



For Official Use Only

GENERAL ORDER

INTERVENTION/RESTRAINING ORDERS

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General Orders provide an employee with instructions to ensure organisational standards are maintained consistent with SAPOL's vision. To this end, General Orders are issued to assist an employee to effectively and efficiently perform their duties. It is important that an employee constantly bears in mind that the extent of their compliance with General Orders may have legal consequences.

Most orders, as is indicated by the form in which they are expressed, are mandatory and must be followed. However, not all situations encountered by an employee can be managed without some form of guidance and so some of these orders are prepared as guidelines, which should be applied using reason. An appendix to a General Order will be regarded as part of the General Order to which it relates. At all times an employee is expected to act ethically and with integrity and to be in a position to explain their actions. Deviation from these orders without justification may attract disciplinary action.

To ensure best practice an employee should be conversant with the contents of General Orders.

The contents of General Orders must not be divulged to any person not officially connected with SAPOL. Requests for General Orders will be managed as follows:

- Civil subpoena and disclosure requests—contact the Information Release Unit.
- Criminal subpoena and disclosure requests—refer to General Order, **Disclosure compliance and subpoena management**.
- Freedom of information requests—contact the Freedom of Information Unit.
- Any other requests (including requests by employees)—refer to instructions provided within General Order, **Corporate policy framework, 5. General Order requests/release**.

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1. GENERAL ORDER STATEMENT

This General Order provides direction to South Australia Police (SAPOL) employees in the practical application of the *Intervention Orders (Prevention of Abuse) Act 2009* (IOPA Act). The IOPA Act identifies all relationships both domestic and non-domestic, and brings together laws governing intervention orders relating to domestic violence and other forms of personal violence.

As of 25 November 2017 the IOPA Act allows domestic violence orders issued in any Australian jurisdiction to be recognised and enforced across Australia without the need to manually register an order in a new jurisdiction. This initiative is referred to as the National Domestic Violence Order Scheme (NDVOS) and has been implemented in all Australian states and territories.

The *Criminal Procedure Act 1921* prescribes specific provisions for making an application for a Paedophile restraining order and Child protection restraining order.

A member must not use intervention order legislation at an industrial dispute (refer to General Order, **Civil disputes**).

Scope

The procedures contained in this General Order apply to all employees except where the roles and responsibilities are assigned to a particular section or category of employee.

2. DEFINITIONS

The following definitions, terms and abbreviations are used throughout this General Order.

CFIS—Child and Family Investigation Section.

Domestic violence concern—an order addresses a domestic violence concern, if that order is made because the defendant has committed, or it is feared the defendant will commit an act of domestic abuse.

Domestic violence order (DVO) means—

- a local DVO; or
- an interstate DVO; or
- a foreign intervention order,

that addresses a domestic violence concern.

DVEC (Domestic Violence Evidence in Chief)—a DVEC is an audio recording or audio visual recording made by a police officer of a representation made by a complainant in connection with an investigation of the commission of a domestic violence offence or the making or variation of an intervention order.

Firearms terms—in an intervention order includes a firearm, part of a firearm and ammunition.

FLAO—Family Law Act Order.

FVIO—Family Violence Intervention Officer.

Intervention order means—

- an interim intervention order; or
- a final intervention order.

Interim intervention order means—

- an interim intervention order issued by a police officer pursuant to section 18 of the IOPA Act; or
- an interim intervention order issued by the Court pursuant to section 21 of the IOPA Act.

Final intervention order means—

- an interim intervention order (PIIO or court interim order) confirmed by the Court as a final order pursuant to section 23 of the IOPA Act; or
- a final intervention order issued by the Court pursuant to section 23 of the IOPA Act in substitution for an interim intervention order.

Intimate domestic relationship

For the purposes of establishing whether a relationship is an intimate domestic relationship, two people must share a close interpersonal relationship where there is or has been, some behavioural interdependence and repeated interactions. Two people are in an intimate domestic relationship when (currently or previously):

- they are married
- they are domestic partners (refer to section 11A of the *Family Relationships Act 1975*)
- they are in an intimate personal relationship where their lives are interrelated and the actions of one affects the other—this can include boyfriend/girlfriend and same sex relationships (there is no need to establish a ‘live-in’ relationship, nor a level of permanency/intended permanency)
- one party is the child, stepchild, grandchild of the other party or otherwise under the legal guardianship of the other.

Properly notified—(in relation to a DVO) means correctly served on the defendant. A DVO is properly notified when it is served personally on the defendant or in some other manner authorised by the court or the defendant was present in court when the DVO was made.

Protected person—a person for whose protection an order is issued.

Served—an order is considered served where the defendant was present in court when the order was made. When the defendant was not present in court, the order must be served personally or in some other manner authorised by the court.

Victim—(for the purpose of this General Order) is a person subject to protection in an order. A victim is not a protected person until an interim intervention order is issued and served.

3. TYPES OF INTERVENTION/RESTRAINING ORDERS

The IOPA Act allows for the issuance of both domestic and non-domestic intervention orders, which are defined in section 8(8) and (9) of the IOPA Act.

The following orders can be made:

- **Police interim intervention order (PIIO)**—pursuant to section 18 of the IOPA Act police are able to issue an interim intervention order, where the defendant is present or in custody.
- **Court interim intervention order**—pursuant to section 20 of the IOPA Act an application for an interim intervention order can be made directly to the court either privately or through police.

The IOPA Act also facilitates national recognition of domestic violence orders. This means that a DVO issued from 25 November 2017 in any Australian jurisdiction can be enforced, varied or revoked in any other Australian jurisdiction.

A DVO issued prior to 25 November 2017 in any jurisdiction, except Victoria, can be declared to be nationally recognised. All Victorian DVOs, irrespective of the date of issue are nationally recognised and do not require declaring.

Other orders of restraint may be made pursuant to other Acts as follows:

- **Criminal Law (Sentencing) Act 1988**—pursuant to section 19A of the *Criminal Law (Sentencing) Act 1988* the court can issue an intervention order in accordance with the IOPA Act when a person is found guilty of, or sentenced for an offence.
- **Bail Act 1985**—pursuant to section 23A of the *Bail Act 1985* the court can issue an intervention order in accordance with the IOPA Act when there is a perceived need for protection by a victim.
- **Paedophile restraining order**—pursuant to section 99AA of the *Criminal Procedure Act 1921* orders can be made against persons who have previously been convicted or sentenced for a child sexual offence or who persistently loiter near children. Refer to General Order, **Paedophile restraining orders** for further information.
- **Child protection restraining order**—pursuant to section 99AAC of the *Criminal Procedure Act 1921* an order can be made to restrain an adult person from having contact with a child under the age of 17 years where the adult is not the guardian but is residing with the child, and in doing so, is exposing that child to a risk of abuse or drug offending or where the adult has been convicted of this type of offending in the preceding 10 years. Refer to General Order, **Children and young people—protection from harm** for further information.

Characteristics of intervention orders

Intervention orders made pursuant to the IOPA Act:

- may be issued for the protection of anyone against whom it is suspected the defendant will commit an act of abuse or any child who may hear or witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against another person
- have a continuing effect—these orders continue in force, subject to any variation or substitution by the court, until revoked—there is no fixed date of expiry imposed that will limit the duration of an intervention order
- can be made against a person residing in or outside South Australia

- direct a person to be restrained from doing certain things in order to protect the victim from abuse (for example from contacting the protected person in any manner, or by restricting the method of communication, from attending particular locations, or going within a certain distance of a protected person)
- may require the person to do other things (for example allow a protected person access to recover specified personal property, surrender specified weapons or articles)
- may be issued contrary to the protected person's wishes
- may be issued to protect more than one person.

4. LEGISLATION FRAMEWORK

An intervention order may be issued for the protection of any person against whom it is suspected the defendant will commit an act of abuse; or any child who may hear, witness or otherwise be exposed to the effects of an act of abuse.

Pursuant to section 8(2) of the IOPA Act, an act is an act of abuse against a person if it results in or is intended to result in:

- physical injury
- emotional or psychological harm
- an unreasonable and non-consensual denial of financial, social or personal autonomy
- damage to property owned, possessed or used or otherwise enjoyed by the victim.

Emotional or psychological harms includes:

- mental illness
- nervous shock
- distress, anxiety or fear, that is more than trivial.

Section 8(4) of the IOPA Act provides examples of the types of emotional and psychological harm which are considered to be acts of abuse.

Grounds for issuing an interim intervention order

There are grounds for issuing an interim intervention order when it is reasonable to suspect the defendant will, without intervention, commit an act of abuse against a person and the issuing of the order is appropriate in the circumstances.

A defendant may commit an act of abuse by causing or allowing another person to commit the act or to take part in the commission of the act.

Refer to **8. POLICE INTERIM INTERVENTION ORDER** and **10. COURT APPLICATION** further in this General Order for instructions regarding the circumstances when members will be involved in issuing a PIIO or initiating a court application.

Eligibility to apply for an intervention order

An application for an intervention order can be made by:

- a police officer
- a victim or another person (given permission by the court)
- where the defendant or person proposed to be protected is a child and there is a State child protection order in force with respect of the child, the Minister responsible for the administration of the *Children and Young People (Safety) Act 2017*
- a child 14 years or above
- a parent/guardian of a child under 14 years, or with whom the child resides, or representative of the child.

Where a child is included as a protected person on a PIIO or on an application for a court interim intervention order, consideration should be given as to whether the reasons for the inclusion of the child gives rise to a suspicion of child abuse or neglect relative to that child. If so, a child abuse notification should be made to the Child Abuse Report Line (CARL) or via eCARL as per obligations pursuant to section 31 of the *Children and Young People (Safety) Act 2017*.

5. FORMS

The following forms apply to this General Order. Any form completed as part of the processes detailed within this General Order, should be uploaded to the associated Shield occurrence.

SAPOL forms

PD18 Firearms forfeiture/found property notice

PD18A Intervention Orders (Prevention of Abuse) Act 2009 firearms forfeiture

PD18B Intervention Orders (Prevention of Abuse) Act 2009 weapons and articles forfeiture (not firearms)

PD215 Summons enquiry sheet

PD438 Domestic violence risk assessment

PD570 Police interim intervention order

PD570A Administrative Information—for the Principal Registrar

PD570B Interim intervention order—supplementary information

PD570C Intervention order—protected person's details

PD571 Revocation notice—written notice revoking police interim intervention order

PD572 Family Law Court—request for most recent orders relating to children of the parties

PD573 Record of police interim intervention order authorisation

PD585 Forwarding minute and checklist for intervention order applications

PD585A Forwarding minute and checklist for intervention order variation/revocation applications

PD684 National request to investigate and prosecute (online form)

PD685 National DVO request—police (online form)

RF2134 State Intelligence Branch request for external information (non-telecommunications).

Court forms

Form 28 Police/Third party Application (intervention order)

Form 31 Police/Third party Application for variation or revocation of intervention order

Form 31AB Police Application for interim variation of final intervention order

Form 41 Request to register foreign intervention order

Form 43 Multilingual notice for intervention orders

Form 44 Application for extension of period of detention

Form 46A Application to declare domestic violence order as nationally recognised

Notice of contravention pursuant to IOPA Act, section 13, Intervention programs (this form is provided to SAPOL by the court).

6. POLICY REGARDING INITIATING AN INTERVENTION ORDER

4(2)(a)(iii) & 4(2)(a)(iv) & 4(2)(b)

Before initiating an intervention order which relates to a domestic violence concern, a member must establish whether or not a current, comparable DVO exists. When a current and comparable DVO exists, a member should, wherever possible, act on the existing DVO rather than applying for or issuing a new order.

A comparable order is one which involves the same defendant and one or more of the same protected persons.

How to establish if a DVO exists

The National Police Reference System (NPRS) must be checked to see if there are any existing DVOs for the involved parties. Checks can be undertaken using either the victim or the defendant's name. SearchLite is the preferred application to access NPRS as it will search across both SAPOL and interstate data and will display the information about DVOs on a summary screen.

South Australian Police Person Search (SAPPS) may also be used if SearchLite is not available.

SearchLite—person search

The following steps are to be used when conducting a person search on SearchLite:

- add person name details in and search—ensuring to select the ‘National’ button to check all states/territories
- look through the list and select the correct row of the person identified
- select the three dot (...) ellipsis in the top right corner of the window to reveal a menu
- select ‘Protection order’ in the menu.

All relevant and available orders will appear in a new screen.


7. EXCHANGING INFORMATION WITH INTERSTATE POLICE AND COURTS

With the introduction of nationally recognised DVOs, information exchange practices and protocols with interstate jurisdictions have been agreed and established. This will ensure that a member has access to copies of DVOs and other relevant information and documentation to enable appropriate and timely action to be taken.

Police and court services in each state/territory have set up a generic mail box (central contact point) to receive and process requests from other states/territories for copies of DVOs and other information.

A list of the central contact points is available on the intranet at <police connect home page/services/crime service/public protection branch/family and domestic violence section/intervention orders>.

4(2)(a)(iii) & 4(2)(a)(iv) & 4(2)(b)



Requests for information from SAPOL to interstate

All requests for information from SAPOL members for information from interstate police and courts should be directed to the SAPOL central contact point mailbox. A response will be returned via email to the enquiring member.

In addition to information exchange, the mailbox can be used by a member to seek clarification or assistance with a matter concerning an intervention order or DVO.

Urgent requests

An urgent request will be confined to those instances where an operational member needs a copy of an interstate DVO and proof of service immediately, either to serve an unserved order, or because they have arrested an offender for a breach of a DVO and need a copy of the DVO for the arrest apprehension submission.

When searching for a DVO in SearchLite (as described in **6. POLICE REGARDING INITIATING AN INTERVENTION ORDER, How to establish if a DVO exists, SearchLite—person search** previous in this General Order) selecting an order from the summary list will display detailed information regarding that order.

At the bottom of the screen there are two buttons marked 'Urgent' and 'Non-urgent'. Selecting the 'Urgent' button will submit an email request for a copy of the selected intervention order and associated proof of service, directly to the SAPOL central contact point mailbox with a one hour response time for the information to be emailed back to the member.

The 'Non-urgent' button will follow the same process with a response time for the copies to be emailed within one business day.

Alternatively, a **PD685 National DVO Request—police (PD685)** can be completed and emailed to the SAPOL central contact point mailbox.

A member must follow-up any urgent email request with a phone call to the SAPOL central contact point to alert them to the presence of the email. The telephone numbers for the central contact point is listed on the online form.

A response will be emailed to the requesting member within the designated time frame.

Non-urgent requests

Non-urgent requests (aside from the option above) should be submitted via a **PD685** and will only be processed during business hours. There is no need to follow-up the submission of a non-urgent request with a phone call. Requests will be actioned within the designated time frames which are listed on the online form.


Requests for information from interstate to SAPOL

Incoming requests from interstate police and courts will be received via the SAPOL central contact point mailbox and will be managed centrally. Such requests should not impact significantly on operational members.


Should a member receive a direct request for a copy of a DVO, proof of service or other urgent domestic violence-related information (outside of the planned response procedures), the member should provide the required documents/information to the requestor and copy in the SAPOL central contact point mailbox. In all instances, responses should only ever be provided to police or court/justice email addresses.

8. POLICE INTERIM INTERVENTION ORDER

4(2)(a)(iii) & 4(2)(a)(iv) & 4(2)(b)




4(2)(a)(iii) and 4(2)(b)



How to establish immediate or imminent risk

A member must give due consideration to the immediate or imminent risk to a person's safety when determining whether to issue a PIIO.

4(2)(a)(iii) & 4(2)(a)(iv) & 4(2)(b)



To assist in determining the immediate or imminent risk, a member must conduct a risk assessment which should include giving due regard to the known risk factors of the Shield Domestic abuse risk assessment report/**PD438 Domestic violence risk assessment**, as well as considering the current circumstances, the criminal investigation, domestic abuse history, antecedents and the member's professional judgement.

Where the circumstances are complex in nature an employee should seek advice from their immediate supervisor, CFIS, officer in charge of a regional Criminal Investigation Branch (CIB), FVIO, a District Duty Inspector or the State Shift Manager.

Electronic issue of a PIIO

A member should, unless exceptional circumstances exist, issue an electronic PIIO by using the Interim intervention orders (IIO) data entry application system on the Police incident management system (PIMS). PIMS will remain the source of truth for all PIIO conditions and service/revocation details.

An occurrence will be utilised as the mechanism to record details of the related incident, and PIIO submission to prosecution. Refer to the IIOs user guide available through the intranet at <police connect home page/services/crime service/public protection branch/family and domestic violence section/intervention orders>.

Issue of a PIIO from the pre-printed book

There will be occasions where it is not possible to electronically issue a PIIO at a station and it will be necessary to complete and serve the order from the pre-printed book **PD570 Police interim intervention order (PD570)**. Circumstances where this may occur include:


- where the defendant is unable to reasonably be taken to a police station (for example admitted to hospital)
- the defendant is in a location not proximate to a police station (for example remote location)
- the electronic system is not working.

As soon as practicable and in any case before the end of the shift, the issuing officer must enter the details of the order onto the IIO data entry application system (PIMS).

Powers to facilitate preparation and service of an order on a defendant

Pursuant to section 34 of the IOPA Act, police are provided with the power to require a defendant to remain at a particular place for as long as necessary for an order to be prepared and served (whether a PIIO or a court issued order). When the defendant fails to comply or a member reasonably believes the defendant will not remain as requested, they may arrest and detain the person for the purpose of completing the issuing/preparation and service of the order.

4(2)(a)(iii) and 4(2)(b)




A PIIO is effective upon service on the defendant and offers immediate protection to a victim.

Impact of the National Domestic Violence Order Scheme on issuing PIIOs

Where police are aware there is a current national DVO in place which has been issued by a **court** (either South Australian or interstate) a PIIO **may not be issued**. Action should be taken on the existing DVO.

4(2)(a)(iii) and 4(2)(b)



Where a member is unaware of the existence of a DVO (for example the NPRS is not available or it is difficult to determine that an order is comparable) the IOPA Act allows the issuing of a PIIO.

Authorisation

Prior to issuing a PIIO, oral or written authorisation must be obtained from a member of or above the rank of sergeant. This must be a substantive sergeant. An acting sergeant **cannot** authorise a PIIO.

When a PIIO is issued by a member of or above the rank of sergeant, they may not authorise that PIIO. Authorisation must be sought from another member of or above the rank of sergeant.

When seeking authorisation, the following information should be provided by the issuing member to the authorising officer for consideration:

- details of the circumstances of the incident, including any acts of abuse and/or criminal offences
- previous history of the relationship
- relationship between the victim and defendant to determine whether the abuse is domestic or non-domestic
- the grounds for issuing the order
- the terms being imposed
- any other relevant information.

Where a defendant is to be excluded from their place of residence (term 15 on the PIIO) authorisation for the order must be sought from an officer of police. Additional factors for consideration include (but are not limited to) the following:

- the victim's intentions to either remain or leave the premises
- minimising any disruption to the educational, social needs and support networks for the children
- minimising any disruption to training, employment, social services, networking of a victim
- the defendant's accommodation/social circumstances information regarding financial arrangements, for example:
 - joint or sole mortgagee (who is the legal owner of the premises)
 - sole or joint tenant on lease (consider whose name is on the tenancy agreement)
 - payment of rent (who contributes to the rent payments)
 - length of occupancy/permanency (how long the occupants have been living at the premises).

Authorising officers may use the **PD573 Record of Police interim intervention order authorisation** to record the basis for their decision for authorisation. When the form is used, the form is retained by the authorising officer as their original notes.

Determining the summons date

When served, the PIIO acts as a summons for the defendant to appear in a court on a date specified in the order for the hearing of that application. The legislation specifies the maximum time frame for the defendant to appear (within eight days after the date of the order or, if the court will not be sitting at the place within that period, within two days after the court next commences sitting at the place).

A member must refer to their local prosecution unit listing practices to determine the appropriate date/time to be endorsed on the PIIO.

The list is located on the intranet at <police connect home page/services/operations support service/prosecution services branch/piio dates and revocations>.

Vetting process

Electronic and pre-printed PIIOs (**PD570**) must be verified as “correct and complete” by another member prior to serving. This process should not be confused with the requirement for obtaining authorisation to issue a PIIO.

The vetting process provides quality assurance with respect to ensuring:

- there is not a pre-existing intervention order (PIIO or court order)
- the correct summons time and date have been recorded
- the name and details of persons named in the order are correct
- listed conditions are appropriate
- all required fields are complete.

All PIIOs must be printed and signed after vetting.

Electronically issued PIIOs

Electronically issued PIIOs can either be printed and reviewed as a hardcopy or reviewed online by the vetting officer.

Once vetting of the PIIO is complete, the required vetting information must be entered on the PIIO system.

Vetting must occur prior to service. When an error is identified, the PIIO should be corrected **prior** to entry of proof of service details and must then be re-vetted.

PIIOs issued from a pre-printed book

Once the PIIO has been entered onto the IIO data entry application system the PIIO must be vetted to ensure the content of the computer generated order is the same as the pre-printed book order (**PD570**). Vetting can be done by either reviewing the order as a hardcopy or online.

Any data entry discrepancies identified must be rectified.

Once vetting of the PIIO is complete, the required vetting information must be entered onto the PIIO system.

When an error is identified, the PIIO should be corrected **prior** to entry of proof of service details and must then be re-vetted.

Service requirements

Upon issuance of a PIIO the serving member must:

- read out the terms of the PIIO to the defendant and the protected person(s)
- advise the defendant and the protected person(s) that the PIIO serves as both an application to the court and summons to the defendant
- serve the order on the defendant and provide a copy of the 'Information and frequently asked questions about the police interim intervention order' sheets
- provide the protected person(s) with a signed copy of the order
- complete Proof of service and enter the Proof of service details into PIMS prior to the end of their shift.

Where an error or discrepancy is identified after the service details are entered onto the IIO system (PIMS) the PIIO must be revoked. Refer to **9. REVOKING/ CORRECTING A POLICE INTERIM INTERVENTION ORDER ISSUED IN ERROR** further in this General Order.

Notification to the Principal Registrar (Adelaide Magistrates Court)

PIIOs entered onto the Intervention order (IO) data entry application system (PIMS) are transmitted electronically to the Principal Registrar, Adelaide Magistrates Court once proof of service details are entered.

Shield occurrence

A Shield occurrence must be created if one does not already exist. The occurrence will record the incident, and provide a mechanism to submit the PIIO to prosecution. Where the incident meets the definition of domestic abuse in accordance with General Order, **Domestic abuse**, a Domestic abuse risk assessment report must be completed.

Documentation

When a PIIO has been served on a defendant, the issuing member must before the end of their shift complete the following:

- generate a **PD339 Application Apprehension report (AP)** through PIMS
- generate an occurrence, if one does not already exist (complete mandatory fields prior to the completion of shift as relevant).

Submission to prosecution

The PIIO will be submitted to prosecution via an Investigator action 'General application submission' template—refer to Shield online help for further instructions.

The PIIO must reach the relevant prosecution unit within 72 hours of it having been issued and at least prior to the nominated court date, whichever is sooner. The following documents will be required by prosecution and will be uploaded to the occurrence:

- **PD585 Forwarding minute and checklist for intervention order applications (PD585)**
- Application Apprehension report (AP)
- copy of the offender's interstate criminal history (SAPPS) or a clear notation to the prosecutor that the person has no interstate criminal history—the offender's South Australian criminal history will be generated through a Shield offender history report
- relevant photos
- the protected person's signed affidavit relating to the substantive offence/incident attended, **or** the police officer's affidavit when the protected person has not provided a statement—where a DVEC (electronic recording) has been taken in lieu of a written statement, this must be noted clearly at the beginning of the summary of evidence on the AP, so that prosecution are aware of the DVEC (and the absence of an affidavit)
- a copy of any notes made by the investigating officer
- any other statements or documentation available at the time of the submission of the file:
 - where it is known there are relevant statements or documents pertaining to the longitudinal domestic violence history of the parties, such as statements or documents prepared for Family Court proceedings, a member must ask the protected person if they are willing to release them to SAPOL to support the application
 - these additional documents must be uploaded to the occurrence and forwarded to the relevant prosecution unit for inclusion on a previously sent file
 - add a comment to the **PD585** regarding the existence of documents that are not on the file
- the PIMS generated PIIO—where a pre-printed **PD570** PIIO was also completed, both must be uploaded
- **PD570B Interim intervention order—supplementary information** where additional protected persons are included on the PIIO.

Additionally, the following documents will be included and uploaded to Shield when applicable:

- copy of bail documentation of the associated arrest
- printout containing details of the defendant's firearms
- **PD18B Intervention Orders (Prevention of Abuse) Act 2009 weapons and articles forfeiture (not firearms)** where there are weapons and/or articles that have been seized
- **PD572 Family Law Court—request for most recent orders relating to children of the parties** (original) and the email receipt

- other documents for example *Family Law Act 1975* (Cwlth) orders, et cetera.
- the workflow should be endorsed with a note to the prosecutor within the remarks field regarding firearms owned by the defendant, as below:

Priority	Due date	Assigned to
HIGH	16/10/2018 08:34	

Remarks
'No firearms' or 'Defendant has firearms recorded but not yet seized'

Assign to appropriate Prosecution Unit

Refer also to General Order, **Arrest/report procedures and documentation**.

9. REVOKING/CORRECTING A POLICE INTERIM INTERVENTION ORDER ISSUED IN ERROR

Cancellation of a Police interim intervention order before service

Electronic issue of a PIIO

An electronically generated PIIO can be deleted if it has not been served by completing a **PD356 Authority to delete, remove, release, restore, reports/items on police information systems** and submitting it to Data Management Unit who will delete the PIIO from the system. When the order has been served it must be revoked.

Issue of a PIIO from the pre-printed book

Where an issuing member makes an error in a handwritten **PD570** and it has not yet been served and no other documentation is completed or entry made on PIMS, the order can be cancelled by writing clearly across the face of the notice the word 'Cancelled'. The cancelled order is to remain in the issuing member's pre-printed book.

Revocation of a police interim intervention order after service

Pursuant to section 19 of the IOPA Act, the Commissioner of Police may revoke a PIIO by having a written notice served on the defendant personally or by post to the address provided by the defendant. In practice, revocations will only be authorised by the Commissioner of Police for matters which have not yet had their first court hearing. Once the first court hearing has occurred, the court should hear and determine an application to revoke.

4(2)(a)(iii) and 4(2)(b)

Electronic revocation notice

A **PD571 Revocation notice (PD571)** is generated from the PIIO main menu— Revoke intervention order on PIMS. Refer to the IIOs user guide which is available through the intranet at <police connect home page/services/crime service/public protection branch/family and domestic violence section/intervention orders>.

Authorisation to revoke is required from an officer of police within Prosecution Services Branch or from an officer of police within the Communications Centre or District Duty Inspector. Where the revocation is needed to correct an administrative error (for example an incorrect court hearing date has been entered) and another PIIO has been or is to be issued to replace the revoked PIIO, verbal approval from an authorising officer is appropriate. In these instances, the details of the authorising officer can be entered prior to printing the revocation notice.

The **PD571** will print from PIMS in quadruplicate to be distributed as follows:

- a copy to be served on the defendant
- a copy to be posted/given to the protected person(s)
- a copy to be sent to the authorising officer
- a copy to be uploaded/linked to the occurrence to accompany the corresponding AP/court file.

Where the reason for revoking is more complex, the **PD571** should be printed prior to entering the authorising officer's details and a copy forwarded to them for written approval/signature. Once received, the requesting officer will ensure the authorising officer's details are entered electronically and the **PD571** printed and distributed as listed above.

Immediate service of authorised revocation notice on defendant

When generating the **PD571** where it is to be served immediately, 'Y' should be selected to 'Has this order been served' and:

- it should be printed and served on the defendant—in exceptional cases, where the defendant is not present the **PD571** can be posted to the last known address—this should be used as a last resort
- the proof of service details must be endorsed on the **PD571** and uploaded to the occurrence (a 'For Your Information' task should be sent to prosecution advising the **PD571** has been served)
- the proof of service details must be entered into PIMS.

When entering the proof of service details onto the IO data entry application system (PIMS) the **PD571** will be transmitted electronically to the Principal Registrar, Adelaide Magistrates Court.

Revocation notice not immediately served on defendant

When the **PD571** is to be served at a later time select 'N' to 'Has this order been served'.

The defendant will be flagged as wanted in relation to an unserved **PD571**, an additional whereabouts flag should be added to the defendant within Shield.

The **PD571** will appear on the Unserved orders report and will be managed in the same way as any other unserved order.

File documentation required when PIIO revoked

When a PIIO has been served on a defendant and then revoked, the file must still be prepared and forwarded to the relevant prosecution unit via an 'URGENT' Shield task within the relevant occurrence. The following documents must be included in the prosecution file:

- revoked PIIO
- authorised **PD571**
- AP application summary of evidence stating 'This order has been revoked'.

Where the revoked order is replaced by the issue and service of a new PIIO, a second prosecution file is required which contains:

- the new PIIO and relevant documentation (refer to **8. POLICE INTERIM INTERVENTION ORDER, Documentation, Submission to prosecution** previous in this General Order)
- a copy of the revoked PIIO
- a copy of the **PD571**.

10. COURT APPLICATION

A court application is the preferred option for obtaining an intervention order for a victim, except in urgent circumstances as articulated in **8. POLICE INTERIM INTERVENTION ORDER, When to issue a PIIO** previous in this General Order.

An application for a court interim order provides the court with comprehensive details regarding the background and current circumstances of a victim and the reasons for their application for an intervention order.

A court application must not be taken by telephone.

When an application is made through police for a court interim order, a member must submit the following before the end of their shift:

- occurrence; or
- Domestic abuse (offence/no offence) occurrence; and accompanying Domestic abuse risk assessment (when applicable).

The application for a court intervention order must be completed by the end of the shift in which it was taken and delivered immediately to the relevant prosecution unit via the Investigator action 'General application submission' template within Shield (Refer to Shield online help for further instructions).

Documentation

The following form part of the prosecution file:

- **PD585 Forwarding minute and checklist for intervention order applications**
- **PD570C Intervention order—protected person's details**

- **Form 28 Police/Third party Application (Intervention order)**
- AP application
- signed affidavit from the victim or witness outlining the history of abuse (a **PD115 Affidavit** may be used where the relationship is an intimate personal relationship)—where a DVEC (electronic recording) has been taken in lieu of a written statement, this must be noted clearly at the beginning of the summary of evidence on the AP) so that prosecution are aware of the DVEC (and the absence of an affidavit)
- copy of the offender's Interstate criminal history (SAPPS) or a clear notation to the prosecutor that the person has no Interstate criminal history—the offender's South Australian criminal history will be generated through a Shield offender history report
- any photos
- firearms system printout with details of the defendant's firearms—if the defendant has no firearms recorded a notation should be made to the prosecutor within the remarks field of the IO workflow as detailed previously within the PIIO submission process
- any other statements or documentation available at the time of the submission of the file:
 - where it is known there are relevant statements or documents pertaining to the longitudinal domestic violence history of the parties, such as statements or documents prepared for Family Court proceedings, a member must ask the protected person if they are willing to release them to SAPOL in support of the application
 - these additional documents must be uploaded to the occurrence prior to submission—if the application has already been submitted to prosecution, a task should be forwarded to the relevant prosecution unit advising of the additional documents.

Additionally, the following documentation is to be included in the prosecution file as applicable:

- **PD572 Family Law Court**—request for most recent orders relating to children of the parties (original) and fax receipt
- other relevant documents for example copies of Family Court orders, et cetera
- **PD18B Intervention Orders (Prevention of Abuse) Act 2009 weapons and articles forfeiture (not firearms) (PD18B)** where there are weapons and/or articles that have been seized.

Refer also to General Order, **Arrest/report procedures and documentation**.

Advice to victim

A member must tell the victim:

- that the prosecution unit will decide whether there is sufficient evidence to proceed with the application

- which court, date and time to attend—as per the court listing arrangements detailed on the Prosecution Services Branch intranet page, for the relevant court, at <police connect home page/services/operations support service/prosecution services branch/piio dates and revocations>
- that they may be required to give evidence in court.

Insufficient evidence

When a member is unsure whether there is enough evidence to support the court application they should seek advice:

- where non-domestic abuse is alleged from:
 - a supervisor
 - a member of their local prosecution unit
- where domestic abuse is alleged from:
 - a member of the CFIS
 - officer in charge, regional CIB
 - a family violence intervention officer,

who may authorise the member to advise the applicant that SAPOL will not proceed with the application. The member must advise the person why the application will not proceed and that the person may lodge a private application with the clerk of the court.

A member should provide the applicant with information regarding local victim support services.

Exception to the hearsay rule

Pursuant to section 21(4)(a) of the IOPA Act, where police are acting for a victim in an intervention order application that is, police are the applicant, the court is not bound by the rules of evidence and may accept information as it sees fit, and are required to act according to equity, good conscience and examine the substantial merits of the case without regard to technicalities and legal forms.

This provides an exception to the hearsay rule for an application for an interim intervention order where police are the applicant, and will permit the hearing of evidence from someone other than the principal witness.

11. TELEPHONE APPLICATION

A member should only make a telephone application when there is sufficient urgency to have an order made immediately and the option of issuing a PIIO is not available or appropriate.

Office hours contact

A member seeking a telephone application for an intervention order must telephone the listing coordinator at their regional court who will nominate a time and a telephone number at which a Magistrate can be reached. When no one is available to assist at the regional court, the member must contact the supervisory court responsible for that regional court.

After-hours contact

A member must contact ComCen which has access to a list of telephone numbers of Magistrates. ComCen will telephone the Magistrate and connect the member to them.

Following telephone contact

When the Magistrate makes an order a member must:

- complete a court Form 28—Application (intervention order) and include the terms and conditions set by the Magistrate
- arrange for the order to be served personally on the defendant as a matter of priority
- ensure the victim is given a copy of the terms and conditions and advised of service when that occurs
- email the details of the order to the Principal Registrar, Adelaide Magistrates Court

4(2)(a)(vi) and 4(2)(b)

Should this occur outside of court business hours there will be a time lapse in the IO being entered onto the court system and PIMS until at least 9am the next business day.

Documentation

When a member has made a telephone application, they must prepare a prosecution file before the end of their shift consisting of the same documentation required for a court application. Refer to **10. COURT APPLICATION** previous in this General Order.

Order not made

In circumstances where the Magistrate does not make an order and adjourns the hearing, a member must:

- record the time and place fixed for the hearing
- advise the victim about the Magistrate's decision and ask the victim and any witnesses to attend court at the time and date fixed
- prepare documentation for a court interim intervention order and submit via an occurrence.

A member must make note within the occurrence via an occurrence enquiry log (OEL) of the following:

- telephone application to (name of Magistrate) refused

- hearing adjourned to (time, date and place)
- victim and witnesses (names) notified to attend court
- name(s) of police officer(s)/witness(es) who spoke to the Magistrate.

12. FIREARMS

An intervention order must include 'firearms terms' which require the surrender of any firearm, part of a firearm, ammunition, licence or permit. While the intervention order remains in force, any licence or permit authorising possession of a firearm is suspended, the defendant is disqualified from holding or obtaining such a licence or permit, and cannot possess a firearm, part of a firearm or ammunition in the course of their employment.

Firearms terms are compulsory for all interim intervention orders (whether a PIIO, or a court interim order). On the PIIO the appropriate term is mandatory term number 16.

When a national DVO has terms that disqualify the defendant from holding a firearms licence, the defendant is also prohibited of holding a firearms licence of the same type in South Australia. The Registrar of Firearms must revoke any South Australian firearms licence under these conditions.

The court may remove firearms terms from a final intervention order if they are satisfied that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

Seizure of firearms and ammunition

A member should consider their authorities pursuant to section 57 of the *Firearms Act 2015* in relation to seizure of firearm(s) when necessary.

Where a substantive offence involving a firearm is established, that firearm will be seized by police as an exhibit and the seizing member will be required to submit a **PD18 Firearms forfeiture/found property notice** which will be included in the prosecution file for the substantive charge.

In circumstances where there is no substantive offence involving a firearm but an interim intervention order is issued by the court or police or a national DVO exists where the defendant is prohibited from holding a firearms licence, all firearms, parts of firearms, ammunition, licences or permits will be seized and deposited at the seizing member's property section as confiscated property. In accordance with General Order, **Firearms** the property is treated as confiscated property until a final determination is made regarding its status pursuant to the *Firearms Act 2015*.

The member seizing the property is responsible for entering the items into the Police property management system (PPMS) and submitting the appropriate documentation.

A member must not authorise release of firearms/ammunition to a defendant upon an intervention order being revoked without prior consultation with Firearms Branch. Similarly, if the firearms terms are removed from a final intervention order, a member must not return any firearms/ammunition to the defendant without prior consultation with Firearms Branch.

13. CONFISCATED WEAPONS AND ARTICLES

Section 37 of the IOPA Act provides a member with the authority to search for weapons and articles they believe may be used/threatened to be used against a protected person and are required for surrender by an intervention order. A member should select term 10 on the PIIO where the use or threatened use of a weapon or article has occurred.

The articles seized pursuant to section 37 of the IOPA Act must be held until a court dealing with an intervention order application decides how such items are to be dealt with or disposed of.

The member seizing such weapons or articles will be responsible for entering these items onto PPMS and submitting a **PD18B**.

A seizing member(s) shall ensure:

- any weapons or articles used in the commission of an offence will be seized and deposited as exhibit property and entered onto PPMS
- any weapons or articles seized only in accordance with the PIIO are seized and deposited as confiscated property and entered onto PPMS
- a **PD18B** is completed and included in the occurrence.

Refer to General Order, **Firearms** for further information.

14. FAMILY LAW ACT 1975 (CWLTH)

Protection orders may be granted pursuant to the *Family Law Act 1975 (Cwlth)* and can operate concurrently; however, State intervention order legislation is more appropriate for protection.

When an order pursuant to section 114 of the *Family Law Act 1975 (Cwlth)* operates concurrently with a State order, and they cover the same matter, the Family Law Act order (FLAO) takes precedence to the extent of any inconsistency. The *Family Law Act 1975 (Cwlth)* also deals with and makes orders with respect to access and property disputes.

The IOPA Act states the applicant (including SAPOL) must inform the court of any relevant:

- *Family Law Act 1975* order
- *Children and Young People Act 2017* order or agreement
- order for the division of property pursuant to the *Family Law Act 1975 (Cwlth)*, the *Domestic Partners Property Act 1996*, a corresponding law of another jurisdiction or any pending application for such an order
- any other legal proceedings between a person proposed to be protected by the order and the defendant, of which the applicant is aware.

Where such orders exist a member shall complete the 'Relevant Orders' section on the **PD570A Administrative information—for the Principal Registrar (PD570A)** and include this form with the prosecution file.

Accessing Family Law Act orders relating to children

Where a member is initiating an intervention order application (either PIIO or court application), they are required to include a copy of a current Family Law Court Order (parenting order) with the prosecution file where there is a need for the court to consider or manage any potential conflict between the two orders.

The **PD572 Family Law Court—Request for most recent orders relating to children of the parties (PD572)** facilitates requests by SAPOL members to the Family Court to provide a current copy of a parenting order. The **PD572** is only used in instances where the victim is not able to provide a current copy of a parenting order to police.

The **PD572** must be emailed to the Family Law Court Registry Office, Adelaide to a

4(2)(a)(vi) and 4(2)(b)

The original **PD572** together with a copy of the email will be included in the prosecution file and forwarded to the relevant prosecution unit.

Refer also to General Order, **Family law**.

15. CHILDREN

All PIIO or court applications for intervention orders against a child must be listed before a Youth Court.

Generally, a breach of an intervention order by a child will be brought before a Youth Court. A Magistrate or Judge will determine whether the matter will be heard by the court or whether it is suitable for diversion to a family conference or formal caution.

Refer to General Order, **Youth justice** for general information relating to Youth Court and diversionary procedures.

16. TENANCY ORDERS

A tenancy order is an associated order which the court may make to assign the defendant's interest in a tenancy agreement to the protected person. A tenancy order can only be made in the following circumstances:

- the home must be rental premises (private or public); and
- the defendant and protected person must have lived there together; and
- the defendant is nominated on the lease as the tenant or co-tenant; and
- the defendant must have been excluded from the home via the intervention order; and
- the intervention order must be a final intervention order; and
- the protected person must agree to take on the responsibilities of the tenancy; and
- the Court must be satisfied that the protected person meets the eligibility requirements for the property tenancy.

Where a member issues a PIIO or facilitates a court application and the abovementioned criteria exists, they should advise the protected person of their entitlement to make application to the court for a tenancy order.

Where a PIIO is issued and a protected person seeks a tenancy order, a member will ask the protected person the following questions (similarly paraphrased):

- Is this a rented property?
- Whose names are on the tenancy agreement?
- What are your long term intentions?

Where a protected person seeks a tenancy order a member will:

- direct the protected person to attend the local Magistrates Court registry office for completion and lodgement of the required court forms
- direct the protected person to other services (through the Domestic Violence and Aboriginal Family Gateway on telephone 1800 800 098) for further advice and assistance
- in the case of a PIIO, complete the 'Joint Applicants and Associated Orders' section on the **PD570A**.

A member will not pursue any enquiries, gather or present evidence associated with a tenancy order as this is outside of the scope of police responsibilities. A member will advise a protected person who seeks a tenancy order to attend and make notification to the court, that they are a co-applicant to the PIIO.

17. PROBLEM GAMBLING ORDERS

A problem gambling order can require a defendant to participate in counselling, rehabilitation or special programs, bar defendants participating in gambling activities, preventing them from being in or on specific premises or requiring defendants to close gambling accounts. Such orders are ordinarily imposed by the Independent Gambling Authority; however, the IOPA Act allows Magistrates to impose this associated order.

A problem gambling order may be made by the court at the time of an interim intervention order becomes a final intervention order.

Where a PIIO is issued and a protected person seeks an application for a problem gambling order, a member shall complete where appropriate the 'Joint Applicants and Associated Orders' on the **PD570A**.

Where a PIIO is issued or a court application is instigated by police and the protected person seeks a problem gambling order, a member will direct the protected person to the Independent Gambling Authority (the Gambling Helpline telephone number is 1800 060 757, 24-hours per day) or the local Magistrates Court registry office for completion and lodgement of the required court forms.

18. SERVING INTERVENTION/RESTRAINING ORDERS

As of 25 November 2017 the IOPA Act provides that where a defendant is present in court at the time an intervention order is made, varied or revoked is deemed to have been served. When a defendant is not present in court, an order must be served on the defendant personally or in some other manner authorised by the court.

South Australian issued orders

It is the responsibility of the District/LSA Tasking and Coordination Group (TCG) to monitor the progress and management of unserved court orders. An unserved orders report can be generated from PIMS as required and it is recommended to monitor it on a daily basis to ensure proper allocation and management of all unserved court orders.

The serving of unserved orders is time critical and must be treated as a priority. All enquiries conducted must be entered onto the diary section within PIMS by selecting the 'Restraining Orders' menu option. This is essential so there is an electronic record of all enquiries conducted.

Obtaining a copy of an unserved order

A PDF version of court intervention orders is available via a link in PIMS (accessible from the 'Enquire Court Order Text' screen) against the relevant defendant or protected person. The link will open the order in adobe acrobat for viewing, printing and serving. When a link is not available within PIMS for a particular order, contact the court of issue who will provide a PDF via email.

Unserved court orders are allocated to a District/LSA/area according to the defendant's recorded address. When a new address is entered for a defendant, the intervention order will automatically reallocate to the appropriate District/LSA.


Where all enquiries to locate a defendant have been reasonably undertaken, and the defendant's whereabouts remains unknown, the intervention order may be reallocated manually to WTSN and a diary entry made on the intervention order to record enquiries made. A member should ensure that a whereabouts flag has been added on the suspect's record within Shield and is active. Additionally an OEL entry should be made within the relevant occurrence recording these enquiries.

Supervisor's responsibility


The supervisor who receives an unserved order which requires service in their District/LSA/area must:

- allocate the order to a nominated member to serve
- record the time and date of allocation and the details of the member on the Restraining orders system
- ensure any District/LSA or local administration records are updated
- monitor the service process and ensure if unserved the order is re-allocated to the oncoming shift if required
- where served or transferred to another area ensure the Restraining orders system and any District/LSA or local administration records are updated.


4(2)(a)(iii) & 4(2)(a)(iv) & 4(2)(b)



4(2)(a)(iii) & 4(2)(a)(iv) & 4(2)(b)



4(2)(a)(iii) and 4(2)(b)



Orders issued in another jurisdiction

A member may serve an intervention order (or interstate equivalent) issued in another state/territory on a defendant who is residing in or visiting this state. This can occur:

- at the request of an interstate jurisdiction who may be aware that a defendant is residing in South Australia:
 - in these instances, Family and Domestic Violence Section (FDVS) will forward a request via email to the appropriate District/LSA to locate and serve the defendant, with all required documents for service and instructions as to the return of the completed documents
- in an operational context where a check of the NPRS through SearchLite reveals an unserved interstate order:
 - a member will need to obtain a copy of the order and a blank proof of service from the issuing jurisdiction
 - a request for a copy of a DVO can be auto-generated from SearchLite to the SAPOL central contact point mailbox
 - copies will be obtained and returned to the member's police email address— instructions as to the return of the completed documents will be provided in the email.

Interstate orders must be served in accordance with the instructions on the relevant proof of service form which may vary slightly depending on which jurisdiction issued the order.

Powers to facilitate service of orders

Pursuant to section 34 of the IOPA Act, a member may require the person to remain at a particular place for so long as may be necessary for:

- a PIIO to be issued and served—section 34(1)(a) of the IOPA Act; or
- a court application to be determined and the court order to be issued and served—section 34(2)(a) of the IOPA Act.

Pursuant to section 34(3)(a) of the IOPA Act, a member can require a person to either remain at a particular place or to accompany police to the nearest police station, in order to effect service of an order. Where a person is required to accompany police to a station, they must be returned to their starting place or nearby to that place, unless the person does not wish to be taken back there, or there is some other good reason not to return them there.

Where the person refuses or fails to comply or the member believes on reasonable grounds the requirement will not be complied with as requested pursuant to section 34 of the IOPA Act, they may arrest and detain the person in custody for:

- as long as may be necessary for the purpose of preparing and/or serving the order or determining the application; or
- two hours or such longer period as is approved by the court

whichever is the lesser.

A member may apply to the court for an extended period of detention when satisfied that it is appropriate to do so as long as the aggregate period of detention does not exceed eight hours. The member will be required to submit a court **Form 44 Application for extension of period of detention**.

Serving a declaration

Notice of a declaration is not required to be served on the defendant unless the person making the application to have the DVO declared consents to the service.

A declaration made by a South Australian court which requires service will appear on the Unserved orders report. Service of a declaration follows the same process as service of an unserved order (refer to **18. SERVING INTERVENTION/RESTRAINING ORDERS** previous in this General Order).

Accessing information from public sector agencies

Section 38 of the IOPA Act obliges a public sector agency, upon request from SAPOL, to make available information they hold which may reasonably assist in locating a defendant on whom an intervention order is to be served.

Such a request can only be used when all SAPOL intelligence holdings have been exhausted.

An **RF2134 State Intelligence Branch request for external information (non-telecommunications) (RF2134)** must be completed and forwarded to the State Intelligence Branch Information Desk. The **RF2134** is available through the intranet at <police connect home page/services/operations support service/state intelligence branch/request forms–sib and other agencies>.

Serving a PIIO on a SAPOL employee

Where an employee is to be served with a PIIO, the serving member will adhere to their local prosecution unit listing practices to determine the summons date/time to be endorsed on the PIIO.

The Officer in Charge, Professional Conduct Section (PCS) must be advised of the PIIO via a Shield 'For Your Attention' task, in addition to personal notification.

Serving a court issued order on a SAPOL employee

The Officer in Charge, PCS will be aware of police prepared applications for an intervention order where the defendant is an employee. PCS or Internal Investigation Section may serve any resultant order on the employee, or request another member to serve the order.

When a member is asked to serve an order which has been prepared independently of SAPOL (private application) on an employee, that member must notify the Officer in Charge, PCS prior to service.

Refer to General Order, **Complaints and disciplinary framework**.

19. CERTIFICATE OF PROPER NOTIFICATION

A Certificate of proper notification commenced on 25 November 2017. A Certificate of proper notification is issued pursuant to section 29W of the IOPA Act and relates to DVOs only. It attests to the correct service of a DVO and contains all the details of a proof of service.

A Certificate of proper notification may be used when a proof of service is not available, or it may be required by some jurisdictions in addition to the proof of service, for their court briefs.

A Certificate of proper notification for a South Australian issued DVO is generated from PIMS through the Restraining Orders menu, selecting the order by subject name, going into Report Court Orders Menu and choosing Print Certificate.

The Certificate of proper notification must be signed by a substantive sergeant or above.

Requesting a Certificate of proper notification from an interstate jurisdiction

Where a member requires a Certificate of proper notification from an interstate jurisdiction (in relation to an interstate DVO) a request should be submitted via a **PD685 National DVO Request—police** to the SAPOL central contact point mailbox. The request will be actioned and the certificate returned to the member via email.

Responding to a request from an interstate jurisdiction

Requests from interstate police and courts for a Certificate of proper notification will be managed through the SAPOL central contact point mailbox however, when a member receives an urgent request direct from interstate police or courts, the member may provide the certificate via email. In all instances, responses should only ever be returned to police or courts/justice email addresses.

20. BREACH OF ORDERS

Section 31(1) of the IOPA Act creates an offence to contravene a term of an intervention order imposed under section 13 (a term relating to compliance with an intervention program).

Section 31(2) of the IOPA Act creates an offence to contravene any other term of an intervention order.

Section 31(2aa) of the IOPA Act increases the penalties (minor indictable offence) for a contravention (other than a term of an intervention order imposed under section 13) in circumstances where:

- the contravention is a second or subsequent contravention; or
- the act or omission alleged to have constituted the contravention involves physical violence or a threat of physical violence.

Where a member takes a report for a breach of an intervention/restraining order, which also amounts to a substantive offence, the occurrence should list both the breach and the substantive offence.

Section 36 of the IOPA Act states:

If a police officer has reason to suspect that a person has contravened an intervention order, the officer may, without warrant, arrest and detain that person.

Breach of a national domestic violence order

Where a national DVO has been breached, the order may be enforced in South Australia in the same way that a South Australian issued order can.

Information, that is properly checked using SearchLite to access NPRS, which leads a member, in good faith, to perceive that there is a valid, current and enforceable national DVO is sufficient for police to act initially to enforce a breach by arrest or report.

The member will need to obtain a copy of the national DVO from the issuing jurisdiction as soon as practicable, for inclusion in the brief. Refer to **7. EXCHANGING INFORMATION WITH INTERSTATE POLICE AND COURTS** previous in this General Order.

In many situations, there will be accompanying offences which will give cause to arrest an offender which will allow time to obtain documentation from the issuing jurisdiction.

Territorial nexus

Pursuant to section 5G of the *Criminal Law Consolidation Act 1935*, a territorial nexus exists if all the elements of an offence exist, and a relevant act occurs wholly or partly in South Australia, and the alleged offence caused harm or a threat of harm in South Australia. A territorial nexus is then presumed and is conclusive unless rebutted by the defendant.

Where there is a breach of a national DVO, and the defendant and protected person are in different jurisdictions (for example contact occurs over the phone in contravention of a no contact order), it has been agreed between police services that the police in the state/territory where the **defendant was located** at the time of the commission of the offence, will investigate and enforce the breach.

Police in the state/territory where the victim is located will support the investigation by taking a statement from the victim and gathering any evidence possible, forwarding the statement/information to the police service in the state/territory where the defendant is.

Breaches of a national DVO will be prosecuted in the state/territory where the defendant resides where possible, unless the seriousness of the offence warrants extradition to the victim's home state/territory.

Police will support one another in gathering the required evidence and information sharing.

The **PD684 National request to investigate and prosecute** is used to request assistance with an investigation from another state/territory. Requests to investigate a breach of a national DVO can be sent direct to the police station closest to where the person under investigation resides. The SAPOL central contact point mailbox must be copied in to the email request.

Police bail

When a bail authority is exercising their discretion regarding whether to release an applicant on bail, one of the considerations (pursuant to section 10(1)(b) of the *Bail Act 1985*) is the likelihood (if any) that the applicant, if released, would breach their intervention order.

Where an applicant is released on bail, bail authorities and PIIO issuing officers must ensure that bail conditions and the PIIO terms are not contradictory. Section 10A of the *Bail Act 1985* states:

“Despite section 10 of the *Bail Act 1985*, bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail.”

A prescribed applicant includes a person who is in custody for a breach of an intervention order, where the alleged offence involves physical violence or a threat of physical violence.

Reported breaches of intervention program

The Intervention program manager (CAA) will report contraventions of the assessment process or non-compliance of intervention program participation by a defendant.

The Intervention program manager or nominee will report breaches to the SAPOL Call Centre, which will ensure:

- an occurrence is raised and allocated; and
- a tasking is generated for the patrol supervisor in the District/LSA where the defendant resides.

The District/LSA patrol supervisor is responsible for conducting an immediate risk assessment to determine whether circumstances warrant an immediate investigation. The occurrence OEL is to be endorsed accordingly.

Where a risk assessment determines a matter has significant risks which require an urgent or immediate response, the supervisor is responsible for ensuring the deployment of a patrol or CIB response, dependent on the circumstances.

Where no significant risks are identified and an immediate response is not required, the occurrence will be forwarded to the State Crime Assessment Centre (SCAC) or officer in charge, regional CIB for appropriate allocation and investigation.

Section 31(1) of the IOPA Act prescribes a penalty provision to expiate such breaches, but does not preclude a defendant from being arrested or reported for an alleged contravention. However, the decision to arrest or report in lieu of an expiation notice requires careful consideration, giving due regard to the circumstances of the contravention, the risk(s) imposed to a protected person(s), other associated criminal offences and the benefits to be gained by not expiating the matter.

Risk assessment process questions

The following questions are to be considered when conducting a risk assessment:

- any fears held for the safety of the protected person
- the known state of mind of the defendant
- the likelihood that the defendant will contact/approach the protected person.

SAPOL checklist

The following checklist applies:

- check Shield, PIMS, SAPD, SAPPS regarding any warnings
- all enquiries and results are to be recorded in the occurrence OEL.

21. DECLARING ORDERS TO BE NATIONALLY RECOGNISED

DVOs issued prior to 25 November 2017 are not automatically nationally recognised, except those issued in Victoria which are retrospectively recognised. Orders issued prior to 25 November 2017 in any jurisdiction (except Victoria) can be declared by a court to be nationally recognised.

Declaring is appropriate when a current order addresses a domestic violence concern, and the terms of the existing order offer sufficient protection for a victim. The declaration process does not require the protected person to re-establish grounds or interact with the defendant.

A new order should only be sought if the existing order does not offer adequate protection.

When the court agrees to declare an order, a Notice of Declaration will be issued. It does not require service on the defendant unless the person making the application to have the DVO declared, consents to the service.

Where service is required, the declaration will appear on the District/LSA Unserved orders report and a copy can be downloaded from the PIMS link. Once served, service details must be entered onto PIMS.

When service is not required, the declaration is effective immediately when it is made by the court. PIMS will display this status. In these instances, the defendant may not be directly aware that the order now operates Australia wide.

Courts have developed **Form 46A Application to declare domestic violence order as nationally recognised** which can be downloaded from their webpage and from the SAPOL electronic forms package under the Domestic violence tab. A victim can complete the form and lodge it with any South Australian court.

A member may complete the form on behalf of a protected person and lodge it with a court registry. This course of action may be appropriate if police are already managing a DV-related matter with or for the victim, in particular if the victim has been assessed as high risk as a proactive safety strategy.

Once declared, the NPRS (accessible via SearchLite) will display a record which identifies which order the declaration relates to. As a declaration is not a new order, a member must match the declaration to the original order. When preparing a court file (for example when the DVO has been breached) a member must include a copy of the DVO, proof of service (or Certificate of proper notification) and the declaration.

Once an order is declared, it becomes a national DVO and can be enforced, varied or revoked anywhere in Australia.

22. VARYING OR REVOKING ORDERS

Pursuant to section 26 of the IOPA Act a court can vary or revoke any intervention order issued in South Australia and any nationally recognised DVO, on application by a police officer, protected person, defendant, and in the event that either a protected person or defendant is a child under the Guardianship of the Minister, the responsible Minister.

From 1 September 2019, pursuant to section 26A of the IOPA Act, a court can, upon application by police only, make an interim variation of a final order without the defendant being present (ex-parte) which takes effect upon service on the defendant. The court must then require the defendant to appear before the court within eight days (or if the court is not sitting in that place within that period, within two days of the next sitting of that court).

When the protected person or defendant is a child, then they may apply for a variation or revocation if they have attained the age of 14 years. Where they are younger, an adult such as a parent, guardian or other suitable representative can make the application.

Protected person seeks variation/revocation

Where a protected person requests a variation or revocation of an interim intervention order, the investigating officer or CFIS/FVIO should consult with their local prosecution unit for the required documentation to be submitted.

Except in urgent cases, a variation (including an interim variation) or revocation application for a final intervention order, where there is an intimate domestic relationship, should only be made by a member from CFIS/FVIO. The application to vary or revoke should only be facilitated by police where police were the applicant in the initial order. Where the initial intervention/restraining order was taken out privately, the victim must be referred to the appropriate Magistrates Court.

Prior to a member preparing an application to vary or revoke, they must conduct a risk assessment and be satisfied that the action taken (in acting as applicant for a protected person) ensures that appropriate levels of protection are maintained.

Where an application relates to revocation or variation to **reduce** protective conditions, the use of section 26(1) of the IOPA Act is appropriate. In this instance, the court will summons both parties to a hearing and will determine the outcome of the application having heard the views of the applicant, the protected person and the defendant.

Where an application relates to a variation where there is a need to **increase** protective conditions, the use of section 26A of the IOPA Act may be necessary where police (applicant) think there is an immediate or imminent risk to the protected person. The court may issue an interim variation without the defendant being present. The interim variation will not take effect until served on the defendant.

An application to vary requires an occurrence to be raised, if one does not already exist, prior to the end of the shift. The following documentation is to be prepared and forwarded to the prosecution unit via the PIIO 'General application submission' workflow (refer to **8. POLICE INTERIM INTERVENTION ORDER** previous in this General Order):

- **PD585A Forwarding minute and checklist for intervention order applications**
- court **Form 31 Application for variation or revocation of intervention order Intervention Orders (Prevention of Abuse) Act 2009** (original and one copy) or court **Form 31AB Police Application for interim variation of final intervention order** (original and copy), whichever is applicable
- Domestic abuse risk assessment report
- AP application including the summary of evidence for an application pursuant to section 26(1)(a) or section 26A(1) of the IOPA Act
- original protected person's affidavit covering the basis for the application—where a DVEC (electronic recording) has been taken in lieu of a written statement, this must be noted clearly at the beginning of the summary of evidence on the AP) so that prosecution are aware of the DVEC (and the absence of an affidavit)
- a copy of the existing intervention/restraining order, including proof of service details, or a Certificate of proper notification for a national DVO issued by a different jurisdiction a printout of the offender history report, or include clear advice on the brief cover that the person has no previous criminal history.

Refer also to General Order, **Arrest/report procedures and documentation**.

Defendant seeks variation/revocation

A defendant who seeks to vary or revoke an intervention/restraining order must be referred to the Magistrates Court.

Prosecutor responsibilities

When a prosecution unit receives notification from the court of an application by a defendant to vary or revoke an intervention order, the prosecutor will comply with Prosecution Practice Note 32—Domestic and non-domestic abuse and issue a PD90 task requiring an investigator within a CFIS/FVIO to complete enquiries regarding the application.

Investigator responsibilities

An investigator who receives a PD90 task regarding a defendant's application to vary or revoke an intervention order must inform the prosecutor in writing of the following:

- the views of the protected person(s)—the investigator should consider taking and submitting to the prosecutor an affidavit from the protected person(s)
- whether any breaches or further substantive offences have occurred and the status/outcome of those investigations/prosecutions
- Domestic abuse risk assessment report
- the views of the investigator regarding the application
- where the application involves the defendant's firearms licence or firearms, whether the defendant is a fit and proper person (refer to General Order, **Firearms**).

Domestic violence and summary protection orders

Interim and final restraining orders granted pursuant to the *Domestic Violence Act 1994* and *Criminal Procedure Act 1921* will continue to be in force pursuant to the IOPA Act, until any expiry date is reached, or they are revoked by a court.

An application made after the commencement of the IOPA Act (9 December 2011) to vary or revoke a restraining order issued pursuant to the *Domestic Violence Act 1994* or *Criminal Procedure Act 1921* that has an expiry date (sunset clause) and a decision is made that the order should continue in some form, the court is required to turn the order into an ongoing intervention order and remove any expiry date.

A member submitting a prosecution file relating to an application to vary or revoke a domestic violence restraining order (DVRO) or summary protection order (SPO) after 9 December 2011 must submit a court **Form 31 Application for variation or revocation of intervention order**. Any prosecution file relating to a breach of a DVRO or SPO after the 9 December 2011 will be dealt with as a breach of an intervention order.

23. REGISTRATION OF FOREIGN ORDERS

A foreign intervention/restraining order is an order which is issued outside of South Australia which does not relate to a domestic violence concern (for example neighbour dispute) or which is issued in New Zealand (either domestic or non-domestic violence related).

A foreign order may be registered with the Principal Registrar, Adelaide Magistrates Court and when this has occurred, the order is then recognised and enforceable in South Australia as well as in the originating jurisdiction. It is not nationally recognised.

When a person seeks to register a current foreign intervention/restraining order in South Australia, a member shall advise the person to attend the Adelaide Magistrates Court with a certified copy of the foreign intervention/restraining order, to make an application to register the order. In regional areas a member shall advise the person to attend the local regional court.

24. REFERENCES

Bail Act 1985

Children and Young People (Safety) Act 2017

Criminal Law (Sentencing) Act 1988

Criminal Procedure Act 1921

Domestic Partners Property Act 1996

Domestic Violence Act 1994 (repealed)

Intervention Orders (Prevention of Abuse) Act 2009

Family Law Act 1975 (Cwlth)

Family Relationships Act 1975

Firearms Act 2015

General Order, **Arrest/report procedures and documentation**

General Order, **Civil disputes**

General Order, **Complaints and disciplinary framework**

General Order, **Domestic abuse**

General Order, **Family law**

General Order, **Firearms**

General Order, **Information—access and release**

General Order, **Paedophile restraining orders**

General Order, **Youth justice**

Government of South Australia's Information Sharing Guidelines for Promoting Safety and Wellbeing available through the Internet at
<<https://www.dpc.sa.gov.au/responsibilities/information-sharing-guidelines/resources-and-publications>>

Interim Intervention Orders (IIOs) User Guide available through the intranet at <police connect home page/services/crime service/public protection branch/family and domestic violence section/intervention orders>

Mental Health Act 2009

Prosecution Practice Note 32—Domestic and non-domestic abuse available through the intranet at <police connect home page/law and procedure/prosecution practice notes>

Standard Operating Procedure, Domestic Violence (Call Centre)

Standard Operating Procedure, Domestic Violence Evidence in Chief (DVEC) available through the intranet at <police connect home page/services/crime service/family and domestic violence section>

25. FURTHER ENQUIRIES

Family and Domestic Violence Section

Prosecution Services Branch

26. DOCUMENT HISTORY SINCE 13/01/10

Gazette reference (SAPG)	Date	Action (amendment/deletion/new/review/temporary variation)
13/10	13/01/10	Review 2010.
10/11	12/01/11	Amendment— 1. GENERAL ORDER STATEMENT, 2. TYPES OF RESTRAINING ORDERS, 3 FOREIGN ORDER.
345/11	30/11/11	Review 2011—rewritten and renamed from General Order, Restraining orders to General Order, Intervention/restraining orders . Coincides with commencement of Intervention Orders (Prevention of Abuse) Act 2009 (on 9/12/11). This review commences 0001 hours on 9/12/11.
104/11	18/04/12	Amendment—text inserted at 6. POLICE INTERIM INTERVENTION ORDER.
35/15	18/02/15	Review 2013—includes the recommendations from the significant incident investigation corporate review into the Abrahamzadeh coronial inquest.
247/15	09/12/15	Review—coincides with commencement of Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015 (1 December 2015). Removes provisions relating to faxing of Orders and Proof of service and allows for transfer of data electronically between SAPOL and Courts.
237/17	22/11/17	Review—implementation of the National Domestic Violence Order Scheme includes revised procedures and instructions relative to the electronic transfer of intervention order data between SAPOL and courts.
267/18	05/12/18	Amendment—implementation of occurrences, including changes to procedures for submission of PIIO to prosecution.
40/19	13/02/19	Amendment—commencement of parts of the <i>Statutes Amendment (Domestic Violence) Act 2018</i> .
186/19	25/09/19	Review 2019—including commencement of remainder of the <i>Statutes Amendment (Domestic Violence) Act 2018</i> .

APPROVED BY COMMISSIONER/DEPUTY

.....
Print Full Name

.....
ID Number

.....
Signature

18/09/19
Date

Documentation certification and verification

General Order draft—prepared by: SS1C ^{§(1)} [REDACTED], Family and Domestic Violence Section

General Order—verified by: Assistant Commissioner, ^{§(1)} [REDACTED], Crime Service