



Queensland

# Childrens Court Amendment Rule (No. 1) 2013

## Subordinate Legislation 2013 No. 96

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) 2013*.

**2 Rules amended**

This rule amends the *Childrens Court Rules 1997*.

**3 Amendment of r 3 (Definitions)**

Rule 3—

*insert—*

*Trans-Tasman Proceedings Act* means the *Trans-Tasman Proceedings Act 2010* (Cwlth).

**4 Replacement of r 4 (Application of rules)**

Rule 4—

*omit, insert—*

**4 Application of rules**

These rules apply to—

- (a) protection applications; and
- (b) Adoption Act applications; and
- (c) applications made under the Trans-Tasman Proceedings Act in any civil or criminal proceeding before the court.

**5 Amendment of r 6 (Filing documents)**

Rule 6(1)(a) and (b)—

*omit, insert—*

- (a) for a document relating to an application under the Trans-Tasman Proceedings Act if the document also relates to an Adoption Act application—each person required,

[s 6]

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under the *Adoption Act 2009*, to be served with a copy of the Adoption Act application; or

- (b) for another document relating to an Adoption Act application not mentioned in paragraph (a)—each person required, under the *Adoption Act 2009*, to be served with a copy of the document; or
- (c) for a document relating to a protection application—each other party to the proceeding.

**6 Amendment of r 6A (Guardian to be served—Adoption Act 2009)**

Rule 6A(1), ‘section applies’—

*omit, insert—*

rule applies

**7 Amendment of r 6B (Guardian to be served—Child Protection Act 1999)**

(1) Rule 6B(1), ‘section’—

*omit, insert—*

rule

(2) Rule 6B(3), ‘section’—

*omit, insert—*

rule

**8 Amendment of r 15 (Service)**

Rule 15(1)(a) and (b)—

*omit, insert—*

- (a) for an affidavit relating to an application under the Trans-Tasman Proceedings Act if

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the affidavit also relates to an Adoption Act application—each person required, under the *Adoption Act 2009*, to be served with a copy of the Adoption Act application; or

- (b) for another affidavit relating to an Adoption Act application not mentioned in paragraph (a)—each person required, under the *Adoption Act 2009*, to be served with a copy of the affidavit; or
- (c) for an affidavit relating to a protection application—each other party to the proceeding.

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

Rule 20(1), ‘section applies’—

*omit, insert*—

rule applies

**10 Amendment of r 22 (Affidavit of service)**

Rule 22(1), from ‘under’ to ‘1999’—

*omit.*

**11 Amendment of pt 7, hdg (General)**

Part 7, heading, ‘General’—

*omit, insert*—

**Subpoenas**

**12 Insertion of new pt 7A and pt 7B, hdg**

After rule 27—

*insert*—

## **Part 7A            Trans-Tasman proceedings**

### **Division 1        Preliminary**

#### **27A Interpretation**

Words and expressions used in this part and the Trans-Tasman Proceedings Act have the same meaning in this part as they have in that Act except so far as the context or subject matter otherwise indicates or requires.

*Note—*

The following words and expressions are defined in the Trans-Tasman Proceedings Act, section 4—

- audio link
- audiovisual link
- document
- given
- party
- proceeding.

#### **27B Application of pt 7A**

This part applies to civil and criminal proceedings that may be heard by the court and to which the Trans-Tasman Proceedings Act applies.

### **Division 2        Applications**

#### **27C Applications in proceeding under Trans-Tasman Proceedings Act**

- (1) This rule applies to a proceeding that has already started.

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- (2) A party to the proceeding who wants to apply for an order under the Trans-Tasman Proceedings Act must make an application in the proceeding.
  - (3) The application must be supported by an affidavit that states the material facts on which the applicant relies that are necessary to give the other party fair notice of the case to be made against the other party at the hearing of the application.

## **Division 3      Subpoenas**

### **27D Application for leave to serve subpoena in New Zealand**

- (1) A party to a proceeding who requires the leave of the court to serve a subpoena in New Zealand under the Trans-Tasman Proceedings Act, section 31 must make an application for leave in the proceeding in which the subpoena was issued.
- (2) The application must be accompanied by—
  - (a) a copy of the subpoena in relation to which leave is sought; and
  - (b) an affidavit stating, briefly but specifically, the following—
    - (i) the name, occupation and address of the person named in the subpoena;
    - (ii) whether the person is over 18 years;
    - (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the person;
    - (iv) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense,

- and with less inconvenience, to the person;
- (v) the date by which it is intended to serve the subpoena in New Zealand;
  - (vi) details of the amounts to be tendered to the person to meet the person's reasonable expenses of complying with the subpoena;
  - (vii) details of the way in which the amounts mentioned in subparagraph (vi) are to be given to the person;
  - (viii) if the subpoena requires the person to give evidence—an estimate of the time that the person will be required to attend to give evidence;
  - (ix) any facts or matters known to the party making the application that may be grounds for an application by the person to have the subpoena set aside under the Trans-Tasman Proceedings Act, section 36(2) or (3).

*Notes—*

- 1 See the Trans-Tasman Proceedings Act, section 31 which allows the court to impose conditions when giving leave to serve a subpoena in New Zealand.
  - 2 See also the Trans-Tasman Proceedings Act, sections 33 and 37 which make provision in relation to the payment of expenses in complying with a subpoena.
- (3) A person must not, without the leave of the court, search for, inspect or copy a document in an application under this rule filed in the court.

### **27E Application to set aside subpoena**

- (1) A person applying under the Trans-Tasman Proceedings Act, section 35 to set aside a subpoena served in New Zealand must make the



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application in the proceeding in which the subpoena was issued.

- (2) The application must be accompanied by—
  - (a) a copy of the subpoena; and
  - (b) an affidavit stating the following—
    - (i) the material facts on which the application is based;
    - (ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

### **27F Application for issue of certificate of noncompliance with subpoena**

- (1) A party to a proceeding may apply to the court that issued a subpoena for a certificate mentioned in the Trans-Tasman Proceedings Act, section 38 (a *certificate of noncompliance*).
- (2) The application may be made—
  - (a) if the proceeding in which the subpoena is issued is before the court—orally to the court; or
  - (b) by filing the application.
- (3) The application must be accompanied by—
  - (a) a copy of the subpoena; and
  - (b) a copy of the order giving leave to serve the subpoena; and
  - (c) an affidavit of service of the subpoena; and
  - (d) a further affidavit stating the following—
    - (i) whether any application was made to set aside the subpoena;
    - (ii) the material in support of an application mentioned in subparagraph (i);

- (iii) any order that disposed of an application mentioned in subparagraph (i);
- (iv) the material facts relied on for the issue of the certificate of noncompliance.

*Note—*

A certificate of noncompliance is to be stamped by the registrar with the seal of the court.

## **Division 4      Remote appearances**

### **27G Application for order for use of audio link or audiovisual link**

- (1) A party to a proceeding applying for leave for an order that an appearance be made, evidence be taken, or submissions be made, by audio link or audiovisual link from New Zealand under the Trans-Tasman Proceedings Act, section 50, must make the application in the proceeding to which the appearance, evidence or submissions relate.
- (2) Subrule (1) does not apply to a request mentioned in rule 27E(2)(b)(ii).

## **Part 7B      General**

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### ENDNOTES

- 1 Made by the Governor in Council on 20 June 2013.
- 2 Notified in the gazette on 21 June 2013.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.

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