

# Domestic and Family Violence Protection Amendment Rule 2024

Explanatory notes for SL 2024 No. 213

made under the

*Magistrates Courts Act 1921*

## General Outline

### Short title

*Domestic and Family Violence Protection Amendment Rule 2024*

### Authorising law

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

### Policy objectives and the reasons for them

The *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* amended the *Domestic and Family Violence Protection Act 2012* (DFVP Act) by inserting new section 36A (Court must be given respondent's criminal history and domestic violence history) and section 90A (Court must be given respondent's criminal history and domestic violence history). Under these sections, the Commissioner of Police (the Commissioner) is obligated to ensure copies of the respondent's domestic violence history and criminal history (the histories) are either:

- filed in the court:
  - with an application for a protection order (including a police protection notice) or application for a variation of a domestic violence order; or
  - before the date and time stated in the application for the first hearing of the application; or
- given to the court when the application is first heard.

These amendments implemented recommendation 58 of the Women's Safety and Justice Taskforce report, *Hear her voice – Report One - Addressing coercive control and domestic violence in Queensland* (2021). This recommendation outlined that the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence immediately progress amendments to the DFVP Act to require the Queensland Police Service to provide a copy of the respondent's criminal history and domestic violence history to the court in all proceedings on private and police-initiated applications for a Domestic Violence Order.

These amendments provide the court with the ability to access, use and disclose the histories of the respondent while maintaining their privacy and procedural fairness. This assists the court to undertake a proper assessment of a respondent's risk profile, and the risk to the aggrieved, when determining whether to make a protection order or vary a domestic violence order.

In addition to the requirements under sections 36A and 90A, the *Domestic and Family Violence Protection Amendment Rule 2023* inserted rule 19B of the *Domestic and Family Violence Protection Rules 2014* (DFVP Rules), requiring the Commissioner to give the respondent a copy the histories before the date and time for the first hearing of the application, unless it is not reasonable in the circumstances.

The purpose of this amendment was to support the operation of the amendments to the DFVP Act made and ensure that court processes are efficient and enhance the safety, protection and wellbeing of people who have matters before the court.

The objective of the *Domestic and Family Violence Protection Amendment Rule 2024* (the Amendment Rule) is to provide appropriate flexibility as to when and how the respondent is provided with a copy of their histories. It is intended to ensure that where a respondent has been provided a copy of the histories through other means, the Commissioner will not need to also serve the histories. Where a respondent cannot be located, it is intended for this amendment to allow for the histories to be given at the first hearing of the application.

## **Achievement of policy objectives**

The Amendment Rule amends rule 19B of the DFVP Rules to retain the obligation that the Commissioner must ensure the respondent is provided with a copy of their criminal and domestic violence history prior to the first hearing of the application.

The Amendment Rule includes new provisions to outline that this obligation does not apply if:

- the Commissioner believes the respondent has obtained a copy of their history from another person (such as the person's legal representative); or
- giving the respondent a copy of their history is not reasonably practicable in the circumstances, including where the Commissioner cannot locate the respondent after making all reasonable inquiries.

The Amendment Rule will not affect provision of the histories to the court, as the Commissioner must ensure the histories are filed in or given to the court under sections 36A or 90A of the DFVP Act. The Amendment Rule will not affect how the court makes an order about the use and disclosure of the histories under section 160A of the DFVP Act.

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

The Amendment Rule is consistent with the policy objectives of the authorising law.

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

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

## Alternative ways of achieving policy objectives

There are no alternative means to achieve the policy objectives.

## Benefits and costs of implementation

The Amendment Rule will provide flexibility in the requirement to give the respondent their histories before the first hearing in specific circumstances. This includes where police have not been able to locate the respondent and the respondent has subsequently attended court for the hearing of a private application, which is not attended by a police prosecutor, and is provided with a copy of the history by their legal representative. It is intended for this to provide administrative and operational efficiencies for police by allowing the respondent to receive their history through other means or at the first hearing of the application.

There are no additional costs associated with implementation of the Amendment Rule.

## Consistency with fundamental legislative principles

The Amendment Rule has been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992* (LSA).

The proposed legislative amendments may infringe upon the rights and liberties of individuals, specifically the principles of natural justice as provided by section 4(3)(b) of the LSA.

The principles of natural justice include the concept of adequate prior notice of matter and material relevant to judicial proceedings. Under the Amendment Rule, there may be circumstances where the respondent has not been given a copy of their history prior to the first hearing of the application because the Commissioner has not been able to locate the respondent despite reasonable inquiries. The courts have the discretion to, and may adjourn a matter, where issues with procedural fairness are observed and where the respondent has not been afforded the opportunity to consider the material before the first hearing and provide an informed response. If appropriate, the court may also decide an application without taking into account all, or part of, the histories if deemed not relevant.<sup>1</sup>

Given there are appropriate safeguards available to the court to manage this limitation, noting courts will maintain discretion in ensuring procedural fairness is applied, the infringement is considered justified and therefore the Amendment Rule does not conflict with the principles of natural justice.

## Consultation

Section 57C of the *Magistrates Courts Act 1921* Act provides that the Governor in Council may make rules of court providing for the practices and procedure of a proceeding in a court under the DFVP Act. A rule may only be made with the consent of the Chief Magistrate.

On 2 September 2024, the Chief Magistrate provided consent for the Amendment Rule.

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<sup>1</sup> DFVP Act, s 160A(4).