FACT SHEET: INTERVENTION ORDERS

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OBTAINING AN INTERVENTION ORDER IN AUSTRALIA

Family violence intervention orders are determined by the laws of each State and territory in Australia, however the terminology varies between each jurisdiction, as follows:

STATE/TERRITORY	NAME
Australian Capital Territory	Domestic Violence Order
New South Wales	Apprehended Violence Order
Northern Territory	Domestic Violence Order
Queensland	Domestic Violence Protection Order
South Australia	Intervention Order
Tasmania	Family Violence Order
Victoria	Intervention Order
Western Australia	Restraining Order

All domestic violence or family violence intervention orders issued from 25 November 2017 are automatically recognised and enforceable in all Australian states and territories..

Whilst there are small differences within each jurisdiction, the purpose is the same: to protect individuals from violence, harassment and intimidation. In Victoria, section 5 of the *Family Violence Protection Act 2008* defines family violence as: **behaviour towards a family member that is physically, emotionally, sexually, economically or psychologically abusive. It includes behaviour that is threatening, coercive, controlling, or dominating**.

HOW TO OBTAIN AN ORDER FOR PROTECTION

While the titles of the protection orders differ across jurisdictions, the processes are similar. Broadly speaking, the courts issue an intervention order if there is evidence that an applicant has reasonable grounds to fear violence, intimidation or stalking. In some jurisdictions, an intervention order will only be issued if there is evidence of a prior act of violence against the applicant.

There are typically two types of orders available:

- **Intervention Orders (IVO):** these relate to parties in a domestic/intimate partner relationship.
- **Apprehended Violence Orders (AVO):** these relate to parties were there is no domestic relationship (such as work colleagues/neighbours etc).

The grounds for obtaining an IVO or AVO are different in each state but follow a similar framework.

- An application can be made on a party's behalf by police; this may follow the police attending an incident, or following a direct report being made by a party. This means that the police have the carriage of the legal case on the victim's behalf, and the victim acts as a witness in the proceedings.
- An application being made directly by a party to the State Court.

If children are present during a family violence incident or have witnessed the aftereffects, they may be automatically included in any order made.

WHAT PROTECTION DOES AN INTERVENTION ORDER AFFORD?

When an application is made, the victim can select the level of protection required from the defendant. This can include:

- A restraint on them approaching or contacting the victim.
- A restraint on them attending within a certain distance of where they live, work or attend school.
- A restraint on them stalking the victim or keeping them under surveillance.
- A restraint on internet publications.

There are usually exceptions to the orders made, which may include a party communicating with the other via counselling, mediation or via lawyers. The terms may also allow the parties to communicate regarding parenting arrangements, or to attend changeover.

It is important to recognise that the primary force of an order of this nature is to act as a deterrent to the offender. It is therefore vital that any breaches of the order, are immediately reported to police.

CONTESTING AN INTERVENTION ORDER

Typically an interim order is granted "ex parte", meaning that it is determined on the evidence of the victim only. After the order is granted, it will be served on the defendant and the matter will be listed for hearing. Both parties will then have an opportunity to attend the hearing, and either negotiate to resolve the application by agreement, or contest the application, meaning that the court pathway will commence towards a final hearing.

If an application is resolved by consent, it can be done on a "no admissions" basis. This means that they make no admissions as to the allegations made. A party may also seek to negotiate and vary the terms of the order made, for example to reduce the distance of travel.

BREACH OF AN INTERVENTION ORDER

The granting of an order does not give rise to a criminal record, unless the order is breached.

If an order is breached it should be reported to the police. The police may then seek to charge the offender with criminal offences resulting from the breach, and this can result in both a criminal record and other sanctions. Any wilful breach of an intervention order is a criminal offence in Victoria and throughout Australia, and is punishable by imprisonment. The maximum penalty for contravention of an intervention order in Victoria is 2 years imprisonment or a $39,652.80 fine or both.

CONTACT US

Our Family & Relationship Law team can provide you with expert advice regarding your family law matter. Please contact us on (03) 9663 9877 (or via email at adminfamily@khq.com.au) for an obligation free discussion.