


**SVENSON**  
BARRISTERS 

## INTERVENTION ORDERS

### *Use and Misuse*

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1 MARCH 2019  
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### Intervention orders – overview

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- What are they?
- Purpose
- Conditions – not to:
  1. Commit family violence
  2. Intentionally damage property
  3. Attempt to locate, follow or keep a protected person under surveillance
  4. Publish on the internet or electronic means

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### Intervention orders – overview (continued)

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5. Contact or communicate
6. Approach or remain with ..... metres
7. Go to or remain within ..... metres of any place where a protected person lives, works or attends school/ childcare
8. Agency

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## Intervention orders – overview (continued)

Exceptions – respondent may:

- a) Do anything permitted by a Family Law Act order, a child protection order [or written arrangement as agreed with DHHS] or written agreement about child arrangements
- b) Negotiate child arrangements by letter, email or SMS
- c) Communicate through a lawyer or mediator
- d) Arrange and/or participate in counselling or mediation
- e) Go to the home of a protected person in the company of a police officer or a person chosen by the applicant to collect personal property

BUT ONLY IF the respondent does not commit family violence while doing so

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## Intervention orders The “Use”

When would you apply for one on behalf of a client?

### SAFETY

Section 1 – Family Violence Protection Act 2008 (Vic)

The purpose of this Act is to:

- (a) Maximise safety for children and adults who have experienced family violence; and
- (b) Prevent and reduce family violence to the greatest extent possible; and
- (c) Promote the accountability of perpetrators of family violence for their actions

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## Intervention orders The “Use” (continued)

Relevant things to consider:

1. SAFETY
2. How recent are the allegations?
3. Were children exposed to family violence?
4. Particulars – dates, times, details
5. Witnesses
6. Reports made to police?
7. Past intervention orders
8. Breach or other criminal charges?

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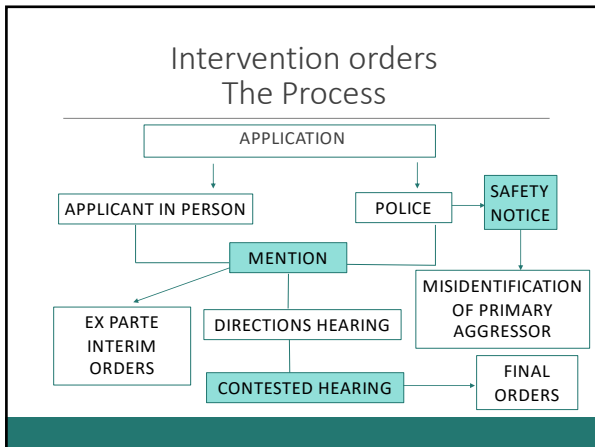
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- ### Intervention orders Final outcomes
1. Strike out application
  2. Withdrawal
  3. Undertaking – without admission to allegations
    - a) Unenforceable
    - b) Reinstatement of application
    - c) Recommended if cross application are on foot or parties wanting boundaries in place (for example, recent breakdown of relationship), avoid an order and potentially misuse through false breach reporting
    - d) Not likely accepted if police are the applicants

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- ### Intervention orders Final outcomes (continued)
4. Intervention order (IVO)
    - a) Consent without admission
      - Advise on consequences of breach – prison
      - Interstate recognition
      - Negotiate conditions and exceptions
      - Children – must be included (section 77) – a condition not to commit FV (only)?
      - Duration – court’s discretion
      - Firearms licence – apply to be deemed a non-prohibited person? Section 189 *Firearms Act 1996* (Vic)

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## Intervention orders Final outcomes (continued)

### b) Order made based on evidence heard by the court

- Two fold test – section 74 *Family Violence Protection Act 2008* (Vic)

Court may make a final order, if the court is satisfied, on the balance of probabilities, that the respondent has committed FV against the affected family member and is likely to continue to do so or do so again

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## Intervention orders Final outcomes (continued)

- Factual findings – concurrent proceedings – criminal, family law?

### b) Respondent does not attend court – order made ex parte

Consider – applications to extend in future

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11

## Intervention orders The “Misuse” – examples

### Example 1

#### Cessation or suspension of parenting arrangements

#### Facts:

- Husband and Wife married with two children
- Wife has interim order against Husband made ex parte - full no contact conditions
- Children listed as affected family members – no contact, publication on social media, school involvement

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### Intervention orders The "Misuse" – examples (cont)

- Wife does not consent to parenting arrangements by parenting plan, ignores requests by solicitor for husband to spend time with the children [possibly no exceptions on interim intervention order]
- Husband then files a cross-application for an intervention order against the Wife
- How would you deal with this scenario?

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### Intervention orders The "Misuse" – examples (cont)

Consider

- Look at the bigger picture –
  - a) Often children arrangements
  - b) Allegations of family violence – does it simply call for boundaries?
  - c) Are the parents still wanting to be in a relationship? Could they benefit from counselling?
- Can you narrow the scope of the issues?
  - a) Is it alcohol or drugs?
  - b) Are text messages directed only at a parent and not the children?

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### Intervention orders The "Misuse" – examples (cont)

- Look at both parties' concerns
- Reality test the allegations made against your client
- Understand your client's perception of the other party
- Has there been a history of family violence with police involvement?

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### Intervention orders The "Misuse" – examples (cont)

Can you resolve the intervention order applications at an early stage?

- a) Mutual undertakings
- b) Mutual orders
- c) Limit conditions
- d) One party withdraws, and gives an undertaking to the other?
- e) Duration

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### Intervention orders The "Misuse" – examples (cont)

- Once served with application for intervention order, immediately start family dispute resolution (FDRS)

- What parenting arrangements were in place before the first parent applied for an intervention order? (One parent may argue need for supervision)

- Legal costs of two proceedings – family law and intervention order

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### Intervention orders The "Misuse" – examples (cont)

**Example 2**

**For migration purposes**

Facts

- Partner visa
- Notification to the Department of Immigration / Home Affairs that relationship has ended
- Received advice - may still be granted a visa if experienced FV and relationship has ended

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### Intervention orders The "Misuse" – examples (cont)

Consider

- Is the test to make a final order (section 74) likely to be satisfied?
- Ask for Further and Better Particulars
- Look at chronology of dates
- Is there evidence to suggest that an application for an IVO has been made for visa purposes?
- History of FV?
- Is this application one that you would advise your client to contest?

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### Intervention orders The "Misuse" – examples (cont)

Example 3

**To exclude a person (respondent) from the matrimonial home**

Facts

- Wife obtains interim IVO against Husband
- Husband becomes homeless
- You act for the husband – how would you deal with this?
- Have you dealt with a situation where DHHS were the applicants to the IVO?

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### Intervention orders The "Misuse" – examples (cont)

Consider

- Is there another place that the Wife can reside in?
- Is there a place that the Husband can reside in?
- Collection of personal property (police or someone nominated by the applicant – how is the respondent notified who this nominated individual is?)
- Foreshadowing family law property proceedings – ask your client to compile a list of items that he wants returned?

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### Intervention orders The "Misuse" – examples (cont)

-See section 82 *Family Violence Protection Act 2008*

- a) minimise disruption to the protected person and any child living with the protected person and support that may be lost if the protected person and child were required to leave residence or unable to return
- b) Continuity and stability in the care of any child living with the protected person
- c) Allowing any childcare arrangements, education, training or employment of the protected person or any child to continue without interruption

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### Intervention orders The "Misuse" – examples (cont)

**Example 4**

**Continuous reports to the police about breaches of intervention order**

- Element of intention

- Some examples – are these breaches?

- a) Multiple text messages about child arrangements
- b) Family violence at changeovers – video recordings?
- c) SMS proposing a person to accompany the respondent to attend home to collect belongings?
- d) Telephone call to children – "how's mum doing?"

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### Intervention orders The "Misuse" – examples (cont)

Some examples – is this a breach?

- e) A respondent had a 10 year IVO made against him (ex parte). His 16 year old daughter was named as an affected family member on the order. The respondent had final Federal Circuit Court parenting orders made with an order that he spend no time with his daughter. The respondent attends his daughter's place of employment not knowing that she works there. He is charged for breach – is this a breach?

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## Intervention orders The "Misuse" – examples (cont)

### Example 5

#### **Protected person uses the FVIO to their advantage**

- Section 125 – Protected person not guilty as abettor  
A protected person is not involved in in the commission of an offence... and is not punishable as a principal offender, because the protected person encourages, permits or authorises conduct by the respondent that contravenes the FVIO or FVSN.

#### Some examples

- Protected person joins the same gym as the respondent
- Parents attending school events

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