



Are you protected by a Domestic and Family Violence Order? Have you lodged an application to vary to reduce your level of protection?

The information in this resource is designed to assist aggrieved applicants who have lodged an application to vary and have been requested to provide further information under 'Section 92'.

WHAT IS SECTION 92?

Section 92 outlines what the Court must consider when someone applies to change a protection order that may affect the safety, protection or wellbeing of the aggrieved or any named person.

Note: The aggrieved is the person protected by the order. A named person can be protected also. The respondent is the person reported to have committed domestic violence and the person restricted by the order.

KEY CONSIDERATIONS UNDER SECTION 92:

- **Express wishes:** the wishes of the aggrieved or named person
- **Current Contact:** any current contact between the aggrieved or named person and the respondent
- **Pressure or Threats:** any pressure applied or threats made to the aggrieved by the respondent or someone else for the respondent
- **Safety Principle:** the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount; and
- **Other relevant matters:** any other factors deemed relevant by the Court.

The Court can only vary the order if it considers that the safety, protection or wellbeing of the aggrieved or the named person would not be adversely affected by the variation and if the variation is to reduce the duration of the order, there are reasons for doing so.

Important: If your order includes a no contact condition, seek legal advice BEFORE lodging your application. If you are a respondent and wish to reduce the conditions you should seek legal advice BEFORE lodging your application.

DISCLAIMER: The material in this factsheet is intended to provide you with information only. The content does not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice regarding your personal and specific circumstances ought to be obtained. The Wide Bay Burnett Community Legal Service believes the information is accurate as at May 2024 and does not accept responsibility for an errors or omissions.

WHAT DOES THIS ALL MEAN?

Does your application ask that the order be changed to lessen your level of protection? For example, if your application seeks to **shorten the length of the protection order, seeks to remove a named protected person or seeks to remove a condition** -then section 92 applies.

WHAT DO I NEED TO DO?

- **Provide relevant information:** include your express wishes, details of any contact and other relevant information. You need to provide information in support of why the protection order should be changed.
- **Prepare an affidavit:** If you already lodged your application to vary and the Court has requested you address section 92 then you should provide the information in an affidavit.

Note: when filing your affidavit ensure you have enough copies for the Court, yourself, the respondent, the police (if a police application) and any named protected persons.

WHAT WILL HAPPEN?

The respondent may be agreeable to the change or may not agree and wish to have the matter listed for a trial. If the order was made by police then police have a say. Police may not agree to the proposed change. If parties are not agreeable your application may be listed for trial.

WHAT HAPPENS AT THE NEXT COURT DATE?

You should attend all Court dates. It is important to keep in mind that everyone's circumstances are different. In some cases, the Magistrate may be cautious about removing a condition entirely and instead consider an exception (for example the written consent exception). If this occurs you should seek legal advice.

If all parties are agreeable and the Magistrate is satisfied with the application and information, the order may be changed. If parties are not agreeable and the matter is going to be contested you should seek legal advice.

THE STORY OF ALEX AND CHARLIE

Charlie and Alex have a protection order. The protection order names Charlie as the Respondent and Alex as the Aggrieved. The order is designed to protect Alex. The order has two conditions:

- (1) The respondent must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.
- (2) The respondent is prohibited from remaining at, entering or attempting to enter, or approaching within 100 m of the aggrieved's usual place of residence.

Alex would like Charlie back home

Alex would like Charlie back home so Alex lodged an application to vary. When Alex appeared at Court the Magistrate said more information was needed and referred to section 92.

WHAT ALEX NEEDS TO DO

Alex needs to prepare an affidavit. Below is an example excerpt from an affidavit to illustrate what your document might include.

It is important to note that the affidavit extract is an example only. It is not a complete affidavit. The Court does consider other factors and laws. For example, the Court will consider information in the original application, any findings if it went to trial, criminal history and compliance of any intervention order (if applicable).

This factsheet is designed to explain section 92 only.

The affidavit extract applies to Alex's circumstances. You should seek legal advice before lodging your application. Importantly, if your protection order includes a no contact condition it is **strongly** recommended you seek legal advice before lodging your application.

EXAMPLE ONLY

Form DV25

Domestic and Family Violence Protection Rules 2014 (r. 35)

AFFIDAVIT OF ALEX SMITH SWORN ON 22 MAY 2024

AGGRIEVED
RESPONDENT
APPLICANT

ALEX SMITH
CHARLIE SMITH
ALEX SMITH

I, Alex Smith of 123 McDonald Street, Urangan, in the State of Queensland, Homemaker, state on oath:

1. *I am the aggrieved applicant in the protection order made on 02 December 2023.*
2. *Charlie Smith ('Charlie') is the Respondent and my partner of 10 years.*
3. *I write this affidavit in support of my application to vary and to express my wishes. I have applied to vary the original protection order so that Charlie can return home. This variation is requested on my own free will and no pressure has been applied of any kind.*
4. *On 01 November 2023, I applied for the protection order. At the time of the original application, Charlie was on a short-term contract at work and that was ending and we were stressed financially. Charlie was also drinking every day.*
5. *Since the protection order was made, I have seen a significant change. Charlie and I talk everyday via text and Facebook Messenger. Exhibited and marked 'AS-1' is a call log setting out the frequency and duration of our contact. Our family members continue to talk with one another and we attend special occasions together. For example, over Christmas we visited our relatives together and spent Christmas day together. Similarly, for Easter day we visited our friends and family on the Sunshine Coast.*
6. *Charlie continues to attend counselling and has also completed a Choosing Change Course on 30 April 2024. Charlie has stopped drinking through the support of Alcohol and Other Drug Services. Charlie's boss has also now placed Charlie in a full-time permanent role which has eased the financial pressure and stress we were previously experiencing. Exhibited and marked 'AS-2' are the completion certificates for the courses Charlie has completed.*
7. *There have been no breaches. I confirm I no longer hold concerns for my safety and would like Charlie to come back home. I plead with the Court to allow Charlie to return home.*
8. *.....include more detailed points as necessary*

NEED HELP: You can contact the Wide Bay Burnett Community Legal Service on (07) 4194 2663.