

Queensland



# CHILDRENS COURT ACT 1992

**Reprinted as in force on 18 September 2003  
(includes commenced amendments up to 2003 Act No. 57)**

**Reprint No. 4A**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# Information about this reprint

This Act is reprinted as at 18 September 2003. 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.

This page is specific to this reprint. See previous reprints 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 reprints.**

## **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 ACT 1992

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# CHILDRENS COURT ACT 1992

[as amended by all amendments that commenced on or before 18 September 2003]

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

### **PART 1—PRELIMINARY**

#### **1 Short title**

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

#### **3 Definitions**

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**

### **4 Childrens Court established etc.**

- (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.

### **5 Members and constitution of the Childrens Court**

(1) The members of the Childrens Court are the judicial officers mentioned in subsections (2) and (3).

(2) If an Act expressly requires the Childrens Court to be constituted by a Childrens Court judge, the court must be constituted by either of the following—

- (a) a Childrens Court judge;
- (b) if a Childrens Court judge is not available—a District Court judge.

*Examples of when a Childrens Court judge is not available—*

1. A child is committed to be tried or sentenced before a Childrens Court judge at a place where the Childrens Court sits only a few times in a year. At the time the child would ordinarily be dealt with at the place, there is no Childrens Court judge available, but a District Court judge is available. The District Court judge may constitute the Childrens Court and deal with the child.
2. A child is due to be tried or sentenced before a Childrens Court judge. A Childrens Court judge is present at the place and at the time but, in the judge's capacity as a District Court judge, is needed for the jurisdiction of the District Court. Another District Court judge is available. The other District Court judge may constitute the Childrens Court and deal with the child.

(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.

(5) In this section—

“**available**” means available having regard to the orderly and expeditious exercise of the jurisdiction of the District Court and Childrens Court.

## 6 Jurisdiction

(1) The Childrens Court has the jurisdiction conferred on it by any Act.

(2) The *Child Protection (International Measures) Act 2003* includes provisions about the exercise of jurisdiction under this Act.

## 7 Rules of court

(1) The procedure of the Childrens Court is governed by the Childrens Court Rules.

(2) The Governor in Council may, with the president’s agreement, make rules of court (the “**Childrens Court Rules**”) under this Act.

(3) A rule may make provision about any matter—

- (a) that is required or permitted to be prescribed under a law giving jurisdiction to the Childrens Court; or
- (b) that is necessary or convenient to be prescribed for carrying out or giving effect to a law giving jurisdiction to the Childrens Court.

(4) In particular, a rule may make provision about the procedure of the Childrens Court, including the matters that may be dealt with in chambers or by a court official.

## 8 Directions

(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*

#### **9 Childrens Court president**

(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.

#### **10 Functions of president**

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*

#### **11 Childrens Court judge**

(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.

#### **12 Acting judge**

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.

#### **13 Termination of office**

(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*****14 Childrens Court magistrates**

(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 *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.

**15 Termination of office**

(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.

**16 Acting magistrate**

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*****17 Jurisdiction not affected by vacancies**

The jurisdiction of the court is not affected by a vacancy in any office in the court.

## **PART 4—SITTINGS OF THE COURT**

### **18 Where court may be constituted**

(1) The court may be constituted—

- (a) if it is constituted by a judge—at a place where a Magistrates Court or the 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.

### **19 Separation of court's proceedings**

The hearing of a matter before the court must be held at a time when the business of another court is not being conducted in the same room.

### **20 Who may be present at a proceeding**

(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—

*Childrens Court Act 1992*

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- (i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
  - (ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child; 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; or
  - (c) in a proceeding, other than a proceeding under the *Child Protection Act 1999*—a representative of mass media.
- (3) Subsection (1) applies subject to any order made by the court under the *Evidence Act 1977*, section 21A<sup>1</sup>—
- (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.
- (7) In this section—
- “community justice group”**, for a child, means a group of persons made up of any of the following—

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<sup>1</sup> *Evidence Act 1977*, section 21A (Evidence of special witnesses)

- 
- (a) an entity within the child's community, other than a department of government, that is involved in the provision of any of the following—
    - (i) information to a court about Aboriginal or Torres Strait Islander offenders;
    - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
    - (iii) other activities relating to local justice issues;
  - (b) elders or other respected persons of the child's community.

**“child's community”** means the child's Aboriginal or Torres Strait Islander community, whether it is—

- (a) an urban community; or
- (b) a rural community; or
- (c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

## 21 Court sitting times

Subject to the rules and the president's directions, proceedings before the court—

- (a) when constituted by a judge—may be held at any time; or
- (b) when constituted by a Childrens Court magistrate, magistrate or justices—must be held at special times fixed in advance by the proper officer of the court.

## PART 5—JURY TRIALS

### 22 Jury in criminal trials

(1) All indictable offences prosecuted in the Childrens Court must be tried by a Childrens Court judge and a jury.

(2) Subsection (1) is subject to an Act that allows or requires an indictable offence prosecuted in the Childrens Court to be tried in another way.

(3) Despite section 18(1)(a), a trial by a Childrens Court judge and a jury must be held at a place where a District Court may be held.

(4) The *Jury Act 1995* states the law about the following—

- (a) the obligation to perform jury service;
- (b) organisation of juries generally;
- (c) the selection of a jury;
- (d) arrangements for a jury during a trial;
- (e) juror's remuneration and allowances.

### **23 Issues of law and fact**

Issues of law and fact are to be decided by the judge or jury as if the trial were a trial on indictment in the Supreme Court.

## **PART 6—GENERAL**

### **24 Annual report**

(1) As soon as practicable after the end of each financial year, but no later than 5 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 publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be published 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.

## 25 Ordinary privileges, protection and immunity allowed

(1) In this section—

“**court of concurrent jurisdiction**” means—

- (a) in relation to the Childrens Court when constituted by a judge—the 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.

## 26 Contempt

(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 the District Court.

(2) The *District Court Act 1967*<sup>2</sup>, section 129<sup>3</sup> applies in relation to the Childrens Court when constituted by a judge in the same way as it applies in relation to the 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.

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2 Now see the *District Court of Queensland Act 1967*, section 140.

3 *District Court of Queensland Act 1967*, section 129 (Contempt)

(4) The *Justices Act 1886*, section 40<sup>4</sup> 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.

## **27 Court officials**

(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 the 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.

## **28 Court records**

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.

## **29 Judicial notice**

All courts and persons acting judicially must take judicial notice of the appointment and signature of every person holding office under this Act.

## **30 References to Childrens Court**

(1) A reference in another Act to the Childrens Court or a Childrens Court (whether the expression ‘the Childrens Court’, ‘a Children’s Court’ or ‘a Childrens Court’ or another expression is used) is, in relation to anything done, or proposed to be done, after the commencement of section 4, taken to be a reference to the Childrens Court established under this Act.

(2) Subsection (1) applies to a reference in an Act passed before the commencement of section 4 despite the reference being expressly to the Childrens Court or a Childrens Court constituted under an Act other than this Act.

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4 *Justices Act 1886*, section 40 (Penalty for insulting or interrupting justices)



**31 Regulation-making power**

The Governor in Council may make regulations under this Act.

**32 Transitional provision for Child Protection Act 1999**

(1) This section applies if, before the commencement of the *Child Protection Act 1999*, chapter 3, part 4<sup>5</sup>—

- (a) a person appealed, under part 4A, against a supervision order or care order; and
- (b) the appeal has not been finally decided.

(2) The appeal may be dealt with under the *Child Protection Act 1999*.

(3) In this section—

“**care order**” means an order under the *Children’s Services Act 1965*, section 49(4)(a)(iii) or section 61(4)(a)(iii).

“**supervision order**” means an order under the *Children’s Services Act 1965*, section 49(4)(a)(ii) or section 61(4)(a)(ii).

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5 *Child Protection Act 1999*, chapter 3 (Court proceedings), part 4 (Court appeals)

## 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 18 September 2003. Future amendments of the Childrens Court Act 1992 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.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 1992 Act No. 68	7 December 1992	24 August 1993
2	to 1995 Act No. 57	28 November 1995	8 December 1995
2A	to 1996 Act No. 22	15 August 1996	18 September 1996
2B	to 1997 Act No. 38	1 August 1997	5 September 1997
3	to 1999 Act No. 19	30 April 1999	3 March 2000
3A	to 1999 Act No. 19	23 March 2000	2 June 2000
3B	to 2000 Act No. 42	27 October 2000	27 October 2000
3C	to 2000 Act No. 46	25 October 2000	3 November 2000
3D	to 2000 Act No. 58	17 November 2000	1 December 2000
			(Column discontinued)
			Notes
3E	to 2003 Act No. 8	28 March 2003	
3F	to 2003 Act No. 8	1 July 2003	R3F withdrawn, see R4
4	to 2003 Act No. 8	1 July 2003	
4A	to 2003 Act No. 57	18 September 2003	

## 5 List of legislation

### **Childrens Court Act 1992 No. 41**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 312)

amending legislation—

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

commenced on date of assent

### **Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch**

date of assent 22 November 1995

commenced on date of assent

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Juvenile Justice Legislation Amendment Act 1996 No. 22 pts 1, 5**

date of assent 15 August 1996  
commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(5)  
pt 5**

date of assent 15 May 1997  
ss 1, 2(5) commenced on date of assent  
remaining provisions commenced 20 June 1997 (1997 SL No. 155)

**Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 2**

date of assent 18 July 1997  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 August 1997 (1997 SL No. 235)

**Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 23 March 2000 (2000 SL No. 45)

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999  
commenced on date of assent

**Penalties and Sentences and Other Acts Amendment Act 2000 No. 42 pts 1, 4**

date of assent 13 October 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 27 October 2000 (2000 SL No. 272)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000  
commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch**

date of assent 17 November 2000  
commenced on date of assent

**Juvenile Justice Amendment Act 2002 No. 39 pts 1, 5**

date of assent 29 August 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2003 (2002 SL No. 350)

**Parliament of Queensland Amendment Act 2003 No. 8 ss 1, 17 sch**

date of assent 28 March 2003  
commenced on date of assent

**Child Protection (International Measures) Act 2003 No. 57 ss 1, 39(1) sch 2**

date of assent 18 September 2003  
commenced on date of assent

**6 List of annotations****Commencement**

s 2 om R2 (see RA s 37)

**Definitions**

s 3 def “**appellate court**” ins 1997 No. 38 s 5  
om 1999 No. 10 s 205 sch 3

**Members and constitution of the Childrens Court**

s 5 amd 2002 No. 39 s 137

**Jurisdiction**

s 6 amd 2003 No. 57 s 39(1) sch 2

**Rules of court**

s 7 amd 1995 No. 57 s 4 sch 1

**Childrens Court magistrates**

s 14 amd 2000 No. 58 s 2 sch

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s 18 amd 1999 No. 19 s 3 sch

**Separation of court’s proceedings**

s 19 amd 1993 No. 76 s 3 sch 1

**Who may be present at a proceeding**

s 20 amd 1996 No. 22 s 107; 1997 No. 9 s 18; 1999 No. 10 s 205 sch 3;  
2000 No. 42 s 8

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s 21 sub 1993 No. 76 s 3 sch 1

**PART 4A—APPEALS**

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**PART 5—JURY TRIALS**

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**References to Childrens Court**

**s 30** orig s 30 ins 1995 No. 50 s 3 sch  
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pres s 30 (prev s 28) ins 1992 No. 68 s 3 sch 1  
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