



APPLICATION BY RESPONDENT	
1	<p>Is the person seeking variation or revocation the respondent to the original order?</p> <p>If yes, leave is required (s109). Go to 2 If no, go to 7</p>
2	<p>Was the original order an interim order?</p> <p>If yes, go to 3 If no, go to 6</p>
3	<p>Was the interim order made when the respondent was not present?</p> <p>If yes, go to 4 If no, go to 5</p>
4	<p>If the interim order was made when the respondent was not present:</p> <ul style="list-style-type: none">• Has the respondent sought leave within 21 days after the day on which a copy of the order was served on them, or are there exceptional circumstances to justify an extension of time?• Is it in the interests of justice to grant leave, having regard to the reasons the respondent was not present when the order was made? (s109(2A)-(2C)) <p>If yes to both, grant leave and go to 11 If no to either, refuse leave</p>
5	<p>If the interim order was made when the respondent was present:</p> <ul style="list-style-type: none">• Has there been a change in circumstances that may justify variation or revocation?• Is it in the interests of justice that the application be determined immediately, rather than waiting for the hearing of the application for the final order? (s109) <p>If yes, grant leave and go to 11 If no to either, refuse leave</p>
6	<p>For a <u>final order</u>, has there been a change in circumstances that may justify variation or revocation? (s109)</p> <p>If yes, grant leave and go to 11 If no, refuse leave application</p>

APPLICATION BY POLICE WITHOUT PROTECTED PERSON'S CONSENT

<p style="font-size: 2em; color: #4F81BD; text-align: center;">7</p>	<p>Is this a police application to vary or extend in which the protected person is a competent adult? (s110)</p> <p>If yes, go to 8 If no, go to 9</p>
<p style="font-size: 2em; color: #4F81BD; text-align: center;">8</p>	<p>Has the protected person consented to the application?</p> <p>If yes, go to 11 If no, note limitation on conditions:</p> <ul style="list-style-type: none"> • May only be <i>varied</i> to include conditions: <ul style="list-style-type: none"> - Prohibiting family violence - Revoking firearms authority or weapons exemption or approval - Prohibiting respondent from causing another person to engage in prohibited conduct • May only be <i>extended</i> if order subject only to the above conditions • Conditions cannot be removed (s110) <p>Then go to 11</p>
<h2>APPLICATIONS BY THIRD PARTIES</h2>	
<p style="font-size: 2em; color: #4F81BD; text-align: center;">9</p>	<p>Is the applicant one of the following:</p> <ul style="list-style-type: none"> • the protected person; • the protected person's guardian; • the respondent; or • a police officer (s111) <p>If yes, go to 11 If no, go to 10</p>
<p style="font-size: 2em; color: #4F81BD; text-align: center;">10</p>	<p>Does the applicant have written consent of:</p> <ul style="list-style-type: none"> • the protected person; • if the protected person is a child, a parent of the child other than the respondent; or • the protected person's guardian (s111) <p>If yes, go to 11 If no, dismiss the application</p>

TYPE OF APPLICATION

11

Is the application for variation/revocation or for extension?

If application is for variation or revocation, go to 12

If application is for extension, go to 21

DETERMINING VARIATION OR REVOCATION APPLICATION

12

Is this an application to revoke or vary an order confirmed or varied by the County Court or Supreme Court on appeal? (s149)

If yes, go to 13

If no, go to 14

13

Is the court satisfied that there are new facts or circumstances relevant to the order? (s149)

If yes, go to 14

If no, refuse the application.

14

Consider all circumstances of the case and, in particular:

- Applicant's reasons for seeking variation or revocation
- Safety¹ of protected person
- Protected person's views about variation or revocation (and if protected person has a guardian, the guardian's views)
- Whether or not protected person is legally represented (s100)²

Then go to 15

15

Before varying or revoking, must decide whether there is/are:

- Any change in protection needs of others protected by order
- Other people who have become family members of respondent or protected person since order made (s102)

Go to 16

16

Are any of the people identified at **15** children? (s103)

If yes, go to 17

If no, go to 20

DETERMINING VARIATION OR REVOCATION APPLICATION

<p>17</p>	<p>Are there any family law orders in place regarding any children identified at 16? (s102(1)(c))</p> <p>If yes, may revive, vary, discharge or suspend such orders under s 68R of the <i>Family Law Act</i>. Go to 18</p> <p>If no, go to 18</p>
<p>18</p>	<p>Is the child's need for protection substantially the same as that of the person seeking the variation or revocation? (ss 102-104)</p> <p>If yes, and the child is a person protected by the original order, make variation or revocation as sought (subject to any limitations noted at 8 for applications by police)</p> <p>If yes, and the child has become a family member since the original order was made, go to 19</p> <p>If no, may:</p> <ul style="list-style-type: none"> • Refuse to vary or revoke the original order or vary it in a different way, if necessary to ensure child's safety³ (subject to any limitations noted at 8 for applications by police) (ss102(2), 103(b)) • Make a separate order for the child (ss103(a), 104(b))
<p>19</p>	<p>Has the child been subjected to family violence⁴ by the respondent and is it likely to happen again?</p> <p>If yes, must either vary the original order to include the child and make any other appropriate variations or make a separate order for the child as a protected person (subject to any limitations noted at 8 for applications by police) (ss102(2), 104(a))</p> <p>If no, order variation or revocation as sought (subject to any limitations noted at 8 for applications by police)</p>
<p>20</p>	<p>May exercise general power to refuse to vary or revoke original order, or vary or revoke it in a different way, if necessary to ensure safety⁵ of another person protected by order (s102(2)) (subject to any limitations noted at 8 for applications by police)</p>

DETERMINING EXTENTION APPLICATION

21

Is the respondent likely to commit family violence if the order is not extended?⁶ (s106)

- Extension may be ordered whether or not respondent has:
 - Committed family violence against protected person while order was in force
 - Complied with the order while it was in force
- Extension subject to any limitations noted at **8** for applications by police
- Consider duration of extended order (s97)
- **If respondent is a child** cannot extend for longer than 12 months (s98)

¹ Note 'safety' means safety from family violence (s4). Note also the broad definition of 'family violence' in ss 5-7 that includes economic abuse, emotional and psychological abuse and exposing a child to the effects of family violence.

² Note the powers to:

- Vary or revoke of own initiative if original order was made of own initiative under s77(2) (s100(1)(b))
- Make interim orders varying family violence intervention orders (s101)
- Vary instead of revoke (s100(3)).

Note also that in deciding the conditions to be included in any varied order, the court should be guided by ss 80-83, 86, 91-93 and 95, but is not specifically directed to consider these matters in the context of variation applications.

³ See 2 above.

⁴ Note the broad definition of 'family violence' as per 2 above.

⁵ See 2 above.

⁶ Note the powers to:

- Extend of own initiative if original order was made of own initiative (s106(1)(b))
- Order interim extensions of not more than 28 days if the respondent has not yet been served (s107).