

Childrens Court Rules 2016

Explanatory notes for SL 2016 No. 92

Made under the

Childrens Court Act 1992

General Outline

Short Title

Childrens Court Rules 2016

Authorising law

Section 7(1) of the *Childrens Court Act 1992* provides that the procedure of the Childrens Court is governed by the Childrens Court Rules. Section 7(2) of the *Childrens Court Act 1992* provides that the Childrens Court Rules may be made by the Governor in Council only with the agreement of the President of the Childrens Court.

Under section 7(3) of the *Childrens Court Act 1992*, a rule may make a provision about any matter:

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

Child protection jurisdiction

The *Child Protection Act 1999* (CP Act) confers jurisdiction on the Childrens Court. For example, the Childrens Court can hear and decide applications for court assessment orders (section 39) and child protection orders (section 54). It can also hear applications to transfer a child protection order (section 214) or a child protection proceeding (section 228) to a 'participating state'.

The CP Act also contains references to matters which are to be prescribed under the rules of court. For example, section 69(2) of the CP Act provides that a chairperson of a court ordered conference must have the qualifications and experience prescribed under the rules of court made under the CP Act.

The *Childrens Court Rules 2016* (Rules) apply to all applications relating to court assessment orders and child protection orders made to the Childrens Court under the CP Act.

Adoption jurisdiction

The *Adoption Act 2009* (Adoption Act) confers jurisdiction on the Childrens Court. For example, under s 174 of the Adoption Act, the Childrens Court can hear and decide applications for an adoption order for the adoption of a child.

The Rules apply to all applications to the Childrens Court under the Adoption Act.

Appellate jurisdiction (adoption and child protection)

The Childrens Court constituted by a Childrens Court judge or a District Court judge has jurisdiction to hear and decide appeals from the Childrens Court exercising its original jurisdiction when constituted by a Childrens Court magistrate, a magistrate or justices of the peace. The Rules apply to the Childrens Court hearing and deciding an appeal.

The Court of Appeal has jurisdiction to hear and decide appeals from the decision of the Childrens Court exercising its original jurisdiction when constituted by a Childrens Court judge or a District Court judge. The Rules do not apply to the Court of Appeal.

Criminal jurisdiction

The Childrens Court is given jurisdiction for some criminal matters under the *Youth Justice Act 1992* where a child is alleged to have committed an offence. The Rules do not make provisions about the exercise of the Childrens Court exercising criminal jurisdiction, except where an application is to be made in a criminal proceeding under the *Trans-Tasman Proceedings Act 2010* (Commonwealth).

Policy objectives and the reasons for them

Queensland Child Protection Commission of Inquiry

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (QCPCI) released its report – *Taking Responsibility: A Road Map for Queensland Child Protection*. The QCPCI confirmed the child protection system is under immense stress and made 121 recommendations aimed at addressing the risk of systemic failure, and building a sustainable and effective child protection system over the next decade.

The QCPCI recommended the establishment of a framework to allow for the Childrens Court to implement a case management approach to child protection proceedings (the court case management framework). A court case management committee (CCMC) was established to develop this framework. The objective of the framework is to provide a structure for the Childrens Court to actively manage proceedings, minimise delay, and improve the quality of evidence and decision-making in child protection matters.

Re-making the Childrens Court Rules

The Childrens Court Rules have not been significantly reviewed since they were made in 1997. The implementation of the court case management framework recommended by the CCMC, as well as the enactment of the *Director of Child Protection Litigation Act 2016* and legislative amendments to the CP Act contained in the *Child Protection Reform*

Amendment Act 2016, provided an opportunity to review the Childrens Court Rules in their entirety.

Achievement of policy objectives

The Rules provide for the procedures of the Childrens Court. The Rules are written and set out in a manner that, as far as practicable, is easy to understand for users of the Childrens Court, particularly for non-represented parties. The ability for parties, particularly unrepresented parties, to understand court processes ensures efficiency throughout proceedings.

The policy objectives of the Rules are achieved by providing clear rules about:

- how proceedings are started;
- documents in proceedings, including how they may be filed or made by the Childrens Court electronically;
- participants' obligations to file notices of address for service in proceedings;
- service of documents in a proceeding, with particular rules for service on guardians for parties with impaired capacity;
- how people participate in child protection proceedings, and the directions that the Childrens Court may make to facilitate participation;
- the disclosure of documents to parties pursuant to the Director of Child Protection Litigation's disclosure obligations in proceedings under the CP Act;
- how the court is to case manage child protection order proceedings under the CP Act;
- evidence in proceedings, including affidavits, subpoenas and evidence given by children in proceedings,
- how the court deals with concurrent review proceedings for certain reviewable decisions which are happening in the Queensland Civil and Administrative Tribunal at the same time that the Childrens Court is hearing and deciding a proceeding for a child protection order;
- court-ordered conferences in child protection order proceedings;
- proceedings under the trans-Tasman proceedings; and
- appeals.

Consistency with policy objectives of authorising law

The Rules are consistent with the policy objectives of the *Childrens Court Act 1992*, the CP Act and the *Adoption Act 2009*.

Inconsistency with policy objectives of other legislation

The Rules are not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Rules will ensure that procedures are in place to provide guidance for how proceedings are dealt with in the Childrens Court.

There are no significant costs for Government in the implementation of the Rules. Any costs to Government can be funded from within existing resources.

Consistency with fundamental legislative principles

Rule 7 of the Rules provides that if a direction or order of the Childrens Court is inconsistent with another provision of these Rules, the Childrens Court's order or direction prevails to the extent of the inconsistency.

By authorising a court order or direction to override statutory rules, rule 7 potentially breaches the fundamental legislative principle that subordinate legislation should contain only matters appropriate to that level of legislation (*Legislative Standards Act 1992*, section 4(5)(c)).

Rule 3(2) of the Rules provides the Rules apply to proceedings as far as the court directs for a proceedings seeking an order to transfer a child protection order or a child protection order proceeding to a participating State. Again, this potentially breaches the fundamental legislative principle that subordinate legislation should contain only matters appropriate to that level of legislation (*Legislative Standards Act 1992*, section 4(5)(c)).

However, the potential breach for both Rules is justifiable. The Childrens Court requires flexible procedures to make decisions about complex and sensitive subject matter relating to children and families. The Rules apply to proceedings under the CP Act and the Adoption Act. Both of these Acts provide that, in a proceeding, the Childrens Court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate (CP Act, section 105 and Adoption Act, section 230). This means that the Childrens Court is assisted by having a flexible procedure for how it deals with evidentiary matters.

Rules 7 and 3(b) allow the Childrens Court to have a flexible procedure for procedural matters as well, by providing that the Childrens Court:

- (a) is not bound to rigidly apply rules of court if to do so would be contrary to the objects of the CP Act; and
- (b) has sufficient flexibility to efficiently and fairly administer justice in accordance with the objects of the CP Act and Rules.

The flexibility provided in Rule 7 is consistent with provisions in other court rules, including, the *Uniform Civil Procedure Rules 1999*, rule 367 and the *Domestic and Family Violence Protection Rules 2014*, rule 24.

Consultation

The President of the Childrens Court has been consulted about the Rules. The Rules are made with the President's agreement pursuant to section 7(2) of the *Childrens Court Act 1992*.

The CCMC has been consulted about the Rules. The CCMC, which is chaired by the President of the Childrens Court includes the following members:

- His Honour Judge Orazio Rinaudo, Chief Magistrate
- Leanne O'Shea, Deputy Chief Magistrate
- Representatives from the Department of Communities, Child Safety and Disability Services;
- Representatives from the Department of Justice and Attorney-General;
- Representatives from the Office of the Public Guardian;

- Representatives from Crown Law;
- Representatives from the Queensland Law Society;
- Representatives from Legal Aid Queensland.

The following stakeholders were consulted during the development of the Rules:

- Queensland Law Society;
- Women's Legal Service;
- South West Brisbane Community Legal Centre;
- Bar Association of Queensland;
- Legal Aid Queensland;
- Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd;
- Queensland Indigenous Family Violence Legal Service;
- Queensland Association of Independent Legal Services Inc;
- Youth Advocacy Centre;
- CREATE Foundation;
- Queensland Family and Child Commission; and
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak.

Stakeholders' comments were considered and, where appropriate, amendments were made to the Rules during the drafting process.

The Office of Best Practice Regulation was consulted about the Rules and confirmed that they are excluded from the Regulatory Impact Statement system.