

Authorised Version No. 002
**Magistrates' Court (Family Violence
Protection) Rules 2008**

S.R. No. 157/2008

Authorised Version incorporating amendments as at
5 September 2011

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Authorised Version No. 002
Magistrates' Court (Family Violence Protection) Rules 2008

S.R. No. 157/2008

Authorised Version incorporating amendments as at
5 September 2011

The Chief Magistrate together with 2 Deputy Chief Magistrates jointly make the following Rules:

ORDER 1

PRELIMINARY

Introductory Note

These Rules are Rules of the Magistrates' Court as to proceedings under the **Family Violence Protection Act 2008**.

Related Rules

These Rules are in many respects uniform with the Magistrates' Court (Personal Safety Intervention Orders) Rules 2011 (the Personal Safety Intervention Orders Rules). Many of the Orders and Rules are drafted in the same terms as the Personal Safety Intervention Orders Rules, except so far as minor variations are required to accord with the **Family Violence Protection Act 2008**.

If the Personal Safety Intervention Orders Rules include an Order or a Rule that is not included in these Rules there is a gap in the numbering of these Rules in order to maintain consistent numbering for the other Orders and Rules.

**Introductory
Note to
Order 1
inserted by
S.R. No.
95/2011 rule 5.**

PART 1—GENERAL

1.01 Object

The object of these Rules is to make rules of procedure for proceedings in the Magistrates' Court of Victoria under the **Family Violence Protection Act 2008**.

1.02 Authorising provisions

These Rules are made under section 209 of the **Family Violence Protection Act 2008**, and under sections 16(1D) and (1E) of the **Magistrates' Court Act 1989**, and all other enabling powers.

1.03 Commencement

These Rules come into operation on 8 December 2008.

1.04 Revocation

The Magistrates' Court (Family Violence) Rules 2000¹ are **revoked**.

PART 2—INTERPRETATION

1.05 Definitions

In these Rules, unless the context or subject matter otherwise requires—

barrister means a barrister as defined in the **Legal Profession Act 2004**;

proceeding, unless the contrary intention appears, means—

- (a) any matter in the Court commenced by application under the **Family Violence Protection Act 2008**; or
- (b) any matter in the Court—
 - (i) that was commenced by application under the **Personal Safety Intervention Orders Act 2010**; and
 - (ii) in respect of which a Court has made a determination under section 176E(2)(b) of the **Family Violence Protection Act 2008**;

Rule 1.05
def. of
proceeding
substituted by
S.R. No.
95/2011 rule 6.

risk assessment means the summary relating to an affected family member's or protected person's risk of family violence prepared under the Common Risk Assessment and Risk Management Framework;

solicitor means an Australian lawyer as defined in the **Legal Profession Act 2004**, other than a barrister as defined in that Act, and includes an incorporated legal practice as defined in that Act;

the Act means the **Family Violence Protection Act 2008**.

PART 3—APPLICATION OF RULES

1.06 Definitions

In this Part—

commencement date means 8 December 2008;

former Rules means—

- (a) the Magistrates' Court Civil Procedure Rules 1999 as in force before the commencement of the Act; and
- (b) the Magistrates' Court (Family Violence) Rules 2000 as in force before the commencement of the Act;

pending proceeding means a complaint or application referred to in section 218(1) of the Act.

1.07 Application

(1) These Rules apply to—

- (a) every proceeding commenced under the Act in the Court on or after the commencement date, other than a proceeding in respect of which a determination has been made under

Rule 1.07(1)
substituted by
S.R. No.
95/2011 rule 7.

section 136(2)(b) of the **Personal Safety Intervention Orders Act 2010**; and

- (b) every proceeding commenced under the **Personal Safety Intervention Orders Act 2010** in respect of which a determination has been made under section 176E(2)(b) of the Act.
- (2) These Rules apply, so far as applicable and with any necessary modification, to every appeal commenced under Division 9 of Part 4 of the Act on or after the commencement date.
- (3) These Rules apply, with any necessary modification, to a pending proceeding and anything required or permitted to be done under these Rules with respect to a proceeding commenced on or after the commencement date may be done in a pending proceeding.

1.08 Former Rules continue to apply

Despite Rule 1.04, the former Rules continue to apply to the following as if the Magistrates' Court (Family Violence) Rules 2000 had not been revoked—

- (a) proceedings referred to in section 219(1)(a) of the Act;
- (b) an appeal referred to in section 219(1)(b) of the Act.

PART 4—MISCELLANEOUS

1.09 Legal representation

- (1) Subject to the Act, a party may appear in person or with legal representation.

-
- (2) If a party obtains legal representation—
- (a) the representative must as soon as practicable notify the Court that he or she represents that party; and
 - (b) the representative must inform the court as soon as practicable if he or she ceases to represent the party.
- (3) A notification to the Court under subrule (2)(a) must—
- (a) specify whether the legal representative is a solicitor or a barrister; and
 - (b) provide the legal representative's address, telephone number, fax number and email address.

1.10 Filing of documents

Except where otherwise provided by these Rules or unless the Court otherwise orders, a document is filed by being lodged with the registrar in the office of the Court at the proper venue of the Court.

Note

Proper venue is defined in section 3(1) of the **Magistrates' Court Act 1989**.

1.11 Seal of the Court

- (1) The principal registrar and every registrar must each have in his or her custody a stamp in a design that is as near as practicable the same as the design of the seal of the Court with the addition of, in the case of—
- (a) the principal registrar, the words "Principal Registrar";
 - (b) a registrar, the word "Registrar".

Magistrates' Court (Family Violence Protection) Rules 2008
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Order 1

r. 1.11

- (2) Marking a document or a copy of a document with a stamp referred to in subrule (1) is sufficient compliance with any requirements of these Rules or an order of the Court that the document or copy be sealed with the seal of the Court.
-

ORDER 2

NON-COMPLIANCE WITH THE RULES

2.01 Effect of non-compliance

- (1) A failure to comply with these Rules is an irregularity and does not render a proceeding or a step taken, or any document or order therein a nullity.
- (2) If there has been a failure to comply with these Rules, the Court may exercise its powers under these Rules to allow amendments and to make orders dealing with the proceeding generally.

2.02 Dispensing with compliance

Subject to the Act, the Court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

ORDER 3

TIME AND DOCUMENTS

Order 3
(Heading)
amended by
S.R. No.
95/2011 rule 8.

3.01 Court may fix time

If no time is fixed by the Act or these Rules for doing any act in a proceeding, the Court may fix a time.

3.02 Content and form of documents

- (1) The Court may require any document in a proceeding to be prepared in any manner it thinks fit.
- (2) If a document for use in the Court is not prepared in accordance with these Rules or any order of the Court—
 - (a) the registrar may refuse to accept it for filing without the direction of the Court; or
 - (b) the Court may order that the party responsible is not entitled to rely on it in any manner in the proceeding until a document which is properly prepared is filed.

3.03 Registrar refusing to accept documents

- (1) A registrar may refuse to accept a document if the registrar considers that the form or contents of the document show that the document, if accepted, would be an abuse of the process of the Court.
- (2) The Court may direct the registrar to accept a document for filing.

3.04 Scandalous matter

If a document for use in the Court contains scandalous, irrelevant or otherwise oppressive matter, the Court may order—

- (a) that the offending matter be deleted; or
 - (b) if the document has been filed, that it be taken off the file.
-

ORDER 4

PROCESS IN THE COURT

PART 1—POLICE PROTECTION BEFORE COURT

4.01 Application to extend direction or detention

For the purposes of an application under section 19 or 20 of the Act, the following particulars are prescribed—

- (a) the name, rank, number and station of the police officer making the application;
- (b) the name, date of birth and gender of the person who has been directed or detained;
- (c) the name, rank, number and station of the police officer who issued the direction;
- (d) the time, date and place that the direction was issued;
- (e) the grounds for issuing the direction;
- (f) if the person has been detained—
 - (i) whether the person refused or failed to comply with the direction; and
 - (ii) the time and date that the person was apprehended and detained;
- (g) the location of the person who has been directed or detained;
- (h) the time and date of making the application;
- (i) the duration of the direction or detention at the time of making the application;
- (j) the proposed period of the extension;
- (k) the grounds for making the application.

4.02 Process for filing family violence safety notices

- (1) For the purposes of section 34(c) of the Act, a copy of the form or safety notice form (the *original form*) must be filed with the Court as soon as practicable.
- (2) The station of the police officer who made the application must retain the original form for 28 days after filing it with the Court.

Note

Rule 12.01(3) requires a family violence safety notice to be filed by facsimile transmission.

PART 2—APPLICATIONS FOR FAMILY VIOLENCE INTERVENTION ORDERS

4.03 Application for a family violence intervention order

- (1) For the purposes of an application for a family violence intervention order under section 43 or 44 of the Act, the following information is prescribed—
 - (a) the name of the applicant;
 - (b) the capacity in which the applicant applies;
 - (c) the name and date of birth of each affected family member;
 - (d) if the applicant is not the affected family member or a police officer—
 - (i) whether the affected family member consents to the making of the application; or
 - (ii) if the affected family member is a child, whether a parent of the child consents to the making of the application; or

Rule 4.03(1)(d)
amended by
S.R. No.
95/2011 rule 9.

-
- (iii) if the affected family member has a guardian, whether the guardian consents to the making of the application;
 - (e) whether the applicant requires leave of the Court to make the application;
 - (f) the name, date of birth and address of the respondent;
 - (g) the relationship between the respondent and the affected family member;
 - (h) the reasons for seeking the order;
 - (i) the nature of the family violence alleged;
 - (j) the conditions on the order sought;
 - (k) whether a warrant is sought for the arrest of the respondent;
 - (l) details of any relevant Family Law Act order or child protection order, or any current application for a relevant Family Law Act order or child protection order;
 - (m) details of any previous application or order made, or family violence safety notice issued under the Act;
 - (n) whether the respondent holds—
 - (i) a firearms authority; or
 - (ii) a weapons approval; or
 - (iii) a weapons exemption;
 - (o) whether an affected family member or the respondent has a disability;
 - (p) whether an affected family member or the respondent is of Aboriginal or Torres Strait Islander descent.

-
- (2) If the applicant seeks a warrant for the respondent's arrest, the application must set out the reasons why a warrant is sought.

4.04 Application for associated final order

- (1) An application for an associated final order under section 76 of the Act must include the following—
- (a) the name of the applicant;
 - (b) the capacity in which the applicant applies;
 - (c) the names of the parties to the application for the original family violence intervention order, or the original order (as the case requires);
 - (d) the court reference number for the original application, or the date of the final order (as the case requires);
 - (e) the reasons for seeking the order;
 - (f) the conditions of the order sought;
 - (g) details of any relevant Family Law Act order or child protection order, or any current application for a relevant Family Law Act order or child protection order.
- (2) If the application is for an associated final order against an additional respondent, the application must also—
- (a) give the name, date of birth and address of the additional respondent; and
 - (b) set out how the additional respondent is an associate of the respondent; and

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Order 4

r. 4.04

Rule 4.04(2)(c)
amended by
S.R. No.
95/2011
rule 10(1).

- (c) if the applicant is not the protected person or a police officer, state—
 - (i) whether the protected person consents to the making of the application; or
 - (ii) if the protected person is a child, whether a parent of the child consents to the making of the application; or
 - (iii) if the protected person has a guardian, whether the guardian consents to the making of the application.
- (3) If the application is for an associated final order to protect an additional applicant, the application must also—

Rule 4.04(3)(c)
amended by
S.R. No.
95/2011 rule
10(2).

- (a) state the name and date of birth of each additional applicant; and
- (b) set out how each additional applicant is an associate of the protected person; and
- (c) if the applicant for the associated final order is not the additional applicant or a police officer—
 - (i) whether the additional applicant consents to the making of the application; or
 - (ii) if the additional applicant is a child, whether a parent of the child consents to the making of the application; or
 - (iii) if the additional applicant has a guardian, whether the guardian consents to the making of the application.

4.05 Application for variation, revocation or extension of a family violence intervention order

- (1) For the purposes of sections 100 and 106 of the Act, an application for a variation, revocation or extension of a family violence intervention order must include the following particulars—
- (a) the names of the parties to the proceeding in which the order was made;
 - (b) the name of the applicant for the variation, revocation or extension;
 - (c) the capacity in which the applicant applies;
 - (d) if the applicant is not the protected person or a police officer—
 - (i) whether the protected person consents to the making of the application; or
 - (ii) if the protected person is a child, whether a parent of the child consents to the making of the application; or
 - (iii) if the protected person has a guardian, whether the guardian consents to the making of the application;
 - (e) whether the applicant requires leave of the Court to make the application;
 - (f) the date of making the family violence intervention order;
 - (g) whether any other persons have become family members of the respondent since the family violence intervention order was made;
 - (h) the reasons for seeking a variation, revocation or extension;

Rule 4.05(1)(d)
amended by
S.R. No.
95/2011
rule 11.

r. 4.06

- (i) details of any relevant Family Law Act order or child protection order, or any current application for a relevant Family Law Act order or child protection order;
 - (j) if the application is for a variation, the conditions of the variation sought;
 - (k) if the application is for an extension, the duration of the extension sought.
- (2) If the respondent applies for the variation or revocation of the family violence intervention order, the application must also set out any change in circumstances since the family violence intervention order was made.

4.06 Form of consent

Rule 4.06(1)
substituted by
S.R. No.
95/2011
rule 12(1).

- (1) This Rule applies if a person—
 - (a) is required under section 45 or 76 of the Act to give written consent to the making of an application for a family violence intervention order; or
 - (b) is required under section 108 of the Act to give written consent to the making of an application to vary, revoke or extend a family violence intervention order.
- (2) The consent must include the following particulars—
 - (a) the name, address, date of birth, occupation and gender of the person who will make the application;

Rule 4.06(2)(b)
revoked by
S.R. No.
95/2011
rule 12(2).

* * * * *

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- (c) the name, address, date of birth, occupation and gender of the person providing the consent;
 - (d) if the person providing the consent is not the affected family member or protected person, that person's relationship to the affected family member or protected person;
 - (e) a description of the application.
- (3) A consent under subrule (2) must be filed with the Court.

PART 3—MISCELLANEOUS

4.07 Request for further and better particulars of application

- (1) A party may only seek further and better particulars of an application with leave of the Court.
- (2) If the Court decides to grant leave, the Court—
 - (a) must fix a time for the further and better particulars to be provided; and
 - (b) may give directions it considers appropriate for seeking and providing particulars, including—
 - (i) limiting the particulars that may be sought; and
 - (ii) directing how particulars are to be provided.

Example

The Court may direct that a party provide particulars in the form of a letter, or by affidavit.

4.08 Withdrawal of applications

- (1) An application under the Act may be withdrawn only with the leave of the Court.
 - (2) A party seeking to withdraw an application must—
 - (a) file a written notice of withdrawal, to be served on the respondent by the registrar; or
 - (b) if the person attends court, make an oral application to the Court.
-

ORDER 5

SERVICE

5.01 Process if Court required to give documents to a person

If under the Act or these Rules, the Court is required to give any notice or other document to any person, the Court may do so—

- (a) by leaving the document at the address of the person; or
- (b) by posting the document to the person at that person's address; or
- (c) if a person has a facility for the reception of documents by facsimile transmission, by transmitting the document to that facility; or
- (d) if the person is a respondent who has provided an email address under section 85(1) of the Act, by sending the document to that email address.

Note

Section 85 of the Act allows a respondent who has been excluded from a residence to give an email address as an address for service. This only applies to documents not requiring personal service.

5.02 Certificate of service

- (1) For the purposes of section 203 of the Act, a certificate of service must—
 - (a) include a statement about the date, time and place the document was served; and
 - (b) include a statement about the manner of service; and
 - (c) specify each document served; and
 - (d) indicate whether the certificate has been made on oath, by affidavit or is certified.

-
- (2) A certificate of service must be filed as soon as practicable after service of the document to which it relates.

5.03 Inability to serve

- (1) For the purposes of section 204 of the Act, the certificate must—
- (a) be made on oath or by affidavit, or certified; and
 - (b) include the following particulars—
 - (i) if the person completing the certificate is a police officer, the police officer's name, rank and station;
 - (ii) if the person completing the certificate is an appropriate registrar, the appropriate registrar's name and the location of the court;
 - (iii) the reasons it has not been possible to serve the document, including details of attempts to locate or serve the person;
 - (iv) the means that the person completing the certificate believes could be used to bring the document to be served to the person's attention, and the reasons for that belief; and
 - (c) specify each document that was to be served.
- (2) For the purposes of subrule (1)(a), the certificate may be certified only if it is completed by a police officer or appropriate registrar.

5.04 Certificates may be filed by facsimile

A certificate completed under Rule 5.02 or 5.03 may be filed with the registrar by facsimile transmission.

5.05 Applications for substituted service

Unless the Court otherwise orders, an application for substituted service does not need to be conducted in open court.

* * * * *

**Rule 5.06
revoked by
S.R. No.
95/2011
rule 13.**

* * * * *

**Rule 5.07
revoked by
S.R. No.
95/2011
rule 14.**

ORDER 6

STAY OF PROCEEDING

6.01 Stay of proceeding

If a proceeding is scandalous, frivolous or vexatious or is otherwise an abuse of the process of the Court, the Court may, on the application of a respondent, stay the proceeding.

6.02 Striking out proceeding

If a proceeding—

- (a) is scandalous, frivolous or vexatious; or
- (b) may prejudice, embarrass or delay the fair hearing of the proceeding; or
- (c) is otherwise an abuse of the process of the Court—

the Court may order that the whole or part of the application be struck out or amended.

ORDER 7
SUBPOENAS

Order 7
(Heading)
amended by
S.R. No.
95/2011
rule 15.

7.01 Attendance by subpoena

Rule 7.01
(Heading)
amended by
S.R. No.
95/2011
rule 16(1).

- (1) A party may by subpoena require a person to attend at the hearing of the proceeding for the purpose of giving evidence or of producing any document or thing or for both purposes.
- (2) A subpoena must be in accordance with Form 1.

Rule 7.01(1)
amended by
S.R. No.
95/2011
rule 16(2).

Rule 7.01(2)
substituted by
S.R. No.
95/2011
rule 16(3).

* * * * *

Rule 7.01(3)
revoked by
S.R. No.
95/2011
rule 16(4).

- (4) If under the Act a party requires leave of the Court to require a person to attend, the subpoena must—
- (a) specify that leave has been granted; and
- (b) be accompanied by a copy of the order, or extract of order, granting that leave.

Rule 7.01(4)
amended by
S.R. No.
95/2011
rule 16(5).

- (5) An order by subpoena for the attendance of a person in a proceeding is taken to be made on the signing of the subpoena by a registrar.

Rule 7.01(5)
amended by
S.R. No.
95/2011
rule 16(5).

r. 7.02

Rule 7.02
(Heading)
amended by
S.R. No.
95/2011
rule 17(1).

7.02 Address of subpoena

Rule 7.02(1)
amended by
S.R. No.
95/2011
rule 17(2).

- (1) A subpoena requiring a person to attend for the purpose of giving evidence may be addressed to any number of persons.

Rule 7.02(2)
amended by
S.R. No.
95/2011
rule 17(2).

- (2) A subpoena requiring the production of a document or thing must be addressed to one person, except in the case of a partnership where all the members of a firm may be addressed in the subpoena.

7.03 Service

Rule 7.03(1)
amended by
S.R. No.
95/2011
rule 18(1).

- (1) A subpoena must be served personally on the person to whom it is addressed.

Rule 7.03(2)
amended by
S.R. No.
95/2011
rule 18(2).

- (2) Despite subrule (1), if the subpoena is addressed to a corporation, service may be effected by serving the subpoena personally on one of the following persons—
 - (a) the mayor, chairman, president or other head officer of the corporation;
 - (b) the town clerk, clerk, treasurer, manager, secretary or other similar officer of the corporation.

Rule 7.04
amended by
S.R. No.
95/2011
rule 19.

7.04 Conduct money

A person to whom a subpoena is addressed is excused from complying with the subpoena unless conduct money, sufficient to meet the person's reasonable expenses of complying, is given or tendered to that person at—

(a) the time of service of the subpoena; or

Rule 7.04(a)
amended by
S.R. No.
95/2011
rule 19(a).

(b) a reasonable time before the day the witness
is required to attend in answer to the
subpoena.

Rule 7.04(b)
amended by
S.R. No.
95/2011
rule 19(b).

7.05 Setting aside

The Court may set aside a subpoena either wholly
or in part.

Rule 7.05
amended by
S.R. No.
95/2011
rule 20.

7.06 Production before date of attendance

(1) If a subpoena requires production of a document
or thing before the Court or an officer of the
Court, the person to whom the subpoena is
addressed may instead produce the document or
thing to the registrar by hand or by post, unless the
Court otherwise orders.

Rule 7.06(1)
amended by
S.R. No.
95/2011
rule 21(1).

(2) A document or thing produced by hand or by post
must be received by the registrar not later than
2 days before the day that the subpoena requires
the document or thing to be produced.

Rule 7.06(2)
amended by
S.R. No.
95/2011
rule 21(2).

(3) This Rule does not apply to so much of a
subpoena as requires a person to attend for the
purpose of giving evidence.

Rule 7.06(3)
amended by
S.R. No.
95/2011
rule 21(3).

ORDER 8

AFFIDAVITS

8.01 Form of affidavit

- (1) An affidavit must be made in the first person.
- (2) An affidavit must state the place of residence of the deponent and his or her occupation or, if he or she has none, his or her description.
- (3) Despite subrule (2), an affidavit does not have to state the deponent's place of residence if the deponent believes that it would jeopardise his or her safety to do so.
- (4) An affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.
- (5) Every affidavit must be signed by the deponent, except as provided by Rule 8.02(1), and the jurat must be completed and signed by the person before whom it is sworn.
- (6) Each page of an affidavit must be signed by the person before whom it is sworn.
- (7) The first page of an affidavit must be headed immediately beneath the title of the proceeding with the name of the deponent and the date of swearing.
- (8) An affidavit must on the outside identify the party on whose behalf it is filed and state the name of the deponent and the date of swearing.

8.02 Affidavit by illiterate, blind or incapacitated person

- (1) If it appears to the person before whom an affidavit is sworn that the deponent is illiterate, blind or physically incapacitated he or she must certify in or below the jurat that—
 - (a) the affidavit was read in his or her presence to the deponent; and
 - (b) the deponent seemed to him or her to understand it; and
 - (c) the deponent made his or her signature or mark in the person's presence.
- (2) If an affidavit is made by an illiterate, blind or physically incapacitated deponent and a certificate in accordance with subrule (1) does not appear on the affidavit, it may not be used in evidence unless the Court is satisfied that the affidavit was read to the deponent and that the deponent seemed perfectly to understand it.

8.03 Content of affidavit

In an application in a proceeding an affidavit may contain a statement of fact based on information and belief if the grounds are set out in the affidavit.

8.04 Affidavit by two or more deponents

If an affidavit is made by 2 or more deponents, the names of the persons making the affidavit must be inserted in the jurat, except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it is sufficient to state that it is sworn by "each of the abovenamed" deponents.

8.05 Alterations

Any interlineation, erasure or other alteration in the jurat or body of an affidavit must be initialled by the person before whom it is sworn.

8.06 Annexures and exhibits

- (1) A document referred to in an affidavit must not be annexed to the affidavit but may be referred to as an exhibit.
- (2) An exhibit to an affidavit must be identified by a separate certificate annexed to it bearing the same title as the affidavit and signed by the person before whom the affidavit is sworn.

Rule 8.07
amended by
S.R. No.
95/2011
rule 22.

8.07 Irregularity

Despite any irregularity in form an affidavit may—

- (a) unless the Court otherwise orders, be filed;
- (b) with the leave of the Court, be used in evidence.

8.08 Filing and service of affidavits

- (1) An affidavit must be filed.
- (2) The affidavit must be served on the following persons—
 - (a) the applicant or respondent (as the case requires);
 - (b) an adult affected family member or protected person;
 - (c) if the application to which the proceeding relates was made with the consent of a parent or guardian, that parent or guardian.
- (3) An affidavit must not be served on a child (other than a child who is an applicant or respondent) without leave of the Court.

-
- (4) An affidavit must be served in a manner set out in Rule 5.01(b), (c) or (d).

8.09 Service of affidavits if party is unrepresented

The registrar must serve an affidavit on a party who does not have legal representation.

8.10 Affidavit sworn before party

A party must not use in evidence on the party's behalf an affidavit sworn before—

- (a) a party; or
 - (b) an employee of a party.
-

ORDER 9

EXPERT EVIDENCE

9.01 Statement or report of expert to be filed

- (1) A party who intends at the hearing to adduce the evidence of a person as an expert witness must, at least 5 working days before the date of the hearing at which the evidence is intended to be adduced, file—
 - (a) a statement in accordance with subrule (2);
or
 - (b) a copy of a report in accordance with subrule (3).
- (2) The statement must—
 - (a) give the name and professional address of the witness, unless the witness believes that disclosing his or her address would jeopardise his or her safety; and
 - (b) describe the qualifications to give evidence as an expert; and
 - (c) give the substance of the evidence it is proposed to adduce from the witness as an expert.
- (3) The report must—
 - (a) give the name of the witness; and
 - (b) describe the qualifications to give evidence as an expert.
- (4) A party who has not filed a statement or a copy of a report under subrule (1) must not adduce any evidence from a witness as an expert at the hearing of a proceeding unless—

-
- (a) the Court grants leave; or
 - (b) the other parties consent; or
 - (c) the evidence is adduced in cross-examination.

9.02 Service of statement or report

- (1) A statement or copy of a report must be served on the following persons—
 - (a) the applicant or respondent (as the case requires);
 - (b) an adult affected family member or protected person;
 - (c) if the application to which the proceeding relates was made with the consent of a parent or guardian, that parent or guardian.
- (2) A statement or copy of a report must not be served on a child (other than a child who is an applicant or respondent) without leave of the Court.
- (3) A statement or copy of a report must be served in a manner set out in Rule 5.01(b), (c) or (d).

9.03 Service of statement or report on unrepresented party

The registrar must serve a statement or copy of a report on a party who does not have legal representation.

9.04 Putting statement or report filed by other party in evidence

A party to a proceeding may put in evidence a statement or copy of a report filed by another party in accordance with Rule 9.01.

ORDER 10

HEARINGS

10.01 Order of hearing

The Court may give directions as to the order of evidence and generally as to the conduct of the hearing of a proceeding.

10.02 No addresses

Unless the Court otherwise orders, no opening or closing addresses may be made at the hearing of any proceeding.

10.03 Absence of party

- (1) If, when the hearing of a proceeding is called on, any party is absent, the Court may—
 - (a) proceed with the hearing; or
 - (b) strike out or dismiss the application; or
 - (c) adjourn the hearing; or
 - (d) make any other order which the Court considers appropriate.
- (2) If the absent party is a respondent who has failed to appear on bail, the Court may also issue a warrant for the arrest of the respondent.

10.04 Alternative arrangements for giving evidence

- (1) This Rule applies if a party wishes to use alternative arrangements for giving evidence referred to in section 69(1)(a) or (b) of the Act.
- (2) A party may apply to use alternative arrangements for giving evidence by notifying the Court in writing before the hearing.

-
- (3) A notification under subrule (2) must set out—
- (a) the reason the witness needs alternative arrangements for giving evidence; and
 - (b) the alternative arrangements sought.
- (4) Despite subrule (2), if the party has not notified the Court, the Court may direct that alternative arrangements be made if they are available on the day of hearing at that venue of the court.
-

ORDER 11

ORDERS

11.01 Certified extracts

- (1) A certified extract from the Court record of any order is sufficient for any purpose for which an order is required.
 - (2) The Court may order, on its own motion or on the application of a party, that a certified extract must not include information that would jeopardise the safety of a party or any other person.
 - (3) In making an order under subrule (2), the Court may be constituted by a registrar.
 - (4) If a person is not satisfied with the decision of the Court constituted by a registrar, the person may seek leave to refer the matter to the Court for decision.
-

ORDER 12

VENUE AND TRANSFER OF PROCEEDINGS

12.01 Venue of Court

- (1) An application under the Act must be made by filing the application at the proper venue of the Court.
- (2) Filing must be effected by—
 - (a) filing in the office of the Court at that venue; or
 - (b) facsimile transmission to the Magistrates' Court of Victoria After Hours Service in the case of an application made under section 20 or 44 of the Act.
- (3) In the case of a family violence safety notice—
 - (a) the copy of the form or safety notice form must be filed by facsimile transmission to the Magistrates' Court of Victoria After Hours Service; and
 - (b) the location for the first mention must be the proper venue of the Court.

Note

Proper venue is defined in section 3(1) of the **Magistrates' Court Act 1989**.

12.02 Place of hearing of application

- (1) A proceeding under the Act must be heard at the venue of the Court stated on the application, unless the Court orders otherwise.
- (2) The Court may adjourn the hearing of a proceeding to another venue of the Court if it is satisfied that the interests of justice so require.

-
- (3) In making a decision under subrule (2), the Court must have regard to the matters listed under paragraph (da) of the definition of *proper venue* in the **Magistrates' Court Act 1989**.

12.03 Venue of Court for applications under Part 11 of the Act

- (1) An application to have a person declared a vexatious litigant must be filed—
- (a) if the person to be declared vexatious is a party in proceedings currently before the Court, at the venue for those proceedings; or
 - (b) in any other case, at the venue of the Court that made the most recent order to which the person to be declared vexatious is a party.
- (2) An application by a vexatious litigant under section 194(1) of the Act must be filed at the venue of the Court that made the order declaring the person to be vexatious.
-

ORDER 13

REHEARINGS

13.01 Application for rehearing

- (1) A relevant person (within the meaning of section 122 of the Act) may make an application for rehearing under section 122 of the Act by filing the application at the venue of the Court where the order sought to be set aside was made.
- (2) The registrar must—
 - (a) list the application for hearing; and
 - (b) serve a copy of the application and affidavit in support on the other parties to the proceeding.
- (3) If the application for rehearing is struck out because the relevant person failed to appear at the time fixed for hearing of the application, any further application for rehearing is taken to be an application for leave to reapply under section 122(4) of the Act.

13.02 Form of application

An application under Rule 13.01 must be in accordance with Form 2.

Rule 13.02
amended by
S.R. No.
95/2011
rule 23.

13.03 Rehearing date

If the Court sets aside an order the proceeding must be reheard on a date fixed by the Court.

ORDER 14

APPEALS

Rule 14.01
substituted by
S.R. No.
95/2011
rule 24.

14.01 Form of notice of appeal

For the purposes of section 116 of the Act, a notice of appeal must be in accordance with Form 3.

Rule 14.02(1)
substituted by
S.R. No.
95/2011
rule 25.

14.02 Stay of relevant decision

(1) An application under section 117 of the Act to stay the operation of a relevant decision must be filed.

Rule 14.02(1A)
inserted by
S.R. No.
95/2011
rule 25.

- (1A) The registrar may serve an application under section 117 of the Act to stay the operation of a relevant decision on the following persons—
- (a) the other parties to the proceeding in which the relevant decision was made;
 - (b) if the appeal relates to a family violence intervention order for a protected person who is a child—
 - (i) if the application for the order was made with the consent of a parent, that parent;
 - (ii) if a parent of the child did not consent to the order, a parent of the child (other than the respondent) with whom the child normally or regularly resides;
 - (c) if the appeal relates to a family violence intervention order for a protected person who has a guardian, the guardian.

Magistrates' Court (Family Violence Protection) Rules 2008
S.R. No. 157/2008
Order 14

r. 14.02

-
- (2) If there are exceptional circumstances, the Court may grant a stay without serving the application on any other person.
-

ORDER 15

MISCELLANEOUS

15.01 Risk assessments

A risk assessment is confidential and must not be—

- (a) used in evidence in any proceeding; or
- (b) disclosed to the respondent or an associate of the respondent to the proceeding to which the risk assessment relates.

Rule 15.02
revoked by
S.R. No.
95/2011
rule 26.

* * * * *

15.03 General power of amendment

For the purpose of determining the real question in issue between the parties to any proceeding, or of correcting any defect or error in any proceeding, or of avoiding multiplicity of proceedings, the Court may at any stage order that any document (including an application) in a proceeding be amended or that any party have leave to amend any document in the proceeding.

15.04 Directions

At any stage of a proceeding the Court may give any direction for the conduct of the proceeding which it thinks conducive to its effective, complete, prompt and economical determination.

FORMS

FORM 1

Rule 7.01

Form 1
inserted by
S.R. No.
95/2011
rule 27.

SUBPOENA

In the Children's Court at: [*specify venue*]

Case No:

Applicant:

Affected family member or protected person:

Respondent:

Nature of proceeding:

To: [*name of person to whom subpoena is addressed*]

Of: [*address*]

You are required to: [*tick one box only*]

- attend court and give evidence in the proceeding OR
- attend court and give evidence in the proceeding and produce the following documents or things: [*specify documents or things that person must produce*] OR
- produce at the hearing the following documents or things: [*specify documents or things that person must produce*]

If you are required to attend court and give evidence you **must** attend the hearing.

If you fail to attend the hearing or fail to produce the documents or things required by this subpoena, **a warrant for your arrest may be issued.**

Production of documents and things before the hearing

If you are required to produce documents or things, you may provide them to the registrar of the Magistrates' Court at [*specify venue*] by hand or by post.

The registrar must receive the documents or things no later than 2 business days before the date of the hearing.

Magistrates' Court (Family Violence Protection) Rules 2008
S.R. No. 157/2008

Form 1

Details of hearing

This case will be heard at the Magistrates' Court at [*specify venue*].

Court address:

Phone:

Date and time of hearing:

Details of issue

This subpoena was issued at [*specify court venue*] by [*Registrar/Magistrate*].

Date issued:

Subpoena filed by: [*name of party or party's legal representative*]

FORM 2

Rule 13.02

Form 2
inserted by
S.R. No.
95/2011
rule 27.

APPLICATION FOR REHEARING

In the Magistrates' Court at: *[specify venue]* **Case No:**

Applicant: *[full name of applicant for rehearing]*

Applicant's address:

Respondent: *[full name of respondent to this application]*

Respondent's address:

Protected person or person protected by the order:

Address:

Details of the application you would like reheard

I (the applicant) am the Respondent to an application:

- for a final family violence intervention order
- for an order declaring me to be a vexatious litigant

The application was made at *[specify court location]* on *[date]*.

Have you previously applied for a rehearing of this application? Yes/No*

Note: If you were granted a rehearing, and that application was struck out by the Court, you will require leave of the Court to make another application.

Reasons for applying for rehearing

My reason for seeking a rehearing of the application is:

- I was not personally served with the application
- the application was not brought to my attention by an order for substituted service
- there are exceptional circumstances and a rehearing is fair and just

These circumstances are: *[briefly state the reasons why you did not attend the hearing of the application]*

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S.R. No. 157/2008

Form 2

Affidavit

I [*full name*] make oath/affirm and say that the contents of my application are true and correct to the best of my knowledge.

Note: Under section 141 of the **Evidence (Miscellaneous Provisions) Act 1958** a person who makes an affidavit knowing the contents of the affidavit to be false may be punished for the offence of perjury.

SWORN/AFFIRMED at: [*place*]

ON: [*date*]

.....
[*signature of person making the affidavit*]

BEFORE ME:.....

Name:

Title:

Address:

A person authorised under section 123C(1) of the **Evidence (Miscellaneous Provisions) Act 1958** to take an affidavit.

FORM 3

Rule 14.01

Form 3
inserted by
S.R. No.
95/2011
rule 27.

NOTICE OF APPEAL

In the Magistrates' Court at: [*specify venue*] **Appeal No:** **Case No:**

Appellant's name:

Appellant's address for service:

Name and address of appellant's solicitor:

Respondent's name:

Respondent's address:

TO

The Registrar of the Magistrates' Court at:

The Registrar of the County Court at:

The abovenamed respondent:

Details of the proceeding appealed

Venue of the Magistrates' Court from which proceeding is appealed:

Date order made:

Nature of proceeding:

[*Please attach copy of order to this Form*]

Grounds of appeal

[*Briefly state the grounds for the appeal*]

The Appellant requests the Registrar of the County Court to list the appeal

Details of the appeal:

The appeal is to be heard by the County Court sitting at:

Date of appeal:

Notice of appeal filed at:

Date:

Signature of Appellant:

Signature of Registrar:

Magistrates' Court (Family Violence Protection) Rules 2008
S.R. No. 157/2008

Dated: 4 December 2008

IAN GRAY,
Chief Magistrate

LANCE MARTIN,
Deputy Chief Magistrate

PETER LAURITSEN,
Deputy Chief Magistrate

ENDNOTES

1. General Information

The Magistrates' Court (Family Violence Protection) Rules 2008, S.R. No. 157/2008 were made on 4 December 2008 by the Chief Magistrate together with 2 Deputy Chief Magistrates jointly under section 209 of the **Family Violence Protection Act 2008**, No. 52/2008 and sections 16(1D) and (1E) of the **Magistrates' Court Act 1989**, No. 51/1989 and came into operation on 8 December 2008: rule 1.03.

The Magistrates' Court (Family Violence Protection) Rules 2008 will sunset 10 years after the day of making on 4 December 2018 (see section 5 of the **Subordinate Legislation Act 1994**).

Magistrates' Court (Family Violence Protection) Rules 2008
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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Magistrates' Court (Family Violence Protection) Rules 2008 by statutory rules, subordinate instruments and Acts.

Magistrates' Court (Family Violence Protection Rules) (Amendment No. 1)
Rules 2011, S.R. No. 95/2011

Date of Making: 2.9.11

Date of Commencement: 5.9.11: rule 3

3. Explanatory Details

¹ Rule 1.04: S.R. No. 73/2000 as amended by S.R. No. 83/2006.