

DRAFT RECOMMENDATIONS FOR STANDARD NATIONAL INTERVENTION ORDERS

(AUTHORS: DR ANDREW CANNON AM & AUSTRALASIAN INSTITUTE OF JUDICIAL ADMINISTRATION)

TERMINOLOGY

- Discuss consistency in terminology across States and Territories – this is likely to require legislative support
 - Intervention Protection Order
 - Protected Person
 - Respondent, rather than ‘Defendant’ (only SA and NSW appear to use ‘Defendant’)

SUGGESTED STANDARD ORDERS

CONTACT WITH PROTECTED PERSON

- 1. Directly or indirectly assault, threaten, harass or intimidate the protected person**
 - direct/indirect useful
 - avoid using the word ‘abuse’ as this has a statutory definition and does not necessarily describe specific behaviour
 - ‘family violence’ and ‘be of good behaviour’ too broad and uses legalese that may not be accessible to the respondent
- 2. Locate, attempt to locate, or follow the protected person or keep the protected person under surveillance**
 - locate and attempt to locate useful
- 3. Be within x metres of the protected person**
 - ‘approach’ x metres unworkable in practice, too easily defended
 - recommended distance is 50 metres, except in rural areas
- 4. Contact or communicate with the PP directly or indirectly including, for example, by telephone, text message, letters, cards, facsimile, e-mail, or any other form of electronic communication such as through social media platforms**
 - direct/indirect useful
 - useful to list specific examples (i.e. cards) so that it is clear to respondent
 - add social media
- 5. Enter, remain upon, loiter near, or be within x metres of the PP’s place of residence, place of employment, any other place at which the PP is staying, working or attending (for example, school, childcare centre, education facility, relative’s residence, etc), or other specified premises, namely x**
 - loiter near is useful – extends the scope of the condition
 - combined SA’s 8 and 9 into this one condition, examples are useful as makes it clear to respondent, specified places also useful
 - should there be knowledge on the part of the respondent that PP is there before the respondent attends? what happens in circumstances of coincidental meeting?

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DAMAGE / INTERFERE WITH

6. Damage or interfere with:

- the premises where the PP is staying, residing or is employed
- specified premises, namely x
- personal property belonging to the PP
- specified personal property belonging to the PP, namely x

- this condition is necessary as it would account for circumstances where the PP may not actually be present when the respondent damages or interferes with the premises and would thereby not readily constitute assault/harass
- the condition is also necessary to account for those circumstances where the respondent may have permitted access to the premises (i.e. to collect possessions) but may nonetheless damage or interfere with the premises, again whilst the PP is not present
- 'interfere' extends the scope of the condition – something that does not amount to damage
- desirable to group all 'damage' conditions together that would cover premises and personal property, also desirable to have specified premises/property formatted as separate conditions, rather than one long condition

FIREARMS AND WEAPONS

7. Any firearm, firearm part and/or ammunition in the possession of the respondent and any licence or permit held by the respondent authorising possession of same must be surrendered to the Registrar of Firearms forthwith.

For so long as this intervention order remains in force, any licence or permit held by the respondent authorising possession of a firearm, firearm part and/or ammunition is suspended and the respondent is disqualified from holding or obtaining a licence or permit authorising possession of a firearm, firearm part and/or ammunition including in the course of his or her employment.

The respondent must also surrender any weapon or article currently in his/her possession and must not possess specified weapons or articles, namely x.

- where firearms orders are mandatory (as in SA) best to reflect as far as possible the words of the legislation
- to include ammunition and *part* of a firearm? (see *Firearms Act 1977* (SA) that defines firearm, firearm and ammunition part separately)
- consider for other States where firearms condition not mandatory and whether a licence should be cancelled rather than suspended (see Vic)
- firearms conditions stated together with other conditions related to weapons/articles

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PUBLISH / TRANSMIT

8. Publish or transmit offensive material about the PP by means of the Internet or some other form of electronic communication including through social media platforms

- should the term 'offensive' be used? – consider other terms including negative, adverse, unfavourable
- respondent should not be prevented from publishing/transmitting *any* information, it should only relate to negative information that could potentially harm the PP
- what is the policy behind preventing the respondent from speaking badly about the PP where she may not be privy to the negative comments? – i.e. is it possible, on a policy basis, to distinguish between negative comments made to a third party online (say, via Facebook) and in person (say, to a large group at a bbq)?

ENCOURAGE OR CAUSE ANOTHER PERSON

9. Cause, allow or encourage another person to do anything prohibited by this order

- cause, allow and encourage are useful – covers the field (although encourage not used in SA Act)
- 'prohibited' should be used rather than forbidden (consistent with the language of the SA Act)

COLLECTION / RETURN OF PERSONAL ITEMS

10. The respondent is permitted to attend at the protected person(s) residence once in the presence of and at a time organised by a police officer and convenient for the protected person to collect personal property that is reasonably needed by the respondent

- the time should be convenient for the protected person
- personal property must be reasonably needed by the respondent to avoid any dispute over property at large (this is a matter properly dealt with by the Family Court and should not become the subject matter of an Intervention Order)

11. The respondent must allow the protected person to recover or have access to or make use of specified property, namely x, in the company of a police officer

- protected person should have access to specified property but only whilst in the company of a police officer

12. The respondent is required to return specified property, namely x, to the protected person

- this condition will cater for circumstances where the respondent can simply drop-off specified property to the protected person

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VACATE PREMISES

13. Vacate the premises at x forthwith upon service of this order and not return to those premises unless this term is varied or dismissed by the Court

- this caters for instances where the respondent may own the residence that the protected person is living in (specific SA provision concerning legal or equitable rights)
- this also caters for instances where it is *immediately* necessary for the respondent to vacate the premises upon service of the order

INTERVENTION PROGRAMS

14. Must contact the Intervention Program Manager at x and make and attend an appointment for assessment and if assessed as suitable undertake any intervention program that is appropriate for the defendant and comply with any direction given by the respondent's Case Manager

- condition is very specific to SA (mandatory participation in program, terms of positions)
- discuss legislation in each State and Territory relating to participation in intervention programs
- such a condition should include name of contact person's role, phone number and within 2 business days of the order

PERMITTED CONTACT

15. Notwithstanding the other terms of this order contact is permitted:

- at a dispute resolution or at a court hearing under the *Family Law Act 1975*, the *Children's Protection Act 1993* or at any other court or tribunal hearing;
- in accordance with an order of a court exercising jurisdiction under the *Family Law Act 1975*;
- to spend time with children under arrangements agreed after this order by a method permitted by this order;
- by a solicitor or police;

other orders related to permitted contact: x.

- this condition should be mandatory on every order (not optional, no tick box)
- discuss whether permitted contact should be more specific (i.e. Vic) or more general (i.e. SA)
- discuss whether this condition should appear together with prohibited contact, as it does in a range of other jurisdictions

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MISCELLANEOUS

**16. The following order(s) made by the Family Court / Federal Magistrates Court
(delete as applicable):**

- Parenting Order
- Recovery Order
- Injunction
- Undertaking
- Registered Parenting Plan
- Recognisance

made on x / x / xx is Revived / Varied / Discharged / Suspended (delete as applicable) as follows: x.

- this is relevant to s 68R of the *Family Law Act 1975* and should be included where applicable

17. Other orders: x

- discuss condition relating to pregnant woman and unborn child (see Qld & NT), only effective once child is born