

Personal Safety IO Act 2010 and technology-facilitated stalking

The Personal Safety Intervention Order Act gives courts the power to make intervention orders that can protect victims of stalking, harassment and assault. Technology-facilitated stalking by someone other than a family member or partner can be a form of stalking and a court can make an Intervention Order (IO) to stop the person responsible.



Who can apply for a Personal Safety Intervention Order (Personal Safety IO)?

A person can apply for a Personal Safety IO against another person if that other person has:

- assaulted them or sexually assaulted them
- damaged or interfered with their property
- made a threat to kill or cause serious injury to them
- harassed them through a course of conduct that is demeaning, derogatory or intimidating
- stalked them,

AND the other person is likely to do so again in a way that would cause them to have reasonable fears for their safety.

Note: if the other person is a family member (including a partner, ex partner or someone the person had an 'intimate' relationship) please refer to SmartSafe Easy guide 1 - Family Violence Protection Act.

Can a Personal Safety IO protect someone from technology-facilitated stalking?

Yes, if the court finds the technology-facilitated stalking is a course of conduct that is meant to cause a person physical or mental harm (including self-harm) and is likely to do so again.

Forms of technology-facilitated stalking which may lead to a Personal Safety IO being made could include:

- following a person or keeping them under surveillance, including by electronic means
- contacting a person by telephone, text, email or online
- emailing or publishing something online about a person
- pretending to be a person when emailing or publishing something online
- tampering with a person's computer
- tracing the person's emails or internet use
- directing threats, abusive or offensive words or abusive or offensive acts at a person, including via text, email or on social media
- giving offensive material to a person or leaving it to be found by a person

How can a Personal Safety IO protect a person from technology-facilitated stalking?

If a court makes a Personal Safety IO against a person it can attach any conditions it finds necessary to protect the person, including:

- stopping them from stalking or harassing the protected person, which can include electronic stalking or online harassment on websites or social media
- stopping them from contacting the protected person by any means, including by phone, text, email or social media
- keeping them a certain distance away from where the protected person lives or works
- stopping them from directing others to stalk, harass, threaten or assault the protected person

What evidence will a court accept as proof of stalking, harassment, threats or assault?

To make a Personal Safety IO, a court must find it is more likely than not a person stalked, harassed, made a threat to kill or cause serious injury, damaged or interfered with property or assaulted the protected person.

The courts can accept evidence in a number of formats, including:

- print-outs of text messages, emails or screen grabs of web pages or online social media posts
- photographs
- video footage
- audio recordings
- witness testimony (ie a person telling a court what they saw or heard)

A court may exclude certain evidence if it finds there are important reasons (eg privacy) that outweigh the need to use that evidence in court.

Can a person get in trouble for taking photos or recording video or audio as proof?

A person should be aware there is a risk a court may view taking photos or the making or sharing of audio or video recordings of a private activity or a private conversation as stalking if it is taken without the consent or knowledge of a person involved.

Recording or communicating video or audio records of a private conversation or private activity may also amount to an offence under the Surveillance Devices Act in certain circumstances. A person should seek legal advice before they make or share a video or audio recording of a private activity without the consent or knowledge of all persons recorded.

What if a person breaks the conditions of an intervention order by engaging in technology-facilitated stalking?

If a Personal Safety IO has already been made against a person and they then engage in technology-facilitated stalking of the protected person, they may be breaching a condition of the Order. For example, it may be a breach of an Order if there is a condition to not stalk or harass the protected person or contact them by any means. Breaking a condition of an intervention order is a criminal offence and a person can be investigated by police and charged in court for any breach.

Can police get involved if a person engages in technology-facilitated stalking?

Some forms of technology-facilitated stalking can amount to a criminal offence under state and federal laws. For more information, see the *SmartSafe Easy guide 3*. You should contact police if you are at immediate risk or you believe a crime has been committed and you want police to investigate.

How can a person apply for a Personal Safety IO?

A person can apply for a Personal Safety IO at their local Magistrates Court. For more information on how to contact your local court, go to www.magistratescourt.vic.gov.au