

Authorised Version No. 001
Personal Safety Intervention Orders
Regulations 2011

S.R. No. 89/2011

Authorised Version as at
5 September 2011

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1 Objective

The objective of these Regulations is to prescribe matters necessary for the effective implementation of the **Personal Safety Intervention Orders Act 2010**.

2 Authorising provision

These Regulations are made under section 185 of the **Personal Safety Intervention Orders Act 2010**.

3 Commencement

These Regulations come into operation on 5 September 2011.

4 Definition

In these Regulations, *the Act* means the **Personal Safety Intervention Orders Act 2010**.

5 Revocation of Stalking Intervention Orders Regulations 2008

The Stalking Intervention Orders Regulations 2008¹ are **revoked**.

6 Prescribed corresponding interstate laws

For the purposes of paragraph (b) of the definition of *corresponding interstate law* in section 4 of the Act, the following laws are prescribed—

- (a) the Domestic Violence and Protection Orders Act 2008 of the Australian Capital Territory;
- (b) the Crimes (Domestic and Personal Violence) Act 2007 of New South Wales;
- (c) the Justices Act of the Northern Territory;
- (d) the Peace and Good Behaviour Act 1982 of Queensland;
- (e) the Criminal Code of Queensland;
- (f) the Summary Procedure Act 1921 of South Australia;
- (g) the Justices Act 1959 of Tasmania;
- (h) the Restraining Orders Act 1997 of Western Australia.

7 Prescribed corresponding New Zealand law

For the purposes of paragraph (b) of the definition of *corresponding New Zealand law* in section 4 of the Act, the Harassment Act 1997 of New Zealand is prescribed.

8 Explanation of an interim order

For the purposes of section 40(1) of the Act, the prescribed form is Form 1.

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

For the purposes of section 72(2) of the Act, the prescribed time is 7 days.

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

For the purposes of section 75(3) of the Act, the prescribed time is 7 days.

11 Explanation of final order

For the purposes of section 76(3) of the Act, the prescribed information is the information contained in Form 2.

12 Surrender of firearms and weapons

- (1) In relation to a direction given under section 115(2)(a) of the Act, the following are prescribed particulars for the purposes of section 115(3)—
 - (a) if the police officer giving the direction is not in uniform, the police officer's name and rank;
 - (b) a statement that it is an offence to fail to comply with a lawful direction to surrender a firearm, firearms authority, ammunition or weapon to a police officer.
- (2) In relation to a direction given under section 115(2)(b) of the Act, the following are prescribed particulars for the purposes of section 115(3)—
 - (a) the name of the person given the direction;
 - (b) the address (if known) of the person given the direction;
 - (c) the date of birth (if known) of the person given the direction;
 - (d) the name, rank and station of the police officer issuing the direction;
 - (e) a statement that the direction is given under section 115(2)(b) of the Act;
 - (f) the date and time at which the direction is given;

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- (g) the place at which the firearm, firearms authority, ammunition or weapon is to be surrendered;
- (h) a statement that the firearm, firearms authority, ammunition or weapon must be surrendered by the specified time (if any) or otherwise within 48 hours of the direction being given to the person;
- (i) a description of the firearm, firearms authority, ammunition or weapon to be surrendered (if known), including but not limited to any known identifiers such as the model and serial number of a firearm;
- (j) a statement that it is an offence under section 115(4) of the Act to fail to comply with the direction, punishable by 60 penalty units in the case of a failure to surrender a firearm and 30 penalty units in the case of a failure to surrender a firearms authority, ammunition or a weapon.

13 Disclosure of information by organisations

For the purposes of section 181(1) of the Act, the prescribed way is by application in writing that sets out—

- (a) the name of the organisation to which the application is made; and
- (b) the date of the application; and
- (c) the name, rank, registered number, station and contact telephone number of the police officer making the application; and
- (d) the name of the respondent to which the application relates; and
- (e) the respondent's date of birth (if known); and
- (f) the respondent's gender; and

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- (g) that the request is made under section 181 of the Act; and
 - (h) that if the organisation has the information requested in the application the organisation is required to give the police officer the information under section 181(2) of the Act.
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FORMS

FORM 1

Regulation 8

**EXPLANATION OF INTERIM PERSONAL SAFETY
INTERVENTION ORDER**

What is an interim personal safety intervention order?

1. An interim order is a temporary personal safety intervention order made by the Magistrates' Court or the Children's Court to protect a person from assault, sexual assault, serious threats, property damage or interference, harassment or stalking until the court can decide whether to make a final personal safety intervention order. An interim order prevents a respondent from behaving in certain ways, or requires the respondent to do certain things, stated on the order.
2. An interim order is a civil order, and making an interim order does not necessarily mean that an offence has been committed. However contravention of an interim order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

Who are the parties to an interim personal safety intervention order?

3. The "affected person" is the person who would be protected by the final personal safety intervention order. After an interim order is made, an "affected person" is called a "protected person".
4. The "applicant" is the person who applies for the personal safety intervention order. The applicant may be the affected person, or the applicant could be another person, such as a police officer. Section 15 of the **Personal Safety Intervention Orders Act 2010** lists the people who can apply for a personal safety intervention order.
5. The "respondent" is the person against whom an application for a personal safety intervention order has been made, or against whom an interim order has been made.
6. The respondent, applicant and the adult affected person(s) will be given copies of the interim order. This is called being "served" with the interim order.

What happens if the respondent disobeys an interim personal safety intervention order?

7. The respondent must obey all of the conditions listed in the interim order at all times.
8. If the respondent disobeys or "breaches" a condition in the interim order this means the respondent has "contravened" the interim order. A contravention of an interim order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

What if the protected person gives permission to contravene the interim personal safety intervention order?

9. A person cannot permit another person to contravene an order of the court. This means that, even if the protected person allows a respondent to disobey the interim order, the respondent would still commit an offence.
10. It is not a defence that the protected person consented to the behaviour that contravened an interim order.

How long does an interim personal safety intervention order last?

11. An interim order ends when one of the following occurs—
 - (a) the court makes a final order; or
 - (b) the final order is served on the respondent, 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; or
 - (c) the court refuses to make a final order; or
 - (d) the court revokes the interim order; or
 - (e) the application for the final order is withdrawn.

When does the court make a decision about the final personal safety intervention order?

12. The respondent, protected person and any other parties (for example, the police) will be notified of the next court date when served with the application for a final order and with the interim order.
13. The court may make a final order on the next court date if—
 - (a) the parties agree to a final order being made by the court; or
 - (b) the parties do not oppose the making of a final order; or

Form 1

- (c) the respondent does not attend court and the court is satisfied that the respondent has been served with a copy of the application for a final order and the court is satisfied the evidence supports the making of a final order.
14. The conditions of the final order may be the same or different to those included in the interim order or the application for a final order.
15. If the respondent, affected person or protected person opposes the court making a final order, the court will fix a new court date ("a contested hearing date") and the interim order will continue until that date. On this later date the parties and all their witnesses can come to court to give their evidence to the Magistrate.
16. After the Magistrate has heard relevant evidence from the parties, he or she will decide whether to make a final order and, if so, what conditions should be included in the final order and how long the final order will last.

Can the interim personal safety intervention order be varied or revoked?

17. Yes. The protected person, respondent or applicant, for example, can apply to have the interim order varied or revoked. Section 85 of the **Personal Safety Intervention Orders Act 2010** lists the people who can apply to have the interim order varied or revoked.
18. If the respondent wants the interim order varied or revoked, he or she cannot apply for a variation or revocation without the leave of the court. The Magistrate must be satisfied there has been a change in circumstances since the interim order was made and that the change may justify a variation or revocation of the interim order before granting leave.

What if there is a family violence intervention order under the Family Violence Protection Act 2008?

19. If a family violence intervention order is made after a personal safety intervention order that relates to the same respondent and protected person, the family violence intervention order, and its conditions, will prevail over the personal safety intervention order.
20. The court cannot make an interim or final personal safety intervention order if there is a family violence intervention order already in force between the same respondent and protected person.
21. Speak to a lawyer about whether a personal safety intervention order or a family violence intervention order is the correct order for your circumstances.

What if there is an order made under the Children, Youth and Families Act 2005?

22. The interim personal safety intervention order applies despite any child protection order made by the Children's Court. Speak to a lawyer about how any child protection order and the interim personal safety intervention order interact.

What about your school?

23. If you are a school student, the Magistrate may choose to give a copy of the interim order to your Principal, so that they know what is happening.
24. You should talk to your Principal if you think the interim order will interfere with your attendance at school.

Contacts

Legal advice

[insert service information and contact details]

Key support services

[insert service information and contact details]

Mediation

[insert service information and contact details]

Local courts and police may have other local referral information for support services in your area.

****Note:** The value of a penalty unit for the financial year commencing [1 July YEAR] is \$xxx.xx [*\$ insert current dollar value of penalty unit to two decimal places*].

The amount of the calculated penalty may be rounded to the nearest dollar. The value of a penalty unit for future financial years is to be fixed by the Treasurer.

FORM 2

Regulation 11

**EXPLANATION OF FINAL PERSONAL SAFETY
INTERVENTION ORDER**

What is a final personal safety intervention order?

1. A final personal safety intervention order is an order made by the Magistrates' Court or the Children's Court to protect a person from assault, sexual assault, serious threats, property damage or interference, harassment or stalking. A final order prevents a respondent from behaving in certain ways, or requires the respondent to do certain things, stated on the order.
2. A final order is a civil order and making a final order does not necessarily mean that an offence has been committed. However, contravention of a final order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

Who are the parties to a final personal safety intervention order?

3. The "affected person" is the person who is protected by the personal safety intervention order. After a final order is made, a person called the "affected person" in the application is called a "protected person".
4. The "applicant" is the person who applies for the personal safety intervention order. The applicant may be the affected person, or the applicant could be another person, such as a police officer. Section 15 of the **Personal Safety Intervention Orders Act 2010** lists the people who can apply for a personal safety intervention order.
5. The "respondent" is the person against whom an application for a personal safety intervention order has been made or against whom a final order has been made.
6. The respondent, applicant and the adult protected person(s) will be given copies of the final order. This is called being "served" with the final order.

What happens if the respondent disobeys a final personal safety intervention order?

7. The respondent must obey all of the conditions listed in the final order at all times.

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8. If the respondent disobeys or "breaches" a condition in the final order this means the respondent has "contravened" the final order.
A contravention of a final order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

What if the protected person gives permission to contravene the final personal safety intervention order?

9. A person cannot permit another person to contravene an order of the court. This means that, even if the protected person allows a respondent to disobey the final order, the respondent would still commit an offence.
10. It is not a defence that the protected person consented to the behaviour that contravened the final order.

How long does a final personal safety intervention order last?

11. A final order lasts for the period the court specifies in that final order. If the final order says it will last "until further order", it lasts until it is revoked by the court or set aside on appeal.
12. If the respondent is a child, a final order cannot last for more than 12 months, unless there are exceptional circumstances.
13. The court can extend the duration of a final order, but this requires a further application to the court. The Magistrate may order an extension if he or she is satisfied that the respondent is likely to commit assault, sexual assault, serious threats, property damage or interference, harassment or stalking against the protected person if the duration of the final order is not extended.

Can the final personal safety intervention order be varied or revoked?

14. Yes. The protected person, respondent or applicant, for example, can apply to have the final order varied or revoked. Section 85 of the **Personal Safety Intervention Orders Act 2010** lists the people who can apply to have the final order varied or revoked.
15. If the respondent wants the final order varied or revoked, he or she cannot apply without the leave of the court. The Magistrate must be satisfied there has been a change in circumstances since the final order was made and that the change may justify the variation or revocation of the final order before granting leave.

What if there is a family violence intervention order under the Family Violence Protection Act 2008?

16. The court cannot make a final personal safety intervention order if there is a family violence intervention order already in force between the same respondent and protected person.

Form 2

17. If a family violence intervention order is made after a personal safety intervention order that relates to the same respondent and protected person, the family violence intervention order, and its conditions, will prevail over the personal safety intervention order.
18. Speak to a lawyer about whether a personal safety intervention order or a family violence intervention order is the correct order for your circumstances.

What if there is an order made under the Children, Youth and Families Act 2005?

19. The final order applies despite any child protection order made by the Children's Court. Speak to a lawyer about how any child protection order and your final order interact.

What about your school?

20. If you are a school student, the Magistrate may choose to give a copy of the final order to your Principal, so that they know what is happening.
21. You should talk to your Principal if you think the final order will interfere with your attendance at school.

Firearms and weapons

22. A person who is subject to a final order is a prohibited person under the **Firearms Act 1996** and the **Control of Weapons Act 1990**.
23. It is an offence for a prohibited person to possess, use or carry a firearm, silencer or any other prescribed item under the **Firearms Act 1996**.
24. A weapons exemption granted under the **Control of Weapons Act 1990** cannot be granted to a prohibited person and, if the exemption applies to a class of persons, does not apply to a prohibited person. A prohibited person cannot be granted a weapons approval, and it is an offence for an employer to employ a prohibited person to carry out duties for which a weapons approval is required.
25. A final order may include a condition ("a firearms or weapons condition") cancelling the respondent's firearms licence, revoking the respondent's weapons approval or revoking the application of a weapons exemption to the respondent.
26. Where the court has included a firearms or weapons condition in a final order (which cancels the respondent's firearms licence, weapons approval or weapons exemption), the respondent cannot make an application under the **Firearms Act 1996** to be deemed not to be a prohibited person.

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27. Where the court has included a firearms or weapons condition in a final order, the respondent can apply, with leave of the court, for a variation of the final order to remove the firearms or weapons condition.
28. Where the court has not included a firearms or weapons condition in a final order, or has varied the final order to remove a firearms or weapons condition, the respondent can apply under the **Firearms Act 1996** to be deemed not to be a prohibited person.

Contacts

Legal advice

[insert service information and contact details]

Key support services

[insert service information and contact details]

Mediation

[insert service information and contact details]

Local courts and police may have other local referral information for support services in your area.

****Note:** The value of a penalty unit for the financial year commencing [1 July YEAR] is \$xxx.xx [*\$ insert current dollar value of penalty unit to two decimal places*].

The amount of the calculated penalty may be rounded to the nearest dollar. The value of a penalty unit for future financial years is to be fixed by the Treasurer.

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ENDNOTES

1. General Information

The Personal Safety Intervention Orders Regulations 2011, S.R. No. 89/2011 were made on 30 August 2011 by the Governor in Council under section 185 of the **Personal Safety Intervention Orders Act 2010**, No. 53/2010 and came into operation on 5 September 2011: regulation 3.

The Personal Safety Intervention Orders Regulations 2011 will sunset 10 years after the day of making on 30 August 2021 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Personal Safety Intervention Orders Regulations 2011 by statutory rules, subordinate instruments and Acts.

Endnotes

3. Explanatory Details

¹ Reg. 5: S.R. No. 152/2008.