

LEGAL GUIDE TO INTERVENTION ORDERS IN SOUTH AUSTRALIA

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, Whatsapp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of three guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Intervention Orders

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In South Australia these protection orders are called **Intervention Orders (IOs)**.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in South Australia

This guide looks at what the law says about **surveillance devices** – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Relevant Criminal Offences in South Australia

This guide looks at the various **criminal offences** that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

DISCLAIMER: The use of technology-facilitated violence is a developing area of the law. The legal information, examples and scenarios contained in the guide are intended to explain the law in general terms only and are not legal advice. They cannot be relied upon or applied by readers in their own cases. Each set of circumstances needs to be looked at individually. You should seek legal advice about your own particular circumstances.

Terminology

Language of 'Victim' vs 'Survivor'

Some women who are experiencing, or who have experienced, domestic violence use the term 'victim' of domestic violence to describe themselves. Others believe the term 'survivor' of domestic violence more accurately reflects their experience.

Whilst acknowledging that each woman's experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as 'victims' of domestic violence.

Gender and Language

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims.

For this reason these guides use 'he' to refer to perpetrators and 'she' to refer to victims. This is not intended to exclude other situations.

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as 'breaking the law'.

Summary offence

Less serious offences (such as disorderly conduct), are known as summary offences. Summary offences are defined by the Summary Procedure Act 1921 (SA) and have a maximum penalty of no more than two years imprisonment or are not punishable but imprisonment at all.

Indictable offence

More serious offences are known as indictable offences. Indictable offences are divided into minor and major indictable offences.

- Minor indictable offences are less serious (such as stalking) and are usually dealt with in the Magistrates Court
- Major indictable offences are the most serious (such as murder, manslaughter, sexual assault) and are dealt with by the District or Supreme Court

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

INTERVENTION ORDERS

The *Intervention Orders (Prevention of Abuse) Act 2009* (SA) (**'the Act'**) is the piece of legislation (law) in South Australia that allows the courts to make orders protecting people from abuse.

A person who is experiencing domestic violence (**'protected person'**) may apply to the Magistrates Court of South Australia for an Intervention Order (**'IO'**). Applications are made through the police who can also make temporary orders that last until the matter goes to court (interim intervention order). An IO can protect a person by ordering the person against whom the IO is made (**'defendant'**) not to commit further acts of domestic violence against the protected person.

It's important to note that an IO is a *civil order*, meaning it is not a criminal charge. However, an application for an IO may be accompanied by related criminal charges and criminal penalties may apply if an IO is breached.

The Magistrates Court may grant an IO against the defendant for the protection of the protected person if it is satisfied that:

- It is reasonable to suspect, without intervention, the defendant would commit an act of abuse against a person; and
- Issuing the order is appropriate in the circumstances.

Where can I find this information in the Act?

Please see section 6 of the Act.

1. Can technology-facilitated stalking and abuse be a form of domestic violence?

The short answer is **yes**, technology-facilitated stalking and abuse may be a form of domestic violence.

Technology-facilitated stalking and abuse can be a form of domestic abuse if the defendant and protected person are or have been in an intimate personal relationship, or a family relationship, and the defendant's behaviour results in, or is intended to result in *emotional or psychological harm or an unreasonable and non-consensual denial of a person's financial, social or personal autonomy*.

Emotional or psychological harm includes mental illness, nervous shock and distress, anxiety or fear that is more than trivial. The Act includes some examples of acts of abuse that may result in, or be intended to result in emotional or *psychological harm*. The list includes technology-facilitated domestic violence, some examples are:

- Engaging in behaviour designed to coerce the person to engage in sexual activity
 - For example, sending a person text messages blackmailing them for sex
- Following the person
 - For example, using GPS tracking to physically follow someone
- Publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person
 - For example, a person's abusive ex-partner posts a picture featuring him killing an animal onto the woman's Facebook wall
- Communicating with the person, or to others about the person, by way of mail, telephone (including associated technology), fax or the Internet or some other form of electronic communication in a manner that could reasonably be expected to cause emotional or psychological harm to the person
 - For example, emailing intimate photos of a person to that person's work colleagues
 - For example, repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent

- Keeping the person under surveillance
 - For example, installing spyware on a person’s phone or computer without consent

The Act also includes some examples of acts of abuse that may result in, or be intended to result in *unreasonable and non-consensual denial of a person’s financial, social or personal autonomy*. The list includes technology-facilitated domestic violence, some examples are:

- Preventing the person from making or keeping connections with the person’s family, friends or cultural group
 - For example, preventing a person from contacting their friends or family overseas via telephone or email
 - For example, a husband sending his wife’s family overseas an email from her account pretending to be her, saying she is disowning them and never wants them to contact her again
- Exercising an unreasonable level of control and domination over the daily life of the person
 - For example, demanding to see an intimate partner’s call logs, text messages, personal emails and internet browsing history

Of key importance – domestic violence can include where a person commits or **threatens** to commit any of the above acts of abuse. It can also include where a person **causes or allows another person** to do one of the above acts or to take part in the act.

Where can I find this information in the Act?

Please see section 8 of the Act.

2. When is it “domestic abuse”?

Abuse is defined as ‘domestic abuse’ where the defendant and protected person are or were:

- **Married**
- **Domestic partners** - meaning they are/were in a close personal relationship and were living together, and they
 - Lived together continuously for at least three years immediately preceding; or
 - Lived together for a a collective period of three years over the four years preceding; or
 - Have had a child together (whether or not the child is still alive)

See section 11A Family Relationship Act 1975 (SA)

- In some other form of **intimate personal relationship** in which their lives are interrelated and the actions of one affects the other
- Regardless of age, one party is the **child, stepchild or grandchild**, or are **under the guardianship** of:
 - The other party; or
 - A person who is or was formerly married to, in a domestic relationship with or in an intimate relationship with the other
- One party is the **child** (under 18) and the other acts in the place of a parent
- One party is the **child** (under 18) who normally or regularly resides or stays with the other
- They are **siblings** through blood, marriage, a domestic partnership or adoption
- They are related according to **Aboriginal or Torres Strait Islander kinship** rules or are both members of some other culturally recognised family group
- One party is the **carer** of the other

It is important to note the Act also covers where one of these above relationships does not apply. In such circumstances, the abuse is called “**non-domestic abuse**”. Intervention orders can still be applied for, however “domestic abuse” is prioritised. If a person applies for an IO for non-domestic abuse (and the police did not make the application), the court must consider whether mediation may be an appropriate alternative to making an IO.

- For example, one party becomes obsessed with the other party and unilaterally decides they are in a relationship. The obsessive party sends the other party a large volume of unwanted messages over text, email and social media and repeatedly calls their phone. This may be a form of non-domestic abuse.

Where can I find this information in the Act?

Please see sections 8, 9 and 21 of the Act.

3. Who can apply for an Intervention Order?

An application for an IO may be made by:

- The police
- A person seeking protection or their representative
- A child themselves (if over 14 years old) who may hear, witness or be exposed to abuse, or their parent, guardian or representative

The police may make an application on behalf of someone they suspect the defendant will commit an act of abuse against, meaning, even if a person does not want an IO made for their protection, the police can still apply for an order protecting them.

If police are called out to a domestic violence incident and they are concerned a person will commit an act of abuse, they may decide to make a temporary IO (“interim IO”) for the protection of the other party/parties that takes effect as soon as it is served on the defendant. This order lasts until the matter goes to court to be decided.

Applying for an IO

To apply for an IO for their (or their child’s) protection, they can go to the police and make a statement. The police will then assess whether there are grounds for an IO. If there are grounds, a police prosecutor will take the matter to court for the protected person.

If the police refuse to act or a person feels uncomfortable going to the police, they can get legal advice from a community legal centre (e.g. Women’s Legal Services SA), the Legal Services Commission or a private lawyer on applying for an IO. Applications for an IO can be made directly to the Magistrates Court, see the link to the Intervention Order Application Form at the bottom of this guide.

Where can I find this information in the Act?

See sections 7 and 20 of the Act.

4. How can an Intervention Order protect a person from technology-facilitated stalking or abuse?

The conditions in an IO depend on the particular circumstances of the matter. An IO can impose requirements on the defendant to take specific actions as well as prohibitions and restraints from certain actions.

On the current IO application form, there are set conditions the applicant can apply for which prohibit technology-facilitated domestic violence. These include, the defendant must not:

- Assault, threaten, harass or intimidate the protected person(s)
- Follow or keep the protected person(s) under surveillance
- Contact or communicate with the protected person(s) either directly or in any way (including phone, letter, cards, SMS, messages, E-mail, Facsimile etc).
- Publish on the internet, by E-mail, SMS or other electronic means any material about the protected person(s)
- Cause, allow or encourage another person to do anything forbidden by this order.

The applicant for the IO can also apply for 'other' conditions that are specific to their situation and which will make the protected person feel safe.

A defendant **must** follow the conditions of an IO. If the defendant breaks any of the IO conditions (called contravening or breaching the IO), it is an offence and the police can lay charges against the defendant.

Where can I find this information in the Act?

See section 12 of the Act.

5. How long does an Intervention Order last?

An IO is ongoing and continues in force until it is revoked. There are no set expiry dates.

If a defendant wishes to have an IO varied after it has been made, they cannot apply for at least 12 months (or longer ordered by the court).

Where can I find this information in the Act?

See sections 11 and 15 of the Act.

6. What if a person is in urgent need of protection?

The police can make an interim IO (a temporary order) if it appears to a police officer that there are grounds for issuing an IO and the defendant is present before the police or is in custody. For example, if they are called out to a domestic dispute and fear for a woman's safety, they may issue and serve an interim IO against the defendant on the spot.

When a person applies privately (not through the police), the court will hold a preliminary hearing for her matter as soon as practicable and without asking the defendant to attend. At this hearing, they may decide to grant an interim IO.

An interim IO takes effect immediately (as soon as it is served on the defendant) and may contain the same conditions as in a final IO. It usually lasts until the court can hear more evidence and decide whether to make a final order for an IO or not.

Where can I find this information in the Act?

See sections 18, 21 and 23 of the Act.

7. What if a person breaks the conditions of an Intervention Order by engaging in technology-facilitated stalking or abuse?

When a person does not obey the conditions of an IO, this is called a **breach** or **contravention** of the IO.

It is an offence to contravene an IO or an interim IO. The maximum penalty is **two years imprisonment**.

All contraventions should be reported to the police so they can investigate.

If the protected person aids, abets, counsels, or procures the defendant to engage in behaviour that contravenes the IO, the protected person **will not** have committed an offence.

- For example, there is an order prohibiting the defendant from contacting the protected person in any way. If the protected person sends the defendant a text message and he replies, he has breached the order and she cannot be charged with an offence.

Where can I find this information in the Act?

See section 31 of the Act.

8. Gathering evidence to prove a technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show an IO is necessary or an IO has been contravened include:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated

9. Further help and information

LEGAL ADVICE – At any stage, it is important for a person to obtain legal advice about their situation and the options available to them. Please see the legal services directory on the support page at www.smartsafe.org.au for referrals to the nearest legal service.

Note: certain conduct in relation to technology-facilitated stalking or abuse may constitute a criminal offence. Please see the Legal Guide on Relevant Criminal Offences and Legal Guide to Surveillance Legislation for further information.