

## Final Hearing Checklist

### Family Violence Protection Act 2008

Last updated: 5 January 2011

Items in the checklist tagged **red** in the left hand column are mandatory

Final orders in absence of the Respondent	
1.	<p>Is the Respondent present at court?</p> <p><b>If yes, go to 4</b></p> <p><b>If no, go to 2</b></p>
2.	<p>If the Respondent has been served but does not attend, the court may make a final order - s61 - if respondent has committed family violence against AFM and is likely to continue to do so or do so again - s74. <b>Go to 3.</b></p>
3.	<p>Determine conditions of final order ss80-81</p> <ul style="list-style-type: none"> <li>• Give paramount consideration to safety<sup>1</sup> of AFM and children</li> <li>• Include any conditions necessary or desirable, including any of the conditions listed in s81</li> <li>• Consider matters listed on <b>mandatory considerations</b> checklist</li> <li>• Consider duration of order – s97</li> <li>• <b>If respondent is a child</b>, order cannot be made for longer than 12 months - s98</li> </ul>
Final Consent Orders	
4.	<p>Are the parties consenting to a final order being made?</p> <p><b>If yes</b>, Court <b>must</b> still consider the matters listed on <b>mandatory considerations</b> checklist and can still elect to:</p> <ul style="list-style-type: none"> <li>• Conduct a hearing if in the interests of justice</li> <li>• Refuse to make order if may pose risk to safety<sup>2</sup> of party or child of protected person or respondent - s78. <b>Go to 5</b></li> </ul> <p><b>If no, go to 6</b></p>
5.	<p>Is the respondent an adult or a child?</p> <p><b>If adult</b>, final order can be made (after addressing <b>mandatory considerations</b> checklist) - s78</p> <p><b>If child:</b></p> <ul style="list-style-type: none"> <li>• Need to be satisfied there are grounds for the order under s74 or s76 – see s78(2)</li> <li>• Order cannot be made for longer than 12 months - s98</li> </ul> <p>Subject to these considerations final order can be made (after addressing <b>mandatory considerations</b> checklist)</p>
Contested final orders	
6.	<p>Has respondent committed family violence against the affected family member and are they likely to continue to do so or do so again? s74</p> <p><b>If yes, go to 7</b></p> <p><b>If no</b>, refuse order</p>
Police applications for final orders without AFM consent	
7.	<p>Is this a police application in which the AFM is a competent adult? s75</p> <p><b>If yes to all, go to 8</b></p> <p><b>If no to any, go to 9</b></p>

<p>8.</p>	<p>Has the AFM consented to the application?</p> <p><b>If yes, go to 9</b></p> <p><b>If no</b>, determine conditions of final order by reference to <b>ss75</b>, 80-81</p> <ul style="list-style-type: none"> <li>• Give paramount consideration to safety of AFM and children</li> <li>• Specifically consider whether respondent has firearms authority or weapons exemption or approval</li> <li>• May only include conditions: <ul style="list-style-type: none"> <li>○ Prohibiting family violence</li> <li>○ Revoking firearms authority or weapons exemption or approval</li> <li>○ Prohibiting respondent from causing another person to engage in prohibited conduct</li> </ul> </li> <li>• Consider duration of order – s97</li> <li>• <b>If respondent is a child</b>, order cannot be made for longer than 12 months - s98</li> </ul>
<p><b>Other applications for final orders</b></p>	
<p>9.</p>	<p>Determine conditions of final order by reference to ss80-81</p> <ul style="list-style-type: none"> <li>• Give paramount consideration to safety<sup>3</sup> of AFM and children</li> <li>• Include any conditions necessary or desirable, including any of the conditions listed in s81</li> <li>• Consider matters listed on <b>mandatory considerations</b> checklist</li> <li>• Consider duration of order – s97</li> <li>• <b>If respondent is a child</b>, order cannot be made for longer than 12 months - s98</li> </ul>

<sup>1</sup> Note 'safety' means safety from family violence - s4- and the broad definition of 'family violence in ss5-7 that includes economic abuse, emotional and psychological abuse.

<sup>2</sup> See note 1 above.

<sup>3</sup> See note 1 above.