

Potential Pitfalls with IVOs

3 SEPTEMBER 2021
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Two Acts:

- *Family Violence Protection Act 2008*
- *Personal Safety Intervention Orders Act 2010*

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Family Violence IVOs

- Must be a 'family member' (s8).
- Engaging in 'family violence' (s5).
- Lengthy definition including:
 - Economic abuse (s6)
 - Emotional or psychological abuse (s7)

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Family Member (s8) Includes current or former

- Spouse or domestic partner
- Intimate personal relationship (doesn't have to be sexual)
- A relative
- A child (residing or previously resided) or intimate relationship
- S8(3) outlines other relevant persons

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Domestic Partner (s9)

- Includes registered relationships
- Gender not relevant
- Parties do not have to be living together
- Does NOT include person providing care and support for reward or on behalf of another person or organisation or as a co-tenant

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Relative (s10)

- Blood, half blood or by marriage or adoption. (domestic partner included)
- Father, mother GF, GM
- Son, daughter GS, GD
- Brother, sister, uncle aunt, nephew niece cousin
- Includes traditional/social relatives of Aboriginal or Torres Strait Islanders

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Interim IVOs (s53)

- Court must be satisfied, on balance, interim order is necessary
 - To ensure safety of AFM or
 - Preserve property or
 - Protect children or
 - Safety Notice in place
 - Court MUST consider whether children involved and make an order (s53AA)

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IIVOS Evidentiary requirements (s55)

- Unless both parties agree to IIVO:
 - Application must be supported by Oral Evidence or on Oath
 - Court may waive this requirement
 - Where applicant is PO and application is outside court hours
- Order remains until expiry, final hearing or the order is revoked.
- Cannot make IIVO where PSIVO (s53A)

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Interim IVOs Issues for Respondents

- Almost always granted prior to Respondent being served. (s54)
- Almost impossible to revoke prior to full hearing date.
- Act requires hearing must be as soon as practicable (s59). Reality is often 12 months + before final determination.
- Issues where police are applicant and AFM not supportive. (and Vice Versa)

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IIVOs made on court's own motion Part 4 Div 2A s60A-L

- In a bail proceeding (application, extension, variation or appeal) or
- At any stage of a criminal proceeding (including committal, trial, sentence or appeal and whether a person is found guilty or not or a charge is withdrawn)
- Court can make IIVO to ensure safety of AFM pending a decision about a final order.

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Evidence in IVO Proceedings

Court can inform itself in any way it sees fit (s65). Usual rules of evidence do not apply.

Usual for AFMs to give evidence remotely. (s69)

In person Resp cannot XE AFM (s70)

Children (unless Appl or Resp) cannot give evidence without leave. (s67)

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CONDITIONS

s81. wide powers to make any conditions, necessary or desirable, including duration.

Must consider children (s73I)

If AFM does not consent to (police) order limited conditions only

Consider Family Court Orders (s87-90)

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OFFENCES

Breach IVO. (s123) Breach Safety Notice (s37)

- 2 years jail or level 7 fine
- Must prove Order served or explained

Breach IVO intending to cause physical or mental harm/Persistent Breach of IVO/safety Notice

- 5 years jail level 6 fine

Note AFM or PP cannot be charged as abettor

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PERSONAL SAFETY INTERVENTION ORDER ACT 2010

Replaced the *Stalking Intervention Orders Act 2008*, which AG Hulls complained was "being used in a range of situations that are not true 'stalking' at all...situations where difficult challenging or inappropriate behaviour is being alleged".

two aims:

- "to better protect victims of **serious inappropriate behaviour** that threaten their safety where that behaviour occurs outside the family, and
- to refer appropriate disputed to mediation services"

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PROHIBITED BEHAVIOUR

To obtain a PSIVO it must be established that a respondent engaged in *prohibited behaviour* as defined.

Section 5 of the Act defines *prohibited behaviour* as:

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

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DEFINITIONS

Assault & sexual Assault (s6)

- Direct or indirect force, without lawful excuse with intent
- Sexual assault means assault of a sexual nature

Harassment (s7) (most common reason)

- 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.

Property damage/interference (s8)

- Destruction or interference of any property including a pet
- Threats to damage, destroy or substantially interfere

Serious threat (s9)

- Threat to kill or inflict serious injury (Crimes Act)

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STALKING (s10) (same definition as s21A CA)

Course of conduct with the intention of causing:

Physical or mental harm

Arousing apprehension or fear including

- Following
- Contacting by post, telephone, text, email or other elect communication
- Publishing.
- Unauthorised computer function (as per CA)
- Electronic surveillance
- Loitering near residence
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S11 Exclusion

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) Enforcement of.. Pecuniary penalty
- (d) Execution of a warrant
- (e) Protection of public revenue.

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PROCEEDINGS

Court may direct the parties to mediation (s26)

No contempt for lack of attendance (s32)

Court may take into account failure to attend mediation when determining application.

Otherwise proceedings and penalties for breach very similar to FV IVOs

- Interim orders (s35)
- Cannot have IVO under both Acts (s36)

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Other matters

Prohibition on publication of proceedings FV (s166)

Court may close proceedings to public

Right of appeal against final orders

Right to apply to vary/revoke

Firearms clauses may apply

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