

# Personal Safety

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## **What is a Personal Safety Intervention Order (PSIO)?**

A PSIO is a court order to protect you from a person, who is not a member of your family, being violent towards you, stalking, harassing or seriously threatening you or engaging in property damage or interfering with your property. Your children may also be protected by a PSIO.

This type of order is sometimes called a “stalking” order.

A PSIO may be appropriate if someone you know, such as a person in your workplace, a neighbour or an acquaintance has been violent towards you, stalked, harassed or seriously threatened you or damaged or interfered with your property.

## **What if the person I am having problems with is a family member?**

If the behaviour involves a “family member”, that is anyone with whom you have a family relationship, including your partner, ex-partner, children, parents or other relatives, then you will need to apply for a Family Violence Intervention Order.

## **How do I know if the person’s behaviour is harassment or stalking?**

“Harassment” is when a person engages in a “course of conduct” that is “demeaning, derogatory or intimidating” towards you. For example if a person taunts you about your race or sexual identity this may be harassment.

“Stalking” includes where a person engages in a “course of conduct” that includes following you or contacting you, loitering outside or near your house or workplace, keeping you under surveillance or by publishing material on the internet about you.

In order for such behaviour to be considered stalking, the person must have intended to cause you physical or mental harm (including self harm), or cause you to fear for your own safety or the safety of someone else, such as your children.

## **What does “property damage” or “interference with property” mean?**

“Property damage” occurs when your property is repeatedly and intentionally damaged or destroyed by another person. This includes threatening to kill or injure your pets.

If a person does not allow you access to your property, then this may be “interference” with your property. For example, if a person withholds your medication, or prevents you from accessing your wheelchair or your car, this may be considered interference with your property.

## **What if I don’t know the identity of the person? Can I still apply for a PSIO?**

If you apply for a PSIO you must know the name and address of the person who is stalking, harassing or seriously threatening you or damaging your property.

If the police cannot identify and locate the person, then the court cannot make an order to protect you.

## **What if no one has seen how the other party is behaving towards me?**

You do not have to be able to produce evidence from other people about what has been happening to you.

If you have received abusive or threatening SMS or emails from the other party, or have photos of your injuries or property damage, bring copies to court to show the magistrate.

## **What if I need protection straight away?**

Call 000 for police assistance. The police should help to resolve the immediate problem, and may apply for a PSIO on your behalf. The police may advise you to apply for a PSIO yourself.

If the police attend at an incident outside of normal work hours, and believe you need immediate protection, they can apply for an “interim” (temporary) order to protect you until the court deals with your case in normal work hours.

If the police do not apply for an interim order for you, you can still go to your nearest Magistrates’ Court

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to apply for a PSIO to give you protection from the other party (see below).

## **How do I apply for a PSIO?**

Telephone your nearest Magistrates' Court, and tell them that you need to apply for a PSIO. Your local Magistrates' Court may require you to make an appointment or they may tell you that you can just come in straight away.

When you go to the Magistrates' Court, you will be given an application form to complete. You will be asked to provide information about why you want to take out a PSIO. You will need to explain what has happened so far and why you are fearful.

You will then have an interview with a registrar of the Magistrates' Court – this is someone who works at the court and assists the magistrates. The registrar may go through the details of your application with you. Once you sign your application it is a “sworn” application.

You are known as the “Applicant” in the court proceedings. You may also be referred to as the “Protected Person” (PP) or an “Affected Person” (AP). The other person who you are seeking protection from is known as the “Respondent”.

## **What happens after I apply for a PSIO?**

When your application is complete, if you think that you need immediate protection, you can ask the registrar for an “interim” PSIO. If you ask for an interim order, you will be required to go into court.

The magistrate will ask you questions in court about your application. You will be asked to give sworn evidence to the magistrate about what has been going on. If you have any other evidence to support your application, you can give this to the magistrate. The magistrate may make an interim order if he or she believes that you need immediate protection.

It is important to know that if the magistrate has made an interim PSIO, it will only come into effect once it has been “served” on the other party. This means your application and the interim order has been given to the other party by the police.

Before it has been served, it does not provide you with protection.

Once your application has been made, you will be given a first court hearing date. This is known as a “mention date” or a “mention hearing”. The other party will be notified of the mention hearing when they are served.

You need to attend court for the mention hearing. The first time you come back to court (after you have made your application) is usually a preliminary hearing. This means that the magistrate will read through your application and ask you and the other party some questions.

## **What will happen on the first hearing date?**

There are different orders that the magistrate can make on the first hearing date.

The magistrate may ask you and the other party to attend mediation or to attend a “mediation assessment” to determine whether your case is suitable for mediation. Your lawyer may also refer you to a mediation assessment.

Alternatively, the magistrate may ask the other party if he or she agrees to a PSIO. If the other party does agree, then the magistrate can make an order on that day.

If the other party does not agree, and wants to dispute your application and make arguments against your application, a hearing (also known as a “contest” or “contested hearing”) will be arranged by the court for a later date. If your application is to be heard on a later date, you can ask the magistrate to extend your interim order so that you are protected until your case is finally heard at a “contested hearing”.

## **Does the other party need to know about my application?**

Yes.

When you make an application to court for a PSIO, the other party has to be served with a copy of your application. They have to know what you are saying about their behaviour and the reasons why you need protection.

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If you are worried about the other party's reaction to being served with your application, you should ask the magistrate to make an interim order when you apply for the PSIO. The interim order will then be in force at the time the other party receives a copy of your application.

## **Is the other party going to be at court?**

If the other party has been served with a copy of your application, then they should attend court on the mention hearing.

If the other party has not been served with your application by the date of the mention hearing, they may not know that they are supposed to attend court. In this case, the hearing may have to be "adjourned", that means it may be listed for another mention hearing in the future.

## **What if I do not feel safe going to court when I know the other party will be there too?**

Tell the court beforehand if you do not feel safe when you attend court. They can arrange for you to wait in a separate area from the other party.

The court may also be able to organise court security to be in the court room with you. In some courts, you may be able to give evidence by video link so that you do not have to be in the court room with the other party. This needs to be arranged in advance.

## **Do I need a lawyer when I go to court?**

You do not have to have a lawyer to represent you on the first court date after you have made your application. At many courts there are duty lawyers available who can give you free legal advice at court. The duty lawyer may also be able to talk to the other party about your application, and assist you in court. When you attend court you may wish to ask the court staff if there is a duty lawyer who you can see. If you have to go back to court at a later date for a "contested hearing", you should arrange for a lawyer to represent you at the "contested hearing". You may be able to apply to Victoria Legal Aid for a lawyer to represent you, or you may want to consult a private lawyer if you are able to pay for their services.

## **Can I have an interpreter at court?**

Yes.

Call the court in advance if you need an interpreter to assist you with your application for a PSIO. You should also tell the court registrar that you would like an interpreter for your court hearing.

## **The police have applied for a PSIO for me. Do I have to have one?**

If the police came to assist you during or after an incident, they may apply for a PSIO on your behalf. If they do, it is because they believe that you need protection from the other party. It is then a police application and not your own application.

When the police have made an application for a PSIO, it is likely that the magistrate will make an order for your protection. You may be able to have only limited conditions in your order, which enable you to continue to have contact with the other party. You should obtain legal advice about the conditions included in your order.

## **Will the other party get a criminal record if I apply for a PSIO?**

No.

A PSIO is a civil order and the other party does not get a criminal record if a PSIO is made against them.

However, if the other party breaches a PSIO, that is a criminal offence. They may be arrested and charged for the breach. The maximum penalty for breaching a PSIO is up to two years jail and/or a fine of up to \$30,535.00.

## **How long does the PSIO last?**

The magistrate will decide how long your PSIO should last. PSIOs commonly last 12 months but the magistrate may make it for a longer period if they think you need it.

If your PSIO is about to end, and the other party's abusive or threatening behaviour is continuing, you can go back to the Magistrates' Court, and ask for your order to be extended. You will have to tell (give

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evidence to) the magistrate about why you still need protection from the other party.

## **Can I change my PSIO?**

While your PSIO is in force, you can apply to change or “vary” the conditions of your order. There may be conditions in your order, which you no longer need, or you may need your order to contain more conditions so that you are properly protected.

## **I have got my PSIO. What do I do if the other party ignores it?**

If the other party does not keep to the terms of the order they will be in “breach” of the order.

For example, your order may say that the other party must not “contact you or communicate with you by any means”. If they then send you an SMS, email or call you on the telephone, they are in breach of the order.

You should report any and every breach of your PSIO to the police. The order will only protect you if you report breaches of the order to the police. The police will decide whether to charge the other party for breaching the order. The other party can be sent to prison or fined for breaching the conditions of a PSIO.

## **What support will I have at court?**

It will depend which court you are in. There may be a duty lawyer at court, and an interpreter (if you have notified the court that you need one).

There may also be a support worker or a representative from the Court Network, a group which works at the court and provides information and support.

You may wish to bring a friend or family member with you for support.