



# PSOs – providing ‘on the spot’ security



By Maria Kazmierow, barrister, O’Connell Chambers

The spotlight of statutory innovation shone on domestic violence, with Police Safety Orders (PSOs) coming into effect on 1 July 2010 under the *Domestic Violence Amendment Act 2009 (Act)*. What are PSOs? How are they different to protection orders? What do lawyers practising in the area of family violence need to know about them when advising clients? Other changes were also brought in by the Act on 28 October 2009. This article will give a brief overview of the amendments under the Act.

## 28 October 2009 – changes to Domestic Violence Act 1995

One change to protection orders is a new ban on *electronic messages*. These are now prohibited when a protection order is made. Twitter, Facebook, and messaging on other social networking sites will come under this head.

Penalties for breach of protection orders are also strengthened.

Respondents breaching their order face a maximum of two years’ imprisonment (compared with six months’ imprisonment and a \$5,000 fine for a first conviction and two years’ imprisonment for two or more such convictions within the previous three years).

A respondent failing to attend a specified programme on *any occasion without reasonable excuse* is not in breach of a condition of a protection order, but is committing a separate offence punishable by not more than six months in prison or a \$5,000 fine.

Police power to arrest without warrant for breach of a protection order is less prescriptive if the police have “good cause to suspect” a protection order has been breached.

## PSOs – what are they?

Police Safety Orders are effectively discretionary ‘on the spot’ Police-issued orders, offering instant security for a limited shelf life to victims of domestic violence in qualifying domestic relationships. They have almost the same conditions as a protection order.

## Who issues PSOs?

Seniority and experience are factors in designating police officers as having the power to issue a PSO. Qualified constables are sergeants or above, or a non-qualified constable authorised by a qualified constable.

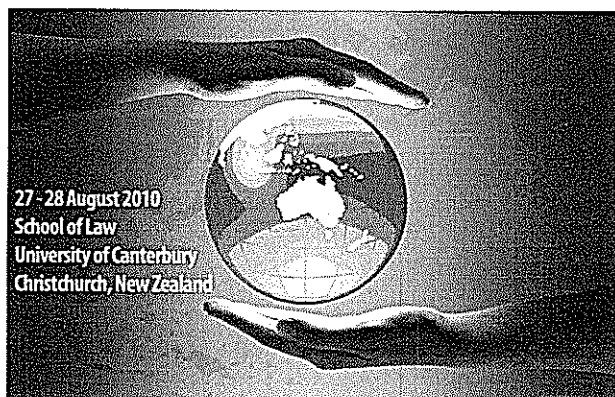
## When can a PSO be issued?

PSOs can be issued if a qualified constable is satisfied that the respondent is or has been in a domestic relationship with a protected person, but has not been arrested for violence against the protected person.

If the relevant constable is aware of reasonable grounds for believing that that a PSO will be necessary to ensure the safety of the protected person, they must take into account:

- Whether it is likely that the respondent has used/is using domestic violence against the protected person, or against another person with whom they have a domestic relationship.
- The likelihood of use of domestic violence against a protected person;
- The welfare of any child residing with the protected person;
- The hardship that may be caused if the PSO is issued; and
- Any other relevant matter.

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The University of Canterbury in conjunction with the New Zealand Australia Research Centre (NZARC) is very pleased to invite you to a conference entitled “Trans-Tasman Law and Legal Practice” to be held at the School of Law, University of Canterbury, Christchurch, 27-28 August 2010.

The conference organisers are extremely grateful for the generous sponsorship received from the New Zealand Law Foundation, Minter Ellison Rudd Watts Lawyers and the School of Law.

The conference is designed to bring together legal experts comprising academics, judges, law commissioners and all interested practitioners to discuss various legal relationships between New Zealand and Australia.

For full details on the programme, papers, accommodation and to register, please visit: [http://www.laws.canterbury.ac.nz/trans\\_tas/trans\\_tas2010\\_index.shtml](http://www.laws.canterbury.ac.nz/trans_tas/trans_tas2010_index.shtml)

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While qualified constables are considering issuing a PSO, they can detain the respondent for up to two hours.

#### When are PSOs not available?

If the respondent has been arrested for family violence offences, no PSO can be made, but bail conditions may be set which serve the same purpose as an order.

No PSO can be made while a current protection order exists between the parties.

#### Limitation on respondents

Children cannot have PSOs issued against them.

#### What protection is offered?

This is quite broad. The protections offered are the same conditions as those covered by a protection order, with the exception that the protected person cannot consent to residing with the respondent.

A PSO lapses for the child if he or she stops residing with the protected person.

Parenting orders are suspended for the duration of the PSO.

#### Service

Service should be as soon as possible.

#### Duration

Commences: on the day of issue of the order.

Ends: Lasts for the specified duration of no longer than five days.

#### Breach? Detention in custody, further PSO or TPO

If during the five days of the PSOs' life the respondent breaches the conditions of the order, then the following is the pathway for the Police:

- Arrest the respondent and take them into custody using reasonable force if necessary, or executing a warrant to do so. The respondent must be brought before the Court within 24 hours or released on a summons to appear on another date at Court.
- At District Court, a Justice of the Peace or Community Magistrate can direct a further PSO for five more days.
- At District Court, the breach can be adjourned off to be heard by a District Court Judge for consideration of whether a Temporary Protection Order ought to be made.

#### The reality

Police statistics were promising. 3 News reported that "around 80 police safety orders have been issued since new powers were introduced just 10 days ago" ("Police: new safety orders a useful tool to prevent abuse", 10 July 2010). Current statistics are unavailable. However, the early numbers are promising in offering hope of safety for victims of domestic violence.

Organisations dealing with the victims and perpetrators of violence were approached to find out what impact PSOs have had on their organisations. Ms Hazel Scott, Coordinator of Inner City Women's Group – a provider for female victims and female perpetrators of domestic violence – says "that none of the five agencies [she] surveyed have noticed any difference or heard anything about Police Safety Orders since they started on 1 July 2010. One agency asked that a breakdown be released of how many PSOs had been issued against men/women and where do they go."

It would seem one month down the track is too soon to tell, from the agencies dealing with the fallout of domestic violence in the community.

#### Family lawyers

Counsel advising parties applying for protection orders need to take note of the status of PSOs. A recent seminar on these amendments by the New Zealand Law Society, "Domestic Violence – radical changes", held in June 2010, provided tips for lawyers applying for protection orders if a PSO was in force. It is recommended to advisers.

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