



Community Housing Core Operating Procedure

Intervention Order Notifications

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Issued by:	Renewal SA on behalf of the SAHT
Delegated authority:	Maria Palumbo, A/General Manager, Strategy & Innovation
Policy custodian:	Joe Noone, Manager, Industry Partnerships
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1. Overview

1.1. Intent

This procedure outlines how **community housing providers** manage: an **intervention order** notification concerning a tenant, the storage and management of intervention order information and the service response to **protected person/s** and the **defendant** named in an intervention order.

1.2. Context

Under the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* ('the Act'), the police and the court can issue interim intervention orders and intervention orders and **tenancy orders**. The objectives of the Act are:

- a) to assist in preventing domestic and non-domestic abuse, and the exposure of children to the effects of domestic and non-domestic abuse, and
- b) to provide special police powers of arrest, detention and search in connection with issuing, serving and enforcing Intervention Orders; and
- c) to further protect persons suffering or witnessing domestic or non-domestic abuse.

The conditions of **interim intervention orders** and intervention orders override other legislation, including the *Residential Tenancies Act 1995 (SA)*. Intervention order conditions need to be carefully considered by community housing providers. The conditions may mean the defendant cannot reside in the same property as the protected person, even if the defendant is the tenant of the property.

Following an intervention order, the court may issue a tenancy order which assigns the tenancy to another person, for example the protected person. The defendant will be unable to appeal this condition to the South Australian Civil and Administrative Tribunal.

Under the new *Residential Tenancies (Domestic Violence Protections) Amendment Bill 2015 s89A (2)*, a community housing provider may ask the South Australian Civil and Administrative Tribunal to terminate a tenancy if it is satisfied that either:

- a) An intervention order is in force against a tenant to protect a person who normally resides at the community housing property, or
- b) A tenant has committed domestic abuse against a person who normally resides at the community housing property.

1.3 Scope

This procedure applies to all community housing providers that receive intervention orders notifications identifying a property address that is subject to or bound by a **Community Housing Agreement** between a community housing provider and the South Australian Housing Trust (SAHT).

2. Definitions

Community Housing Agreement

The agreement entered into between the South Australian Housing Trust (SAHT) and a community housing provider, pursuant to section 20 of the *Community Housing Providers (National Law) (South Australia) Act 2013* and includes:

- The *Master Community Housing Agreement* including all attachments, annexures and schedules to it; and
- Any agreement, deed or instrument executed under or which is subject to or bound by the *Master Community Housing Agreement* (including but not limited to project agreements, deeds of statutory charge and pre-existing agreements).

Community housing provider

An entity that provides community housing and is registered under the *Community Housing Providers (National Law) (South Australia) Act 2013*.

Court

The Magistrates Court is able to make rulings under the *Intervention Orders (Prevention of Abuse) Act 2009* and other legislation.

Defendant

The defendant is either:

- a person against whom an application for an intervention order has been or is intended to be brought, or
- a person against whom an intervention order has been made.

Interim intervention order

An interim intervention order is an application for an intervention order and provides temporary protection to the person specified in the order. The order requires the defendant to appear before the court for determination of the application. Once confirmed by the court the interim intervention order becomes an intervention order.

Intervention Order

Intervention orders are orders prohibiting a defendant from doing certain things and, if necessary, requiring the defendant to do other things as set out in the terms of the order.

The order 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. The order may be issued to protect more than one person.

Proof of service

Evidence that the intervention order has been delivered to the intended party (that is, the defendant), notifying them of initial legal action. If the intervention order had not been served on the defendant, it is not effective.

Protected person

A person for whose protection an interim intervention order or intervention order has been issued. He or she may be named in the order as the person being protected from abuse or who the order restrains the perpetrator from abusing.

Renewal SA

The trading name of the Urban Renewal Authority which has delegation to act on behalf of the South Australia Housing Trust (SAHT) in relation to the funding of community housing in South Australia. This includes, but is not limited to, the responsibility for ensuring community housing providers comply with the terms of their *Community Housing Agreement* with the SAHT to deliver quality community and affordable housing outcomes.

Revoke

An intervention order is ongoing and continues in force until it is revoked (*Intervention Order Act, Part 3, 11(1)*). When an intervention order is revoked, the order ceases to be in effect and its terms and conditions no longer apply.

South Australian Civil and Administrative Tribunal

This Tribunal is able to make rulings under the *Residential Tenancies Act 1995* and other legislation.

Tenancy order

An order issued in addition to an intervention order, where a tenancy of a property is allocated to the remaining occupant (that is, the protected person) if the original tenancy agreement was in the name of the defendant.

3. Procedure detail

Step	Description
1	<p>Notifying a community housing provider of an intervention order</p> <p>Community housing providers must nominate a contact officer to receive notifications of intervention orders, and inform Renewal SA of the contact details.</p> <p>The Courts Administration Authority will inform the Department for Communities and Social Inclusion (DCSI) of an intervention order including <i>proof of service</i>, variations and revocations.</p> <p>Where the property is a community housing property, DCSI will notify Renewal SA, which will notify the relevant community housing provider by email on the same day the information is received.</p> <p>The email must include the following information:</p> <ul style="list-style-type: none"> ▪ Name of defendant ▪ Name of protected person(s) ▪ Property address ▪ Relevant conditions of the intervention order and possible tenancy order
2	<p>Managing <u>interim</u> intervention order notifications</p> <p>Community housing providers must check whether the defendant named in the <u>interim</u> intervention order is their tenant, and whether the conditions of the <u>interim</u> intervention order exclude the tenant from their property. No action is required where the defendant and/or protected person/s is not a tenant or listed household member of the property.</p> <p>2.1 Defendant is named on the tenancy agreement</p> <p>Where the defendant is a tenant named on the tenancy agreement and they are excluded from their property under the conditions of the <u>interim</u> intervention order, their tenancy agreement will remain in place until the <u>interim</u> intervention order is reviewed by the court. They may not, despite any other Act or law, take any action to terminate the tenancy agreement before the determination of the application for an intervention order, as per section 16(5) of the Act.</p> <p>However, where the defendant is not living at the property, the community housing provider may make a fixed term lease arrangement with the protected person for the period of the <u>interim</u> intervention order and reassess the rent payable, based on the income of the remaining household occupants (that is, the defendant's income is excluded from the rent assessment).</p> <p>The court will consider an <u>interim</u> intervention order within 8 days of the order being</p>

issued pursuant to section 18 of the Act. If the defendant does not contest the order, the court may confirm the order at this point. If the interim intervention order is confirmed, the order continues in force against the defendant as an intervention order with any further requirements for service. If the defendant contests the order, a subsequent court hearing will take place after the interim intervention order has been issued.

2.2 Defendant is a household member

Where the defendant is a household member (but not named on the tenancy agreement) and is excluded from their property, a change of circumstances will apply and household income should be reassessed

Refer to: *Community Housing Rent Policy and Procedures V14* and the *Community Housing Core Operating Policy – Rent Management*.

3

Managing confirmed intervention order notifications

Community housing providers must check whether the defendant named in the intervention order is their tenant, and whether the conditions of the confirmed intervention order exclude the tenant from their property. No action is required where the defendant and/or protected person/s is not a tenant or household member of the property.

3.1 Defendant is named on the tenancy agreement

Where the defendant is excluded from their property under the conditions of the intervention order, and the defendant and protected person/s are both named on the tenancy agreement, the community housing provider may invite the defendant to voluntarily end their lease. In this case a change of circumstances will apply and household income should be reassessed (Refer to: *Community Housing Core Operating Policy – Rent Management*). If required, a community housing provider may, under the new *Residential Tenancies (Domestic Violence Protections) Amendment Bill 2015 s89A (2)*, ask the South Australian Civil and Administrative Tribunal to terminate a tenancy if the Tribunal is satisfied that either:

- a) An intervention order is in force against a tenant to protect a person who normally resides at the community housing property, or
- b) A tenant has committed domestic abuse against a person who normally resides at the community housing property.

Alternatively, the protected person/s could request a tenancy order from the Court to assign the tenancy to another person (see this procedure section 4. Managing tenancy orders).

Where the protected person/s is not named on the tenancy agreement but is a household member, the community housing provider must undertake a full eligibility assessment before transferring the lease from the defendant to the protected person subject to their eligibility for community housing (Refer to:

	<p><i>Community Housing Core Operating Procedure – Eligibility</i>).</p> <p>If a protected person/s is ineligible for community housing, he or she can be allocated a 3 month fixed term lease if required. This can be renewed for an additional 3 months. This will allow the protected person/s the opportunity to seek alternative accommodation.</p> <p>3.2 Defendant is a household member</p> <p>Where the defendant is a household member (but not named on the tenancy agreement) and is excluded from their property, a change of circumstances will apply and household income will be reassessed (Refer to: <i>Community Housing Core Operating Policy – Rent Management</i>).</p>
<p>4</p>	<p>Managing tenancy orders</p> <p>If a court confirms an intervention order with conditions that:</p> <ul style="list-style-type: none"> ▪ prohibit the defendant from being at premises where the protected person resides; and ▪ the defendant and the protected person previously resided together on the premises; and ▪ the premises are subject to a tenancy agreement to which the defendant is a party <p>the court may also make a tenancy order that assigns the tenancy to another person (the assignee), for example, the protected person. This means that the assignee assumes responsibility for the lease of the property.</p> <p>Where the landlord is a community housing provider, the court must be satisfied that the assignee:</p> <ul style="list-style-type: none"> ▪ consents to the assignment of the lease, and ▪ meets the criteria in the <i>Community Housing Core Operating Procedure - Eligibility</i>. <p>Where a tenancy order has been issued, the community housing provider must notify the Courts Administration Authority of the assignee’s housing eligibility assessment; and then must undertake the relevant process to transfer the lease from the defendant to the court nominated assignee.</p>
<p>5</p>	<p>Revoked intervention order notifications</p> <p>Where an intervention order (including an interim intervention order) is revoked, the order ceases to be in effect and its terms and conditions no longer apply. The defendant is able to resume his or her tenancy (unless the protected person/s continues to occupy the property under a court imposed tenancy order).</p>

<p>6</p>	<p>Changing locks</p> <p>If an interim intervention order or intervention order prohibits a defendant from being on premises at which a protected person/s resides, the protected person/s must be allowed to change any external door or window lock of the premises but must give a key to the lock to the community housing provider.</p> <p>If the community housing provider has been notified of the prohibition, it is an offence if it provides the defendant with a key to the premises or otherwise assists or permits the defendant to gain access to the premises (as per section 32 of the Act).</p>
<p>7</p>	<p>Confidentiality</p> <p>Community housing providers which receive information about intervention orders must ensure that the information is kept confidential. Only those people who need to know the information, in relation to housing and tenancy arrangements, should be informed of the intervention order or tenancy order and the conditions.</p>
<p>8</p>	<p>To report violation of an intervention order</p> <p>Where the violation of an intervention order:</p> <ul style="list-style-type: none"> ▪ Creates reasonable grounds for suspecting that a child is at risk of any harm; or ▪ Creates reasonable grounds for suspecting that an adult is at imminent risk of serious harm, <p>the community housing provider must report the suspected violation to the police.</p>

4. Resources

4.1. Directive documents

- *Department for Communities and Social Inclusion Intervention Orders Legislation Policy*
- *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*
- *National Plan to Reduce Violence against Women and their Children*
- *Residential Tenancies Act 1995 (SA)*
- *Residential Tenancies (Domestic Violence Protections) Amendment Bill 2015*

4.2. Supporting documents and resources

- www.dontcrossthe.com.au/

5. Procedure approval

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6. Version record

Version number	Version date	Change description	Principal change author
1.0	September 2015	Final draft of <i>Community Housing Core Operating Procedure - Intervention Order Notification</i>	Monique Pringle
2.0	April 2016	Addition of ability for community housing providers to terminate tenancies where necessary under <i>Residential Tenancies (Domestic Violence Protections) Amendment Bill 2015 s89A(2)</i>	Monique Pringle