

42. Variation or cancellation

- (1) An application for the court to vary or cancel a restraining order may be made by a police officer nominated by the Commissioner of Police or, with the leave of the court, by the person against whom the order was made.
- (2) The application is to be made —
 - (a) if the person against whom the order was made is a child, to the Children’s Court; or
 - (b) otherwise, to a court of petty sessions,and is to be accompanied by an affidavit in support of the application.
- (3) If subsection (1) requires the leave of the court for an application to be made, an application seeking leave is to be accompanied by an affidavit disclosing all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) Neither the application nor the affidavit are to be served on the person upon whose application the restraining order was made (in this section called “**the respondent**”) unless the court orders under subsection (6) that they are to be served on the respondent.
- (5) Even though the giving of leave may not be prevented by subsection (7), the court may refuse the application for leave if it considers that —
 - (a) the affidavit does not disclose everything required by subsection (3) to be disclosed; or
 - (b) the facts disclosed by the affidavit do not give sufficient reason to vary or cancel the restraining order.
- (6) Before the court grants an application for leave it is to —
 - (a) order that a copy of the application and accompanying affidavit be served on the respondent; and
 - (b) give the respondent an opportunity to oppose the application for leave.
- (7) Leave is not to be given unless the court is satisfied there has been a substantial change in the relevant circumstances since the restraining order was made.
- (8) The person against whom the order was made and the respondent are to be given an opportunity to be heard at the hearing of an application to vary or cancel a restraining order.
- (9) At the hearing of the application to vary or cancel a restraining order, the court may receive as evidence any record of evidence given or affidavit filed in connection with an application for leave mentioned in subsection (3).
- (10) The court may dispose of the application to vary or cancel a restraining order by —
 - (a) dismissing the application;
 - (b) making a new restraining order in addition to the original restraining order; or

- (c) cancelling the original restraining order with or without making a new restraining order.
- (11) Anything in this Part that applies to a restraining order made in the first instance also applies to a new restraining order made under this section.