



Queensland

Childrens Court Amendment Rule (No. 1) 2010

Subordinate Legislation 2010 No. 5

made under the

Childrens Court Act 1992

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1 Short title

This rule may be cited as the *Childrens Court Amendment Rule (No. 1) 2010*.

2 Commencement

This rule commences on 1 February 2010.

3 Rules amended

This rule amends the *Childrens Court Rules 1997*.

4 Amendment of r 3 (Definitions)

(1) Rule 3, definitions *authorising law* and *department*—
omit.

(2) Rule 3—
insert—

‘Adoption Act application means an application to the court under the *Adoption Act 2009*.

jurat see rule 9(3).’.

(3) Rule 3, definition *protection application*, ‘authorising law’—
omit, insert—

‘Child Protection Act 1999’.

5 Replacement of r 4 (Application)

Rule 4—
omit, insert—

‘4 Application of rules

‘(1) These rules apply to protection applications.

‘(2) These rules, other than part 4, also apply to Adoption Act applications.’.

6 Amendment of r 5 (Starting proceedings)

Rule 5, ‘approved form’—

omit, insert—

‘appropriate approved form for the proceeding’.

7 Amendment of r 6 (Filing documents)

Rule 6(1)—

omit, insert—

- ‘(1) A party filing a document in the court must give to the registrar of the court enough copies of the document to enable the party to serve a sealed copy on—
- (a) for a document relating to an Adoption Act application—each person who is required, under the *Adoption Act 2009*, to be served with a copy of the document; or
 - (b) for a document relating to a protection application—each other party to the proceeding.’.

8 Insertion of new rr 6A and 6B

Part 2, after rule 6—

insert—

‘6A Guardian to be served—Adoption Act 2009

- ‘(1) This section applies if—
- (a) a person is required to serve a copy of an application for dispensation on the relevant parent under the *Adoption Act 2009*, section 36(1); and
 - (b) the Guardianship and Administration Tribunal has made an order under section 30(2) of that Act appointing a guardian for the matter of the dispensation.
- ‘(2) The person must also serve a copy of the application on the guardian.

‘6B Guardian to be served—Child Protection Act 1999

- ‘(1) This section applies if—
- (a) a person is required to serve a document under the *Child Protection Act 1999* on another person; and
 - (b) the person—
 - (i) knows that the person to be served is an impaired person; or
 - (ii) reasonably suspects that the person to be served is an impaired person.
- ‘(2) The person must—
- (a) if the person does not know whether a guardian has been appointed for the person to be served under the *Guardianship and Administration Act 2000*—make a reasonable attempt to find out whether a guardian has been appointed for the person to be served under that Act; and
 - (b) if the person is aware because of that attempt, or otherwise, that a guardian has been appointed for the person to be served under that Act—also serve the document on the guardian.
- ‘(3) In this section—
- Child Protection Act matters*** means matters under the *Child Protection Act 1999* that are capable of applying to the impaired person.
- impaired person*** means a person who is not capable of the following in relation to Child Protection Act matters—
- (a) understanding the nature and effect of decisions about the matters;
 - (b) freely and voluntarily making decisions about the matters;
 - (c) communicating decisions about the matters in some way.’.

[s 9]

9 Amendment of r 9 (Swearing or affirming affidavit)

(1) Rule 9(3)(d), footnote—

omit.

(2) Rule 9(3)(d), at the end—

insert—

‘Editor’s note—

Oaths Act 1867, section 41(1)—

41 Who may take affidavits

(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) if the affidavit is taken outside Australia—a person authorised to administer an oath under the law of the place in which the affidavit is taken.’.

10 Amendment of r 10 (Certificate of reading or signature for person making affidavit)

Rule 10(1), footnote—

omit.

11 Amendment of r 15 (Service)

Rule 15(1), from ‘affidavit on’—

omit, insert—

‘affidavit on—

(a) for a document relating to an Adoption Act application—each person who is required, under the

Adoption Act 2009, to be served with a copy of the document; or

- (b) for a document relating to a protection application—each other party to the proceeding.’.

12 Amendment of r 16 (Examination of person making affidavit)

(1) Rule 16(1) to (6)—
renumber as rule 16(2) to (7).

(2) Rule 16—
insert—

‘(1) This rule applies only to an adult.

Notes—

- 1 See the *Adoption Act 2009*, section 238 (Child can not be compelled to give evidence).
- 2 See the *Child Protection Act 1999*, section 112 (Child can not be compelled to give evidence).’.

13 Amendment of r 19 (Qualifications or experience of chairperson)

Rule 19, ‘section 66(2)’ and footnote—

omit, insert—

‘section 69(2)’.

14 Amendment of r 20 (Order to be sent to Legal Aid Queensland)

Rule 20(1), ‘*Child Protection Act 1999*, section 107’—

omit, insert—

‘*Adoption Act 2009*, section 235 or the *Child Protection Act 1999*, section 110’.

[s 15]

15 Amendment of r 22 (Affidavit of service)

Rule 22(1), ‘or the *Child Protection Act 1999*’—

omit, insert—

‘, the *Adoption Act 2009* or the *Child Protection Act 1999*’.

16 Replacement of r 27 (Subpoenas)

Rule 27—

omit, insert—

‘27 Subpoenas

‘(1) This rule applies only to an adult.

Notes—

1 See the *Adoption Act 2009*, section 238 (Child can not be compelled to give evidence).

2 See the *Child Protection Act 1999*, section 112 (Child can not be compelled to give evidence).

‘(2) 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.’.

ENDNOTES

1. Made by the Governor in Council on 28 January 2010.
2. Notified in the gazette on 29 January 2010.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.

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