

Queensland



Subordinate Legislation 2000 No. 47

Childrens Court Act 1992

**CHILDRENS COURT AMENDMENT RULE
(No. 1) 2000**

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Short title

1. This rule may be cited as the *Childrens Court Amendment Rule (No. 1) 2000*.

Rules amended

2. This rule amends the *Childrens Court Rules 1997*.

Amendment of r 1 (Short title)

3. Rule 1, ‘This rule’—

omit, insert—

‘These rules’.

Amendment of r 2 (Commencement)

4. Rule 2, ‘This rule commences’—

omit, insert—

‘These rules commence’.

Amendment of r 3 (Definitions)

5.(1) Rule 3, ‘this rule’—

omit, insert—

‘these rules’.

(2) Rule 3, definitions “**authorised officer**”, “**child**”, “**director**” and “**parent**”—

omit.

(3) Rule 3, definition “**authorising law**”, ‘*Children’s Services Act 1965*’—

omit, insert—

‘*Child Protection Act 1999*’.

(4) Rule 3, definition “**protection application**”, ‘part 6 or 7.’—
omit, insert—
‘chapter 2, part 3 or 4.’¹

Amendment of r 4 (Application)

6. Rule 4, ‘This rule applies’—
omit, insert—
‘These rules apply’.

Amendment of r 5 (Starting proceedings)

7. Rule 5(2)—
omit.

Omission of rr 7–8

8. Rules 7 and 8—
omit.

Renumbering of pt 6 (General)

9. Part 6—
renumber as part 7.

Replacement of pts 3–5

10. Parts 3 to 5—
omit, insert—

¹ Chapter 2 (Protection of children), part 3 (Court assessment orders) or 4 (Child protection orders)

‘PART 3—AFFIDAVITS

‘Contents of affidavit

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

‘(2) However, an affidavit may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

‘Form of affidavit

‘8.(1) An affidavit must be in the approved form.

‘(2) A note must be written on an affidavit stating the name of the person making it and the name of the party on whose behalf it is filed.

‘(3) An affidavit must be made in the first person.

‘(4) An affidavit must describe the person making it and state the person’s residential or business address or place of employment.

‘(5) The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

‘(6) Each page of an affidavit must be numbered.

‘Swearing or affirming affidavit

‘9.(1) The person making an affidavit and the person taking the affidavit must sign each page of the affidavit.

‘(2) Subrule (3) applies if—

- (a) the affidavit is made by 1 person; or
- (b) although the affidavit is made by 2 or more persons, both or all of the persons are not swearing or affirming the affidavit at the same time before the same person.

‘(3) A statement (the “**jurat**”) must be placed at the end of the body of the affidavit and must—

- (a) state the full name of the person making the affidavit before the person taking it; and
- (b) state whether the affidavit was sworn or affirmed; and
- (c) state the day and the place the person made the affidavit; and
- (d) be signed by the person making it in the presence of the person authorised to take the affidavit; and
- (e) then be signed by the person before whom the affidavit was taken, above a statement of the capacity of the person to take the affidavit;² and

Example of the capacity mentioned in paragraph (e)—

Solicitor.

- (f) otherwise be as in the approved form.

‘**(4)** If the affidavit is made by 2 or more persons, 2 or more of whom are swearing or affirming the affidavit at the same time before the same person, then, in addition to any statement under subrule (3), a statement (the “**jurat**”) must be placed at the end of the body of the affidavit and must—

- (a) state the full name of the persons making the affidavit before the person taking it; and
- (b) state, for each of the persons making the affidavit, whether the affidavit was sworn or affirmed; and
- (c) state the day and the place both or all the persons made the affidavit; and

² See the *Oaths Act 1867*, section 41 which provides—

‘Who may take affidavits

‘41.(1) A person’s affidavit may be taken by any of the following persons without a commission being issued for the purpose—

- (a) a justice, commissioner for declarations or notary public under the law of the State, the Commonwealth or another State;
- (b) a lawyer;
- (c) a conveyancer, or another person authorised to administer an oath, under the law of the State, the Commonwealth or another State.’.

- (d) be signed by the persons making it in the presence of the person authorised to take the affidavit; and
- (e) then be signed by the person before whom the affidavit was taken, above a statement of the capacity of the person to take the affidavit; and
- (f) otherwise be as in the approved form.

‘Certificate of reading or signature for person making affidavit

‘10.(1) If the person taking an affidavit considers that the person making it is incapable of reading the affidavit, the person taking the affidavit must certify in or below the jurat³ that—

- (a) the affidavit was read or otherwise communicated in the person’s presence to the person making it; and
- (b) the person seemed to understand the affidavit; and
- (c) the person signified that the person made the affidavit.

‘(2) If the person taking an affidavit considers that the person making it is physically incapable of signing it, the person taking the affidavit must certify in or below the jurat that—

- (a) the affidavit was read or otherwise communicated in the person’s presence to the person making it; and
- (b) the person seemed to understand the affidavit; and
- (c) the person signified that the person made the affidavit.

‘(3) If an affidavit is made by a person who is incapable of reading the affidavit or physically incapable of signing the affidavit and a certificate under subrule (1) or (2) does not appear on the affidavit, the affidavit may be used in a proceeding only if the court is satisfied that—

- (a) the affidavit was read or otherwise communicated to the person making it; and
- (b) the person seemed to understand it; and
- (c) the person signified that the person made the affidavit.

³ See rule 9 (Swearing or affirming affidavit).

‘Alterations

‘11.(1) This rule applies if there is an alteration in any part of an affidavit.

‘(2) The affidavit may be filed but, unless the court orders otherwise, may only be used if the person who makes the affidavit and the person who takes the affidavit initials the alteration.

‘(3) In this rule—

“alteration” includes an interlineation, erasure or other alteration of the affidavit.

‘Exhibits

‘12.(1) An original document used with and mentioned in an affidavit is an exhibit.

‘(2) An original thing used with and mentioned in an affidavit may be an exhibit, if practicable.

‘(3) A group of different documents may form 1 exhibit.

‘(4) If it is impracticable to exhibit the original of a document used with and mentioned in an affidavit, a copy of the document may be an exhibit to the affidavit.

‘(5) An exhibit to an affidavit must—

- (a) have a letter, number or other identifying mark on it; and
- (b) be bound with the affidavit, if practicable.

‘(6) An exhibit must have a certificate in the approved form on it or attached to it.

‘(7) The certificate must be signed by the person who made the affidavit and the person who took the affidavit.

‘(8) However, if an affidavit is taken under rule 10,⁴ only the person who took the affidavit must sign the certificate.

⁴ Rule 10 (Certificate of reading or signature for person making affidavit)

‘Irregularity

‘**13.(1)** An affidavit may, unless the court orders otherwise, be filed despite an irregularity in form, including a failure to use the approved form.

‘**(2)** An affidavit may, with the leave of the court, be used despite an irregularity in form and the affidavit must have on it a memorandum by the court or the registrar of the court that it was used by leave.

‘**(3)** An affidavit used under subrule (2) is afterwards taken as a regular affidavit.

‘Filing

‘**14.** Unless the court gives leave, an affidavit may be used in a proceeding only if it has been filed.

‘Service

‘**15.(1)** As soon as practicable after an affidavit has been filed, the party on whose behalf the affidavit is filed must serve a copy of the affidavit on any other party to the proceeding.

‘**(2)** The court may, at any time, give leave to a party to use an affidavit that has not been served or that was served later than the time specified in subrule (1).

‘Examination of person making affidavit

‘**16.(1)** If an affidavit is to be relied on at a hearing, the court may order the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose.

‘**(2)** If an affidavit to be relied on at a hearing is served on a party more than 1 business day before the hearing and the party wishes the person who made the affidavit to attend the court for cross-examination, the party must serve a notice to that effect on the party on whose behalf the affidavit is filed at least 1 business day before the date the person is required for examination.

‘(3) If an affidavit to be relied on at a hearing is served on a party less than 2 business days before the hearing, the person who made the affidavit must attend the court to be available for cross-examination unless the party otherwise agrees.

‘(4) If the person who made the affidavit does not attend the court in compliance with the notice or subrule (3), the court may refuse to receive the affidavit into evidence.

‘(5) However, the court may—

- (a) dispense with the attendance for cross-examination of a person making an affidavit; and
- (b) direct that an affidavit be used without the person making the affidavit being cross-examined in relation to the affidavit.

‘(6) Unless the court orders otherwise, a party who serves a notice under subrule (2) for the person who made an affidavit to attend the court is not liable to pay the expenses of the attendance.

‘Scandal and oppression

‘17. If there is scandalous or oppressive matter in an affidavit, the court may order that—

- (a) the affidavit be removed from the file; or
- (b) the affidavit be removed from the file and destroyed; or
- (c) the scandalous or oppressive matter in the affidavit be struck out.

‘Affidavit taken before party

‘18. The court may not receive, and a party may not file, an affidavit taken by a party personally.

‘PART 4—COURT ORDERED CONFERENCES

‘Qualifications or experience of chairperson

‘19. For the *Child Protection Act 1999* section 66(2),⁵ the chairperson must have the following qualifications—

- (a) an ability to facilitate voluntary dispute resolution processes;
- (b) a knowledge and understanding of the issues and processes for the protection of children under the *Child Protection Act 1999*;
- (c) an ability to communicate effectively with a broad range of people.

‘PART 5—ORDERS FOR SEPARATE LEGAL REPRESENTATION OF A CHILD**‘Order to be sent to Legal Aid Queensland**

‘20.(1) This section applies if the court makes an order under the *Child Protection Act 1999*, section 107⁶ that a child be separately represented by a lawyer.

‘(2) The registrar of the court must, as soon as practicable after the order is made, send to Legal Aid Queensland a copy of—

- (a) the order; and
- (b) all material filed in the proceeding.

‘Legal Aid Queensland to advise registrar

‘21. Legal Aid Queensland must, as soon as practicable after receiving a copy of an order under rule 20, advise the registrar of the court in writing of the following—

- (a) if Legal Aid Queensland allocates a lawyer to represent the child—the lawyer’s name and contact details;

⁵ Section 66 (Registrar to appoint chairperson and convene conference)

⁶ *Child Protection Act 1999*, section 107 (Separate legal representation of child)

- (b) if Legal Aid Queensland does not allocate a lawyer to represent the child—the decision not to make an allocation and the reasons for the decision.

‘PART 6—PROOF OF SERVICE

‘Affidavit of service

‘22.(1) Service of a document under these rules or the *Child Protection Act 1999* may be proved by an affidavit of service of the document filed in the court.

‘(2) The affidavit—

- (a) for an affidavit of personal service—must be made by the person who served the document and include the following—
 - (i) the person’s full name;
 - (ii) the time, day and date the document was served;
 - (iii) the place of service;
 - (iv) the name of the person served and how the person was identified; or
- (b) otherwise—
 - (i) must state the relevant dates and the facts showing service; and
 - (ii) may be made on information given to, or the belief of, the person causing the service; and
 - (iii) if made on information given to the person—must state the source of the information.

‘(3) The affidavit of service must—

- (a) have the document filed with it as an exhibit or be written on the document; or
- (b) if the document has been filed—mention the document in a way sufficient to enable the document to be identified.

‘(4) Nothing in this rule prevents the proving of service in another way.’.

Replacement of r 28 (Evidentiary provision)

11. Rule 28—

omit, insert—

‘Power to amend

‘**28.** At any stage of a proceeding, the court may allow or direct a party to amend an application, anything written on an application or a document in a proceeding in a way and on the conditions the court considers appropriate.’.

Amendment of r 29 (Effect of noncompliance with rules)

12. Rule 29, ‘this rule’—

omit, insert—

‘these rules’.

Amendment of r 30 (Approval of forms)

13. Rule 30, ‘this rule’—

omit, insert—

‘these rules’.

Replacement of r 31 (Transitional)

14. Rule 31—

omit, insert—

‘PART 8—TRANSITIONAL PROVISIONS

‘Transitional—Applications pending at 1 October 1997

‘**31.** Unless the court otherwise directs, these rules apply to a protection application started in the court, but not completed, before 1 October 1997.’.

‘Transitional—Childrens Court Amendment Rule (No. 1) 2000

‘**32.(1)** Unless the court otherwise directs, these rules as amended by the *Childrens Court Amendment Rule (No. 1) 2000* apply to the next step in a protection application started in the court, but not completed, before the commencement of the *Childrens Court Amendment Rule (No. 1) 2000*.

‘**(2)** If a difficulty arises in the application of subrule (1) to a particular proceeding, the court may, on application by a party or its own initiative, make an order it considers appropriate to resolve the difficulty.’.

ENDNOTES

1. Made by the Governor in Council on 23 March 2000.
2. Notified in the gazette on 24 March 2000.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.