



*Magistrates Courts Act 1921*

# **Domestic and Family Violence Protection Rules 2014**

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Queensland

# Domestic and Family Violence Protection Rules 2014

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# Domestic and Family Violence Protection Rules 2014

## Part 1 Preliminary

### 1 Short title

These rules may be cited as the *Domestic and Family Violence Protection Rules 2014*.

### 2 Commencement

These rules commence on 28 February 2015.

### 3 Application

- (1) These rules apply to—
  - (a) a proceeding in a DFVP court under the DFVP Act; and
  - (b) a registry of a DFVP court in relation to a proceeding under that Act.
- (2) These rules do not apply to an appeal under the DFVP Act.

*Note—*

The DFVP Act, section 142 states that the *Uniform Civil Procedure Rules 1999* apply to an appeal under the DFVP Act. See also the DFVP Act, part 5, division 5 for other provisions that apply to an appeal.

### 4 Dictionary

- (1) The dictionary in schedule 2 defines particular words used in these rules.
- (2) Words and expressions used in the DFVP Act have the same meaning in these rules as they have in that Act.
- (3) However, subrule (2) does not apply if the rule where the term is used makes it clear that the term does not have the same meaning as in the DFVP Act.

## **5 Main objects of rules**

- (1) The main objects of these rules are—
  - (a) to allow a DFVP court to decide a proceeding in a way that—
    - (i) is consistent with the main objects of the DFVP Act; and
    - (ii) resolves a proceeding under that Act with a minimum of expense; and
    - (iii) facilitates the just and expeditious resolution of the issues relevant to the proceeding; and
  - (b) to provide for the practice and procedure of a DFVP court for a proceeding.
- (2) These rules are to be applied by DFVP courts with the objective of avoiding undue delay, expense and technicality and facilitating the objects of these rules and the DFVP Act.
- (3) A party to a proceeding undertakes to the DFVP court and to the other parties to proceed in an expeditious way.

## **6 Failure to comply with rules**

- (1) A failure to comply with a rule is an irregularity and does not render a proceeding, a document, step taken or order made in a proceeding a nullity.
- (2) However, a DFVP court can make an order dealing with a failure to comply with a rule if the court considers it appropriate.
- (3) The DFVP court may waive compliance with a rule, or excuse noncompliance with a rule, if the DFVP court considers compliance with the rule would be inconsistent with—
  - (a) the main objects of the DFVP Act under the DFVP Act, section 3; or
  - (b) the principles for administering the DFVP Act under the DFVP Act, section 4.



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## Part 2 Filing documents in proceeding

### 7 What pt 2 is about

Part 2 explains how a document in a proceeding, including a DFVP application, is to be filed.

*Note—*

See the DFVP Act, sections 32(2) and 86(2) for what a DFVP application is to include.

### 8 DFVP application may be filed in registry in any district or region

- (1) A DFVP application, other than a police protection application, may be filed in a registry of a DFVP court in any district for the court or region.

*Notes—*

- 1 See the DFVP Act, section 111 for where a police protection application is to be filed.
- 2 See the DFVP Act, section 136 for a DFVP court's jurisdiction.

- (2) In this rule—

***Childrens Court judge*** see the *Childrens Court Act 1992*, section 3.

***district***, for a DFVP court, means—

- (a) if the DFVP court is a Magistrates Court—a district appointed under the *Justices Act 1886* for the purposes of a Magistrates Court; or
- (b) if the DFVP court is the Childrens Court, and the court is constituted by a Childrens Court magistrate—a district appointed under the *Justices Act 1886* for the purposes of a Magistrates Court; or
- (c) if the DFVP court is the Childrens Court, and the court is constituted by a Childrens Court judge—a district of

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the court declared by regulation made under the *District Court of Queensland Act 1967*, section 7; or

- (d) if the DFVP court is the District Court—a district of the court declared by regulation made under the *District Court of Queensland Act 1967*, section 7; or
- (e) if the DFVP court is the Supreme Court—a district of the court mentioned in the *Supreme Court of Queensland Regulation 2012*, schedule.

**region** means a region under the *Supreme Court of Queensland Act 1991*, section 53.

## 9 How documents may be filed—general

- (1) A document in a proceeding may be filed by—
  - (a) delivering the document to the registry personally under subrule (2); or
  - (b) sending the document to the registry by post under subrule (3); or
  - (c) electronic or computer-based means—
    - (i) if the party filing the document is a police officer—by filing the document under subrule (4); or
    - (ii) otherwise—by filing the document under rule 9A.
- (2) A document is filed personally in the registry when the clerk of the DFVP court receives the document and stamps the document with the date the registry receives it.
- (3) A document is filed in the registry by post if—
  - (a) the document is sent to the postal address for the registry; and
  - (b) the registry receives the document and stamps the document with the date the registry receives it.
- (4) A police officer files a document electronically or by computer-based means if the document is sent electronically or by computer-based means to the registry and the police

officer receives an electronic message from the registry that the document was received.

*Note—*

Under the DFVP Act, section 153, a police officer may file a document by electronic or computer-based means.

## **9A How particular parties may file documents electronically**

- (1) A party to a proceeding, other than a police officer, may file a document electronically if the principal registrar approves—
  - (a) the electronic filing of the document or documents of that class; and
  - (b) the electronic file format for the document or class of documents.

*Note—*

See the *Oaths Act 1867* for how an affidavit or statutory declaration may be signed electronically and made in counterparts.

- (2) The party files a document electronically if the document is sent electronically to the registry and the party receives an electronic message from the registry that the document was received.
- (3) A document filed electronically in the registry—
  - (a) may be retained in electronic form by the registry; and
  - (b) is taken for all purposes to be a document in a court file.

## **9B Approvals given by principal registrar**

- (1) This rule applies to an approval given by the principal registrar under rule 9A(1).
- (2) The approval—
  - (a) may be given on conditions; and
  - (b) must be published on the Queensland Courts website.
- (3) The failure of the principal registrar to comply with subrule (2)(b) does not affect the validity of the approval.

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## **10 Change of address for service or email to be filed in DFVP court registry**

- (1) Notice of any change in the address for service or email of a party to a proceeding must be filed in the registry of the DFVP court hearing the proceeding.
- (2) The clerk of the DFVP court must give a copy of the notice to the police commissioner.

# **Part 3 Notice of proceedings**

## **Division 1 Preliminary**

### **11 What pt 3 is about**

- (1) Part 3 generally explains how a person, other than a child, is to be given notice of proceedings.

*Note—*

The DFVP Act, section 188 states how a document is to be given to, or served on, a child.

- (2) Division 2 explains how personal service, ordinary service and informal service are to be performed for a proceeding.
- (3) Division 3 explains how a named person is to be given notice of a proceeding.

*Note—*

The DFVP Act also regulates how service is to be performed.

## **Division 2 Service**

### **12 How personal service is performed**

- (1) To serve a document personally, the person serving it must—
  - (a) give the document, or a copy of the document, to the person to be served; and

- (b) tell the person to be served what the document is.

*Notes—*

- 1 Generally, the DFVP Act requires documents that must be personally served on a person to be served by a police officer. For example, the DFVP Act, sections 34(1) and 184(2) require a police officer to personally serve the following documents on a respondent—
    - (a) a copy of a DFVP application;
    - (b) a domestic violence order, or a varied domestic violence order.
  - 2 Under the DFVP Act, section 184(4), personal service on a respondent is not required in particular circumstances if the respondent is present in the DFVP court when an order is varied or made.
- (2) However, if the person does not accept the document or copy, the person serving it may serve it by putting it down in the person's presence and telling the person what it is.
- (3) It is not necessary to show to the person served the original of the document.

### **13 Proof of personal service**

- (1) This rule applies to a person, other than a police officer, who must personally serve a document under the DFVP Act or these rules.
- (2) The person must—
  - (a) file an affidavit of personal service with the registry of the DFVP court hearing the proceeding; and
  - (b) if the DFVP court orders—give evidence orally about the service.
- (3) The affidavit of personal service must—
  - (a) either—
    - (i) be in the approved form and—
      - (A) have the document that was served filed with it as an exhibit; or

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- (B) if the document that was served has been filed—mention the document in a way sufficient to enable the document to be identified; or
- (ii) be written on the document that was served but otherwise be in the approved form; and
- (b) be made by the person who served the document; and
- (c) include each of the following details—
  - (i) the person’s name;
  - (ii) the time, day and date the document was served;
  - (iii) the place of service;
  - (iv) the name of the person served and how the person was identified.

## 14 Statement of police service

- (1) This rule applies to a police officer who must personally serve—
  - (a) a domestic violence order mentioned in the DFVP Act, section 124; or
  - (b) another document under the DFVP Act or these rules.
- (2) However, this rule does not apply if the police officer files an affidavit of personal service.
- (3) The police officer must file a statement (a *statement of police service*) with the registry of the DFVP court hearing the proceeding, unless a DFVP court orders otherwise.
- (4) The statement of police service must—
  - (a) be made and signed by the officer who served the document; and
  - (b) include each of the following details—
    - (i) the officer’s name and rank;
    - (ii) the time, day and date the document was served;

- (iii) the place of service;
  - (iv) the name of the person served and how the person was identified;
  - (v) if the DFVP Act requires the police officer to explain the document or the nature of the content of the document to the person served—how the document or content was explained; and
- (c) include a statement that either—
- (i) the contents of the statement are true; or
  - (ii) if the contents of the statement are stated on the basis of information and belief—the contents are true to the best of the knowledge of the officer; and
- (d) include a statement that the officer understands that a police officer who provides a false matter in the statement commits an offence.

*Example of offence—*

misleading declaration under the Criminal Code, section 194

- (5) The statement of police service must also—
- (a) have the document that was served filed with it as an exhibit; or
  - (b) if the document that was served has been filed—mention the document in a way sufficient to enable the document to be identified; or
  - (c) have the statement of police service written on the document that was served.

## **14A Affirming statement of police service**

- (1) A police officer making a statement of police service must affirm the statement before—
- (a) the officer in charge of a police station, police establishment or watch-house; or

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- (b) if an officer mentioned paragraph (a) is not practicably available—a police officer of or above the rank of sergeant; or
  - (c) if an officer mentioned in paragraph (a) or (b) is not practicably available—a police officer who is more senior in rank to the officer making the statement.
- (2) The statement of police service must be signed by the police officer before whom it was affirmed (the *witnessing officer*) above a statement of the witnessing officer's name and rank.

## 15 How ordinary service is performed

- (1) If personal service is not required under the DFVP Act or these rules, the serving or giving of a document to a person may occur in 1 of the following ways—
- (a) by posting it to the relevant address;
  - (b) if the person has given a fax number to the DFVP court—by faxing the document to the person;
  - (c) if the person has given an email address to the DFVP court—by emailing the document to the person;
  - (d) if the lawyer for the person has—
    - (i) an exchange box at a document exchange—by leaving the document in the exchange box or another exchange box available for documents to be transferred to the lawyer's exchange box; or
    - (ii) a fax number and machine—by faxing the document to the lawyer; or
    - (iii) an email address—by emailing the document to the lawyer;
  - (e) by electronic or computer-based means approved by a DFVP court; or
  - (f) in another way as directed by a DFVP court.



- (2) A document served under subrule (1)(d)(i) is taken to have been served on the business day after it is left in the document exchange box.
- (3) In this rule—  
*relevant address*, of a person to be served, means—
  - (a) the person’s address for service; or
  - (b) if the person does not have an address for service—the person’s last known place of business or residence.

## 16 Informal service

- (1) This rule applies if—
  - (a) personal service is not required by the DFVP Act or these rules; and
  - (b) a document is not served as required under rule 15 for any reason; and
  - (c) despite the document not being served under rule 15, the document or a copy of the document still came into the possession of the person to be served; and
  - (d) the DFVP court is satisfied on evidence before it that the document came into the person’s possession on or before a particular day.
- (2) The DFVP court may order that the possession of the document is service for these rules.
- (3) The DFVP court may order that the document was served on—
  - (a) the day it came into the person’s possession; or
  - (b) another day stated in the order.

## 17 Service outside the State

- (1) If a document is required to be served under the DFVP Act or these rules, the document may be served—

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- (a) outside the State but within Australia; or
  - (b) outside Australia.
- (2) If a document is to be served outside the State—
- (a) the DFVP court may issue a direction about how the document is to be served; and
  - (b) the document must otherwise be served in compliance with this division.
- (3) In deciding whether to issue a direction about how a document is to be served under subrule (2), the DFVP court may consider—
- (a) for service outside Australia—whether a convention requires the service to be performed in a particular way; and  
*Example of a convention—*  
the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965
  - (b) how the party required to serve the document is to pay the costs of service; and
  - (c) if the document must be served personally and the DFVP court considers it is impracticable for service to be proved by an affidavit of personal service or statement of police service—whether service is to be proved in another way.
- (4) However, if a document is to be served outside the State but within Australia and the document may be served in accordance with the *Service and Execution of Process Act 1992* (Cwlth), the document must be served in accordance with that Act.
- (5) Also, if a document is to be served within New Zealand and the document may be served in accordance with the *Trans-Tasman Proceedings Act 2010* (Cwlth), the document must be served in accordance with that Act.
- (6) Nothing in this rule, or in any direction issued by a DFVP court made under these rules, authorises or requires the doing

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of anything in a country in which service is to be effected that is contrary to the law of the country.

## **Division 3                    Informing named person of proceeding**

### **18            Giving notice of proceeding to named person**

- (1) This rule applies if a person is to be specifically named in a domestic violence order when it is made, or at a later time if it is varied.
- (2) If a DFVP court considers that it is necessary and appropriate, the DFVP court may order that a copy of the DFVP application for the protection order or a variation of the protection order be served on the person.
- (3) If the person is a child, the DFVP court must consider the following matters before making an order under subrule (2)—
  - (a) the age of the child;
  - (b) the ability of the child to understand the DFVP application;
  - (c) whether the court has dispensed with the requirement to give a copy of the DFVP application to a parent of the child under the DFVP Act, section 188(3);
  - (d) whether service of the copy of the DFVP application is in the best interests of the child;
  - (e) whether the child is already aware of the proceeding or the circumstances giving rise to the proceeding.
- (4) If an order is made, the clerk of the DFVP court must—
  - (a) serve a copy of the DFVP application on—
    - (i) if the person is a child—the child in accordance with the DFVP Act, section 188; or
    - (ii) otherwise—the person; and

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- (b) inform the person that the person may be specifically named in the domestic violence order; and
- (c) inform the person that the DFVP court may inform itself in any way it considers appropriate in a proceeding under the DFVP Act, section 145.

## **Division 4                    Informing police commissioner if domestic violence order is to be revived**

### **19            Obligation to inform police commissioner if suspended domestic violence order is to be revived**

- (1) This rule applies if—
  - (a) a domestic violence order is suspended under the DFVP Act, section 48(3); and
  - (b) a DFVP court refuses to vary the domestic violence order or an application for variation of the domestic violence order is withdrawn; and
  - (c) the respondent is not present in court when the refusal or withdrawal happens.
- (2) The clerk of the DFVP court must notify the police commissioner about the refusal or withdrawal.

*Notes—*

- 1 See the DFVP Act, section 48(5)(b) and (c) and (6) for the effect of a police officer informing the respondent of matters relating to the suspended domestic violence order.
- 2 See the DFVP Act, section 48(7) for how a police officer may tell the respondent about the refusal or withdrawal of the domestic violence order.

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## **Part 4                      Conduct of proceedings**

### **Division 1                Preliminary**

#### **20        What pt 4 is about**

Part 4 explains matters that relate to proceedings under the DFVP Act.

### **Division 2                Directions in proceeding**

#### **21        What div 2 is about**

Division 2 explains the orders or directions that may be made or issued by a DFVP court in a proceeding.

*Note—*

The DFVP Act, section 144 allows a DFVP court to issue directions about matters not provided for by these rules.

#### **22        Directions that may be issued by DFVP court for proceeding**

The DFVP court may issue a direction about any of the following for a proceeding—

- (a) that an application be amended, and how the application is to be amended;
- (b) that an applicant give further particulars about his or her application;
- (c) that evidence given by a person be given by affidavit;
- (d) how and when an affidavit is to be filed and served on the other parties in the proceeding;
- (e) that a person give further details of a matter in the affidavit, and how the further details are to be given;

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- (f) that a person who has given an affidavit attend, or not attend, a proceeding;
- (g) how a respondent may cross-examine an aggrieved or a named person;

*Note—*

A DFVP court may make an order that the respondent who is not represented by a lawyer may not cross-examine a protected witness under the DFVP Act, section 151.

- (h) how a respondent's lawyer may cross-examine an aggrieved, named person or child;
- (i) that scandalous or oppressive matter in an affidavit be removed from the affidavit;
- (j) that a scandalous or oppressive document be removed from the file;
- (k) that a party to the proceeding may appear and make submissions by telephone, video link or another form of communication, including conditions about the appearance and submissions;
- (l) that evidence may be received by telephone, video link or another form of communication, including conditions about how the evidence may be received;
- (m) that a document, particular documents or a class of documents be disclosed to a party in the proceeding, and how disclosure is to happen;
- (n) if a person is to be specifically named in a domestic violence order and the application is to be served in a way other than rule 18—the way the person is to be notified;
- (o) that a named person give evidence in a proceeding;
- (p) how and when a subpoena is to be served.

## **23 Matters relevant to making order or issuing direction**

- (1) In deciding whether to make an order or issue a direction, the interests of justice are paramount.

- (2) In addition to the principle mentioned in subrule (1), in deciding whether to make an order or issue a direction of a type mentioned in rule 22, the DFVP court may have regard to the following matters—
- (a) the protection of the person for whose benefit a DFVP application is made under the DFVP Act;
  - (b) that each party is entitled to a fair hearing;
  - (c) the time allowed for taking a step in the proceeding or for the hearing must be reasonable;
  - (d) the complexity or simplicity of the case;
  - (e) the importance of the issues and the case as a whole;
  - (f) the volume and character of the evidence to be led;
  - (g) the time expected to be taken by the hearing;
  - (h) the number of witnesses to be called by the parties;
  - (i) that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
  - (j) the state of the court lists;
  - (k) another relevant matter.

**24 Order made or direction issued may be inconsistent with rules**

If the DFVP court's order or direction is inconsistent with another provision of these rules, the DFVP court's order or direction prevails to the extent of the inconsistency.

**25 Revoking or varying order made or direction issued under rules**

A DFVP court may at any time vary or revoke an order made or direction issued under these rules.

## **26 Failure to comply with DFVP court directions**

A failure to comply with a direction of a DFVP court issued under these rules is an irregularity and does not render a proceeding, a document or step taken in a proceeding a nullity.

## **Division 3 Litigation guardians**

### **27 Who may be litigation guardian**

A person may be a litigation guardian of an aggrieved, a respondent or named person with impaired capacity if the person—

- (a) is an adult; and
- (b) is not a person with impaired capacity; and
- (c) has no interest in the proceeding adverse to the interest in the proceeding of the person with impaired capacity; and
- (d) consents to being a litigation guardian.

### **28 Litigation guardian for aggrieved**

(1) This rule applies if—

- (a) an aggrieved is a person with impaired capacity; and
- (b) an authorised person does not appear on behalf of the aggrieved; and

*Note—*

An authorised person may appear on behalf of an aggrieved in a proceeding under the DFVP Act, section 25.

- (c) a guardian has not been appointed under the *Guardianship and Administration Act 2000* for the person for a legal matter.
- (2) Unless a person is appointed as a litigation guardian by a DFVP court, a person becomes a litigation guardian of an



aggrieved with impaired capacity for a proceeding by filing in the registry the person's written consent to be litigation guardian of the aggrieved.

- (3) If the interests of an aggrieved who is a person with impaired capacity require it, a DFVP court may appoint or remove a litigation guardian for the aggrieved or substitute another person as litigation guardian.

## **29 Litigation guardian for named person or respondent**

- (1) This rule applies if—
  - (a) a respondent or named person is a person with impaired capacity; and
  - (b) a guardian has not been appointed under the *Guardianship and Administration Act 2000* for the person for a legal matter.
- (2) Unless a person is appointed as a litigation guardian by a DFVP court, a person becomes a litigation guardian of a respondent or named person with impaired capacity for a proceeding by filing in the registry the person's written consent to be litigation guardian of the respondent or named person.
- (3) If the interests of a respondent or named person who is a person with impaired capacity require it, a DFVP court may appoint or remove a litigation guardian or substitute another person as litigation guardian for the respondent or named person.

## **30 Litigation guardian involvement in proceeding for person with impaired capacity**

- (1) A person with impaired capacity may start or be a respondent for a proceeding by the person's litigation guardian.
- (2) Anything that may be done by a party in a proceeding may be done by the party's litigation guardian.

**31 Considering respondent’s impaired capacity if respondent does not attend hearing**

- (1) This rule applies if the DFVP court—
  - (a) is deciding whether to hear and decide the application, adjourn the application or order the issue of a warrant for the respondent under the DFVP Act, section 39(2); and
  - (b) is aware the respondent is a person with impaired capacity.
- (2) In making the decision the DFVP court may consider whether—
  - (a) to appoint a litigation guardian for the respondent under rule 29(3); or
  - (b) to continue to hear the proceeding before a litigation guardian is appointed for the respondent.

*Note—*

See the DFVP Act, sections 27 and 44 for a DFVP court’s power to make a temporary protection order on adjourning a proceeding.

## **Part 5 Evidence in proceeding**

### **Division 1 Preliminary**

**32 What pt 5 is about**

Part 5 explains how a DFVP court may receive evidence in a proceeding.

*Note—*

The DFVP Act, section 145 provides for matters relating to evidence for a DFVP court.

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## Division 2 Evidence generally

### 33 Evidence in other proceedings

- (1) A party may rely on evidence or an affidavit used in an earlier proceeding, an earlier stage of the same proceeding, or in a cross application, if—
  - (a) the evidence or affidavit is relevant to the proceeding; and
  - (b) the DFVP court gives its permission for the evidence or affidavit to be relied upon.
- (2) In this rule—

*cross application* see the DFVP Act, section 41(1).

*earlier proceeding* includes an earlier criminal or child protection proceeding.

### 34 Tendering media exhibit at hearing

- (1) This rule applies if a party intends to tender a media exhibit at a hearing in a DFVP court.
- (2) At least 7 days before the hearing starts, the party must file the media exhibit.
- (3) Also, at least 7 days before the hearing starts, the party filing the exhibit must give all other parties notice that—
  - (a) the media exhibit has been filed; and
  - (b) the party may—
    - (i) inspect the media exhibit at the registry; and
    - (ii) agree to its admission without proof.
- (4) However, subrule (3) does not apply if the DFVP court, on the application of a party without notice to the other parties, orders that the media exhibit be placed in a sealed container.

*Example of a sealed container—*

an envelope

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- (5) The container may be opened only if the DFVP court orders it to be opened.
- (6) A person who intends to tender the media exhibit must ensure that the thing is in a format capable of being played or viewed in the DFVP court.
- (7) Noncompliance with subrule (2), (3) or (6) does not affect the admissibility of the media exhibit.

## **Division 3                      Affidavits**

### **35            Requirements for affidavits**

- (1) This rule states—
  - (a) what must be included in an affidavit; and
  - (b) the form of an affidavit.
- (2) An affidavit must state—
  - (a) the name of the person making the affidavit; and
  - (b) the name of the party on whose behalf it is filed.
- (3) An affidavit must include only matters that are relevant to the proceedings.
- (4) The body of an affidavit must be divided into paragraphs numbered consecutively.
- (5) Each page of an affidavit must be numbered.
- (6) An affidavit may contain statements based on information and belief if the person making the statement states the sources of the information and the grounds for the belief.
- (7) An affidavit must include a statement that—
  - (a) either—
    - (i) the contents of the affidavit are true; or
    - (ii) if the contents of the affidavit are stated on the basis of information and belief—that those

contents are true to the best of the knowledge of the person making the statement; and

- (b) the person making the affidavit understands that a person who provides a false matter in the affidavit commits an offence.

*Example of offence—*

perjury under the Criminal Code, section 123

- (8) An affidavit must attach the documents referred to in the affidavit after the last page of the affidavit as exhibits to the affidavit.
- (9) Also, an affidavit must comply with the *Oaths Act 1867*.

### **36 Swearing or affirming affidavits**

- (1) A person making an affidavit must swear or affirm the affidavit before a person who may take an affidavit.

*Note—*

For persons who may take an affidavit, see the *Oaths Act 1867*, parts 4 and 6A.

- (2) The affidavit must be signed by the person before whom the affidavit was sworn or affirmed, above a statement of the capacity of the person to take the affidavit.

### **37 Filing affidavit**

An affidavit may be used in a proceeding only if it has been filed, unless a DFVP court orders otherwise.

## **Division 4 Subpoenas**

### **38 What div 4 is about**

Division 4 explains how a court may issue a subpoena under the DFVP Act, including—

- (a) how a person may request a subpoena; and

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- (b) the form of a subpoena; and
- (c) the obligations of a person to comply with a subpoena; and
- (d) how a subpoena may be set aside.

*Note—*

A DFVP court can issue the following subpoenas under the DFVP Act, section 154—

- (a) a subpoena for production;
- (b) a subpoena to give evidence;
- (c) a subpoena for production and to give evidence.

### **39 Requesting subpoena**

A request for a subpoena must—

- (a) be in the approved form; and
- (b) state the name of the person to whom the subpoena is directed unless a DFVP court orders otherwise; and
- (c) attach the subpoena that is to be issued by the court; and
- (d) be filed.

### **40 Subpoena requirements**

- (1) A subpoena must—
  - (a) be in the approved form; and
  - (b) include a notice advising the person who must comply with the subpoena that the person has the right to apply to a DFVP court to have the subpoena set aside under rule 41.
- (2) A subpoena must not be filed.
- (3) A subpoena to give evidence may be addressed to 1 or more persons.

- (4) A subpoena requiring a person to produce a document or thing must include an adequate description of the document or thing.
- (5) A person to whom a subpoena is directed must comply with it.

*Note—*

See the DFVP Act, section 155 for the effect of a person's refusal or failure to comply with a subpoena.

#### **41 Setting aside subpoena**

- (1) A DFVP court may make an order setting aside all or part of a subpoena.
- (2) Without limiting subrule (1), the subpoena may be set aside on any of the following grounds—
  - (a) want of relevance;
  - (b) privilege;
  - (c) oppressiveness, including oppressiveness because substantial expenses may not be reimbursed;
  - (d) noncompliance with these rules;
  - (e) compliance with the subpoena would breach an obligation under an Act.

#### **42 Way person complies with subpoena for production**

- (1) This rule applies to a subpoena requiring a person to produce a document or thing.
- (2) A person may comply with the subpoena by giving the document or thing to the clerk of the DFVP court in a sealed envelope clearly marked 'court exhibits', or something similar, at least 1 clear day before the time stated for production in the subpoena.
- (3) The person must attach a copy of the subpoena to the front of the document, thing or envelope.

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- (4) If a document given to the clerk of the DFVP court is a copy of another document, the person must state if the document is to be—
  - (a) returned to the person; or
  - (b) destroyed.
- (5) If a document or thing is produced at the registry, the clerk of the DFVP court must—
  - (a) issue a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as the DFVP court directs.
- (6) The subpoena may be satisfied by an agent of the person named in the subpoena producing the document or thing to the DFVP court.
- (7) A DFVP court may order that a person comply with the subpoena in a way other than under this rule.

#### **43 Giving media exhibit under subpoena**

- (1) This rule applies to a subpoena requiring a person to produce a document that is a media exhibit.
- (2) The person must ensure the media exhibit the person produces is in a format capable of being played or viewed by the person seeking the document under the subpoena.

#### **44 Costs of complying with subpoena if non-party**

- (1) This rule applies if—
  - (a) a subpoena for production is addressed to a person who is not a party to the proceeding; and
  - (b) a DFVP court is satisfied the person has or will incur substantial loss or expense in complying with the subpoena.



- (2) The DFVP court may order the party on whose behalf the subpoena was issued to pay all or part of the losses and expenses, including legal costs, incurred by the person to whom the subpoena is addressed in responding properly to the subpoena.
- (3) The DFVP court may fix the amount payable under subrule (2) or it may order the amount to be fixed by assessment.
- (4) An order under this rule may be made at the hearing or at another time but in all cases before the order is made finally deciding the proceeding at first instance.
- (5) If a party who is ordered to pay losses and expenses under subrule (2) obtains an order for the costs of the proceeding under the DFVP Act, section 157, the DFVP court may make another order it considers appropriate.

#### **45 Inspecting subpoenaed documents**

- (1) This rule applies to a document that has been subpoenaed in a proceeding and given to the clerk of a DFVP court.
- (2) A person, including a party to a proceeding, may not inspect or copy the document unless an inspect and copy order allows the person to do so.
- (3) The person may apply to the DFVP court for an inspect and copy order for the document.
- (4) The DFVP court may make an inspect and copy order for the document only if—
  - (a) the DFVP court has given all of the parties to the proceeding a reasonable opportunity to present evidence and to prepare and make submissions about the application, including objecting to the making of the order; and
  - (b) the DFVP court has considered submissions made by a party; and

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- (c) the DFVP court considers it is appropriate in the circumstances to make the order.
- (5) The DFVP court may hear and refuse the application, or dismiss the application without deciding it, even if the other parties to the proceeding have not been given notice of the application.
- (6) If the DFVP court makes an inspect and copy order for the document, the person named in the order may only—
  - (a) inspect the document in the registry; and
  - (b) if the DFVP Court orders that the person may copy the document—copy the document in the registry.
- (7) In this rule—

*inspect and copy order*, for a document, means an order made by a DFVP court that authorises a person named in the order to inspect, or inspect and copy, the document.

#### **46 Return of subpoenaed documents or things**

- (1) This rule applies to a document or thing if—
  - (a) the document or thing is not tendered or admitted into evidence at the hearing of a proceeding for which it was produced; and
  - (b) either—
    - (i) the matter was heard and the hearing of the proceeding for which it was produced has ended; or
    - (ii) the matter was not heard and the period for which the matter was listed for hearing has ended.
- (2) The clerk of the DFVP court must—
  - (a) return the document or thing to the person required to produce it; or
  - (b) if the document is a copy and the person stated to the clerk that the document may be destroyed—destroy the document.

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## Division 5                      Access to documents

### 47            Accessing documents from registry

- (1) This rule applies to a person who may—
  - (a) obtain a copy of a section 160 document under the DFVP Act, section 160; or
  - (b) use a section 160 document for approved research under the DFVP Act, section 161.
- (2) The person may make a request to the clerk of the DFVP court to inspect and copy the section 160 document from the registry.
- (3) A request must—
  - (a) be in writing addressed to the clerk of the DFVP court; and
  - (b) state the basis upon which the person is requesting a copy, or the use, of the section 160 document.
- (4) In this rule—

*section 160 document* means a copy of—

  - (a) any part of the record of a proceeding; or
  - (b) a document used or tendered in a proceeding.

## Division 6                      Return of exhibits

### 48            Return of exhibits

- (1) This rule applies to an exhibit held by a DFVP court in a finalised proceeding.
- (2) The clerk of the DFVP court may give written notice to a party, the lawyer for a party or any other person who appears to the clerk to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry within 28 days.

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- (3) If the exhibit is not collected from the registry within 3 months after the notice is given, the clerk of the DFVP court may destroy or otherwise dispose of the exhibit in the way the clerk considers appropriate.
- (4) The clerk of the DFVP court may apply to the DFVP court at any time for an order about the return, destruction or other disposal of an exhibit.
- (5) If the clerk of the DFVP court returns, destroys or otherwise disposes of an exhibit under this rule, the clerk must ensure a note is placed on the court file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.
- (6) In this rule—

*exhibit* includes an unfiled document held by the DFVP court.

*finalised proceeding* means a proceeding—

- (a) in which a DFVP court has dismissed a DFVP application without deciding it; or
- (b) in which a DFVP application has been withdrawn; or
- (c) in which a protection order has been made if—
  - (i) 3 months have passed since the order was made and no notice of appeal has been filed starting an appeal in relation to the proceeding; or
  - (ii) an appeal in relation to the proceeding has been decided and—
    - (A) 3 months have passed since the decision and no application for special leave to appeal to the High Court from the decision has been filed; or
    - (B) an application for special leave to appeal to the High Court from the decision has been decided other than by the grant of special leave and 3 months have passed since the High Court's decision; or

- (C) 1 month has passed since an appeal to the High Court in relation to the proceeding has been decided, other than by granting a new trial or remitting the proceeding to another court for the making of a protection order.

## Part 6 Ending proceedings early

### 49 What pt 6 is about

Part 6 explains how a party may end a proceeding early.

### 50 Withdrawal of DFVP application

- (1) The applicant for a domestic violence order or the variation of a domestic violence order may withdraw the applicant's DFVP application before a DFVP court decides the application in 1 of the following ways—
- (a) orally during a proceeding in a DFVP court;
  - (b) in writing to the clerk of the DFVP court (an *application to withdraw*).
- (2) An application to withdraw must state the following—
- (a) the name of the applicant;
  - (b) the role of the person in the proceeding that is to be withdrawn, including whether the person is, represents or is acting on behalf of, a party to the proceeding;
  - (c) the proceeding in which the application is to be withdrawn, including the name of the parties and the file number;
  - (d) the date of the next court appearance for the proceeding, if the person knows the date.
- (3) If the clerk of the DFVP court receives an application to withdraw, the clerk must send a copy to the officer in charge of the nearest police station for service on each person who—

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- (a) is a party in the proceeding, other than the applicant; and
  - (b) has been served with a copy of the DFVP application.
- (4) A police officer must personally serve a copy of the application to withdraw on each person mentioned in subrule (3).
- (5) A DFVP court may decide an application to withdraw without the parties appearing, unless a DFVP court orders otherwise.

### **50A Notice DFVP application has been withdrawn**

- (1) This rule applies if a DFVP application is withdrawn under rule 50 during a proceeding in a DFVP court—
- (a) either—
    - (i) orally by the applicant; or
    - (ii) because a DFVP court grants an application to withdraw; and
  - (b) in the absence of—
    - (i) for an application withdrawn under paragraph (a)(ii)—the applicant; or
    - (ii) the aggrieved; or
    - (iii) another party to the proceeding who has been served with a copy of the DFVP application.
- (2) The clerk of the DFVP court must give written notice that the DFVP application has been withdrawn to the officer in charge of the nearest police station for service on the party mentioned in subrule (1)(b).
- (3) A police officer must tell the party that the DFVP application has been withdrawn.
- (4) For subrule (3), a police officer may tell a party that the DFVP application has been withdrawn in any way, including, for example, by written notice, telephone, email, SMS message, a social networking site or other electronic means.

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## Part 7                      Costs

### 51      **What pt 7 is about**

Part 7 explains how costs are to be assessed if a DFVP court awards costs against a party under the DFVP Act, section 157(2).

### 52      **Assessing costs in a proceeding**

- (1) A DFVP court may fix the amount of the costs of the proceeding and order payment of the amount.
- (2) However, the DFVP court may order that the costs of the proceeding be assessed by a costs assessor if the court considers it appropriate because of the nature and complexity of the proceeding.
- (3) For assessing the costs under this rule, a lawyer is entitled to charge and be allowed the costs in accordance with the scale of costs set out in schedule 1.

*Note—*

The scale of costs set out in schedule 1, part 2 is based on the scale of costs for Magistrates Courts that apply under the *Uniform Civil Procedure Rules 1999*, schedule 2, part 3.

- (4) In this rule—

**costs assessor** means a costs assessor appointed under the *Uniform Civil Procedure Rules 1999*, rule 743L.

## **Schedule 1      Costs in a proceeding**

rule 52(3)

### **Part 1                      General**

#### **1                      Costs allowed for counsel and solicitor or clerk**

- (1) The costs of or incidental to the attendance of both counsel and a solicitor during a trial are not to be allowed unless a court certifies that the attendance of both counsel and solicitor was necessary.
- (2) The costs of or incidental to the attendance of the clerk with counsel or a solicitor acting as advocate during a trial are to be allowed unless a court certifies the attendance of the clerk was not reasonably required.
- (3) A court may direct that costs to be allowed for counsel or a solicitor acting as advocate are to be less than the costs set out in part 2.

#### **2                      Costs of unnecessary step**

A court may disallow the costs of a step taken by a party in a proceeding if the court considers the step was unnecessary for the proper conduct of the proceeding.

### **Part 2                      Costs**

\$

**(including  
GST)**

**General care and conduct**



§

**(including  
GST)**

- 1 In addition to an amount that is to be allowed under another item of this schedule, the amount that is to be allowed for a solicitor's care and conduct of a proceeding is the amount the clerk of the DFVP court or a costs assessor considers reasonable, having regard to the circumstances of the proceeding, including, for example—
- (a) the complexity of the proceeding; and
  - (b) the difficulty and novelty of any question raised in the proceeding; and
  - (c) the importance of the proceeding to the party; and
  - (d) the amount involved; and
  - (e) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor; and
  - (f) the number and importance of the documents prepared or perused, without regard to the length of the documents; and
  - (g) the time spent by the solicitor; and
  - (h) research and consideration of questions of law and fact.

**Clerk of the DFVP court's, or costs assessor's, discretion**

- 2 For a matter for which a cost is not provided for in this schedule, the amount to be allowed is the cost the clerk of the DFVP court or a costs assessor considers reasonable.

**Costs on quarter-hourly basis**

- 3 If, under an item of this schedule, costs in relation to a matter are allowable on a quarter-hourly basis, the amount to be allowed is—

	\$ (including GST)
(a) for less than a quarter-hour spent on the matter—the cost of 1 quarter-hour; or	
(b) for part of a quarter-hour after the first quarter-hour spent on the matter—a proportionate amount of the cost of 1 quarter-hour.	
<b>Drafting documents</b>	
4 Drafting a document—for each 100 words	19.55
<b>Producing documents</b>	
5 Producing a document in final form—for each 100 words	4.70
<b>Preparing exhibit certificates</b>	
6 Preparing an exhibit certificate—for each exhibit, including a paginated book	3.65
<b>Copying documents</b>	
7 Copying a document—for each page	0.22
<b>Perusing documents</b>	
8 Perusing a document—for each 100 words	4.70
<b>Examining or comparing documents</b>	
9 Examining a document or comparing documents, if perusal is unnecessary—	
(a) by a solicitor—for each quarter-hour	69.35
(b) by an employee—for each quarter-hour	20.45
<b>Serving documents</b>	
10 Serving on a person 1 or more documents at the same time—	

	\$ (including GST)
(a) personal service, by a solicitor or a solicitor's employee, if personal service is required for 1 or more of the documents served	40.50
<p>However, if the clerk of the DFVP court or a costs assessor considers another amount is reasonable (having regard, for example, to the distance travelled, the time involved, and the number of attendances necessary to effect service), the amount to be allowed is the amount the clerk or the costs assessor considers reasonable.</p>	
(b) ordinary service, other than ordinary service of a type mentioned in paragraph (c), (d) or (e)	25.45
(c) service by post	18.50
(d) service by facsimile—	
(i) for the first page	8.40
(ii) for each extra page	1.00
(e) service by email	8.40
<b>Attendances</b>	
11 Attendance, if capable of being done by an employee—	
(a) to file or deliver a document, obtain an appointment, insert an advertisement, or settle an order	25.45
(b) to search	25.45
(c) to do something of a similar nature	25.45
12 Attendance by telephone that does not involve the exercise of skill or legal knowledge	17.00
13 Attendance in a DFVP court by a solicitor who appears without a barrister—for each quarter-hour	76.95

## Schedule 1

	\$ (including GST)
14 Attendance for a hearing held at a place other than the town where the solicitor lives or carries on business—	
(a) by the solicitor—	
(i) for the time spent in attendance at the hearing or trial—for each quarter-hour	70.40
(ii) for the time the solicitor is absent from the solicitor’s place of business, including time used in travelling to or from the hearing, other than in attendance at the hearing—	
(A) for an absence of 4 hours or less	528.70
(B) for an absence of more than 4 hours—for each quarter-hour to a maximum of 8 hours	34.15
(iii) the expenses the clerk of the DFVP court or a costs assessor considers reasonable for each day of absence, including Saturdays and Sundays	
(iv) the actual expenses of transport to and from the hearing or trial the clerk of the DFVP court or a costs assessor considers reasonable	
(b) by the solicitor’s employee—the amount the clerk of the DFVP court or a costs assessor considers reasonable	
However, if the solicitor’s absence is to attend more than 1 hearing at the same place, the costs are to be divided proportionately.	
15 Attendance at a call-over or mention, to be apportioned if the attendance is for more than 1 proceeding	46.40
16 Other attendances—	

	\$ (including GST)
(a) by a solicitor, involving skill or legal knowledge—for each quarter-hour	70.40
(b) by an employee—for each quarter-hour	20.45

However, the costs allowed under this item are to be reduced by 25% in relation to time necessarily spent at court before an appearance in court.

### **Correspondence**

#### 17 (1) Correspondence sent—

(a) written message or letter (20 words or less)	14.15
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This includes a letter forwarding documents without explanation.

(b) short letter (21 to 100 words)	28.30
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(c) any other letter—for each 100 words	24.55
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This covers any form of written communication including ordinary post, facsimile, email, text or other form of electronic transmission.

This includes the charges of the communication provider, other than charges for sending the correspondence by registered post, international post or courier or serving the correspondence personally.

For a circular letter, the first is to be allowed under this item. For each circular letter after the first, the charge under item 7 applies.

#### (2) Correspondence received—

(a) receiving any correspondence, including by electronic means, and filing, including reading a message (20 words or less) and, for an electronic communication, printing 1 page for filing	14.15
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	\$ (including GST)
For printing additional pages received electronically for filing, the charge under item 7 applies.	
(b) perusing correspondence—	
(i) for the first 100 words	18.90
(ii) for each 100 words or part after the first 100 words	9.45
(c) if perusing the document is not reasonably necessary, to examine the document—for each page	4.75
(3) Agency correspondence—	
(a) for sending correspondence to the agent by the principal, or to the principal by the agent—costs under item 17(1)	
(b) for receiving correspondence from the agent by the principal, or from the principal by the agent—costs under item 17(2)	

If engagement of the agent was normal and reasonable in the circumstances, costs may be charged under this item by the principal and the agent.

Correspondence between offices of the same firm of solicitors may be charged if it is analogous to agency correspondence and the engagement of an agent was not reasonable in the circumstances.

*Note—*

The word count for agency correspondence is based on the body of the correspondence, as defined in schedule 2.

### **Electronic conduct of proceedings**

18 (1) Examining an electronic document or comparing electronic documents, including emails, if perusal is unnecessary—for each 100 words	0.95
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	\$ (including GST)
(2) Preparing a document for disclosure, or to be exchanged electronically, by—	
(a) barcoding the document—for each page	0.55
(b) electronically scanning or imaging the document—for each page	0.55
(c) entering data about the document in a database, including delimiting the document to decide start and end pages, and carrying out quality control of the data, for example, to check for missing data and check spelling—for each document	4.70
(3) To the extent a proceeding is conducted electronically, the costs to be allowed, including the costs of any electronic service provider, are the costs the clerk of the DFVP court or a costs assessor considers have been reasonably incurred and paid.	

## Schedule 2 Dictionary

rule 4

***affidavit of personal service*** means an affidavit of personal service under rule 13.

***body***, of correspondence, does not include an address, salutation or other text that is generic to correspondence.

***DFVP Act*** means the *Domestic and Family Violence Protection Act 2012*.

***DFVP application*** means—

- (a) an application for a protection order made under the DFVP Act, section 32; or
- (b) an application for a variation of a domestic violence order made under the DFVP Act, section 86; or
- (c) a police protection application.

***DFVP court*** means a court under the DFVP Act, section 6.

***impaired capacity***, in relation to a person, means the person is not capable of making the decisions required of a party to conduct the proceedings.

***legal matter*** see the *Guardianship and Administration Act 2000*, schedule 2, section 18.

***media exhibit*** means plan, photograph, video or audio recording or model.

***model*** includes a model or image generated by a computer.

***nearest police station***, in relation to a DFVP application, means the police station nearest the place where the respondent lives or was last known to live.

***party*** includes an aggrieved.

***police protection application*** means a police protection notice that is taken to be an application for a protection order under the DFVP Act, section 112.



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***principal registrar*** see the *Uniform Civil Procedure Rules 1999*, schedule 3.

***proceeding***—

- (a) means a proceeding under the DFVP Act; and
- (b) includes—
  - (i) if a court that convicted a person of an offence involving domestic violence exercises the court’s jurisdiction under the DFVP Act, section 42—the part of a proceeding in the court relating to the conviction in which the court exercises the jurisdiction; and
  - (ii) if the Childrens Court is hearing a child protection proceeding and exercises the court’s jurisdiction under the DFVP Act, section 43—the part of the child protection proceeding in which the court is exercising the jurisdiction.

***registry***, of a DFVP court, means—

- (a) if the DFVP court is a Magistrates Court—the registry of that court; or
- (b) if the DFVP court is the Childrens Court—the registry of the Childrens Court; or
- (c) if the DFVP court is the District Court—the registry of the District Court; or
- (d) if the DFVP court is the Supreme Court—the registry of the Supreme Court.

***statement of police service*** see rule 14(3).