

Decision making in family violence Intervention order matters: Prescriptive requirements and limitations.



Subject	Nature of requirement or limitation	Section
Children		
Protection from family violence	Must consider whether children have been subjected to family violence before deciding on interim or final orders	Ss 52A, 73I
	Must make orders protecting child if child subjected to family violence	Ss 53AA, 53AB, 77, 77A, 77B
	Must enquire whether any family law or child protection orders exist	S 89
	Must decide if child contact will be safe for child or protected person and if not safe, order no contact	Ss 91, 93
	Must use powers under s68r of <i>Family Law Act</i> to modify inconsistent order	S 90
	If no family law orders and contact safe, must include specific conditions re agreements and negotiations about children's arrangements	S 92
	If making final order or varying or revoking an existing order, court must separately consider children's need for protection, including new children	Ss 77, 102-104
	If order made is inconsistent with child protection order, registrar must notify DHS	S 174
Orders against children	Need grounds for final consent/unopposed order	S 78
	Final orders for no longer than 12 months	S 98
	Limits on power to impose exclusion condition	S 83(3)
Protecting children in court	Alternative arrangements for evidence generally required	S 69
	Child cannot give evidence without leave, unless applicant or respondent	S 67
	Certain children cannot be present in court without court order	S 150
	Legal representation of children - limited	S 62

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Conditions on orders		
Police applications without AFM consent	Limits conditions that can be included on final orders, variations & revocations without AFM consent unless AFM a child, has a guardian who consents or is cognitively impaired	Ss 75, 110
Exclusion conditions	Must consider imposing	S 82
	Limitations and requirements when considering exclusion of children	Ss 83-84
	Must ask excluded respondent for address and advise of police power to seek information to allow service	S 85
Firearms and weapons	Must inquire whether respondent has firearms authority or weapons exemption or approval	S 94
Evidence		
Cross-examination of protected witnesses	Generally prohibited by unrepresented respondents. Court must inform respondent and give opportunity to obtain representation	S 70
	If respondent not represented, court must order VLA to offer representation and may need to warn respondent about effect of refusing assistance	S 71
	Representation must also be ordered for protected witness	S 72
Procedural issues		
Explanation of Orders	Court must explain interim and final orders	Ss 57, 57A, 96, 96A
Final order contest at mention date	Court cannot hear contest regarding final order at mention date unless criteria met	S 61
Costs	May only order costs in exceptional circumstances or if application vexatious, frivolous or in bad faith	S 154
Counselling orders	May only be made by Family Violence Court Division or prescribed court	Ss 129, 130
	Presumption in favour of making assessment orders and counselling orders	Ss 129, 130