

## Conditions

The **types of conditions** a judicial officer can impose in a protection order (whether interim or final) vary to some extent across Australian state and territory jurisdictions. Typically, the protection order will prohibit the perpetrator from committing domestic and family violence against the victim and other protected people (such as children). In addition, there may be conditions necessary to specifically address the needs and circumstances of the parties to the particular case, for example, conditions that prohibit the perpetrator from: committing certain forms of domestic and family violence; entering the victim's residence, workplace or other specified premises; being within a specified distance of the victim or a specified location; telephoning or otherwise contacting the victim; interfering with the victim's property; locating or attempting to locate the victim; or possessing firearms or prohibited weapons [ALRC/NSWLRC 2010]. A protection order may also be an appropriate means of ensuring that **children are not exposed to ongoing domestic and family violence** [WA Equal Justice Bench Book 2017].

In some jurisdictions, where it is necessary to ensure the safety of the victim and other protected people, a court may also be empowered to prohibit a perpetrator from entering and remaining in a residence shared with the victim (whether as co-owner or co-tenant) or to terminate an existing tenancy agreement and replace it with one for the benefit of the victim; these are commonly referred to as exclusion or ouster orders [ALRC/NSWLRC 2010]. Conditions in protection orders may also overlap with general prohibitions or requirements imposed by the criminal law; **bail** conditions; pre-sentencing orders; or orders made on **sentencing** [ALRC/NSWLRC 2010]. It is desirable that criminal charges, including breach charges, relating to matters that are also the subject of a protection order application be dealt with contemporaneously in the same court to ensure that any bail conditions are consistent with protection order conditions. Where this is not possible, it is important that judicial officers are made aware of bail or protection orders issued by other courts (by tendering or by annexing to the application) to ensure consistency of orders.

Australian research has shown that where insufficient time is allowed in application proceedings for judicial officers to give particularised attention to the conditions of protection orders, conditions may not be tailored to the particular circumstances. This outcome may also occur where the victim and other protected people are not present at the hearing to explain their protection needs, or have limited language skills to do so. In tailoring conditions, a judicial officer may need to consider the potential for breaches of a protection order in the context of, for example, child contact hand-over arrangements [Katzen 2000], other court orders or remote communities [ALRC/NSWLRC 2010]. It is also important that protection order conditions are consistent and readily understood by the parties [NSWLC DV Trends & Issues 2012].

**Consent** orders are a common outcome of protection order application proceedings. Research demonstrates no observable relationship between the nature of the conditions sought and the willingness of the perpetrator to consent to the order. It is likely that these matters will be the subject of negotiations between the parties outside the courtroom [\[Gelb 2016\]](#).