

# **Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020**

Explanatory notes for SL 2020 No 153

made under the

*COVID-19 Emergency Response Act 2020*  
*Domestic and Family Violence Protection Act 2012*  
*Magistrates Courts Act 1921*

## **General Outline**

### **Short title**

*Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020.*

### **Authorising law**

*Domestic and Family Violence Protection Act 2012* in reliance on sections 9 and 17 of the *COVID-19 Emergency Response Act 2020*  
*Magistrates Courts Act 1921* in reliance on sections 9 and 17 of the *COVID-19 Emergency Response Act 2020*.

### **Policy objectives and the reasons for them**

The policy objective of the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020* (the Regulation) is to prescribe modified arrangements for procedures under the *Domestic and Family Violence Protection Act 2012* (DFVPA) and the *Domestic and Family Violence Protection Rules 2014* (DFVP Rules) to facilitate the safe continuance of court proceedings and the ongoing protection of people who fear or experience domestic violence during the COVID-19 emergency.

### **COVID-19 Emergency Response Act 2020**

On 29 January 2020, the then Minister for Health and Minister for Ambulance Services made an order declaring a public health emergency in relation to coronavirus disease (COVID-19) under the *Public Health Act 2005*. The public health emergency area specified in the order is for 'all of Queensland'. Its duration has been extended by regulation to 17 August 2020 and may be further extended.

The Queensland Chief Health Officer's *Movement and Gathering Direction (No. 2)*, effective from 3 July 2020, provides that a person who is leaving their principal place of residence must practise physical distancing while outside their principal place of residence, to the extent reasonably practicable.

The *COVID-19 Emergency Response Act 2020* (COVID-19 Act) commenced on 23 April 2020. The COVID-19 Act provides for the modification of current legislation by regulation for necessary responses to the COVID-19 emergency.

An extraordinary regulation may only be made under the COVID-19 Act when it is necessary to achieve a purpose of the COVID-19 Act. Relevant purposes of the COVID-19 Act include to protect the health, safety and welfare of persons affected by the COVID-19 emergency; and to facilitate the continuance of public administration, judicial process, small business and other activities disrupted by the COVID-19 emergency.

Part 3 of the COVID-19 Act relates to reducing physical contact between persons. Section 9 provides an additional regulation-making power for particular matters relating to documents, including the filing, lodgement, giving or service of a notice or other document.

Part 5 of the COVID-19 Act relates to proceedings before a relevant entity, including courts. Section 17 provides an additional regulation making power for matters including, but not limited to, alternative processes or methods for making, signing, filing, giving or verifying documents; and the use of audio visual links or audio links to enable persons to appear before a relevant entity, give evidence or make submissions, or take an oath or make an affirmation. Section 17(2) enables regulations made about these matters to have retrospective application to a day not earlier than 19 March 2020.

### ***Continuation of domestic and family violence proceedings***

The DFVPA provides the legislative framework for providing civil protection from domestic and family violence. The main objects of the DFVPA are to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption in their lives; to prevent or reduce domestic violence and the exposure of children to domestic violence; and to ensure that people who commit domestic violence are held accountable for their actions.

The delivery of court services and the continuation of domestic and family violence Magistrates Court proceedings has been complicated by the impact of COVID-19 and social distancing, self-quarantine and self-isolation requirements under the Queensland Chief Health Officer's public health directions.

It has also become difficult for private applicants to meet existing requirements regarding statutory declarations, as social distancing requirements have impacted witness availability. For example, the temporary closure of the Justices of the Peace (JPs) in the Community Program impacted access to JPs, although some community signing sites are now reopening following COVID safe requirements.

The continuation of proceedings under the DFVPA during the COVID-19 emergency is considered vital to ensure that people who fear or experience domestic violence can continue to seek protection through a domestic violence order (DVO). Protecting the health and safety

of those involved in proceedings under the DFVPA is also a paramount consideration.

## **Achievement of policy objectives**

The Regulation will achieve its policy objectives by prescribing modified arrangements that support the Magistrates Court of Queensland in responding effectively to the COVID-19 emergency, while continuing to ensure the safety of people who fear or experience domestic violence. Broadly, the Regulation achieves this balance by enabling reduced physical contact between persons and facilitating the continuance of administrative and judicial processes during the COVID-19 emergency.

### ***Use of audio visual links or audio links***

The Regulation provides for proceedings under the DFVPA before a Magistrates Court to be conducted virtually, by enabling a Magistrates Court to conduct all or part of proceedings by the use of audio visual links or audio links. This supports social distancing requirements in response to COVID-19, and ensures that proceedings can continue when physical appearances in court may pose a risk to the health and safety of parties.

Persons who appear by audio visual links or audio links will be taken to be present before the Magistrates Court. This also supports social distancing requirements in response to COVID-19 by reducing personal service requirements for persons who are ‘present in court’ by audio visual links or audio links.

### ***Verifying private applications***

The Regulation enables private applications for DVOs and variations to DVOs to be verified by an applicant informing a magistrate that the application is true and correct. The modified arrangement is intended to apply to both a magistrate alone and a constituted Magistrates Court, and is broad enough to enable the use of audio visual link or audio link for the verification.

This modified arrangement provides an alternative to the existing requirement for applicants to verify private applications by way of a signed and witnessed statutory declaration. Temporarily removing this requirement responds to difficulties faced by applicants in finding eligible persons to witness statutory declarations in the COVID-19 environment, such as JPs, and supports social distancing requirements.

### ***Electronic filing***

The Regulation modifies the DFVP Rules to enable private applications for DVOs and variations of DVOs to be filed electronically. This supports social distancing requirements by temporarily removing the current need for private applicants to be physically present to file applications or to send a document by post.

The Regulation provides for these modified arrangements to apply retrospectively from 19 March 2020, as enabled by the COVID-19 Act. In response to the growing threat of the COVID-19 emergency and the impact of public health directions, the Magistrates Court of Queensland began providing these alternatives when the need was identified. Retrospective application is considered necessary in order to place beyond doubt the lawfulness of these arrangements, which were put in place at the earliest opportunity to protect the safety of those involved in proceedings under the DFVPA.

The Regulation will expire on 31 December 2020 (the expiry date of the COVID-19 Act). An expiry of 3 December 2020 and transitional provisions have been included in relation to the modified arrangement for verifying applications for DVOs or variations of DVOs. The earlier expiry and transitional provisions have been included to ensure that lodged applications that have not been verified by statutory declaration are able to be verified in accordance with the modified arrangement prior to the expiry of the Regulation.

The Regulation is considered reasonable and appropriate due to the impacts of the COVID-19 emergency. The Regulation allows for proceedings under the DFVPA to continue, ensuring the protection of people who fear or experience domestic violence, while supporting social distancing and protecting the health and safety of individuals during the COVID-19 emergency.

The Regulation is temporary in nature, includes necessary safeguards, and is considered proportional to the risks associated with the COVID-19 emergency. Importantly, the Regulation provides alternatives to existing processes for the duration of the COVID-19 emergency, but does not invalidate or permanently amend regulated procedures.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the objectives of the COVID-19 Act to protect the health, safety and welfare of persons affected by the COVID-19 emergency and to facilitate the continuance of administrative and judicial processes during the COVID-19 emergency. The Regulation supports the objectives of the DFVPA by protecting people who fear or experience domestic violence and holding perpetrators to account.

## **Inconsistency with policy objectives of other legislation**

There is no inconsistency with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

The Regulation will help ensure proceedings under the DFVPA can continue in a safe and socially-distant manner during the COVID-19 Emergency. This will benefit people who fear or experience domestic violence by ensuring DVOs can continue to be made or varied.

Any costs associated with the Regulation will be met from existing agency resources.

## **Consistency with fundamental legislative principles**

The Regulation is largely consistent with fundamental legislative principles (FLPs) set out in section 4 of the *Legislative Standards Act 1992* (LSA). Any potential inconsistencies are considered justified to allow proceedings under the DFVPA to safely continue during the COVID-19 emergency.

The use of audio links and audio visual links to facilitate court appearances may be considered a departure from the FLP that legislation should have sufficient regard to individuals' rights and liberties, including that legislation should be consistent with principles of natural justice (LSA, section 4(3)(b)). The modified arrangements may infringe an individual's right to be heard to the extent that the arrangements may negatively impact members of the community who have limited access to, or familiarity with, technology-based facilities or who may be otherwise disadvantaged by the use of such facilities. The modified arrangements may similarly impact on the right to equality before the law, particularly where culturally and linguistically diverse communities and people with disability may be disadvantaged by the use of technology.

The modified arrangements are considered reasonable and justified given the extraordinary nature of the COVID-19 emergency and are in the interests of public health and safety. Safeguards have been incorporated to limit impacts on individuals' rights and liberties, including that the Regulation provides time-limited alternatives to existing processes for the duration of the COVID-19 emergency. The Regulation does not invalidate or permanently amend existing procedures.

Regulations with retrospective application may be considered a departure from the FLP that legislation should have sufficient regard to individuals' rights and liberties, including that legislation should not affect rights and liberties, or impose obligations, retrospectively (LSA, section 4(3)(g)).

While the Regulation does not impose retrospective obligations, it will operate retrospectively to protect the legal standing of measures that have already been taken by the Magistrates Court of Queensland. The retrospectivity is considered to be beneficial, as it ensures the protection of aggrieved parties with DVOs made during proceedings which used modified arrangements between 19 March 2020 and the commencement of the Regulation. The retrospectivity is also considered to be justified, as it was necessary to maintain individual safety through social distancing during the early stages of the COVID-19 emergency while continuing with essential court services.

## Consultation

Consultation on the Regulation was undertaken with key domestic violence and legal stakeholders: Queensland Family and Child Commission, Women's Legal Service Qld, Micah Projects, Domestic Violence Action Centre (DVAC) Ipswich and Toowoomba, Queensland Indigenous Family Violence Legal Service, Cairns Regional Domestic Violence Service, Queensland Law Society, Bar Association of Queensland, Legal Aid Queensland, Queensland Human Rights Commission, and the Chief Magistrate of Queensland. The Regulation was generally supported by stakeholders, and comments made by stakeholders were taken into account when finalising the Regulation.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the Regulation. The Department of Child Safety, Youth and Women applied a self-assessed exclusion from further regulatory impact analysis on the basis of exclusion category (j) of the Guide: *Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services.*