committed prohibited behaviour or stalking; or
 - (c) a vehicle registered in the person's name.
- (3) To enter premises or a vehicle under subsection (2), a police officer may, if it is necessary to do so, use reasonable force.

116A Applications for interstate orders—additional requirements for direction or search without warrant

S. 116A
inserted by
No. 77/2013
s. 35.

If a police officer intends to serve or has served an application for an interstate order on a person, the police officer must not give a direction under section 115(2) or enter and search premises or a vehicle under section 116(2) unless—

- (a) the police officer is satisfied, on the balance of probabilities, that the person has—
 - (i) committed prohibited behaviour against a person sought to be protected by the order and—
 - (A) is likely to continue to do so or do so again; and
 - (B) the person's prohibited behaviour would cause a reasonable person to fear for his or her safety; or
 - (ii) stalked a person sought to be protected by the order and is likely to continue to do so or do so again; or
- (b) the police officer believes on reasonable grounds that the direction is, or entry and search are, necessary to ensure the safety of a person sought to be protected by the order pending final determination of the application.

117 Warrants to search premises and vehicles

- (1) A police officer may apply to a magistrate for the issue of a search warrant in relation to particular premises (including any vehicle on or in those premises) or a particular vehicle located in a public place if—
- (a) the police officer intends to apply for a personal safety intervention order against a person or an order has been made against a person; and
 - (b) the police officer believes on reasonable grounds—
 - (i) the person is committing or is about to commit an offence against this Act; or
 - (ii) the person is in possession of a firearm, a firearms authority, ammunition or a weapon at premises or in a vehicle, other than premises at which the person resides or has resided or at which the person committed or allegedly committed prohibited behaviour or a vehicle registered in the person's name.

S. 117(1A)
inserted by
No. 77/2013
s. 36(1).

- (1A) A police officer may apply to a magistrate for the issue of a search warrant in relation to particular premises (including any vehicle on or in those premises) or a particular vehicle located in a public place if—
- (a) the police officer intends to serve, or has served, on a person an interstate order or an application for an interstate order made against the person; and
 - (b) the police officer believes on reasonable grounds that the person is in possession of a firearm, a firearms authority, ammunition or a weapon at premises or in a vehicle, other than premises at which the person resides or

has resided or at which the person committed or allegedly committed prohibited behaviour or a vehicle registered in the person's name.

- (2) If the magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that an offence against this Act is being or is about to be committed or the person is in possession of a firearm, firearms authority, ammunition or a weapon, the magistrate may issue a search warrant authorising the police officer named in the warrant and any assistants the police officer considers necessary—
- (a) to enter the premises or vehicle named or described in the warrant; and
 - (b) to search for and seize—
 - (i) any evidence of the offence named or described in the warrant; or
 - (ii) any firearms, firearms authority, ammunition or weapon as specified in the warrant.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
- (a) if the grounds for seeking the warrant are the grounds referred to in subsection (1)(b)(i), the offence suspected; and
 - (b) if the grounds for seeking the warrant are the grounds referred to in subsection (1)(b)(ii) or (1A), the reason it is necessary to search for the firearm, firearms authority, ammunition or a weapon in the person's possession; and
 - (c) the premises or vehicle to be searched; and

**S. 117(3)(b)
amended by
No. 77/2013
s. 36(2).**

- (d) a description of the evidence or firearm, firearms authority, ammunition or a weapon to be searched for; and
 - (e) any conditions to which the warrant is subject; and
 - (f) whether entry is authorised to be at any time or during stated hours; and
 - (g) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the prescribed form under that Act.
- (5) The rules to be observed with respect to search warrants set out by or under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

118 Announcement before entry

- (1) Before executing a search warrant, the police officer named in the warrant or person assisting must—
- (a) announce that he or she is authorised by warrant to enter the premises or the vehicle located in a public place, as the case requires; and
 - (b) give any person at the premises or on or in the vehicle an opportunity to allow entry to the premises or the vehicle.
- (2) The police officer or a person assisting the police officer need not comply with subsection (1) if the police officer or assistant believes, on reasonable grounds, that immediate entry to the premises or vehicle is required to ensure—

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- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.
- (3) To enter premises or a vehicle under the search warrant, a police officer may, if it is necessary to do so, use reasonable force.
- (4) To avoid doubt, the authority given by subsection (3) is in addition to any authority given by section 78(1)(b) of the **Magistrates' Court Act 1989**.

119 Copy of the warrant to be given to occupier

- (1) If the occupier or another person who apparently represents the occupier is present at the premises when a search warrant is being executed, the police officer must—
- (a) identify himself or herself to the person as a police officer; and
 - (b) give that person a copy of the execution copy of the warrant.
- (2) If there is a person in charge of the vehicle located in a public place when a search warrant is being executed, the police officer must—
- (a) identify himself or herself to the person as a police officer; and
 - (b) give that person a copy of the execution copy of the warrant.

120 Seizure of firearms etc.

If a person fails to comply with a direction given to the person under section 115(2), or a police officer searches premises under section 116(2), the police officer—

- (a) must seize any firearm or firearms authority the officer is aware is in the person's possession; and

- (b) may seize ammunition or a weapon the officer is aware is in the person's possession.

121 Effect of surrender or seizure of firearm, weapon or other article if final order made against person

S. 121(1)
amended by
No. 77/2013
s. 37(1).

- (1) If a person's firearm, firearms authority or ammunition is surrendered under section 115 or seized under section 117 or 120 and a final order or a corresponding interstate order has been or is made against the person, the firearm, firearms authority or ammunition must be—
- (a) returned to the person if—
- (i) the person is declared, under the **Firearms Act 1996**, not to be a prohibited person; and
- (ii) the firearms, firearms authority or ammunition is not required as evidence in further proceedings under this Act or another Act or is not subject to forfeiture after a proceeding for an offence under this Act or another Act; or
- (b) if paragraph (a) does not apply and the period during which, under section 47A(2) of the **Firearms Act 1996**, the person may make an application under section 189 of that Act has ended or the application has been refused, forfeited to the Crown or disposed of in accordance with directions in the order or, if there are no such directions, forfeited to the Crown or disposed of under the **Firearms Act 1996**.
- (2) If a person's weapon is surrendered under section 115 or seized under section 117 or 120 and a final order or a corresponding interstate order has been or is made against the person, the weapon must be—

S. 121(2)
amended by
No. 77/2013
s. 37(2)(a).

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- (a) returned to the owner if—
- (i) the person is declared, under the **Firearms Act 1996**, not to be a prohibited person; and
 - (ii) the weapon is not required as evidence in further proceedings under this Act or another Act or is not subject to forfeiture after a proceeding for an offence under this Act or another Act; or
- (b) if paragraph (a) does not apply and the person has not made an application under section 189 of the **Firearms Act 1996** within 3 months after the making of the final order or the corresponding interstate order or the person has made an application and it has been refused, forfeited to the Crown or disposed of in accordance with directions in the order.
- (3) If an article other than one referred to in subsection (1) or (2) is seized from a person under section 117 or 120 and a final order or a corresponding interstate order has been or is made against the person, the article must be returned to the person unless—
- (a) the article is required as evidence in further proceedings under this Act or another Act; or
 - (b) the article is subject to forfeiture after a proceeding for an offence under this Act or another Act.
- (4) If a firearm, weapon or other article is disposed of by sale under this section in accordance with directions in an order, the proceeds of the sale must be paid to the owner of the firearm, weapon or other article.

S. 121(2)(b)
amended by
No. 77/2013
s. 37(2)(b).

S. 121(3)
amended by
No. 77/2013
s. 37(3).

122 Effect of surrender or seizure of firearm, weapon or other article if no final order etc.

- (1) This section applies if—
- (a) a person's firearm, weapon or other article is surrendered under section 115 or seized under section 117 or 120; and
 - (b) either—
 - (i) a final order or corresponding interstate order is not made against the person; or
 - (ii) an application for a personal safety intervention order against the person is not made within a reasonable time; and
 - (c) the firearm, weapon or other article is not otherwise required as evidence in further proceedings under this Act or another Act; and
 - (d) the firearm, weapon or other article is not subject to forfeiture after a proceeding for an offence under this Act or another Act.
- (2) The firearm, weapon or article surrendered or seized must be—
- (a) if the firearm, weapon or other article is required to be forfeited or disposed of under the **Firearms Act 1996**, **Control of Weapons Act 1990** or another Act—
forfeited or disposed of in accordance with that Act; or
 - (b) otherwise—returned to the person.

S. 122(1)(b)(i)
amended by
No. 77/2013
s. 38.

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- (3) If a firearm, weapon or other article is disposed of by sale under this section in accordance with directions in an order, the proceeds of the sale must be paid to the owner of the firearm, weapon or other article.
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**PART 6—RESTRICTION ON PUBLICATION OF
PROCEEDINGS**

**123 Restriction on publication of proceeding in
Magistrates' Court**

- (1) This section applies to—
- (a) a proceeding under this Act, other than in the Children's Court; or
 - (b) an order made under this Act, other than by the Children's Court.

Note

For a proceeding in the Children's Court, see section 534 of the **Children, Youth and Families Act 2005** which provides restrictions on the publication of proceedings in that Court.

- (2) A person must not publish, or cause to be published, a report of the proceeding or about the order that contains—
- (a) if a party to or a witness in the proceeding, or a person the subject of the order, is a child—
 - (i) the locality or any particulars likely to lead to the identification of the particular venue of the court; or
 - (ii) any particulars likely to lead to the identification of the child or any other person involved in the proceeding, either as a party to the proceeding or as a witness in the proceeding, or the subject of the order; or

- (b) a picture of or including a child concerned in a proceeding for a personal safety intervention order.

Penalty: In the case of a natural person—
100 penalty units or 2 years imprisonment or both;
In the case of a body corporate—
500 penalty units.

124 Exception to restriction on publication

To remove any doubt, it is declared that section 123 does not apply to—

- (a) a person publishing, or causing the publication of, a report about the proceeding or the order if the publication does not identify the locality of a court or particulars likely to identify a venue of a court, or particulars of a person; or
(b) the publication under section 171 by the Attorney-General of a copy of any order made under section 165 or 169.

125 Identifying particulars

For the purposes of sections 123 and 124, the particulars likely to lead to the identification of a person include, but are not limited to, the following—

- (a) the person's name, title, pseudonym or alias;
(b) the address of any premises at which the person lives or works, or the locality in which the premises are situated;
(c) the address of a school attended by the person or the locality in which the school is situated;
(d) the physical description or the style of dress of the person;

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- (e) any employment or occupation engaged in, profession practised or calling pursued by, the person or any official or honorary position held by the person;
 - (f) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
 - (g) the recreational interests or the political, philosophical or religious beliefs or interests of the person;
 - (h) any real or personal property in which the person has an interest or with which the person is associated.
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PART 7—RELATIONSHIP WITH OTHER ACTS

126 Application of Magistrates' Court Act 1989 and rules

- (1) Part 5 (other than sections 100(1)(d) and 109) of the **Magistrates' Court Act 1989** and any rules made under that Act in relation to civil proceedings (other than rules made for the purposes of section 109 of that Act) do not apply to proceedings under this Act.
- (2) Despite subsection (1), for the purposes of enforcement of an order for costs made under section 111—
 - (a) Division 5 of Part 5 of the **Magistrates' Court Act 1989** and any rules made for the purposes of that Division apply in respect of the order; and
 - (b) any rules made under that Act relating to, or necessary for, proceedings for enforcement of a costs order apply for the purposes of proceedings for enforcement of the order under that Division.

S. 126
amended by
No. 52/2013
s. 77 (ILA
s. 39B(1)).

S. 126(2)
inserted by
No. 52/2013
s. 77.

127 Relationship with Firearms Act 1996 and Control of Weapons Act 1990

To remove doubt, it is declared that if the court decides to include in a personal safety intervention order a condition under section 69(a) or (b)—

- (a) no appeal lies against the decision under the **Firearms Act 1996** or the **Control of Weapons Act 1990**; and
- (b) the respondent may not apply under section 189 of the **Firearms Act 1996** for a declaration that the person is deemed not to be a prohibited person for that Act.

128 Application of principles under Children, Youth and Families Act 2005 to decisions under this Act

To remove any doubt, it is declared that the Children's Court is not required to have regard to the principles set out in Part 1.2 of Chapter 1 of the **Children, Youth and Families Act 2005** in making any decision or taking any action in the course of exercising the jurisdiction given to the Court under this Act.

129 Personal safety intervention orders prevail over child protection orders

- (1) A personal safety intervention order applies despite any child protection order.
- (2) However, if the Children's Court is hearing an application for a child protection order in relation to a child and the child is a protected person or respondent under a personal safety intervention order, the Court may, on its own initiative, revoke or vary the personal safety intervention order to the extent the order would be inconsistent with the order the Court proposes to make under the **Children, Youth and Families Act 2005**.
- (3) For the purposes of subsection (2), if the Court proposes to revoke or vary the personal safety intervention order—
 - (a) the appropriate registrar for the Court must give notice of its intention to revoke or vary the order to all the parties to the proceeding in which the order was made; and
 - (b) the Court must not revoke or vary the order until all the parties have had an opportunity to be heard by the Court; and
 - (c) the Court may make an interim order varying the personal safety intervention order until all the parties have been given an opportunity to be heard.

130 Notice to be given to Secretary to Department of Human Services

If the court makes a personal safety intervention order that is or may be inconsistent with a child protection order, the appropriate registrar for the court must give written notice of the making of the order and its terms to the Secretary to the Department of Human Services.

130A Relationship with certain orders under the Sentencing Act 1991

S. 130A
inserted by
No. 65/2011
s. 100.

- (1) If a court makes a personal safety intervention order in respect of a respondent that is inconsistent with a residence restriction or exclusion condition or a curfew condition attached to a community correction order to which the respondent is subject at the time the personal safety intervention order is made, the personal safety intervention order prevails to the extent of any inconsistency.
- (2) In this section *community correction order*, *curfew condition* and *residence restriction or exclusion condition* have the same meaning as in the **Sentencing Act 1991**.

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S. 131
repealed by
No. 48/2011
s. 25.

**PART 8—RELATIONSHIP WITH FAMILY VIOLENCE
PROTECTION ACT 2008**

Division 1—General

132 Definitions

In this Part—

affected family member has the meaning given in the **Family Violence Protection Act 2008**;

associated final order means a final order made under section 76 of the **Family Violence Protection Act 2008**;

family violence safety notice means a family violence safety notice issued under the **Family Violence Protection Act 2008**;

final family violence intervention order means a final order within the meaning of the **Family Violence Protection Act 2008**;

interim family violence intervention order means an interim order within the meaning of the **Family Violence Protection Act 2008**.

133 Concurrent applications may be heard together

- (1) Any number of applications for personal safety intervention orders may be heard together with any number of applications under the **Family Violence Protection Act 2008** for family violence intervention orders if the court considers that—
 - (a) the applications are sufficiently related; and
 - (b) it is appropriate for the applications to be heard together.

- (2) The decision under subsection (1) to hear applications for personal safety intervention orders and family violence intervention orders together may be made—
- (a) on the application of the applicants or the respondents; or
 - (b) on the court's own initiative if the court considers it in the interests of justice to do so.

134 Family violence intervention order to prevail

A family violence intervention order prevails to the extent of any inconsistency with a personal safety intervention order.

Division 2—Certain applications under Family Violence Protection Act 2008 to be heard under this Act where parties are not family members

Note

Division 2 of Part 9A of the **Family Violence Protection Act 2008** provides for applications for personal safety intervention orders to be heard under that Act as applications for family violence intervention orders where the court determines that the parties are family members.

135 Application of Division

This Division does not apply to the following applications under the **Family Violence Protection Act 2008**—

- (a) an application for the variation, revocation or extension of a final family violence intervention order;
- (b) an application for the variation or extension of a registered corresponding interstate order within the meaning of the **Family Violence Protection Act 2008**, or for the revocation of the registration of that order;

- (c) an application for an associated final order where the court has made the original final order within the meaning of section 76(5) of the **Family Violence Protection Act 2008**.

136 Court may determine parties to application for family violence intervention order are not family members

- (1) This section applies to—
 - (a) a hearing of an application for a family violence intervention order;
 - (b) a hearing of an application for a variation or revocation of an interim family violence intervention order;
 - (c) a mention date in relation to any of the proceedings referred to in paragraph (a) or (b).
- (2) If the court is satisfied that the affected family member and the respondent are not family members, the court may either—
 - (a) strike out the application for the family violence intervention order; or
 - (b) make a determination to continue to hear the application as an application for a personal safety intervention order.
- (3) If the parties consent to the making of a determination under subsection (2)(b), the court may make the determination without being satisfied that the affected family member and the respondent are not family members.
- (4) The court may make more than one determination under subsection (2)(b) during the proceeding.

137 No further determination if determination made by County Court or Supreme Court

The Magistrates' Court or Children's Court must not make a determination under section 136(2)(b) in relation to an application if the County Court or Supreme Court has made a determination in relation to that application under section 136(2)(b) of this Act or section 176E(2)(b) of the **Family Violence Protection Act 2008**.

138 Effect of determination under section 136(2)(b)—general

- (1) On and from making a determination under section 136(2)(b), the application for the family violence intervention order is taken, to the extent possible, to be an application for a personal safety intervention order and, subject to this Part—
 - (a) this Act applies as if—
 - (i) a reference in the application to an affected family member were a reference to an affected person; and
 - (ii) a reference in the application to family violence were a reference to prohibited behaviour or stalking; and
 - (b) the court may make any orders that it may make in respect of an application for a personal safety intervention order under this Act; and
 - (c) anything that has been done under the **Family Violence Protection Act 2008** in relation to the application or the proceeding for the application is, to the extent possible, taken to have been done under this Act.
- (2) This section applies whether or not the application for a family violence intervention order was made by issue of a family violence safety notice.

- (3) Without limiting subsection (1)(c)—
- (a) a summons issued under section 49 of the **Family Violence Protection Act 2008** is taken to be a summons issued under section 20 of this Act; and
 - (b) a warrant to arrest issued under section 50 or 67A of the **Family Violence Protection Act 2008** is taken to be a warrant issued under section 21 or 50 of this Act; and
 - (c) if the respondent has been granted bail, the bail conditions continue to apply; and
 - (d) a direction given under section 158(2) of the **Family Violence Protection Act 2008** is taken to be a direction given under section 115(2) of this Act.
- (4) Despite subsection (1)(c), any order made under section 62, 70 or 150 of the **Family Violence Protection Act 2008** ceases to apply on the making of a determination under section 136(2)(b).

139 Search warrants issued under Family Violence Protection Act 2008

- (1) This section applies if—
- (a) the court makes a determination under section 136(2)(b); and
 - (b) before making the determination, a search warrant was issued under section 160 of the **Family Violence Protection Act 2008**.
- (2) If a person's firearm, firearms authority, ammunition, weapon or other article was seized or is seized pursuant to the warrant, then on and from making the determination the seizure—

- (a) continues as if the firearm, firearms authority, ammunition, weapon or other article had been seized under section 117; and
- (b) ends in accordance with section 121 or 122.
- (3) To avoid doubt, section 165 of the **Family Violence Protection Act 2008** does not apply to a firearm, firearms authority, ammunition, weapon or other article seized pursuant to the warrant.

140 Firearms etc seized or surrendered under Family Violence Protection Act 2008

- (1) This section applies if—
 - (a) the court makes a determination under section 136(2)(b); and
 - (b) before making the determination—
 - (i) a person surrendered a firearm, a firearms authority, ammunition or a weapon under section 158 of the **Family Violence Protection Act 2008**; or
 - (ii) police seized a person's firearm, firearms authority, ammunition or weapon under section 163 of the **Family Violence Protection Act 2008**.
- (2) On and from making the determination, the surrender or seizure—
 - (a) continues as if the firearm, firearms authority, ammunition or weapon had been surrendered under section 115 or seized under section 120; and
 - (b) ends in accordance with section 121 or 122.

- (3) To avoid doubt, section 165 of the **Family Violence Protection Act 2008** does not apply to a firearm, firearms authority, ammunition or weapon surrendered or seized.

141 Determination where proceeding in Family Violence Court Division

- (1) If the Family Violence Court Division makes a determination under section 136(2)(b), the Family Violence Court Division may—
- (a) transfer the proceeding to the Magistrates' Court in accordance with section 4I(5) of the **Magistrates' Court Act 1989**; or
 - (b) continue to hear the matter under this Act.
- (2) In this section—

Family Violence Court Division means the Family Violence Court Division of the Magistrates' Court.

142 Existing interim family violence intervention order must be revoked

- (1) This section applies if—
- (a) the court has made a determination under section 136(2)(b); and
 - (b) an interim family violence intervention order has been made in the proceedings.
- (2) The court—
- (a) must revoke the interim family violence intervention order; and
 - (b) may make an interim personal safety intervention order if there are grounds for making the order under section 35.

143 Determination made on application to vary existing interim family violence intervention order

If the court has made a determination under section 136(2)(b) at a hearing or a mention date for an application for a variation of an interim family violence intervention order, the court—

- (a) must revoke the interim family violence intervention order; and
- (b) may make an interim personal safety intervention order if there are grounds for making the order under section 35, having regard to the application for variation of the interim family violence intervention order.

144 Determination made on application to revoke existing interim family violence intervention order

If the court has made a determination under section 136(2)(b) at a hearing or a mention date for an application to revoke an interim family violence intervention order, the court—

- (a) must revoke the interim family violence intervention order; and
- (b) may make an interim personal safety intervention order if there are grounds for making the order under section 35, having regard to the application for revocation of the interim family violence intervention order.

145 Determination made when hearing application for final family violence intervention order

- (1) This section applies if, during a hearing of an application for a final family violence intervention order, the court makes a determination under section 136(2)(b).

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- (2) On making the determination, the court—
- (a) if there is an existing interim family violence intervention order—
 - (i) must revoke the interim family violence intervention order; and
 - (ii) may make an interim personal safety intervention order if there are grounds for making the order under section 36; and
 - (b) may do any of the following, as the interests of justice require—
 - (i) adjourn the proceeding;
 - (ii) make any order the court could make in a proceeding for a personal safety intervention order;
 - (iii) continue to hear the matter.

146 Revocation of interim family violence intervention order under this Division

The revocation of an interim family violence intervention order under section 142, 143, 144 or 145—

- (a) has effect as a revocation of an interim family violence intervention order under the **Family Violence Protection Act 2008**; and
- (b) takes effect at the time of the revocation.

Note

See section 60(d) of the **Family Violence Protection Act 2008**, which provides that an interim family violence intervention order ends when it is revoked by the court.

**147 Applications for associated final orders under
Family Violence Protection Act 2008**

- (1) This section applies if—
- (a) the court makes a determination under section 136(2)(b) in relation to an application for a family violence intervention order; and
 - (b) either of the following applications have been made under the **Family Violence Protection Act 2008**—
 - (i) an application for an associated final order against an additional respondent; or
 - (ii) an application for an associated final order to protect an additional applicant.
- (2) The application for the associated final order is taken, to the extent possible, to be an application for a personal safety intervention order and—
- (a) this Act applies as if—
 - (i) a reference in the application to family violence were a reference to prohibited behaviour or stalking; and
 - (ii) a reference in the application to a family violence intervention order were a reference to a personal safety intervention order; and
 - (iii) a reference in the application to an affected family member were a reference to an affected person; and
 - (iv) a reference in the application to an additional respondent were a reference to a respondent; and
 - (v) a reference in the application to the additional applicant were a reference to the applicant; and

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- (b) the court may make any orders that it may make in respect of an application for a personal safety intervention order under this Act; and
 - (c) anything that has been done under the **Family Violence Protection Act 2008** in relation to the application is, to the extent possible, taken to have been done under this Act.
- (3) In this section, *additional respondent* and *additional applicant* have the meanings given in section 76 of the **Family Violence Protection Act 2008**.

148 Explanation of determination

- (1) If the court makes a determination under section 136(2)(b), the court must explain to the respondent and affected person—
 - (a) the effect of the determination; and
 - (b) if there is an interim order in force, the effect of the determination on the interim order.
 - (2) A failure by the court to explain a determination in accordance with this section does not affect the validity of the determination.
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PART 9—INTERSTATE AND NEW ZEALAND ORDERS

Division 1—Interstate orders

149 Registration of corresponding interstate orders

An appropriate registrar for a court may register a corresponding interstate order in the court.

150 Notice to be given of registration of corresponding interstate orders

- (1) As soon as practicable after registering a corresponding interstate order, the appropriate registrar must—
 - (a) give notice of the registration of the order to—
 - (i) the court that made the order; and
 - (ii) the person for whose protection the order was made; and
 - (b) give a copy of the order to the Chief Commissioner of Police and the Secretary to the Department of Human Services.
- (2) In addition, the appropriate registrar may list the matter before the court for decision as to whether or not a copy of the registered corresponding interstate order must be served on the respondent for the interstate order at the respondent's last known address.
- (3) If the registrar lists a matter before the court under subsection (2) the court must make an order as to whether or not a copy of the registered corresponding interstate order must be served on the respondent.
- (4) However, the court may make an order under subsection (3) only if, after hearing from the person for whose protection the corresponding interstate order was made, the court is satisfied

that revealing that the person is in Victoria would not jeopardise the safety of the person or any children of the person.

- (5) If the court makes an order under subsection (3) the appropriate registrar must arrange for the registered corresponding interstate order to be served on the respondent.

151 Registered corresponding interstate orders may be enforced as final orders

A registered corresponding interstate order may be enforced against a person as if it were a final order and as if a copy of the order had been served on that person in accordance with this Act.

152 Variation, extension or revocation of corresponding interstate order by interstate court

The variation, extension or revocation of a corresponding interstate order by a court of the State or Territory in which it was made after the order is registered under this Division has no effect in Victoria.

153 Variation, extension or revocation of corresponding interstate order by Victorian Court

- (1) The court, on the application of a relevant person, may—
- (a) vary a registered corresponding interstate order as it applies in Victoria; or
 - (b) extend the period during which a registered corresponding interstate order has effect in Victoria; or
 - (c) revoke the registration of a registered corresponding interstate order.

(2) In this section—

relevant person, in relation to a registered corresponding interstate order, means—

- (a) a person for whose protection the order has been made; or
- (b) a person against whom the order has been made; or
- (c) a police officer; or
- (d) a person who has been granted leave by the court to make an application in respect of the order.

154 Notice of proposed variation, extension or revocation of corresponding interstate order

- (1) A registered corresponding interstate order is not to be varied or extended, or the registration of the order revoked, under this Division on the application of a person, other than the person against whom it was made, unless notice of the application has been served on the person against whom it was made.
- (2) A registered corresponding interstate order is not to be varied, or the registration of the order revoked, on the application of the person against whom it was made unless notice of the application has been served on the person for whose protection the order was made.

155 Notice to be given of variation, extension or revocation of corresponding interstate order

If the court varies or extends a registered corresponding interstate order, or revokes the registration of the order, the appropriate registrar must give notice of the variation, extension or revocation to—

- (a) the court that made the order; and
- (b) the Chief Commissioner of Police and the Secretary to the Department of Human Services.

Division 2—Corresponding New Zealand Orders

156 Registration of corresponding New Zealand orders

The appropriate registrar may register a corresponding New Zealand order in the court.

157 Notice to be given of registration of corresponding New Zealand orders

- (1) As soon as practicable after registering a corresponding New Zealand order, the appropriate registrar must—
 - (a) give notice of the registration of the order to—
 - (i) the court that made the order; and
 - (ii) the person for whose protection the order was made; and
 - (b) give a copy of the order to the Chief Commissioner of Police and the Secretary to the Department of Human Services.
- (2) In addition, the appropriate registrar may list the matter before the court for decision as to whether or not a copy of the registered corresponding New Zealand order must be served on the respondent for the New Zealand order at the respondent's last known address.
- (3) If the registrar lists a matter before the court under subsection (2) the court must make an order as to whether or not a copy of the registered corresponding New Zealand order must be served on the respondent.

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- (4) However, the court may make an order under subsection (3) only if, after hearing from the person for whose protection the registered corresponding New Zealand order was made, the court is satisfied that revealing that the person is in Victoria would not jeopardise the safety of the person or any children of the person.
- (5) If the court makes an order under subsection (3) the court must arrange for the registered corresponding New Zealand order to be served on the respondent.

158 Effect of registration of corresponding New Zealand orders

- (1) A corresponding New Zealand order—
- (a) has the same effect in Victoria as it has for the time being in New Zealand; and
 - (b) may be enforced against a person as if it were a final order under this Act.
- (2) A contravention of the New Zealand order in Victoria is taken, for the purposes of imposing a penalty, to be a contravention of a final order.

159 Variation, revocation or extension of corresponding New Zealand order

If a corresponding New Zealand order registered under this Division is varied, revoked or extended by a court in New Zealand—

- (a) the registration is varied, revoked or extended accordingly; and
 - (b) the appropriate registrar must give the Chief Commissioner of Police notice of the variation, revocation or extension.
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PART 10—VEXATIOUS LITIGANTS

160 Constitution of court

The court, when exercising a power under this Part, must be constituted by—

- (a) for the Magistrates' Court, the Chief Magistrate or a Deputy Chief Magistrate; or
- (b) for the Children's Court, the President of the Court.

161 Who may apply for order that person is a vexatious litigant

- (1) Any of the following persons may apply to the court for an order declaring a person to be a vexatious litigant—
 - (a) the Attorney-General;
 - (b) a person against whom applications have been made under this Act;
 - (c) a person against whom—
 - (i) applications have been made under the **Stalking Intervention Orders Act 2008** (as in force immediately before its repeal); or
 - (ii) applications or complaints have been made for, or in relation to, a stalking intervention order under the **Crimes (Family Violence) Act 1987** (as in force immediately before its repeal);
 - (d) a person referred to in paragraph (b) or (c) against whom—
 - (i) applications have also been made under the **Family Violence Protection Act 2008**; or

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- (ii) complaints or applications have also been made under the **Crimes (Family Violence) Act 1987** (as in force immediately before its repeal), for, or in relation to, an intervention order, other than a stalking intervention order.
- (2) However, a person other than the Attorney-General may apply for an order under subsection (1) only with the leave of a magistrate of the court.
- (3) A magistrate may grant leave under subsection (2) for an application if the magistrate is satisfied there is evidence that—
- (a) there is merit in the application; and
 - (b) the making of the application would not be an abuse of process.
- (4) In this section, *stalking intervention order* means an intervention order of a kind referred to in section 21A(5) of the **Crimes Act 1958** (as in force immediately before its repeal).

162 Attorney-General may request documents from courts

- (1) For the purposes of deciding whether to make an application under section 161(1) for an order declaring a person to be a vexatious litigant, the Attorney-General may ask a court for a copy of documents held by the court in relation to a proceeding brought by the person under this Act, the **Family Violence Protection Act 2008**, the **Stalking Intervention Orders Act 2008** or the **Crimes (Family Violence) Act 1987**.
- (2) The court may give to the Attorney-General a copy of documents requested under subsection (1).

163 Notice of application by Attorney-General to be served on protected person

If the Attorney-General applies under section 161(1) for an order declaring a person to be a vexatious litigant, the appropriate registrar for the court must serve a copy of the application on the person who would be protected by the order.

164 Notice of application to be served on person proposed to be declared vexatious litigant

A copy of an application for an order declaring a person to be a vexatious litigant must be served by the appropriate registrar for the court on the person who it is proposed will be declared a vexatious litigant.

165 Order declaring person to be vexatious litigant

- (1) The court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied the person has habitually, persistently and without any reasonable ground instituted proceedings against the same person under any one or more of the following Acts—
- (a) this Act;
 - (b) the **Stalking Intervention Orders Act 2008** (as in force immediately before its repeal);
 - (c) the **Family Violence Protection Act 2008**;
 - (d) the **Crimes (Family Violence) Act 1987** (as in force immediately before its repeal).

Example

The person has persistently and without any reasonable grounds done any of the following—

- made applications for personal safety intervention orders against the same person;

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- made applications for personal safety intervention orders and family violence intervention orders against the same person;
 - applied for the variation of a personal safety intervention order made against a person;
 - applied for the revocation of a personal safety intervention order made against the person;
 - appealed against the making of a personal safety intervention order, or the conditions of the order, made against the person.
- (2) An order under subsection (1) must provide that the vexatious litigant must not without leave of the court make an application for a personal safety intervention order or a family violence intervention order, or the variation, revocation or extension of a personal safety intervention order or a family violence intervention order, in relation to a person stated in the order or the person's children.
- (3) The appropriate registrar for the court must serve a copy of an order made under subsection (1) on—
- (a) the vexatious litigant; and
 - (b) the person protected by the order.
- (4) The order must include or be accompanied by a statement of the court's reasons for the decision.

166 Leave to make an application under this Act

- (1) For the purposes of deciding an application by a vexatious litigant for leave to make an application for a personal safety intervention order, or the variation, revocation or extension of a personal safety intervention order, the court may be constituted by any magistrate.
- (2) The application must be decided by the court as soon as practicable.

- (3) In this section, *vexatious litigant* means a person declared to be a vexatious litigant under this Part or under Part 11 of the **Family Violence Protection Act 2008**.

167 Appeal against order declaring person to be vexatious litigant

- (1) A person who is declared to be a vexatious litigant by an order made under this Part may appeal against the order to—
- (a) the County Court, with the leave of that Court; or
 - (b) if the court that made the relevant decision was the Children's Court constituted by the President of the Court, the Trial Division of the Supreme Court with the leave of that Court.
- (2) The appropriate registrar for the Court must serve notice of the application for leave on—
- (a) the person protected by the order; and
 - (b) if the Attorney-General made the application under section 161(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.
- (3) The Court must allow the person protected by the order to be heard on the application if that person wishes.
- (4) The Court may grant leave under subsection (1) if the Court is satisfied there is evidence that—
- (a) the appeal has merit; and
 - (b) is not an abuse of process.

- (5) If leave is granted under this section, the appropriate registrar for the Court must serve notice of the hearing date for the appeal on—
- (a) the vexatious litigant; and
 - (b) the person protected by the order; and
 - (c) if the Attorney-General made the application under section 161(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.

168 Application for leave to appeal under Division 11 of Part 3 by vexatious litigant

- (1) A person who has been declared a vexatious litigant under this Part or under Part 11 of the **Family Violence Protection Act 2008** may appeal under Division 11 of Part 3 to the County Court or the Supreme Court against a decision referred to in section 91(2)(c) only if that Court grants leave for the appeal.

Note

Section 91 provides for appeals in relation to personal safety intervention orders. For the right of a person to appeal against an order declaring the person to be a vexatious litigant see section 167.

- (2) If an application for leave to appeal is made to the County Court or the Supreme Court, the appropriate registrar for the court that made the order declaring the person to be a vexatious litigant must—
- (a) arrange to be filed in the County Court or the Supreme Court (as the case may be) a statement of the court's reasons for declaring the person to be a vexatious litigant; and

S. 168(2)(a)
amended by
No. 52/2013
s. 78(1).

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- (b) serve a copy of the statement and a copy of the application on—
- (i) the Attorney-General; and
 - (ii) the protected person in relation to the decision the subject of the appeal; and
 - (iii) if the protected person is not the person protected by the order declaring a person to be a vexatious litigant, the person protected by that order.
- (3) The protected person is entitled to be heard by the County Court or the Supreme Court on the application even if the protected person was not a party to the proceeding in which the order declaring the person to be a vexatious litigant was made.
- (4) In deciding whether to grant leave for an appeal under subsection (1), the County Court or Supreme Court must have regard to all the circumstances of the case, including the statement of reasons filed under subsection (2)(a).

S. 168(4)
amended by
No. 52/2013
s. 78(2).

169 Court may vary, set aside or revoke

- (1) The court, as constituted under section 160, may at any time vary, set aside or revoke an order made under section 165 if it considers it proper to do so.
- (2) However, a vexatious litigant may apply to vary, set aside or revoke an order made under section 167 only with the leave of a magistrate of the court.
- (3) A magistrate may grant leave under subsection (2) if the magistrate is satisfied there is evidence that—

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- (a) there is merit in the application; and
 - (b) the application is not an abuse of the process of the court.
- (4) The appropriate registrar for the court must serve a copy of the application for leave on—
- (a) the person protected by the order declaring the person to be a vexatious litigant; and
 - (b) if the Attorney-General made the application under section 161(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.
- (5) If leave is granted under subsection (2), the appropriate registrar for the court must serve notice of the hearing date for the application to vary, set aside or revoke the order on—
- (a) the person protected by the order; and
 - (b) if the Attorney-General made the application under section 161(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.

170 Notice of order to be given to Attorney-General

- (1) If the court makes an order under section 165 or 169, the appropriate registrar must give a copy of the order to the Attorney-General.
- (2) The order must include or be accompanied by a statement of the court's reasons for the decision.

171 Attorney-General to publish copy of order in Government Gazette

- (1) The Attorney-General must cause a copy of any order made under section 165 or 169 to be published in the Government Gazette.

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- (2) However, the copy of the order published in the Government Gazette must have removed from it the name of the person against whom the vexatious litigant must not make an application.

172 Notice of order to be served on courts

If the court makes an order under section 165, a copy of the notice must be filed in—

- (a) the County Court and Supreme Court; and
- (b) if the order is made by the Magistrates' Court, the Children's Court; and
- (c) if the order is made by the Children's Court, the Magistrates' Court.

173 Annual report

- (1) The Magistrates' Court and Children's Court must each give to the Attorney-General a report about the number of orders made in each calendar year under this Part declaring persons to be vexatious litigants.
- (2) A report under subsection (1) must be given to the Attorney-General as soon as practicable after the end of the calendar year to which it relates.

PART 11—SERVICE OF DOCUMENTS

174 Service of personal safety intervention orders

If the court makes, varies, extends or revokes a personal safety intervention order, the appropriate registrar for the court must—

- (a) arrange for the order to be drawn up and filed in the court; and
- (b) serve a copy of the order on the respondent; and
- (c) give a copy of the order to the following persons—
 - (i) the Chief Commissioner of Police;
 - (ii) each party to the proceeding;
 - (iii) if the protected person is a child and the application was made with the consent of the child's parent, that parent;
 - (iv) if the protected person has a guardian, the guardian;
 - (v) the officer in charge of the police station closest to the place of residence of the protected person.

175 Copy of personal safety intervention order may be given to school

- (1) This section applies if the respondent or protected person under a personal safety intervention order is a student or wishes to become a student.
- (2) If the court makes, varies, extends or revokes the personal safety intervention order, the court may order that the appropriate registrar give a copy of the order to the principal of the school at which the respondent or protected person is a student, or wishes to become a student, if the court considers that it—

- (a) would assist to ensure the safety of the protected person; or
- (b) is necessary for the effectiveness of the order; or
- (c) is otherwise necessary in the interests of justice.

176 Manner of service

- (1) This section applies if, under this Act, a document must be served on a person.
- (2) The document must be served on the person (other than the Attorney-General) by giving a true copy of the document to the person personally.
- (3) The document must be served on the Attorney-General by giving a true copy of the document to the Victorian Government Solicitor.
- (4) If it appears to the court that it is not reasonably practicable to serve a copy of a document on a person personally, the court may—
 - (a) order that a copy of the document be served by any other means it considers appropriate; or
 - (b) make an order for substituted service.

177 Proof of service

- (1) As soon as practicable after a person serves a document under this Act, the person must file with the court a certificate of service—
 - (a) that has been made on oath or by affidavit or is certified; and
 - (b) that states service has taken place; and
 - (c) that specifies details of the service.

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- (2) For the purposes of subsection (1)(a), the certificate of service may certify that service has taken place only if that service was by a police officer or the appropriate registrar of a court.
 - (3) The certificate of service must—
 - (a) include the prescribed information; and
 - (b) be accompanied by the prescribed documents.
 - (4) A certificate of service is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it.

178 Inability to serve document

- (1) If a person is required under this Act to serve a document and it has not been possible to serve the document, the person must file with the court a certificate about why it has not been possible to serve the document.
- (2) The certificate must—
 - (a) include the prescribed information; and
 - (b) be accompanied by the prescribed documents.
- (3) A certificate under this section is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it.

179 Person may cause document to be served

- (1) If, under this Act, a person is required or permitted to serve a document, the person may serve the document by causing it to be served by another person.
- (2) If, under this Act, a person is required or permitted to give a document to another person, the person may give the document by causing it to be given by another person.

180 Certificate of service

If, under this Act, a police officer or appropriate registrar of a court is required or permitted to certify that a document has been served on a person, the police officer or appropriate registrar must complete a certificate of service that—

- (a) if the certificate is completed by a police officer, includes the police officer's name, rank and station; and
- (b) if the certificate is completed by an appropriate registrar, includes the appropriate registrar's name and the location of the court; and
- (c) includes a statement about the manner of service; and
- (d) includes a statement of the date, time and place of service; and
- (e) is certified by the police officer or appropriate registrar.

181 Disclosure of information by organisations

- (1) This section applies if—
 - (a) a police officer applies to an organisation in the prescribed way for information held by the organisation about a respondent; and
 - (b) the purpose of the application is to assist a police officer to locate the respondent to enable a police officer to serve the respondent with a document under this Act.
- (2) If the organisation has the information requested in the application, the organisation must give the police officer the information.

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- (3) Information provided by an organisation under subsection (2) to a police officer—
- (a) must relate only to the respondent for whom an order has been made or is being sought under this Act; and
 - (b) must not be used by a police officer for any purpose other than locating the respondent for the purpose of serving the respondent with a document under this Act; and
 - (c) must not be given by a police officer to—
 - (i) the protected person; or
 - (ii) any other organisation or person, other than another police officer or the court.

- (4) In this section—

organisation has the meaning given by the **Information Privacy Act 2000**.

PART 12—MISCELLANEOUS

182 Supreme Court—limitation of jurisdiction

It is the intention of sections 95 and 97 to alter or vary section 85 of the **Constitution Act 1975**.

183 Rules of court and practice directions for Magistrates' Court

- (1) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to proceedings in the Magistrates' Court in relation to applications and orders made under this Act.
- (2) Without limiting subsection (1), rules may be made for or with respect to the following matters—
 - (a) the proper venue for proceedings under this Act, including the transfer of proceedings between court venues;
 - (b) the right of parties to appear personally or to be represented by a legal practitioner;
 - (c) the amendment of applications;
 - (d) the striking out or dismissal by the court of matters;
 - (e) the adjournment of proceedings by the court and the power to stay orders;
 - (f) access to records and documents held by the court;
 - (g) extracts from records and documents held by the court and certification of those extracts;
 - (h) mediation assessments and mediations.

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- (3) A power conferred by this Act to make rules may be exercised in accordance with section 16(1D) and 16(1E) of the **Magistrates' Court Act 1989** as if the rules had been made under section 16 of that Act.
 - (4) To remove any doubt, it is declared that the power of the Chief Magistrate to issue practice directions, statements or notes for the court under section 16A of the **Magistrates' Court Act 1989** in relation to civil proceedings or any class of civil proceedings includes power to issue practice directions, statements or notes for the court in relation to proceedings, or any class of proceedings, with respect to applications or orders made under this Act.
 - (5) A practice direction, statement or note issued with respect to proceedings, or any class of proceedings, with respect to applications under this Act is taken to have been issued under section 16A(1) of the **Magistrates' Court Act 1989**.

184 Rules of court and practice directions for Children's Court

- (1) The President of the Children's Court together with 2 or more magistrates of the court may jointly make rules for or with respect to proceedings in the court in relation to applications and orders made under this Act.
- (2) Without limiting subsection (1), rules may be made for or with respect to the following matters—
 - (a) the proper venue for proceedings under this Act, including the transfer of proceedings between court venues;
 - (b) the right of parties to appear personally or to be represented by a legal practitioner;

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- (c) the amendment of applications;
 - (d) the striking out or dismissal by the court of matters;
 - (e) the adjournment of proceedings by the court and the power to stay orders;
 - (f) access to records and documents held by the court;
 - (g) extracts from records and documents held by the court and certification of those extracts;
 - (h) mediation assessments and mediations.
- (3) Rules made under subsection (1) may adopt or apply rules made for the Magistrates' Court under section 183.
- (4) To remove any doubt, it is declared that the power of the President of the Children's Court to issue practice directions, statements or notes for the court under section 592 of the **Children, Youth and Families Act 2005** in relation to proceedings in the Family Division or the Criminal Division, or any class of proceedings in the Family Division or Criminal Division, includes power to issue practice directions, statements or notes for the court in relation to proceedings, or any class of proceedings, with respect to applications or orders made under this Act.
- (5) A practice direction, statement or note issued with respect to proceedings, or any class of proceedings, with respect to applications or orders under this Act is taken to have been issued under section 592(1) of the **Children, Youth and Families Act 2005**.

185 Regulation making power

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may prescribe—
 - (a) the content of forms to be used for the purposes of this Act; and
 - (b) matters relevant to applications made under this Act; and
 - (c) the content of orders, applications, notices and certificates made under this Act.

**PART 13—REPEAL OF STALKING INTERVENTION
ORDERS ACT 2008 AND TRANSITIONAL PROVISIONS**

Division 1—Repeal of Stalking Intervention Orders Act 2008

186 Repeal of Stalking Intervention Orders Act 2008

The **Stalking Intervention Orders Act 2008** is
repealed.

See:
Act No.
68/2008
and
amending
Act Nos
55/2009,
69/2009 and
18/2010.
LawToday:
www.
legislation.
vic.gov.au

Division 2—Transitional provisions

187 Definitions

In this Division—

commencement day means the day that
section 186 comes into operation;

final order means a final order within the
meaning of the repealed Act;

interim order means an interim order within the
meaning of the repealed Act;

intervention order means an intervention order
within the meaning of the repealed Act;

repealed Act means the **Stalking Intervention
Orders Act 2008** as in force immediately
before its repeal.

188 Final orders

- (1) On and from the commencement day, a final order made under the repealed Act is taken to be a final personal safety intervention order made under this Act.

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- (2) Without limiting subsection (1), the final order—
- (a) continues subject to any restriction or prohibition included in the order as if the restriction or prohibition had been included in the order under this Act; and
 - (b) may be revoked, varied or extended under this Act as if it had been made under this Act.

189 Interim orders

- (1) On and from the commencement day, an interim order made under the repealed Act is taken to be an interim personal safety intervention order made under this Act.
- (2) If, immediately before the commencement day—
- (a) an interim order had been made under the repealed Act; but
 - (b) proceedings for the hearing of the application for the final order had not yet started—

the proceedings for the hearing of the application for the final order may proceed under this Act as if it were a hearing for an application for a personal safety intervention order and the interim order were an interim personal safety intervention order.

190 Applications for intervention orders

- (1) This section applies if, immediately before the commencement day, an application for an intervention order or an application for the variation, revocation or extension of an intervention order had been made under the repealed Act but a proceeding in relation to the application had not yet started.

- (2) On and from the commencement day, the application may be dealt with under this Act as an application for a personal safety intervention order or the variation, revocation or extension of a personal safety intervention order as if it were an application made under this Act.

191 Proceedings

- (1) This section applies if, immediately before the commencement day—
- (a) proceedings under the repealed Act for a final order or interim order, or the variation, revocation or extension of a final order, had started but had not yet been finalised; or
 - (b) an appeal under section 30 or 31 of the repealed Act had been started but had not yet been finalised.
- (2) The proceeding may continue under the repealed Act as if that Act had not been repealed.
- (3) An interim order is made, varied or extended in a proceeding referred to in subsection (1) is taken to be an interim personal safety intervention order made under this Act.
- (4) A final order made, varied or extended in a proceeding referred to in subsection (1) is taken to be a final personal safety intervention order made under this Act.

192 Interstate and New Zealand orders

- (1) An order registered as a corresponding interstate order under section 43 of the repealed Act before the commencement day is taken, on and from the commencement day, to be registered under this Act as a corresponding interstate order.

- (2) An order registered as a corresponding New Zealand order under section 46 of the repealed Act before the commencement day is taken, on and from the commencement day, to be registered under this Act as a corresponding New Zealand order.

193 Acts committed before commencement day relevant

In deciding whether to make a personal safety intervention order, the court may take into account behaviour that—

- (a) was committed by the respondent before the commencement day; and
- (b) if it were committed by the respondent after the commencement day, would be prohibited behaviour or stalking within the meaning of this Act.

194 Directions under the repealed Act to surrender firearms

- (1) A direction under section 35(2) of the repealed Act existing immediately before the commencement day is, on and from the commencement day, taken to be a direction given under section 115.
- (2) If, immediately before the commencement day, a firearm, firearms authority or ammunition—
- (a) was surrendered under section 35 or seized under section 40 of the repealed Act; and
- (b) had not been returned to the person, forfeited to the Crown or disposed of in accordance with section 41 or 42 of the repealed Act—
- on and from the commencement day sections 121 and 122 apply to the firearm, firearms authority or ammunition as if it had been surrendered under section 115 or seized under section 120.

- (3) This section does not apply if the direction was given, or the firearm, firearms authority or ammunition was surrendered or seized, in relation to a proceeding referred to in section 191(1).

195 Search warrants issued under repealed Act

- (1) If, immediately before the commencement day, a firearm, firearms authority, ammunition or other article—
- (a) was seized pursuant to a search warrant issued under section 37 of the repealed Act; and
 - (b) had not been returned to the person, forfeited to the Crown or disposed of in accordance with section 41 or 42 of the repealed Act—
- on and from the commencement day sections 121 and 122 apply to the firearm, firearms authority, ammunition or other article as if it had been seized under section 117.
- (2) This section does not apply if the firearm, firearms authority, ammunition or other article was seized pursuant to a warrant issued in relation to a proceeding referred to in section 191(1).

**196 Police complainants and police prosecutors—
Crimes (Family Violence) Act 1987**

Despite its repeal, section 7A(2) of the **Crimes (Family Violence) Act 1987** continues to apply—

- (a) to a police officer in relation to a complaint or application made by that police officer under that Act as in force immediately before its repeal; or
- (b) in relation to the police officer representing another police officer at a hearing in accordance with section 7A(1) of that Act.

Personal Safety Intervention Orders Act 2010

No. 53 of 2010

Part 13—Repeal of Stalking Intervention Orders Act 2008 and Transitional Provisions

s. 197

Division 3—Children, Youth and Families Amendment Act 2013

Pt 13 Div. 3
(Heading and
s. 197)
inserted by
No. 52/2013
s. 79.

197 Transitional provision—Children, Youth and Families Amendment Act 2013

New s. 197
inserted by
No. 52/2013
s. 79.

Section 104A as inserted by section 76 of the **Children, Youth and Families Amendment Act 2013** applies to an application under this Act made on or after the commencement of section 76 of that Act.

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Pt 14
(Headings
and
ss 197–225)
repealed by
No. 53/2010
s. 225.

Personal Safety Intervention Orders Act 2010
No. 53 of 2010

Sch.

Sch.
amended by
No. 20/2011
s. 10(2)(3),
repealed by
No. 53/2010
s. 225.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 9 June 2010

Legislative Council: 29 July 2010

The long title for the Bill for this Act was "A Bill for an Act to make provision for a system of personal safety intervention orders, the use of mediation and other matters relating to the prevention and resolution of prohibited behaviour and stalking, to repeal the **Stalking Intervention Orders Act 2008** and for other purposes."

The **Personal Safety Intervention Orders Act 2010** was assented to on 7 September 2010 and came into operation as follows:

Sections 1–3, 197–209, 222–224 on 1 December 2010: Government Gazette 14 October 2010 page 2405; sections 4–196, 210–221, 225 on 5 September 2011: Special Gazette (No. 271) 23 August 2011 page 1.

Personal Safety Intervention Orders Act 2010
No. 53 of 2010

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Personal Safety Intervention Orders Act 2010** by Acts and subordinate instruments.

Personal Safety Intervention Orders Act 2010, No. 53/2010

Assent Date: 7.9.10
Commencement Date: S. 225 on 1.1.13: s. 225
Current State: This information relates only to the provision/s amending the **Personal Safety Intervention Orders Act 2010**

Family Violence Protection Amendment (Safety Notices) Act 2011, No. 16/2011

Assent Date: 31.5.11
Commencement Date: Ss 8, 9 on 5.9.11: Special Gazette (No. 271) 23.8.11 p. 1
Current State: This information relates only to the provision/s amending the **Personal Safety Intervention Orders Act 2010**

Crimes Amendment (Bullying) Act 2011, No. 20/2011

Assent Date: 7.6.11
Commencement Date: Ss 9, 10 on 8.6.11: s. 2(4)
Current State: This information relates only to the provision/s amending the **Personal Safety Intervention Orders Act 2010**

Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011, No. 48/2011

Assent Date: 22.9.11
Commencement Date: S. 25 on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 4
Current State: This information relates only to the provision/s amending the **Personal Safety Intervention Orders Act 2010**

Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011

Assent Date: 22.11.11
Commencement Date: S. 100 on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the **Personal Safety Intervention Orders Act 2010**

Personal Safety Intervention Orders Act 2010
No. 53 of 2010

Endnotes

Children, Youth and Families Amendment Act 2013, No. 52/2013

Assent Date: 24.9.13
Commencement Date: Ss 70–79 on 1.12.13: Special Gazette (No. 419)
26.11.13 p. 1
Current State: This information relates only to the provision/s
amending the **Personal Safety Intervention Orders
Act 2010**

Justice Legislation Amendment (Miscellaneous) Act 2013, No. 77/2013

Assent Date: 17.12.13
Commencement Date: Ss 32–38 on 3.3.14: Special Gazette (No. 17) 28.1.14
p. 1
Current State: This information relates only to the provision/s
amending the **Personal Safety Intervention Orders
Act 2010**

Endnotes

3. Explanatory Details

No entries at date of publication.