

Reprint
as at 1 July 2019



Domestic Violence Amendment Rules 2009

(SR 2009/189)

Domestic Violence Amendment Rules 2009: revoked, on 1 July 2019, pursuant to section 259(2) of the Family Violence Act 2018 (2018 No 46).

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 29th day of June 2009

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 126 of the Domestic Violence Act 1995, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following rules.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Ministry of Justice.

Rules

1 Title

These rules are the Domestic Violence Amendment Rules 2009.

2 Commencement

These rules come into force on 3 August 2009.

3 Principal rules amended

These rules amend the Domestic Violence Rules 1996.

4 Notice of defence where application on notice

Rule 31(2) to (4) are revoked.

5 New rule 31A inserted

The following rule is inserted after rule 31:

31A Non-compliance with rule 31

- (1) This rule applies to a person who—
 - (a) is served with an application; and
 - (b) fails to file and serve a notice of defence within the time specified in or under rule 31; and
 - (c) in the case of an application for a protection order or a property order, fails to file an affidavit in accordance with rule 31(1)(b).
- (2) If the person appears on the day of the hearing of the application to oppose or support the application, the Judge must decide whether it is in the interests of justice to allow the person to be heard.
- (3) In deciding, for the purpose of subclause (2), whether to allow the person to be heard in relation to the application, the Judge must take into account the following matters:
 - (a) any reason given by the person for failing to comply with rule 31; and
 - (b) the effect of the person's failure to comply with rule 31 on—
 - (i) the other parties to the proceeding;
 - (ii) the management of the proceeding.
- (4) The Judge may—
 - (a) allow the person to be heard in relation to the application on such terms as the Judge thinks fit; or
 - (b) decline to allow the person to be heard.
- (5) If the Judge allows the person to be heard in relation to the application, the Judge may—

- (a) either—
 - (i) proceed with the hearing of the application in accordance with any directions that the Judge thinks fit; or
 - (ii) adjourn the hearing of the application and give any directions about the adjourned hearing that the Judge thinks fit; and
 - (b) make an order against the person for costs properly incurred in consequence of his or her failure to comply with rule 31.
- (6) An adjournment under subclause (5)(a)(ii) must be to a fixed—
- (a) date, which must be—
 - (i) as soon as practicable; and
 - (ii) not more than 42 days after the date of adjournment, unless special circumstances exist; and
 - (b) time; and
 - (c) place.
- (7) If the Judge declines to allow the person to be heard, the Judge may proceed with the hearing of the application as if the person had not appeared.

6 Schedule 1 amended

Form DV 10 of Schedule 1 is amended by omitting the third and fourth paragraphs under the heading “**Notice of defence**” and substituting the following paragraphs:

You should note that if you do not file and serve a notice of defence and an affidavit (if required) at least 5 clear days before the date of the hearing you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

- (a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or
- (b) decline to allow you to take part.

You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence and an affidavit (if required) within time.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 3 August 2009, amend the Domestic Violence Rules 1996 (the **principal rules**).

The amendments—

- insert a *new rule 31A* in the principal rules setting out the options available to a Judge where a person appears at the hearing of an application without having filed a notice of defence and an affidavit (if required) within the time specified. These options include declining to allow the person to be heard and proceeding with the hearing as if the person had not appeared:
- insert reference as to the effect of *new rule 31A* in form DV 10 of Schedule 1 of the principal rules.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 2 July 2009.

Reprints notes

1 *General*

This is a reprint of the Domestic Violence Amendment Rules 2009 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Family Violence Act 2018 (2018 No 46): section 259(2)