

Queensland



# **CHILDRENS COURT ACT 1992**

**Act No. 41 of 1992**

# Queensland



## CHILDRENS COURT ACT 1992

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Queensland



## **Childrens Court Act 1992**

**Act No. 41 of 1992**

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

*[Assented to 19 August 1992]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

## PART 1—PRELIMINARY

### Short title

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

### Commencement

2. This Act commences on a day to be fixed by proclamation.

### Definitions

3. In this Act—

“**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, on the recommendation of the President, make Childrens Court Rules with respect to any matter that—

- (a) is required or permitted to be prescribed by the Rules; or
- (b) is necessary or convenient to be prescribed for the purposes of the Court.

(3) Without limiting subsection (2), the Rules may make provision with respect to the procedure of the Court, including providing the matters that may be dealt with in chambers or by a court official.

(4) The Rules are subordinate legislation.

### **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 on a day or 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
- (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.

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

- (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.

### **Fixing of sittings times**

21. Proceedings before the Court must be conducted at special times fixed beforehand by the proper officer of the Court.

## **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) Section 105 of the *District Courts Act 1967* 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) Section 40 of the *Justices Act 1886* 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.

### **Regulations**

**28.** The Governor in Council may make regulations for the purpose of this Act.

## SCHEDULE

### TRANSITIONAL PROVISIONS

1. A proceedings started before a Children's Court under the *Children's Services Act 1965*, and not finished on the commencement of section 4 of this Act, may be continued and finished by the Childrens Court established under this Act as if the proceedings had been started before the Court.

2.(1) An order made by a Children's Court established under the *Children's Services Act 1965*, and still in force on the commencement of section 4 of this Act, continues in force.

(2) The order is taken to be an order made by the Childrens Court established under this Act and may be discharged or amended by the Court.

3.(1) The Children's Court Rules 1966 ("**former Rules**") made under the *Children's Services Act 1965* continue in force.

(2) The former Rules—

- (a) have effect as if they were Rules under this Act; and
- (b) may be amended or repealed under this Act.

(3) If the former Rules, or those Rules as amended, are not repealed by the end of 2 years from the commencement of section 4 of this Act, they then expire.