

Queensland



# CHILDRENS COURT ACT 1992

**Reprinted as in force on 5 September 1997  
(includes amendments up to Act No. 38 of 1997)**

**Reprint No. 2B**

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# Information about this reprint

This Act is reprinted as at 5 September 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**CHILDRENS COURT ACT 1992**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	3
3	Definitions .....	3
<b>PART 2—THE CHILDRENS COURT OF QUEENSLAND</b>		
4	Childrens Court established etc. ....	4
5	Members and constitution of the Childrens Court .....	4
6	Jurisdiction .....	5
7	Rules of court .....	5
8	Directions .....	5
<b>PART 3—APPOINTMENT OF JUDICIAL OFFICERS</b>		
<i>Division 1—The president</i>		
9	Childrens Court president .....	6
10	Functions of president .....	6
<i>Division 2—Childrens Court judges</i>		
11	Childrens Court judge .....	7
12	Acting judge .....	7
13	Termination of office .....	7
<i>Division 3—Childrens Court magistrates</i>		
14	Childrens Court magistrates .....	8
15	Termination of office .....	8
16	Acting magistrate .....	8
<i>Division 4—Miscellaneous</i>		
17	Jurisdiction not affected by vacancies .....	8

**PART 4—SITTINGS OF THE COURT**

18	Where court may be constituted . . . . .	9
19	Separation of court's proceedings . . . . .	9
20	Who may be present at a proceeding . . . . .	9
21	Court sitting times . . . . .	10

**PART 4A—APPEALS**

21A	Application of pt 4A . . . . .	11
21B	Who may appeal . . . . .	11
21C	How to start an appeal . . . . .	11
21D	Stay of operation of decisions . . . . .	12
21E	Hearing procedures . . . . .	12
21F	Powers of appellate court . . . . .	12

**PART 5—GENERAL**

22	Annual report . . . . .	13
23	Ordinary privileges, protection and immunity allowed . . . . .	13
24	Contempt . . . . .	14
25	Court officials . . . . .	14
26	Court records . . . . .	14
27	Judicial notice . . . . .	15
28	References to Childrens Court . . . . .	15
29	Regulation making power . . . . .	15
30	Transitional provision for Courts Reform Amendment Act 1997 . . . . .	15

**ENDNOTES**

1	Index to endnotes . . . . .	17
2	Date to which amendments incorporated . . . . .	17
3	Key . . . . .	17
4	Table of earlier reprints . . . . .	18
5	List of legislation . . . . .	18
6	List of annotations . . . . .	19

# CHILDRENS COURT ACT 1992

[as amended by all amendments that commenced on or before 5 September 1997]

## An Act to establish the Childrens Court of Queensland and for related purposes

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Childrens Court Act 1992*.

#### Definitions

3. In this Act—

“**appellate court**”, for an order made by the Childrens Court, means—

- (a) if the order was made by the Childrens Court constituted by a Childrens Court judge—the Court of Appeal; or
- (b) if the order was made by the Childrens Court constituted by a Childrens Court magistrate, a stipendiary magistrate or justices—the Childrens Court constituted by a Childrens Court judge.

“**Childrens Court judge**” means a District Court judge appointed to the Childrens Court.

“**Childrens Court magistrate**” means a magistrate appointed to the Childrens Court.

“**court**” means the Childrens Court.

“**judge**” means a Childrens Court judge.

“**president**” means the president of the Childrens Court.

“**procedure**” includes practice.

“**rules**” means the Childrens Court Rules.

## **PART 2—THE CHILDRENS COURT OF QUEENSLAND**

### **Childrens Court established etc.**

**4.(1)** The Childrens Court of Queensland is established.

**(2)** The court is a court of record.

**(3)** The court is to have a seal, which must be judicially noticed.

### **Members and constitution of the Childrens Court**

**5.(1)** The members of the Childrens Court are the judicial officers mentioned in subsections (2) and (3).

**(2)** The Childrens Court must be constituted by a Childrens Court judge if that is expressly required by an Act.

**(3)** If the Childrens Court is not required to be constituted by a Childrens Court judge, it may be constituted by—

(a) a Childrens Court magistrate; or

(b) if a Childrens Court magistrate is not available—any stipendiary magistrate; or

(c) if neither a Childrens Court magistrate nor other stipendiary magistrate is available—2 justices of the peace.

**(4)** Subsection (3)(c) does not affect the limitations placed on justices of the peace under the *Justices of the Peace and Commissioners for Declarations Act 1991* or another Act.

**Jurisdiction**

6. The Childrens Court has the jurisdiction conferred on it by any Act.

**Rules of court**

7.(1) The procedure of the Childrens Court is governed by the Childrens Court Rules.

(2) The Governor in Council may, with the president's agreement, make rules of court (the "**Childrens Court Rules**") under this Act.

(3) A rule may make provision about any matter—

- (a) that is required or permitted to be prescribed under a law giving jurisdiction to the Childrens Court; or
- (b) that is necessary or convenient to be prescribed for carrying out or giving effect to a law giving jurisdiction to the Childrens Court.

(4) In particular, a rule may make provision about the procedure of the Childrens Court, including the matters that may be dealt with in chambers or by a court official.

**Directions**

8.(1) To the extent that any matter relating to Childrens Court procedure is not provided for by the rules, the matter may be dealt with by directions under this section.

(2) The president may issue directions of general application with respect to the procedure of the court.

(3) A Childrens Court judge may issue directions in relation to a particular case before the court when constituted by the judge.

(4) A Childrens Court magistrate, stipendiary magistrate or justices may issue directions in relation to a particular case before the court when constituted by the Childrens Court magistrate, stipendiary magistrate or justices, as the case may be.

## **PART 3—APPOINTMENT OF JUDICIAL OFFICERS**

### *Division 1—The president*

#### **Childrens Court president**

**9.(1)** There is to be a president of the court.

**(2)** The Governor in Council may appoint a Childrens Court judge to be the president of the court.

**(3)** The president may resign office by written resignation given to the Governor.

**(4)** The resignation does not affect the appointment or powers of the president as a Childrens Court judge.

**(5)** If—

- (a) the office of president is vacant; or
- (b) the president is on leave or otherwise absent or is, for another reason, unable to perform all the ordinary functions of the president's office;

the Governor in Council may, on the recommendation of the Attorney-General, appoint a Childrens Court judge to be the acting president.

#### **Functions of president**

**10.** The president's functions are—

- (a) to ensure the orderly and expeditious exercise of the jurisdiction of the court when constituted by a Childrens Court judge; and
- (b) to discharge other functions conferred on the president by this Act or any other Act.

***Division 2—Childrens Court judges*****Childrens Court judge**

**11.(1)** The Governor in Council may, on the recommendation of the Attorney-General, appoint 1 or more District Court judges as Childrens Court judges.

**(2)** In choosing a District Court judge to be recommended as a Childrens Court judge, the Attorney-General must have regard to the appointee's particular interest and expertise in jurisdiction over matters relating to children.

**(3)** The appointment of a person as a Childrens Court judge does not affect the person's appointment as a District Court judge or the person's powers as a District Court judge.

**Acting judge**

**12.** The Governor in Council may, on the recommendation of the Attorney-General, appoint a District Court judge to act as a Childrens Court judge if, in the Governor in Council's opinion, the conduct of the business of the court requires it.

**Termination of office**

**13.(1)** A Childrens Court judge ceases to hold the office if the judge ceases to hold office as a District Court judge.

**(2)** A Childrens Court judge may resign office by written resignation given to the Governor.

**(3)** The resignation does not affect the appointment or powers of the judge as a District Court judge.

***Division 3—Childrens Court magistrates*****Childrens Court magistrates**

**14.(1)** The Governor in Council may, on the recommendation of the Attorney-General, appoint 1 or more stipendiary magistrates as Childrens Court magistrates.

**(2)** The appointment of a person as a Childrens Court magistrate does not affect the person's appointment as a stipendiary magistrate or powers as a stipendiary magistrate.

**(3)** For the purpose of the *Stipendiary Magistrates Act 1991*, the duties of a stipendiary magistrate include those performed as a Childrens Court magistrate if the stipendiary magistrate is a Childrens Court magistrate.

**Termination of office**

**15.(1)** A Childrens Court magistrate ceases to hold the office if the person ceases to hold office as a stipendiary magistrate.

**(2)** A Childrens Court magistrate may resign office by written resignation given to the Attorney-General.

**(3)** The resignation does not affect the appointment or powers of the magistrate as a stipendiary magistrate.

**Acting magistrate**

**16.** The Governor in Council may, on the recommendation of the Attorney-General, appoint a stipendiary magistrate to act in the office of a Childrens Court magistrate if, in the Governor in Council's opinion, the business of the Court requires it.

***Division 4—Miscellaneous*****Jurisdiction not affected by vacancies**

**17.** The jurisdiction of the court is not affected by a vacancy in any office in the court.

## **PART 4—SITTINGS OF THE COURT**

### **Where court may be constituted**

**18.(1)** The court may be constituted—

- (a) if it is constituted by a judge—at a place where a Magistrates Court or a District Court may be held; or
- (b) if it is constituted by a Childrens Court magistrate, stipendiary magistrate or justices—at a place where a Magistrates Court may be held.

**(2)** Subject to subsection (1), the court as constituted by any of its members—

- (a) may exercise jurisdiction throughout Queensland; and
- (b) may sit in more than 1 place at the same time.

### **Separation of court's proceedings**

**19.** The hearing of a matter before the court must be held at a time when the business of another court is not being conducted in the same room.

### **Who may be present at a proceeding**

**20.(1)** In a proceeding before the court in relation to a child, the court must exclude from the room in which the court is sitting a person who is not—

- (a) the child; or
- (b) a parent or other adult member of the child's family; or
- (c) a witness giving evidence; or
- (d) if a witness is a complainant within the meaning of the *Criminal Law (Sexual Offences) Act 1978*—a person whose presence will provide emotional support to the witness; or
- (e) a party or person representing a party to the proceeding, including for example a police officer or other person in charge of a case against a child in relation to an offence; or

*Childrens Court Act 1992*

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- (f) a representative of the chief executive of the department; or
- (g) if the child is an Aboriginal or Torres Strait Islander person—a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
- (h) a person mentioned in subsection (2) whom the court permits to be present.

(2) The court may permit to be present—

- (a) a person who is engaged in—
  - (i) a course of professional study relevant to the operation of the court; or
  - (ii) research approved by the chief executive of the department; or
- (b) a person who, in the court’s opinion, will assist the court;
- (c) in a proceeding, other than a proceeding under the *Children’s Services Act 1965*, part 6 or 7—a representative of mass media.

(3) Subsection (1) applies subject to any order made by the court under the *Evidence Act 1977*, section 21A—

- (a) excluding any person (including a defendant) from the place in which the court is sitting; or
- (b) permitting any person to be present while a special witness within the meaning of that section is giving evidence.

(4) Subsection (1) applies even though the court’s jurisdiction is being exercised conjointly with other jurisdiction.

(5) Subsection (1) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.

(6) Subsection (1) does not prevent an infant or young child in the care of an adult being present in court with the adult.

### **Court sitting times**

**21.** Subject to the rules and the president’s directions, proceedings before the court—

- (a) when constituted by a judge—may be held at any time; or
- (b) when constituted by a Childrens Court magistrate, magistrate or justices—must be held at special times fixed in advance by the proper officer of the court.

## **PART 4A—APPEALS**

### **Application of pt 4A**

**21A.** This part applies to appeals from orders of the Childrens Court made under the *Children’s Services Act 1965*, parts 6 and 7.<sup>1</sup>

### **Who may appeal**

**21B.** The following persons may appeal to the appellate court against an order for a child—

- (a) if the child is 12 or over—the child;
- (b) if the child is under 12—a separate legal representative for the child;
- (c) another party to the proceeding.

### **How to start an appeal**

**21C.(1)** An appeal is started by filing a written notice of appeal with the registrar of the appellate court.

**(2)** The registrar must give the decision-maker a copy of the notice.

**(3)** The appellant must serve a copy of the notice on each other party to the proceeding.

**(4)** The notice of appeal must be filed within 28 days after the decision is made.

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<sup>1</sup> Part 6 (Children in need of care and protection); part 7 (Children in need of care and control)

(5) The court may at any time extend the period for filing the notice of appeal.

(6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **Stay of operation of decisions**

**21D.(1)** The appellate court may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on the reasonable conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) However, the period of a stay must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

### **Hearing procedures**

**21E.(1)** An appeal must be decided on the evidence and proceedings before the Childrens Court.

(2) However, if the appellate court is the Childrens Court constituted by a judge, it may order that the appeal be heard afresh, in whole or part.

### **Powers of appellate court**

**21F.** In deciding an appeal, the appellate court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision and substitute another decision.

## **PART 5—GENERAL**

### **Annual report**

**22.(1)** As soon as practicable after the end of each financial year, but no later than 3 months after the end of the financial year, the president must give to the Attorney-General a report of the administration and operation of the Childrens Court during the year.

**(2)** The Attorney-General must cause a copy of the report to be laid before the Legislative Assembly within 14 days of receiving it.

**(3)** If, at the time the Attorney-General would otherwise be required to lay the report before the Legislative Assembly, the Legislative Assembly is not sitting, the Attorney-General must give a copy of the report to the Clerk of the Parliament.

**(4)** The clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

**(5)** For the purposes of its printing and publication, the report is taken to be laid before the Legislative Assembly, and to have been ordered printed by the Legislative Assembly, when it is given to the clerk.

**(6)** The first report must cover the period from the commencement of section 4 until the end of the first full financial year of the court's operation.

### **Ordinary privileges, protection and immunity allowed**

**23.(1)** In this section—

**“court of concurrent jurisdiction”** means—

- (a) in relation to the Childrens Court when constituted by a judge—a District Court; or
- (b) in relation to the Childrens Court when constituted by a Childrens Court magistrate, stipendiary magistrate or justices—a Magistrates Court.

**“proceeding”** means a proceeding in the Childrens Court.

**(2)** A person who is—

- (a) a judicial officer presiding over a proceeding; or

(b) a legal practitioner appearing in a proceeding; or

(c) a witness attending in a proceeding;

has the same privileges, protection or immunity as the person would have if the proceeding were in the court of concurrent jurisdiction.

### **Contempt**

**24.(1)** A judge has the same power to punish a person for contempt of the court as the judge has to punish a person for contempt of a District Court.

**(2)** The *District Courts Act 1967*, section 105 applies in relation to the Childrens Court when constituted by a judge in the same way as it applies in relation to a District Court.

**(3)** In the performance of duties in relation to the Childrens Court, a Childrens Court magistrate, stipendiary magistrate or justices have the same power to punish for contempt as a stipendiary magistrate has or justices have, as the case may be, to punish for contempt of a Magistrates Court.

**(4)** The *Justices Act 1886*, section 40 applies in relation to the court when constituted by a Childrens Court magistrate, stipendiary magistrate or justices in the same way as it applies in relation to a Magistrates Court.

### **Court officials**

**25.(1)** Every person holding office as the clerk, registrar or other court official of a Magistrates Court held at a place is taken to hold the same office in relation to the Childrens Court constituted by a Childrens Court magistrate, stipendiary magistrate or justices held at the place.

**(2)** Every person holding office as a registrar, deputy registrar, sheriff or other court official of a District Court held at a place is taken to hold the same office in relation to the Childrens Court constituted by a judge held at the place.

### **Court records**

**26.** The records of the court held at a place must be kept in the custody of the registrar or clerk of the court at the place.

**Judicial notice**

**27.** All courts and persons acting judicially must take judicial notice of the appointment and signature of every person holding office under this Act.

**References to Childrens Court**

**28.(1)** A reference in another Act to the Childrens Court or a Childrens Court (whether the expression ‘the Childrens Court’, ‘a Children’s Court’ or ‘a Childrens Court’ or another expression is used) is, in relation to anything done, or proposed to be done, after the commencement of section 4, taken to be a reference to the Childrens Court established under this Act.

**(2)** Subsection (1) applies to a reference in an Act passed before the commencement of section 4 despite the reference being expressly to the Childrens Court or a Childrens Court constituted under an Act other than this Act.

**Regulation making power**

**29.** The Governor in Council may make regulations under this Act.

**Transitional provision for Courts Reform Amendment Act 1997**

**30.(1)** This section applies if, before the commencement of the *Courts Reform Amendment Act 1997*, section 92—

- (a) a person aggrieved by an order of the Childrens Court under the *Children’s Services Act 1965*, part 6 or 7,<sup>3</sup> started an appeal under the *Children’s Services Act 1965*, section 52A or 68A,<sup>4</sup> as in force immediately before the commencement; and
- (b) the appeal has not been finally decided.

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<sup>2</sup> Section 9 (Amendment of s 52A (Appeals))

<sup>3</sup> Part 6 (Children in need of care and protection)  
Part 7 (Children in need of care and control)

<sup>4</sup> Section 52A (Appeals) or 68A (Appeals)

*Childrens Court Act 1992*

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(2) The appeal may be dealt with as if the *Courts Reform Amendment Act 1997*, sections 6 and 62<sup>5</sup> had not been enacted.

(3) This section expires 2 years after it commences.

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<sup>5</sup> Sections 6 (Insertion of new pt 4A) and 62 (Amendment of s 222 (Appeal to a single judge))

## ENDNOTES

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	17
3 Key . . . . .	17
4 Table of earlier reprints . . . . .	18
5 List of legislation . . . . .	18
6 List of annotations . . . . .	19

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 September 1997. Future amendments of the Childrens Court Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only]

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1992	24 August 1993
2	to Act No. 57 of 1995	8 December 1995
2A	to Act No. 22 of 1996	18 September 1996

## 5 List of legislation

### **Childrens Court Act 1992 No. 41**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 312)

as amended by—

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

commenced on date of assent

### **Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch**

date of assent 22 November 1995

commenced on date of assent

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

### **Juvenile Justice Legislation Amendment Act 1996 No. 22 pts 1, 5**

date of assent 15 August 1996

commenced on date of assent

### **Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(5) pt 5**

date of assent 15 May 1997

ss 1, 2(5) commenced on date of assent

remaining provisions commenced 20 June 1997 (1997 SL No. 155)

### **Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 2**

date of assent 18 July 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 1997 (1997 SL No. 235)

## **6 List of annotations**

### **Commencement**

s 2 om R2 (see RA s 37)

### **Definitions**

s 3 def “**appellate court**” ins 1997 No. 38 s 5

### **Rules of court**

s 7 amd 1995 No. 57 s 4 sch 1

### **Separation of court’s proceedings**

s 19 amd 1993 No. 76 s 3 sch 1

### **Who may be present at a proceeding**

s 20 amd 1996 No. 22 s 107; 1997 No. 9 s 18

### **Court sitting times**

s 21 sub 1993 No. 76 s 3 sch 1

### **PART 4A—APPEALS**

pt hdg ins 1997 No. 38 s 6

### **Application of pt 4A**

s 21A ins 1997 No. 38 s 6

### **Who may appeal**

s 21B ins 1997 No. 38 s 6

### **How to start an appeal**

s 21C ins 1997 No. 38 s 6

### **Stay of operation of decisions**

s 21D ins 1997 No. 38 s 6

### **Hearing procedures**

s 21E ins 1997 No. 38 s 6

### **Powers of appellate court**

s 21F ins 1997 No. 38 s 6

### **References to Childrens Court**

s 28 prev s 28 renum as s 29 1992 No. 68 s 3 sch 1  
pres s 28 ins 1992 No. 68 s 3 sch 1

### **Regulation making power**

s 29 (prev s 28) renum 1992 No. 68 s 3 sch 1  
sub 1995 No. 57 s 4 sch 1

### **Transitional provision for Courts Reform Amendment Act 1997**

s 30 prev s 30 ins 1995 No. 50 s 3 sch  
exp 22 November 1996 (see s 30(3))  
pres s 30 ins 1997 No. 38 s 7  
exp 1 August 1999 (see s 30(3))

**SCHEDULE—TRANSITIONAL PROVISIONS**

om 1995 No. 57 s 4 sch 1

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