

Queensland



Subordinate Legislation 1997 No. 309

Childrens Court Act 1992

CHILDRENS COURT RULES 1997

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PART 1—PRELIMINARY

Short title

1. This rule may be cited as the *Childrens Court Rules 1997*.

Commencement

2. This rule commences on 1 October 1997.

Definitions

3. In this rule—

“**approved form**” see section 30.

“**authorised officer**” means an officer of the department authorised by the director to make a protection application.

“**authorising law**” means the *Children’s Services Act 1965*.

“**child**” see the authorising law, section 8.

“**department**” means the department within which the authorising law is administered.

“**director**” see the authorising law, section 8.

“**parent**” see the authorising law, section 8.

“**protection application**” means an application to the court under the authorising law, part 6 or 7.¹

Application

4. This rule applies to protection applications.

¹ Part 6 (Children in need of care and protection), part 7 (Children in need of care and control)

PART 2—STARTING PROCEEDINGS

Starting proceedings

5.(1) A proceeding is started by filing in the court a written application in the approved form.

(2) The application must—

- (a)** state the order sought; and
- (b)** include a summary of the facts relied on to support the application.

Filing documents

6.(1) A party filing a document in the court must give to the registrar of the court² enough copies of the document to enable the party to serve a sealed copy on the other parties to the proceeding.

(2) The document must include the address for service of the party filing it.

(3) A document is filed when the registrar fixes the court's seal on the document.

(4) If the document is an application, the registrar must write on the application the date, time and place for hearing the application.

Service of protection applications

7.(1) This section applies to a person who files a protection application about a child in the court.

(2) If the person is not the child's parent, the person must give to the child's parents a sealed copy of the application as soon as practicable after the application is filed.

(3) If the person is 1 of the child's parents, the person must give to the child's other parent a sealed copy of the application as soon as practicable after the application is filed.

² See the Act, section 25 (Court officials).

(4) If the person is not the director or an authorised officer, the person must also give to the director a sealed copy of the application.

(5) If the court is satisfied the person has made reasonable attempts to give the child's parent or parents a sealed copy of the application, the court may dispense with the requirement for service of the application and hear the application in the absence of the parent or parents.

Information to be given to child 12 or over

8. A person who files a protection application about a child who is 12 years or over must give to the child appropriate information about the application including, for example, information about the orders the court may make in relation to the application.

PART 3—AFFIDAVITS

Title of affidavits

9.(1) An affidavit for a proceeding must have a title.

(2) The title must name the application to which it relates.

(3) If there is more than 1 applicant or respondent, it is enough to state in the title the full name of the first applicant or respondent and the words 'and another' or 'and others'.

Form of affidavit

10.(1) An affidavit—

(a) must state the name of the person making it; and

(b) must be in the first person and divided into consecutively numbered paragraphs; and

(c) may have headings for different parts of the affidavit.

(2) Each paragraph must be confined, as far as possible, to a distinct part of the subject of the affidavit.

Contents of affidavit

11.(1) An affidavit must state only facts of which the person making it has knowledge.

(2) However, an affidavit may state the person's belief if the affidavit gives the source of the information and the grounds for the belief.

Jurat

12.(1) An affidavit must state that it was sworn by the person making it on the day and at the place where it was sworn.

(2) The person making the affidavit and the person before whom it is sworn must sign each page of the affidavit and any attachment to it.

Alterations in affidavits

13.(1) This section applies if an affidavit has an alteration, erasure or interlineation in any part of it.

(2) The affidavit must not be used in a proceeding without the permission of the court.

(3) However, subsection (2) does not apply if—

- (a)** for an alteration or interlineation—the alteration or interlineation is initialled by the person making it and the person before whom it is sworn; or
- (b)** for an erasure—the erased words are re-written in the margin of the affidavit and signed or initialled by the person making it and the person before whom it is sworn.

Attachments

14.(1) A document mentioned in an affidavit must be attached to the affidavit and identified as an attachment to the affidavit.

(2) An object or other thing mentioned in an affidavit must not be attached to the affidavit, but must be available to be tendered in evidence.

(3) However, a person making the affidavit may, in the affidavit, quote from a document instead of attaching it to the affidavit.

(4) If in an affidavit a person quotes from a document, the person must produce the document in evidence when the affidavit is used.

Affidavits not to be sworn before a party

15. The court must not receive an affidavit sworn before a person who is also a party to the proceeding in which it is to be used.

Cross-examination of person making affidavit

16.(1) If a party wants to cross-examine a person (the “**deponent**”) who has made an affidavit, the party must give to the party who filed the affidavit reasonable written notice that the deponent’s attendance is required for cross-examination.

(2) If the deponent does not attend for cross-examination, the affidavit must not be used as evidence without the court’s permission.

(3) The party who filed the affidavit can not require the party requiring the deponent’s attendance to pay expenses for the deponent’s attendance.

Use of defective affidavits

17.(1) An affidavit that does not state the name of the person making it and the party for whom it is filed must not be used without the court’s permission.

(2) This section does not prevent the court receiving an affidavit in a proceeding even though the affidavit misdescribes the parties or there is another defect or irregularity in it.

(3) The court may direct the registrar to write on the affidavit that it has been received under this section.

PART 4—HEARINGS, MEETINGS AND CONFERENCES

Hearing applications together

18.(1) The court may, at the request of a party or on its own initiative, hear 2 or more applications for orders in a proceeding together.

(2) Subsection (1) applies even though the parties, or all of the parties, are not the same.

Change of venue

19.(1) A court may order the hearing of an application made to the court be held in a court at a place stated in the order.

(2) The court may make the order on terms the court considers appropriate.

Explanation of proceeding

20.(1) In a proceeding, the court must ensure, as far as practicable, that the child and any parent of the child present at the proceeding has full opportunity to participate in the proceeding.

(2) Without limiting subsection (1), the court must ensure that the child and parent understand, as far as practicable, the court's procedures and the consequences of any order that may be made.

Court may order family meeting or conference

21.(1) This section applies if the court orders a party to a proceeding to—

- (a) attend a family meeting; or
- (b) attend a conference between the parties.

(2) If the court orders a party—

- (a) to attend a family meeting—the director must do anything necessary or convenient to be done for giving effect to the order including, for example, arranging the venue for the meeting; or

- (b) to attend a conference between the parties—the director must comply with section 24(2) and (3).

Reports

22.(1) This section applies if the court orders someone to prepare a report about a child or the child's family circumstances.

(2) The court must indicate the purpose of the report and state who must arrange for, and pay the cost of, its preparation, and when it is to be filed in the court.

Family meetings

23.(1) This section applies if the court orders the director to hold a family meeting in relation to a child.

(2) The child's parents may be present.

(3) The director may decide who else may be present at the meeting.

(4) However, the director must not exclude from the meeting a person who, under the Act, section 20(1)(b), (e), (f) or (g), may be present at a proceeding.³

(5) The director must—

- (a) ensure, as far as practicable, the meeting considers any child protection concerns about the child and future plans for the child; and
- (b) give to the persons attending the meeting a written statement, signed by the parties, of what was decided at the meeting; and
- (c) file in the court a report on the meeting and a copy of the signed statement.

Court ordered conferences

24.(1) This section applies if the court orders the parties to a protection application to attend a conference.

³ Section 20 (Who may be present at a proceeding)

(2) The director must—

- (a) ensure the conference is held as soon as possible after the court makes the order; and
- (b) do anything else necessary or convenient to be done for giving effect to the order including, for example, arranging the venue for the conference.

(3) The director must appoint someone the director considers has appropriate qualifications and experience to chair the conference.

(4) At least 1 of the child's parents must be present.

(5) The chairperson may decide who else may be present at the meeting.

(6) However, the chairperson must not exclude from the meeting a person who, under the Act, section 20(1)(b), (e), (f) or (g), may be present at a proceeding.⁴

(7) Anything said in the conference is inadmissible in the proceeding, unless the parties otherwise agree.

(8) The chairperson must—

- (a) help the parties to the conference decide what matters are in dispute, and resolve those matters; and
- (b) ensure any agreement between the parties is written and signed by the parties; and
- (c) file in the court a report on the conference as soon as practicable after the conference is held; and
- (d) if an agreement is signed by the parties—ensure the parties are given notice of the time and day the agreement is to be given to the court.

Consent orders

25.(1) An order to which the parents of a child named in a protection application consent must not be made if the parents are not legally represented, unless the parents consent in writing to the order or are in

⁴ Section 20 (Who may be present at a proceeding)

attendance when the order is made.

(2) Subsection (1) applies subject to the authorising law, section 52.⁵

PART 5—SERVICE OF DOCUMENTS

Service of documents

26.(1) A document may be served only in the way provided by this section.

(2) A document may be served by giving it to the party personally.

(3) However, if it is not practicable to serve the document personally, the document may be served on the party by leaving it at, or by sending it by post to, the party's residential address last known to the party serving the document.

(4) A notice or another document a party is required to give someone else is taken to have been given to the other person if it is given at the address for service of the other person on a document filed in the court.

PART 6—GENERAL

Subpoenas

27. On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of a person before the court to give evidence in the proceeding or produce stated documents or things.

Evidentiary provision

28.(1) In a proceeding, the appointment of the director, an authorised

⁵ Section 52 (Limitation on court's admitting to care and protection)

officer or another officer of the department must be presumed, unless a party, by reasonable notice, requires proof of—

- (a) the appointment; or
- (b) for an officer of the department (including an authorised officer)—the officer's power to do anything under the authorising law.

(2) A signature purporting to be the signature of the director or an officer of the department (including an authorised officer) is evidence of the signature it purports to be, unless a party, by reasonable notice, requires proof of the signature.

(3) A certificate purporting to be signed by the director or a person mentioned in subsection (2) and stating any of the following matters is evidence of the matter—

- (a) a stated notice has been given to a stated person at a stated place and time;
- (b) after reasonable inquiries, a parent's whereabouts are unknown;
- (c) the director has authorised a stated officer of the department to make a stated application.

Effect of non-compliance with rules

29. A proceeding before the court is not a nullity merely because of the failure of a party to the proceeding to comply with this rule.

Approval of forms

30. The president may approve forms for use under this rule.

Transitional

31. Unless the court otherwise directs, this rule applies to a protection application started in the court before the commencement but not completed on the commencement.

ENDNOTES

1. Made by the Governor in Council on 25 September 1997.
2. Notified in the gazette on 26 September 1997.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice.