JUSTICE

JU301

Magistrates Court (Civil Proceedings) Act 2004

Magistrates Court (Civil Proceedings) Amendment Rules (No. 3) 2020

SL 2020/141

Made by the Magistrates Court in accordance with the *Magistrates Court Act 2004* section 39.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules (No. 3) 2020*.

2. Commencement

These rules come into operation as follows —

(a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;

(b) the rest of the rules — on the day after that day.

3. Rules amended

These rules amend the *Magistrates Court (Civil Proceedings) Rules 2005*.

4. Part 21 Division 1A heading and rules 131CAA and 131CAB inserted

After rule 131C insert:

Division 1A — *Restraining Orders Act 1997*

131CAA. Terms used

In this Division —

Act means the *Restraining Orders Act 1997*;

section means a section of the Act.

131CAB. Fixing conference under Act

(1) In this rule —

conference means a conference under section 49D.

(2) A conference may be fixed only at a Court location approved by the Chief Magistrate.

(3) A registrar may fix a conference by —

    (a) fixing a day, time and place for the conference; and

    (b) notifying the parties of the conference.

5.   Rule 131CA amended

(1) Delete rule 131CA(1).

(2) In rule 131CA(2) delete "The court" and insert:

For the purposes of sections 9 and 26, the Court

(3) In rule 131CA(3) delete "the court must fix a hearing that is to be held in the absence of one party" and insert:

if the hearing is to be held in the absence of a party, it is to be fixed

(4) In rule 131CA(4) and (5) delete "court" and insert:

Court

Note: The heading to amended rule 131CA is to read:
    Fixing a hearing under s. 9 or 26

6.   Rule 131CB amended

(1) In rule 131CB(1) and (3) delete "the *Restraining Orders Act 1997*".

(2) In rule 131CB(3) and (5) delete "court" and insert:

Court

(3) In rule 131CB(5) delete "court's" and insert:

Court's

Note: The heading to amended rule 131CB is to read:
    Preparing, serving and delivering restraining orders under s. 10(1)

7.   Rule 131CC amended

In rule 131CC(1) delete "the *Restraining Orders Act 1997*".

Note: The heading to amended rule 131CC is to read:
Application for FVRO under s. 24A

8.   Rule 131CD amended

In rule 131CD(1) delete "the *Restraining Orders Act 1997*".

Note: The heading to amended rule 131CD is to read:
Application for VRO under s. 25

9.   Rule 131D amended

In rule 131D(1) delete "*Restraining Orders Act 1997*," and insert:

Act,

Note: The heading to amended rule 131D is to read:
Forms under Act

10.   Schedule 1 Form 1 replaced

Delete Schedule 1 Form 1 and insert:

Form 1 — Application for family violence restraining order

Restraining Orders Act 1997 s. 13A, 24A **Family violence restraining order Application**	Number:
	Jurisdiction:
	Location:

Applicant [*If not the person seeking to be protected*]	Family name:	Date of birth:
	Other names:	
	Address: street: suburb: postcode:	
	Phone nos.: work: home: mobile:	
Person seeking to be protected (victim of offence if s. 13A applies)	Family name:	Date of birth:
	Other names:	
	Address: street: suburb: postcode:	
	Phone nos.: work: home: mobile:	
Respondent [*Fill in as many details as you can*] (Offender if s. 13A applies)	Family name:	Date of birth:
	Other names:	
	Home street: address: suburb: postcode:	
	Work street: address: suburb: postcode:	
	Phone nos.: work: home: mobile:	
Grounds for application	Set out details of the evidence in support of your application.	
Offence details (if s. 13A applies)	This is to be completed where the respondent has been convicted of an offence referred to in section 63(4AA)(a) or 63A(1A).	
	Date of offence:	
	Offence details:	

Family orders [*If yes, see the Details of family order Annexure*]	Are there any current family orders relating to the respondent's rights in relation to children who may be affected by a restraining order?	❒ Yes ❒ No ❒ Unknown
	Are there any current Family Court proceedings in which such orders are being sought?	❒ Yes ❒ No ❒ Unknown
Firearms	Does the respondent have a firearm or firearms licence?	❒ Yes ❒ No ❒ Unknown
	Does the respondent have access to a firearm at work?	❒ Yes ❒ No ❒ Unknown
Explosives	Does the respondent have explosives or an explosives licence?	❒ Yes ❒ No ❒ Unknown
	Does the respondent have access to explosives at work?	❒ Yes ❒ No ❒ Unknown
Police incident [*Reference number to be inserted, if applicable*]		
First hearing	Do you want the respondent to be present at the first hearing?	❒ Yes ❒ No
Conference	Do you agree to the listing of a conference?* *[*Applies only if conferences are available at your court.*]	❒ Yes ❒ No
Applicant [*Not essential if lodged by means of the ECMS or if applicant is a police officer*]	Signature:	Date:
Hearing [*To be filled in by the court*]	Court:	Date:	Time:
Approved user to certify applicant's declaration [*If applicable*]	I [*Insert name of approved user*] certify that I have read out to the applicant the information the applicant provided to me that forms the evidence in support of this application, and the applicant has declared that the information is true.	

11.   Schedule 1 Form 2 amended

(1)   In Schedule 1 Form 2 Part B under the heading "**If the order is an interim order**":

(a)   delete "arrange a final order hearing at which it" and insert:

list a conference (if you agree to a conference and one is available at your court) or arrange a final order hearing. At the conference a registrar will attempt to achieve an appropriate outcome (including the making of orders) without the parties being together. At the final order hearing the court

(b)   delete "while you are in prison and will expire 2 years after the date on which you are released from prison (or longer if specified in the order)." and insert:

(while you are in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which you are released from prison.

(2)   In Schedule 1 Form 2 Part C delete "arrange a final order hearing at which it" and insert:

list a conference (if you agree to a conference and one is available at your court) or arrange a final order hearing. At the conference a registrar will attempt to achieve an appropriate outcome (including the making of orders) without the parties being together. At the final order hearing the court

(3) In Schedule 1 Form 2 Part C delete the table with the heading "**Objection**" and insert:

Objection			
Order	Restraining order no.:	Court of issue:	
Family name:			Date of birth:
Other names:			
Address: street: suburb: postcode:			
Do you agree to the listing of a conference?* *[*Applies only if conferences are available at your court.*]	❏ Yes ❏ No		
Will you be represented by a lawyer at a conference or the final order hearing? ❏ Yes ❏ No			
If yes: lawyer's name: lawyer's firm:			
How many witnesses (including yourself) do you intend to call? _____			
Does this interim order prevent you from — • going to where you normally live? • having contact with your children? • going to where you work or otherwise prevent you from doing your job? • being in possession of a firearm which is essential for your job? • being in possession of explosives which are essential for your job?	❏ Yes ❏ No ❏ Yes ❏ No ❏ Yes ❏ No ❏ Yes ❏ No ❏ Yes ❏ No		
Signature:		Date:	

(4) In Schedule 1 Form 2 Part C under the heading "**Consent**" delete "If I am in prison when the court receives this form, the order will stay in force while I am in prison and for a further 2 years from the date on which I am released from prison (or longer if specified in the order)." and insert:

If I was in prison at the time this order was served on me, the order will stay in force (while I am in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which I am released from prison.

(5) In Schedule 1 Form 2 Part D under the heading "**If the order is an interim order**":

    (a) delete "final order hearing. At that hearing the court" and insert:

        conference (if the person agrees to a conference and one is available at your court) or a final order hearing. At the conference a registrar will attempt to achieve an appropriate outcome (including the making of orders) without the parties being together. At the final order hearing the court

    (b) delete "the court received the person's "Consent" form, the order will stay in force while the person is in prison and will expire 2 years after the date on which the person is released from prison (or longer if specified in the order)." and insert:

        this order was served on the person, the order will stay in force (while the person is in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which the person is released from prison.

12.   Schedule 1 Form 3 amended

(1)   In Schedule 1 Form 3 Part B under the heading "**Terms of conduct agreement order**" delete "made, the order will stay in force while you are in prison and will expire 2 years after the date on which you are released from prison (or longer if specified in the order)." and insert:

served on you, the order will stay in force (while you are in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which you are released from prison.

(2)   In Schedule 1 Form 3 Part C under the heading "**Terms of conduct agreement order**" delete "while the person is in prison and will expire 2 years after the date on which the person is released from prison (or longer if specified in the order)." and insert:

(while the person is in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which the person is released from prison.

(3)   In Schedule 1 Form 3 Part D delete "age of 16" and insert:

age of 18 years

13.   Schedule 1 Form 4 amended

(1)   In Schedule 1 Form 4 Part A delete the row relating to Lifelong order and insert:

Duration of order	

(2)   In Schedule 1 Form 4 Part B delete "You must comply with this order for the rest of your life." and insert:

If you were in prison at the time this order was served on you, the order will stay in force (while you are in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which you are released from prison.

(3)   In Schedule 1 Form 4 Part C delete "The person who is bound by this order must comply with this order for the rest of the person's life." and insert:

If the person was in prison at the time this order was served on the person, the order will stay in force (while the person is in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which the person is released from prison.

14. Schedule 1 Form 5 replaced

Delete Schedule 1 Form 5 and insert:

Form 5 — Application for violence restraining order

<table>
<tr>
<td colspan="2"><i>Restraining Orders Act 1997</i> s. 13A, 25
Violence restraining order
Application</td>
<td colspan="2">Number:
Jurisdiction:
Location:</td>
</tr>
<tr>
<td>Applicant
[<i>If not the person seeking to be protected</i>]</td>
<td colspan="2">Family name:
Other names:
Address: street:
suburb: postcode:
Phone nos.: work: home: mobile:</td>
<td>Date of birth:</td>
</tr>
<tr>
<td>Person seeking to be protected (victim of offence if s. 13A applies)</td>
<td colspan="2">Family name:
Other names:
Address: street:
suburb: postcode:
Phone nos.: work: home: mobile:</td>
<td>Date of birth:</td>
</tr>
<tr>
<td>Respondent
[<i>Fill in as many details as you can</i>]
(Offender if s. 13A applies)</td>
<td colspan="2">Family name:
Other names:
Home street:
address: suburb: postcode:
Work street:
address: suburb: postcode:
Phone nos.: work: home: mobile:</td>
<td>Date of birth:</td>
</tr>
<tr>
<td>Grounds for application</td>
<td colspan="3">Set out details of the evidence in support of your application.</td>
</tr>
<tr>
<td>Offence details
(if s. 13A applies)</td>
<td colspan="3">This is to be completed where the respondent has been convicted of an offence referred to in section 63(4AA)(a) or 63A(1A).
Date of offence:

Offence details:</td>
</tr>
<tr>
<td>Family orders
[<i>If yes, see the Details of family order Annexure</i>]</td>
<td>Are there any current family orders relating to the respondent's rights in relation to children who may be affected by a restraining order?</td>
<td colspan="2">❏ Yes ❏ No ❏ Unknown</td>
</tr>
<tr>
<td></td>
<td>Are there any current Family Court proceedings in which such orders are being sought?</td>
<td colspan="2">❏ Yes ❏ No ❏ Unknown</td>
</tr>
<tr>
<td>Firearms</td>
<td>Does the respondent have a firearm or firearms licence?</td>
<td colspan="2">❏ Yes ❏ No ❏ Unknown</td>
</tr>
<tr>
<td></td>
<td>Does the respondent have access to a firearm at work?</td>
<td colspan="2">❏ Yes ❏ No ❏ Unknown</td>
</tr>
<tr>
<td>Explosives</td>
<td>Does the respondent have explosives or an explosives licence?</td>
<td colspan="2">❏ Yes ❏ No ❏ Unknown</td>
</tr>
<tr>
<td></td>
<td>Does the respondent have access to explosives at work?</td>
<td colspan="2">❏ Yes ❏ No ❏ Unknown</td>
</tr>
<tr>
<td>Police incident
[<i>Reference number to be inserted, if applicable</i>]</td>
<td colspan="3"></td>
</tr>
<tr>
<td>First hearing</td>
<td>Do you want the respondent to be present at the first hearing?</td>
<td colspan="2">❏ Yes ❏ No</td>
</tr>
<tr>
<td>Applicant
[<i>Not essential if lodged by means of the ECMS or if applicant is a police officer</i>]</td>
<td colspan="2">Signature:</td>
<td>Date:</td>
</tr>
<tr>
<td>Hearing
[<i>To be filled in by the court</i>]</td>
<td>Court:</td>
<td>Date:</td>
<td>Time:</td>
</tr>
<tr>
<td>Approved user to certify applicant's declaration
[<i>If applicable</i>]</td>
<td colspan="3">I [<i>Insert name of approved user</i>] certify that I have read out to the applicant the information the applicant provided to me that forms the evidence in support of this application, and the applicant has declared that the information is true.</td>
</tr>
</table>

15.   Schedule 1 Form 6 amended

(1)   In Schedule 1 Form 6 Part B:

(a)   under the heading "**If the order is an interim order**" after paragraph (b) insert:

> If you were in prison at the time the court received your "Consent" form, the order will stay in force (while you are in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which you are released from prison.

(b)   under the heading "**If the order is a final order**" after the second bullet point insert:

> If you were in prison at the time this order was made, the order expires —
>
> •   in the case of an order made at a final order hearing or an interim order which became the final order, 2 years after the date on which you are released from prison (or longer if specified in the order); or
>
> •   in the case of a telephone order which became the final order because you did not object, 3 months after the date on which you are released from prison (or shorter if specified in the order).

(2)   In Schedule 1 Form 6 Part C:

(a)   under the heading "**Objection**" after the last bullet point insert:

> •   being in possession of explosives which are essential for your job?   ❑ Yes   ❑ No

(b)   under the heading "**Consent**" after paragraph (b) insert:

> If I was in prison at the time this order was served on me, the order will stay in force (while I am in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which I am released from prison.

(3)   In Schedule 1 Form 6 Part D:

(a)   under the heading "**If the order is an interim order**" after paragraph (b) insert:

> If the person was in prison at the time this order was served on the person, the order will stay in force (while the person is in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which the person is released from prison.

(b) under the heading "**If the order is a final order**" after the second bullet point insert:

If the person was in prison at the time this order was made, the order expires —

- in the case of an order made at a final order hearing or an interim order which became the final order, 2 years after the date on which the person is released from prison (or longer if specified in the order); or

- in the case of a telephone order which became the final order because the person did not object, 3 months after the date on which the person is released from prison (or shorter if specified in the order).

16.   Schedule 1 Form 7 amended

(1)   In Schedule 1 Form 7 Part A delete the row relating to Lifelong order and insert:

Duration of order	

(2)   In Schedule 1 Form 7 Part B delete "You must comply with this order for the rest of your life." and insert:

If you were in prison at the time this order was served on you, the order will stay in force (while you are in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which you are released from prison.

(3)   In Schedule 1 Form 7 Part C delete "The person who is bound by this order must comply with this order for the rest of the person's life." and insert:

If the person was in prison at the time this order was served on the person, the order will stay in force (while the person is in prison and on release) for the period specified in the order. If the duration of the order is not specified, the order will stay in force for 2 years from the date on which the person is released from prison.

17.   Schedule 1 Form 8 amended

In Schedule 1 Form 8 after the row relating to Firearms insert:

Explosives	Does the respondent have explosives or an explosives licence?		
	❏ Yes	❏ No	❏ Unknown
	Does the respondent have access to explosives at work?		
	❏ Yes	❏ No	❏ Unknown

18. **Schedule 1 Form 10 amended**

(1) In Schedule 1 Form 10 Part C under the heading "**If the order is an interim order**" delete "_{arrange a final order hearing at which it}" and insert:

list a conference (if available at your court) or arrange a final order hearing. At the conference a registrar will attempt to achieve an appropriate outcome (including the making of orders) while ensuring that the parties are not together during the conference. At the final order hearing the court

(2) In Schedule 1 Form 10 Part D under the heading "**Objection**" after the last bullet point insert:

• being in possession of explosives which are essential for your job?	❒ Yes	❒ No

(3) In Schedule 1 Form 10 Part F delete "_{age of 16}" and insert:

age of 18 years

19. **Schedule 1 Form 11 amended**

In Schedule 1 Form 11 delete the rows relating to Firearms and insert:

Conference [*FVRO only*]	Does the applicant/respondent agree to the listing of a conference?* *[*Applies only if conferences are available at this court.*]	❒ Yes ❒ No
Firearms	Does the respondent have a firearm or a firearms licence? ❒ Yes ❒ No ❒ Unknown	
	Does the respondent have access to a firearm at work? ❒ Yes ❒ No ❒ Unknown	
Explosives	Does the respondent have explosives or an explosives licence? ❒ Yes ❒ No ❒ Unknown	
	Does the respondent have access to explosives at work? ❒ Yes ❒ No ❒ Unknown	

20. **Schedule 1 Form 12 amended**

(1) In Schedule 1 Form 12 Part A:

(a) in the row relating to Variation or cancellation delete:

Do you want an additional order, to be read with the original order, which states the variation?	❒ Yes
Duration of order: Unless specified, an order made under this option will not vary the duration of the original order.	

(b) before the row relating to Signature insert:

Conference [*FVRO only*]	Do you agree to the listing of a conference? *[*Applies only if conferences are available at your court.]*	❒ Yes ❒ No

(2) In Schedule 1 Form 12 Part B:

   (a) under the heading "**Application by the person protected by the restraining order**" after "vary or cancel the restraining order." insert:

> If this is a family violence restraining order, the court may also list a conference (if you agree to a conference and one is available at your court). The conference may be listed either on the same day as the final hearing or on another, earlier, day. At the conference a registrar will attempt to achieve an appropriate outcome (including the making of orders) without the parties being together.

   (b) under the heading "**Application by the person who is bound by the restraining order**" after "vary or cancel the restraining order." insert:

> If this is a family violence restraining order, the court may also list a conference (if you agree to a conference and one is available at your court). The conference may be listed either on the same day as the final hearing or on another, earlier, day. At the conference a registrar will attempt to achieve an appropriate outcome (including the making of orders) without the parties being together.

21. Schedule 1 Form 14 amended

In Schedule 1 Form 14 after the rows relating to Firearms insert:

Explosives	Does the person who is bound by the restraining order have explosives or an explosives licence? ❏ Yes ❏ No
	Does the person who is bound by the restraining order have access to explosives at work? ❏ Yes ❏ No

22. Schedule 1 Form 16 amended

In Schedule 1 Form 16 Part A delete "**firearm or a firearms licence.**" and insert:

firearm, a firearms licence, explosives or an explosives licence.

23. Various penalties amended

In the provisions listed in the Table:

   (a) delete "$6 000" (each occurrence) and insert:

> $10 000

   (b) delete "$6 000" and insert:

> $10 000

(c)   delete "$6 000" (each occurrence) and insert:

$10 000

Table

Sch. 1 Form 2 Pt. B	Sch. 1 Form 2 Pt. D
Sch. 1 Form 3 Pt. B	Sch. 1 Form 3 Pt. C
Sch. 1 Form 4 Pt. B	Sch. 1 Form 4 Pt. C
Sch. 1 Form 6 Pt. B	Sch. 1 Form 6 Pt. D
Sch. 1 Form 7 Pt. B	Sch. 1 Form 7 Pt. C
Sch. 1 Form 10 Pt. C	Sch. 1 Form 10 Pt. E

24.   Various references to "16 years" amended

In the provisions listed in the Table delete "16 years" and insert:

18 years

Table

Sch. 1 Form 2 Pt. E	Sch. 1 Form 6 Pt. E
Sch. 1 Form 9 Pt. D	

Mr STEVEN HEATH, Chief Magistrate,
Magistrates Court in Perth.

Date: 18 August 2020.

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