

APPLICATION BY RESPONDENT	
1	<p>Is person seeking variation or revocation the respondent to the original order?</p> <p>If yes, leave is required – s 109. Go to 2</p> <p>If no, go to 3</p>
2	<p>Should leave be granted to the respondent to make the application? s 109 - Has there been a change in circumstances that may justify variation or revocation?</p> <p>If no, refuse leave application</p> <p>If yes, grant leave and go to 3</p>
APPLICATION REGARDING COUNTY COURT OF SUPREME COURT ORDER	
3	<p>Is this an application to revoke, vary or extend an order confirmed or varied by the County Court or Supreme Court on appeal? s 149</p> <p>If yes, there must be new facts and circumstances. Go to 4</p> <p>If no, go to 4</p>
APPLICATION BY POLICE WITHOUT PROTECTED PERSON'S CONSENT	
4	<p>Is this a police application to vary or extend in which the protected person is a competent adult? s 110</p> <p>If yes to all, go to 5</p> <p>If no to any, go to 6</p>
5	<p>Has the protected person consented to the application?</p> <p>If yes, go to 6</p> <p>If no, note limitation on conditions – s 110:</p> <ul style="list-style-type: none"> • May only be varied 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 extended if order subject only to the above conditions • Conditions cannot be removed <p>Then go to 6</p>

TYPE OF APPLICATION

6

Is the application for variation/revocation or for extension?

If application is for variation or revocation, go to 7

If application is for extension, go to 14

DETERMINING VARIATION OR REVOCATION APPLICATION

7

Consider all circumstances of the case and, in particular – s 100¹:

- Applicant's reasons for seeking variation or revocation
- Safety² 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

Go to 8

8

Before varying or revoking, must decide whether there is/are – s 102:

- 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

Go to 9

9

Are any of the people identified above **children**?

If yes, go to 10

If no, go to 13

10

Are there any family law orders in place regarding any children identified above?
s 102(1)(c)

If yes, may revive, vary, discharge or suspend such orders under s 68R of the Family Law Act. **Go to 11**

If no, go to 11

<p>11</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 5 for applications by police)</p> <p>If yes, and the child has become a family member since the original order was made, go to 12</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 – ss 102(2), 103(b) (subject to any limitations noted at 5 for applications by police) • Make a separate order for the child – ss 103(a), 104(b)
<p>12</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 – ss 102(2), 104(a) (subject to any limitations noted at 5 for applications by police)</p> <p>If no, order variation or revocation as sought (subject to any limitations noted at 5 for applications by police)</p>
<p>13</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 – s 102(2) (subject to any limitations noted at 5 for applications by police)</p>
<p>DETERMINING VARIATION OR REVOCATION APPLICATION</p>	
<p>14</p>	<p>Is the respondent likely to commit family violence if the order is not extended?⁶ s 106</p> <ul style="list-style-type: none"> • Extension may be ordered whether or not respondent has: <ul style="list-style-type: none"> • 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 5 for applications by police • Consider duration of extended order – s 97 • If respondent is a child cannot extend for longer than 12 months – s 98

¹ Note the powers to:

- Vary or revoke of own initiative if original order was made of own initiative under s77(2) – s 100(1)(b)
- Make interim orders varying family violence intervention orders – s 101
- Vary instead of revoke – s 100(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.

² Note ‘safety’ means safety from family violence – s 4. 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.

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 – s 106(1)(b)
- Order interim extensions of not more than 28 days if the respondent has not yet been served – s 107.