

Variations, Revocations and Extensions Checklist

Family Violence Protection Act 2008

Last updated 5 January 2011

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

Application by respondent	
1.	<p>Is person seeking variation or revocation the respondent to the original order?</p> <p>If yes, leave is required – s109. Go to 2</p> <p>If no, go to 3</p>
2.	<p>Should leave be granted to the respondent to make the application? s109 - 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 or 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? s149</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? s110</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 – s110:</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 <p>Then go to 6</p>
Type of application	
6.	<p>Is the application for variation/revocation or for extension?</p> <p>If application is for variation/revocation, go to 7</p> <p>If application is for extension, go to 14</p>
Determining variation or revocation application	
7.	<p>Consider all circumstances of the case and, in particular – s100¹:</p> <ul style="list-style-type: none"> • 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 <p>Go to 8</p>

8.	<p>Before varying or revoking, must decide whether there is/are – s102:</p> <ul style="list-style-type: none"> 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 <p>Go to 9</p>
9.	<p>Are any of the people identified above children?</p> <p>If yes, go to 10</p> <p>If no, go to 13</p>
10.	<p>Are there any family law orders in place regarding any children identified above? s102(1)(c)</p> <p>If yes, may revive, vary, discharge or suspend such orders under s68R of the <i>Family Law Act</i>. Go to 11</p> <p>If no, go to 11</p>
11.	<p>Is the child's need for protection substantially the same as that of the person seeking the variation or revocation? ss102-104</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 – ss102(2), 103(b) (subject to any limitations noted at 5 for applications by police) Make a separate order for the child – ss103(a), 104(b)
12.	<p>Has the child been subjected to family violence⁴ by the respondent and is it likely to happen again?</p> <p>If yes, may vary the original order to include the child and make any other appropriate variations – ss102(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>
13.	<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 5 for applications by police)</p>
Determining extension application	
14.	<p>Is the respondent likely to commit family violence if the order is not extended?⁶ s106</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 – s97 If respondent is a child cannot extend for longer than 12 months - s98

¹ 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 ss80-83, 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 – s4. Note also the broad definition of 'family violence' in ss5-7 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 – s106(1)(b)
- Order interim extensions of not more than 28 days if the respondent has not yet been served – s107.