

# **Domestic and Family Violence Protection Amendment Rule 2023**

Explanatory notes for SL 2023 No. 96

Made under the

*Magistrates Courts Act 1921*

## **General Outline**

Short Title

*Domestic and Family Violence Protection Amendment Rule 2023*

## **Authorising law**

Section 57C of the *Magistrates Court Act 1921*.

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

The purpose of the *Domestic and Family Violence Protection Amendment Rule 2023* (Amendment Rule) is to support the operation of the amendments to the *Domestic and Family Violence Protection Act 2012* (DFVP Act) made by the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (DFVPOLA Act) and address minor technical issues identified in the *Domestic and Family Violence Protection Rules 2014* (DFVP Rules).

The DFVPOLA Act implements the first tranche of legislative reform recommended by the Women's Safety and Justice Taskforce (the Taskforce) in its first report, *Hear her voice – Addressing coercive control and domestic and family violence in Queensland* (first report).

The DFVP Rules provide rules for users of the DFVP Act to facilitate consistent practices across the jurisdiction and ensure that procedural requirements are easily understood by parties (particularly non-lawyers). The DFVP Rules apply to a proceeding in a DFVP court under the DFVP Act, and a registry of a DFVP court in relation to a proceeding under the DFVP Act. The DFVP Rules do not apply to an appeal under the DFVP Act.

The Amendment Rule will ensure that court processes are efficient and will enhance the safety, protection and wellbeing of people who have matters before the DFVP court. These amendments are reasonable and appropriate because they will ensure that after the amendments arising from the DFVPOLA Act have commenced, the DFVP Act is applied consistently across the jurisdiction.

## **Achievement of policy objectives**

The Amendment Rule:

- amends rule 11(2) (What pt 3 is about) to include 'other matters about attempted service and service under a substituted service order;'
- amends rule 14(1) (Statement of police service) to insert 'or a statement of substituted police service.' Amends rule 14(1) to replace 'commits' with 'may commit.' Amends rule 14(3) to replace 'misleading' with 'false;'
- inserts a new rule 14AA (Affidavit of attempted personal service) that requires a police officer who has attempted to personally serve a document to file an affidavit of attempted personal service with the registry of the DVFP court, unless the court orders otherwise, where a person has made an application for a substituted service order under section 184A of the DFVP Act;
- inserts a new rule 14AB (Statement of substituted police service) that requires a police officer to file a statement of substituted police service with the registry of the DFVP court, unless the court orders otherwise, when a police officer serves a document on a respondent under a substituted service order;
- amends rule 14A (Affirming statement of police service) to insert 'or statement of substituted service;'
- amends rule 15 (How ordinary service is performed) to insert 'or service under a substituted service order;'
- amends rule 16 (Informal service) to insert 'or service under a substituted service order;'
- amends pt 3, div 4 heading (Informing police commissioner if domestic violence order is to be revived) to remove 'if domestic violence order is to be revived' and insert 'of particular matters;'
- inserts a new rule 19A (Obligation to inform police commissioner of particular application for substituted service). This rule applies if an application for substituted service order is made under the DFVP Act section 184A(4)(b). The clerk of the DFVP court must, as soon as reasonably practicable after the application is filed, give a copy of the application to the police;
- inserts new Division 5 (Copy of criminal history and domestic violence history) in Part 3 and inserts a new rule 19B (Obligation to give criminal history and domestic violence history to respondent) that requires the police commissioner to ensure an identical copy of the respondent's criminal history and domestic violence history is given to the respondent before the first hearing of the DFVP application, unless it is not reasonable in the circumstances;

- amends rule 22 (Directions that may be issued by DFVP court for proceeding) to:
  - insert subrule (q) to require the police commissioner to give the DFVP court a copy of a respondent's criminal history and domestic violence history for a proceeding under the DFVP Act, section 42 or 43; and
  - insert subrules (2) to (4) to allow the DFVP court to issue a direction that the police commissioner must give the court a copy of the respondent's current criminal history and domestic violence history, if the DFVP court considers it necessary because of the time that has passed since a copy of those documents was filed in, or given to, the court;
- amends rule 35 (Requirements of affidavits) to replace 'commits' with 'may commit,' and
- amends schedule 2 (Dictionary) to insert '*statement of substituted police service see rule 14AB(2).*'

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

The Amendment Rule is consistent with the objectives of the *Magistrates Courts Act 1921*.

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

The Amendment Rule is not inconsistent with the policy objectives of any other legislation.

## **Benefits and costs of implementation**

The Amendment Rule supports the operation of the DFVPOLA Act which is likely to increase demand for courts, police and the legal profession due to the increase in the number of matters coming before the courts, as well as an increase in the complexity of matters being heard. This demand will be monitored and any costs impacts will be assessed and included in future budget processes.

## **Consistency with fundamental legislative principles**

The Amendment Rule was drafted with regard to the fundamental legislative principles in the Legislative Standards Act 1992 (LSA) by achieving a balance between individual rights and liberties, the broader protection of the Queensland community, and the efficient and effective operation of the QPS and courts. The Amendment Rule is consistent with fundamental legislative principles.

## **Consultation**

The Chief Magistrate was consulted about the Amendment Rule. The Chief Magistrate has consented to the DFVP Amendment Rule, pursuant to section 57C(2) of the *Magistrates Court Act 1921*.

## Domestic and Family Violence Protection Amendment Rule 2023

A self-assessment by the Department of Justice and Attorney-General has determined that a Regulatory Impact Statement is not required as the Amendment Rule is excluded under category (j) of the *Queensland Government Guide to Better Regulation*, as it is a regulatory proposal relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services.