

Mention Date 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.	Is the respondent present at court? If yes, go to 5 If no, go to 2
2.	Has the respondent been served? If yes, go to 3 If no, adjourn matter to enable further attempts at service (interim order continues - s60)
3.	Court may make a final order - s61 - if respondent has committed family violence ¹ against affected family member and is likely to continue to do so or do so again - s74. Go to 4
4.	Determine conditions of final order ss80-81 ² <ul style="list-style-type: none"> • Give paramount consideration to safety³ of the affected family member and children • Include any conditions necessary or desirable, including any of the conditions listed in s81 • Consider matters listed on mandatory considerations checklist • Consider duration of order – s97 • If respondent is a child order cannot be made for longer than 12 months - s98
Final Consent Orders	
5.	Are the parties consenting to a final order being made? If yes , Court must still consider the matters listed on mandatory considerations checklist and can still elect to: <ul style="list-style-type: none"> • Conduct a hearing if in the interests of justice • Refuse to make order if the order may pose a risk to safety of a party or a child of the protected person or respondent (s78) Go to 6 If no, go to 7
6.	Is the respondent an adult or a child? If adult , final order can be made (after addressing mandatory considerations checklist) – s78 If child : <ul style="list-style-type: none"> • Court must be satisfied there are grounds for the order under s74 or s76 (s78(2)) • Order cannot be made for longer than 12 months (s98) Subject to these considerations final order can be made (after addressing mandatory considerations checklist)
Interim Order until final hearing	
7.	Is there an interim order in place? If yes , it will continue until the final hearing (s60). Go to 10 If no, go to 8
8.	Do the parties consent to an interim order being made? If yes , Court must still consider the matters listed on mandatory considerations checklist before fixing conditions of interim order. If no, go to 9
9.	Are there grounds for an interim order being made? s53 <ul style="list-style-type: none"> • necessary to ensure safety of the affected family member, preserve property of the affected family member or protect a child; or⁴ • a family violence safety notice is in place and there are no circumstances to justify discontinuing protection. If yes to either of the above , determine conditions of interim order ss80-81 <ul style="list-style-type: none"> • Give paramount consideration to safety of the affected family member and children • Include any conditions necessary or desirable, including any of the conditions listed in s81 • Consider matters listed on mandatory considerations checklist Then go to 10 If no, go to 10⁵

Legal representation for cross-examination	
10.	Is the respondent legally represented?
	If not represented , inform respondent of prohibition on personal cross-examination, inquire as to whether respondent has sought representation and adjourn to special mention hearing, if necessary - s70(4) ⁶
	If represented , adjourn to final hearing ⁷

¹ The court will need to be satisfied that the affected family member and the respondent are 'family members'.

² Note that if the matter is a police application and the affected family member has not consented to the application, the final order may only contain conditions that do not restrict contact between the parties – s75.

³ Note 'safety' means safety from family violence – s4 and the broad definition of 'family violence' in ss5-7 that includes economic abuse, emotional abuse and psychological abuse.

⁴ See note 2 above.

⁵ But note that if the matter commenced by application and warrant, the court may extend bail until the final hearing.

⁶ See note 3 above.

⁷ See note 5 above.