

Authorised Version No. 002
Family Violence Protection Regulations 2008

S.R. No. 153/2008

Authorised Version as at
13 March 2013

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Page</i>
1 Objective	1
2 Authorising provision	1
3 Commencement	1
4 Definition	1
5 Revocation	1
6 Corresponding interstate laws	1
7 Corresponding New Zealand law	2
8 Notice of rights and responsibilities—Form 1	2
9 Explanation of an interim order	2
10 Time limit to provide court report for the purposes of section 84	2
11 Certificate of respondent's non attendance	3
12 Surrender of firearms and weapons	3
13 Disclosure of information by organisations	4

FORMS	6
Form 1— Family Violence Protection Act 2008 (Section 17) Information on Holding Powers for a Directed or Temporarily Detained Person	6
Form 2—Explanation of Interim Order	8
Form 3— Family Violence Protection Act 2008 (section 139)	13
Form 4— Family Violence Protection Act 2008 (section 139)	14

ENDNOTES	15
1. General Information	15
2. Table of Amendments	16
3. Explanatory Details	17

Authorised Version No. 002
Family Violence Protection Regulations 2008

S.R. No. 153/2008

Authorised Version as at
13 March 2013

1 Objective

The objective of these Regulations is to prescribe matters necessary to be prescribed by, and to ensure the effective implementation of, the **Family Violence Protection Act 2008**.

2 Authorising provision

These Regulations are made under section 211 of the **Family Violence Protection Act 2008**.

3 Commencement

These Regulations come into operation on 8 December 2008.

4 Definition

In these Regulations—

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

5 Revocation

The Crimes (Family Violence) Regulations 2005¹ are **revoked**.

6 Corresponding interstate laws

For the purposes of paragraph (b) of the definition of *corresponding interstate law* in section 4 of the Act, the following laws, to the extent that they relate to protection of persons from family or domestic violence, are prescribed—

- (a) the Domestic Violence and Protection Orders Act 2001 of the Australian Capital Territory;

- (b) the Crimes (Domestic and Personal Violence) Act 2007 of New South Wales;
- (c) the Domestic and Family Violence Act 2007 of the Northern Territory;
- (d) the Domestic and Family Violence Protection Act 1989 of Queensland;
- (e) the Domestic Violence Act 1994 of South Australia;
- (f) the Family Violence Act 2004 of Tasmania;
- (g) the Justices Act 1959 of Tasmania;
- (h) the Restraining Orders Act 1997 of Western Australia.

7 Corresponding New Zealand law

For the purposes of paragraph (b) of the definition of *corresponding New Zealand law* in section 4 of the Act, the Domestic Violence Act 1995 of New Zealand is prescribed.

8 Notice of rights and responsibilities—Form 1

For the purposes of section 17(2)(b) of the Act, the prescribed information is the information set out in Form 1.

9 Explanation of an interim order

For the purposes of section 57 of the Act, the prescribed form is Form 2.

10 Time limit to provide court report for the purposes of section 84

For the purposes of section 84 of the Act, the prescribed time is 7 days.

11 Certificate of respondent's non attendance

For the purposes of section 139(2) of the Act, the prescribed form is—

- (a) if the certificate relates to an order under section 129 of the Act, Form 3; or
- (b) if the certificate relates to an order under section 130 of the Act, Form 4.

12 Surrender of firearms and weapons

- (1) An oral direction under section 158(3) of the Act must include the following particulars—
 - (a) if the police officer issuing the direction is not in uniform, the police officer's name and rank;
 - (b) a statement that it is an offence to fail to comply with a lawful direction.
- (2) A written notice under section 158(2)(b) of the Act directing the surrender of a firearm, firearms authority, ammunition or a weapon must include the following particulars—
 - (a) the name of the person who is given the direction;
 - (b) the address (if known) of the person who is given the direction;
 - (c) the date of birth (if known) of the person who is given the direction;
 - (d) the name, rank and station of the police officer issuing the direction;
 - (e) a statement that the direction is issued under section 158(2)(b) of the **Family Violence Protection Act 2008**;
 - (f) the date and time at which the direction is given;

- (g) the place at which the firearm, firearms authority, ammunition or weapon is to be surrendered;
- (h) a statement that the firearm, firearms authority, ammunition or weapon must be surrendered by the specified time (if any) or otherwise within 48 hours of the direction being given to the person;
- (i) a description of the firearm, firearms authority, ammunition or weapon to be surrendered (if known), including identifiers such as the model and serial number;
- (j) a statement that it is an offence under section 158(4) of the Act to fail to comply with the direction, punishable by 60 penalty units for failure to surrender a firearm and 30 penalty units for failure to surrender a firearms authority, ammunition or a weapon.

13 Disclosure of information by organisations

For the purposes of section 207(1) of the Act, the prescribed way is by application in writing that sets out—

- (a) the name of the organisation to which the application is made; and
- (b) the date of the application; and
- (c) the name, rank, registered number, station and contact telephone number of the police officer making the application; and
- (d) the name of the respondent; and
- (e) the respondent's date of birth (if known); and
- (f) the respondent's gender; and
- (g) that the request is made under section 207 of the **Family Violence Protection Act 2008**; and

-
- (h) that if the organisation has the information requested in the application the organisation must give the police officer the information.
-

FORMS

FORM 1

Regulation 8

**FAMILY VIOLENCE PROTECTION ACT 2008 (Section 17)
INFORMATION ON HOLDING POWERS FOR A DIRECTED
OR TEMPORARILY DETAINED PERSON**

Time: Date: Station:

Name: [*insert name of person directed or detained*]

You have been directed or detained under the holding power provisions in Division 1 of Part 3 of the **Family Violence Protection Act 2008**. You have been either—

- directed to remain at, or go to and remain at, a police station; or
- apprehended and detained at a police station or other specified place.

Why you have been directed or detained

You have been directed because a police officer—

- intends to apply for a family violence safety notice, a family violence intervention order or an order varying a family violence intervention order; and
- reasonably suspects that you are an adult; and
- reasonably believes that your direction is necessary to ensure the safety of a family member or to protect a family member's property.

If you have been detained it is because you refused or failed to obey a direction of a police officer.

You are not under arrest if you have been detained. A police officer may use reasonable force to apprehend and detain you. It is an offence to escape or attempt to escape from the place where you are detained, and the penalty is 2 years imprisonment.

How long can I be directed or detained?

The police may direct or detain you for up to 6 hours. The direction or detention will end when police either serve you with a copy of a family violence safety notice or a family violence intervention order or arrest you under a warrant, provided that police reasonably believe that necessary protection is in place for an affected family member. The direction or detention may also end, when a magistrate refuses to grant a warrant or order under this Act or when the police officer decides not to proceed with an application for an order under this Act.

Family Violence Protection Regulations 2008

S.R. No. 153/2008

Form 1

The period of direction or detention **may**, in exceptional circumstances, be extended by a court to a total period not exceeding 10 hours. Before granting an extension the court will hear your views, if practicable. If an extension is granted you will receive a copy of the order which will show the time at which the direction or detention expires.

The court cannot grant any extension if the police are applying for a family violence safety notice.

You will be informed immediately when your direction or detention ends.

While you are directed or detained

- Police can search you, and any vehicle, package or thing in your possession if they have reasonable grounds to suspect that you have any object in your possession that may cause injury or damage or may be used to escape.
- Police must not question or interview you about any offence or alleged offence.
- You may communicate, or attempt to communicate, with a lawyer. Police will arrange facilities to enable you to communicate with a lawyer or lawyer's clerk, and if practicable, arrangements will be made so you cannot be overheard.
- You may communicate or attempt to communicate with a friend or relative to tell them of your whereabouts. Police will provide reasonable facilities to do this as soon as practicable. However you may not communicate with a friend or relative if police reasonably believe that the communication would be likely to jeopardise the safety of an affected family member or his or her property.
- You are not allowed, under any circumstances, to communicate with an affected family member while you are directed or detained.

Police officer providing information

Signature:

Name:

Rank/Registered number:

FORM 2

Regulation 9

EXPLANATION OF INTERIM ORDER

What is an interim order?

1. An interim order is a temporary family violence intervention order made by the Magistrates' Court to protect a person from family violence until the court can decide whether to make a final order. An interim order prevents a respondent from behaving in certain ways, or requires the respondent to do certain things, stated on the order.
2. An interim order is a civil order, and making an interim order does not necessarily mean that an offence has been committed. However contravention of an interim order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

Who are the parties to an interim order?

3. The "affected family member" is the person who needs the protection of the order. After an interim order is made, an "affected family member" is called a "protected person".
4. The "applicant" is the person who applies for the family violence intervention order. The applicant may be the affected family member, or the applicant could be another person, such as a police officer. Section 45 of the **Family Violence Protection Act 2008** lists the people who can apply for a family violence intervention order.
5. The "respondent" is the person against whom an application for a family violence intervention order or an order has been made.
6. The respondent, applicant and the adult affected family member(s) will be given copies of the interim order. This is called being "served" with the order.

What happens if the respondent disobeys an interim family violence intervention order?

7. The respondent must obey all of the conditions listed in the order at all times.
8. If the respondent disobeys or "breaches" a condition in the order this means the respondent had "contravened" the order. A contravention of an interim order is an offence punishable by 2 years imprisonment or a fine of 240 penalty units ** or both.

What if the protected person gives permission to contravene the order?

9. A person cannot permit another person to contravene an order of the Court. This means that, even if the protected person allows a respondent to disobey the order, the respondent would still commit an offence.
10. It is not a defence that the protected person consented to the behaviour that contravened an interim order.

How long does an interim order last?

11. An interim order ends when one of the following occurs—
 - (a) the court makes a final order; or
 - (b) the court makes a final order and it is served on the respondent; or
 - (c) the court refuses to make a final order; or
 - (d) the court revokes the interim order; or
 - (e) the application for the family violence intervention order is withdrawn.

When does the court make a decision about the final order?

12. The respondent, protected person and any other parties (for example, the police) will be notified of the next court date when served with the application for the family violence intervention order and the interim order.
13. The court may make a final order on the next court date if—
 - (a) the parties agree to a final order being made by the court; or
 - (b) the parties do not oppose the making of a final order; or
 - (c) the respondent does not attend court and the court is satisfied that the respondent has been served with a copy of the application for a family violence intervention order and the court is satisfied the evidence supports the making of a final order.
14. The conditions of the final order may be the same or different to those included in the interim order, family violence safety notice or application for a family violence intervention order.
15. The final order may protect children who have been subjected to family violence by the respondent even if those children are not referred to in a family violence safety notice or an application for a family violence intervention order.

16. If either party, or both parties, oppose the court making a final order, the court will fix a new court date ("a contested hearing date") and the interim order will continue until that date. On this later date the parties and all their witnesses can come to court to give their evidence to the magistrate.
17. Special rules apply if the respondent wants to ask questions or challenge the evidence of protected witnesses, such as the affected family member or a child (called "cross-examination"). Section 70 of the Act lists other people who are protected witnesses. To cross-examine a protected witness, the respondent will need to have a lawyer at court. It is important to get legal advice about this. See the end of this notice for information about how to arrange legal advice.
18. After the magistrate has heard relevant evidence from the parties, he or she will decide whether to make a final order and, if so, what conditions should be included in the final order and how long the final order will last.

Can the interim order be varied?

19. Yes. The protected person, respondent or applicant, for example, can apply to have the interim order changed. Section 108 of the Act lists the people who can apply to have the interim order changed.
20. If the respondent wants the interim order changed, he or she cannot apply without the leave of the court. The magistrate must be satisfied there has been a change in circumstances since the interim intervention order was made and that the change may justify a change to the interim order before granting leave.

What if there is a Family Law Act 1975 order?

21. If there is a Family Law Act 1975 order in force, the magistrate who made the interim order may have changed or suspended the Family Law Act order if it was inconsistent with the interim order. The magistrate may have also revived the Family Law Act order. The purpose of the change, suspension or revival of the Family Law Act order is to prevent the respondent from committing family violence against a protected person (including preventing a child hearing or witnessing violence).
22. If the magistrate has made an interim order that affects a Family Law Act order, that order will continue until the return date of the interim order or for 21 days, whichever is sooner.
23. Speak to a lawyer about how any Family Law Act order and your interim order interact.

What if there is an order made under the Children, Youth and Families Act 2005?

24. The interim order applies despite any child protection order made by the Children's Court. Speak to a lawyer about how any child protection order and your interim order interact.

Contacts

Legal advice

Victoria Legal Aid provides free legal advice and referrals.

[insert contact details]

Federation of Community Legal Centres may have a centre close to you that can provide advice.

[insert contact details]

Women's Legal Service Victoria provides free legal advice by telephone concerning family violence and family law.

[insert contact details]

Key support services

The **Women's Domestic Violence Crisis Service** provides crisis support and referral for women experiencing family violence.

[insert contact details]

Immigrant Women's Domestic Violence Service provides support for immigrant women who are victims of family violence.

[insert contact details]

Elizabeth Hoffman House Aboriginal Women's Family Violence Services provides crisis accommodation and support for Aboriginal women and spouses of Aboriginal men.

[insert contact details]

The following support services are available to help men who use violence toward their families.

Men's Referral Service

[insert contact details]

The Men's Referral Service is a statewide service which provides free and independent advice about what men can do. This anonymous and confidential service can provide suggestions about where to go for more assistance.

Salvation Army Crisis Services

[insert contact details]

The Crisis Service is a statewide service available by telephone for people in need of support. The service provides information, advocacy, referral for accommodation, material aids and links to counselling and other support services.

Local courts and police may have other local referral information for family violence support services in your area.

****Note:** The value of a penalty unit for the financial year commencing 1 July 2008 is \$113.42. The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer.

FORM 3

Regulation 11(a)

FAMILY VIOLENCE PROTECTION ACT 2008 (Section 139)

CERTIFICATE OF NON ATTENDANCE AT ASSESSMENT
INTERVIEW

Case Number:

Applicant:

Respondent:

1. I, *[name of person specified in the order to perform the assessment]* am a person who is approved by the Secretary to the Department of Justice under section 133 of the **Family Violence Protection Act 2008**.
2. On _____ the Family Violence Court Division at _____ made an order requiring the respondent to attend an interview with me for the purposes of preparing a report. The order directed the respondent to attend at *[time]* on *[date]* at *[place]*.

OR

2. **[delete if not applicable]*
On _____ the Family Violence Court Division at _____ varied the order and directed the respondent to attend an interview for the purpose of preparing a report at *[time]* on *[date]* at *[place]*.
3. The respondent failed to attend the interview.

Signed—

[name]

Date—

FORM 4

Regulation 11(b)

FAMILY VIOLENCE PROTECTION ACT 2008 (Section 139)

CERTIFICATE OF NON ATTENDANCE AT COUNSELLING

Case Number:

Applicant:

Respondent:

1. I, [*name of authorised person OR name of person authorised by body specified in order to provide counselling*] am the authorised representative of [*name of counselling organisation*] OR person specified in the order.
2. On _____ the Family Violence Court Division at _____ made an order requiring the respondent to attend counselling provided by [*name of person or body specified in the order*] at [*time*] on [*date*] at [*place*].
3. **[delete if not applicable]*
On _____ the Family Violence Court Division at _____ varied the order and directed the respondent to attend counselling at [*time*] on [*date*] at [*place*].
4. **[delete if not applicable]*
On [*name of person or body providing the counselling*] gave the respondent reasonable written notice of the time and place at which each subsequent counselling session would be conducted.
5. The subsequent counselling sessions were to take place at [*place*] on [*dates*] and [*times*].
6. The respondent failed to attend counselling at [*time*] on [*date*] at [*place*] as directed.

Signed—

[*name*]

Date—

ENDNOTES

1. General Information

The Family Violence Protection Regulations 2008, S.R. No. 153/2008 were made on 2 December 2008 by the Governor in Council under section 211 of the **Family Violence Protection Act 2008**, No. 52/2008 and came into operation on 8 December 2008: regulation 3.

The Family Violence Protection Regulations 2008 will sunset 10 years after the day of making on 2 December 2018 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Family Violence Protection Regulations 2008 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

¹ Reg. 5: S.R. No. 54/2005 as amended by S.R. No. 78/2006.