



Queensland

Childrens Court Act 1992

Childrens Court Rules 1997

Reprinted as in force on 2 June 2000

Reprint No. 1A*

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
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* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. The content has not changed.

Information about this reprint

These rules are reprinted as at 2 June 2000. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

Childrens Court Rules 1997

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Childrens Court Rules 1997

[as amended by all amendments that commenced on or before 2 June 2000]

Part 1 Preliminary

1 Short title

These rules may be cited as the *Childrens Court Rules 1997*.

2 Commencement

These rules commence on 1 October 1997.

3 Definitions

In these rules—

approved form see section 30.

authorising law means the *Child Protection Act 1999*.

department means the department within which the authorising law is administered.

protection application means an application to the court under the authorising law, chapter 2, part 3 or 4.¹

4 Application

These rules apply to protection applications.

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

Part 2 Starting proceedings

5 Starting proceedings

A proceeding is started by filing in the court a written application in the approved form.

6 Filing documents

- (1) A party filing a document in the court must give to the registrar of the court² enough copies of the document to enable the party to serve a sealed copy on the other parties to the proceeding.
- (2) The document must include the address for service of the party filing it.
- (3) A document is filed when the registrar fixes the court's seal on the document.
- (4) If the document is an application, the registrar must write on the application the date, time and place for hearing the application.

Part 3 Affidavits

7 Contents of affidavit

- (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.

8 Form of affidavit

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

² See the Act, section 25 (Court officials).

- (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.

9 Swearing or affirming affidavit

- (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

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- (d) be signed by the person making it in the presence of the person authorised to take the affidavit;³ 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

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
 - (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.

³ See the *Oaths Act 1867*, section 41 which provides—

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.

10 Certificate of reading or signature for person making affidavit

- (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 jurat⁴ 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.

11 Alterations

- (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.

⁴ See rule 9 (Swearing or affirming affidavit).

(3) In this rule—

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

12 Exhibits

- (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 10,⁵ only the person who took the affidavit must sign the certificate.

13 Irregularity

- (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.

⁵ Rule 10 (Certificate of reading or signature for person making affidavit)

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

14 Filing

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

15 Service

- (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).

16 Examination of person making affidavit

- (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.

17 Scandal and oppression

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.

18 Affidavit taken before party

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

Part 4 Court ordered conferences

19 Qualifications or experience of chairperson

For the *Child Protection Act 1999* section 66(2),⁶ the chairperson must have the following qualifications—

- (a) an ability to facilitate voluntary dispute resolution processes;

⁶ *Child Protection Act 1999*, section 66 (Registrar to appoint chairperson and convene conference)

- (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

20 Order to be sent to Legal Aid Queensland

- (1) This section applies if the court makes an order under the *Child Protection Act 1999*, section 107⁷ 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.

21 Legal Aid Queensland to advise registrar

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;
- (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.

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

Part 6 Proof of service

22 Affidavit of service

- (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.

Part 7 General

27 Subpoenas

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.

28 Power to amend

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.

29 Effect of noncompliance with rules

A proceeding before the court is not a nullity merely because of the failure of a party to the proceeding to comply with these rules.

30 Approval of forms

The president may approve forms for use under these rules.

Part 8 Transitional provisions

31 Transitional—Applications pending at 1 October 1997

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

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

- (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

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 June 2000. Future amendments of the Childrens Court Rules 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 October 1997	28 August 1998
1A	2000 SL No. 47	23 March 2000	2 June 2000

5 List of legislation

Childrens Court Rules 1997 SL No. 309

made by the Governor in Council on 25 September 1997
notfd gaz 26 September 1997 pp 354–6
rr 1–2 commenced on date of notification
remaining provisions commenced 1 October 1997 (see r 2)
SIA pts 5, 7 do not apply (see 1991 No. 68 s 118B(1))
amending legislation—

Childrens Court Amendment Rule (No. 1) 2000 SL No. 47

notfd gaz 23 March 2000 pp 1066A–1066B
commenced on date of notification

6 List of annotations

Short title

r 1 amd 2000 SL No. 47 r 3

Commencement

r 2 amd 2000 SL No. 47 r 4

Definitions

r 3 amd 2000 SL No. 47 r 5(1)
def “**authorised officer**” om 2000 SL No. 47 r 5(2)
def “**authorising law**” amd 2000 SL No. 47 r 5(3)
def “**child**” om 2000 SL No. 47 r 5(2)
def “**director**” om 2000 SL No. 47 r 5(2)
def “**parent**” om 2000 SL No. 47 r 5(2)
def “**protection application**” amd 2000 SL No. 47 r 5(4)

Application

r 4 amd 2000 SL No. 47 r 6

Starting proceedings

r 5 amd 2000 SL No. 47 r 7

PART 3—AFFIDAVITS**pt hdg** sub 2000 SL No. 47 r 10**Contents of affidavit****r 7** prev s 7 om 2000 SL No. 47 r 8
pres s 7 ins 2000 SL No. 47 r 10**Form of affidavit****r 8** prev s 8 om 2000 SL No. 47 r 8
pres s 8 ins 2000 SL No. 47 r 10**Swearing or affirming affidavit****r 9** sub 2000 SL No. 47 r 10**Certificate of reading or signature for person making affidavit****r 10** sub 2000 SL No. 47 r 10**Alterations****r 11** sub 2000 SL No. 47 r 10**Exhibits****r 12** sub 2000 SL No. 47 r 10**Irregularity****r 13** sub 2000 SL No. 47 r 10**Filing****r 14** sub 2000 SL No. 47 r 10**Service****r 15** sub 2000 SL No. 47 r 10**Examination of person making affidavit****r 16** sub 2000 SL No. 47 r 10**Scandal and oppression****r 17** sub 2000 SL No. 47 r 10**Affidavit taken before party****r 18** sub 2000 SL No. 47 r 10**PART 4—COURT ORDERED CONFERENCES****pt hdg** sub 2000 SL No. 47 r 10**Qualifications or experience of chairperson****r 19** sub 2000 SL No. 47 r 10**PART 5—ORDERS FOR SEPARATE LEGAL REPRESENTATION OF A CHILD****pt hdg** sub 2000 SL No. 47 r 10**Order to be sent to Legal Aid Queensland****r 20** sub 2000 SL No. 47 r 10**Legal Aid Queensland to advise registrar****r 21** sub 2000 SL No. 47 r 10

PART 6—PROOF OF SERVICE

pt hdg prev pt 6 hdg renum as pt 7 hdg 2000 SL No. 47 r 9
pres pt 6 hdg ins 2000 SL No. 47 r 10

Affidavit of service

r 22 sub 2000 SL No. 47 r 10

Court ordered conferences

r 24 om 2000 SL No. 47 r 10

Consent orders

r 25 om 2000 SL No. 47 r 10

Service of documents

r 26 om 2000 SL No. 47 r 10

PART 7—GENERAL

pt hdg pt 7 hdg (prev pt 6 hdg) renum 2000 SL No. 47 r 9

Power to amend

r 28 sub 2000 SL No. 47 r 11

Effect of noncompliance with rules

r 29 amd 2000 SL No. 47 r 12

Approval of forms

r 30 amd 2000 SL No. 47 r 13

PART 8—TRANSITIONAL PROVISIONS

pt hdg ins 2000 SL No. 47 r 14

Transitional—Applications pending at 1 October 1997

r 31 sub 2000 SL No. 47 r 14

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

r 32 ins 2000 SL No. 47 r 14