

Domestic and Family Violence Protection Rules 2014

Explanatory notes for SL 2014 No. 322

made under the

Magistrates Courts Act 1921

General Outline

Short title

Domestic and Family Violence Protection Rules 2014

Authorising law

Section 57C(1) of the *Magistrates Courts Act 1921* provides that the Governor in Council may make rules of court providing for practices and procedure of a proceeding in a court or registry of a court in relation to a proceeding under the *Domestic and Family Violence Protection Act 2012* (DFVP Act). Section 57C(2) of the *Magistrates Courts Act 1921* provides that a rule may only be made with the consent of the Chief Magistrate.

Policy objectives and the reasons for them

The *Domestic and Family Violence Rules 2014* (the DFVP Rules) are stand-alone rules of court for proceedings in a court, apart from appeals, under the DFVP Act. The *Domestic and Family Violence Rules 2014* are created as a result of amendments to the *Domestic and Family Violence Protection Act 2012*, the *Magistrates Courts Act 1921*, the *Statutory Instruments Act 1992* and the *Supreme Court of Queensland Act 1991* inserted by the *Justice and Other Legislation Amendment Act 2013* (JOLA Act).

Part 15 of the JOLA Act repeals the application of the *Uniform Civil Procedure Rules 1999* (UCPR), apart from appeals, to practices and proceedings under the DFVP Act. The UCPR are rules of court applicable to proceedings in the Supreme Court, District Court and Magistrates Court. Not all provisions of the UCPR are applicable to proceedings under the DFVP Act and this can result in confusion and uncertainty for parties, many of whom are unrepresented. Stand-alone rules of court for proceedings under the DFVP Act will enhance the efficiency of court and registry processes in relation to domestic and family violence proceedings and improve access to justice for parties.

The implementation of the DFVP Rules for domestic and family violence matters will ensure that court processes are more efficient and that the safety, protection and wellbeing of people who fear or experience domestic violence is maximised.

Key features of the DFVP Rules include avoiding unnecessary and burdensome procedural requirements, the use of form and language that is easily understood by parties (particularly non-lawyers), consistency in process and efficiency and timeliness in the resolution of applications brought before the court.

Achievement of policy objectives

The DFVP Rules provide a clear set of rules for users of the DFVP Act thereby facilitating consistent practices across the jurisdiction. The DFVP Rules are written and set out in a manner that is easy to understand, particularly for non-represented parties.

Having certainty of process and requirements ensures efficiency throughout proceedings. This is achieved by clear rules regarding:

- filing of documents;
- service of documents;
- proof of service of documents;
- directions in proceedings;
- use of evidence from other proceedings;
- access of documents in proceedings;
- use of subpoenaed documents;
- how proceedings can be ended early; and
- assessment of costs in proceedings.

Consistency with policy objectives of authorising law

The DFVP Rules are consistent with the policy objectives of the DFVP Act.

Inconsistency with policy objectives of other legislation

The DFVP Rules are not inconsistent with the policy objectives of any other legislation.

Benefits and costs of implementation

There are no significant costs for the Government in the implementation of the DFVP Rules. Any costs are to be funded from within existing resources.

Consistency with fundamental legislative principles

DFVP rule 24 provides that if a direction or order made by a DFVP court (under rule 21) is inconsistent with another provision of the rules, the DFVP court's order or direction prevails to the extent of the inconsistency.

By authorising a court order or direction to override statutory rules, rule 24 potentially breaches the fundamental legislative principle that subordinate legislation should contain only matters appropriate to that level of legislation (*Legislative Standards Act 1992*, section 4(5)(c)).

However, the potential breach is justifiable. Rule 24 ensures the court a) is not bound to rigidly apply prescribed rules if to do so would be contrary to the interests of justice, and b) has sufficient flexibility to efficiently and fairly administer justice in any particular matter. To this end, DFVP rule 23(1) requires that in deciding whether to make an order or issue a direction, the interests of justice are paramount. The *Uniform Civil Procedure Rules 1999* contain a rule of corresponding effect - rule 367.

The DFVP Rules are otherwise consistent with fundamental legislative principles.

Consultation

The Chief Magistrate has been consulted about the DFVP Rules. The Chief Magistrate has consented to the DFVP Rules, pursuant to section 57C(2) of the *Magistrates Courts Act 1921*.

Consultation has also occurred with the following stakeholders during the development of the DFVP Rules:

- Queensland Law Society;
- Legal Aid Queensland;
- Bar Association of Queensland;
- Women's Legal Service;
- Director of Public Prosecutions;
- Queensland Association of Independent Legal Services; and
- Public Guardian.

Stakeholders were supportive of the development of stand-alone rules of court for proceedings under the DFVP Act. Stakeholders' comments were considered and, where appropriate, amendments were made to the DFVP Rules during drafting.

The Office of Best Practice Regulation was consulted in relation to the DFVP Rules and confirmed that the DFVP Rules are excluded from the Regulatory Impact Statement system.