



Queensland

Childrens Court Act 1992

Childrens Court Rules 1997

Current as at 1 February 2010

Information about this reprint

These rules are reprinted as at 1 February 2010. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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.**

Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised 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 an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

Replacement reprint date If the date of an authorised reprint is the same as the date shown on another authorised 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 1 February 2010]

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—

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

approved form see section 30.

jurat see rule 9(3).

protection application means an application to the court under the *Child Protection Act 1999*, chapter 2, part 3 or 4.

4 Application of rules

- (1) These rules apply to protection applications.
- (2) These rules, other than part 4, also apply to Adoption Act applications.

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Part 2 Starting proceedings

5 Starting proceedings

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

6 Filing documents

- (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.
- (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.

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.

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- (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;

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- (c) communicating decisions about the matters in some way.

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) 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—

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- (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

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.
- (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.

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- (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.

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 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.
- (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.
- (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.

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- (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, 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.
- (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—
 - (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

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- (b) for a document relating to a protection application—each 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) 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) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) However, the court may—
- (a) dispense with the attendance for cross-examination of a person making an affidavit; and

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- (b) direct that an affidavit be used without the person making the affidavit being cross-examined in relation to the affidavit.
- (7) 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 69(2), 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

20 Order to be sent to Legal Aid Queensland

- (1) This section applies if the court makes an order under the *Adoption Act 2009*, section 235 or the *Child Protection Act 1999*, section 110 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.

Part 6 Proof of service

22 Affidavit of service

- (1) Service of a document under these rules, the *Adoption Act 2009* 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

- (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.

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 1 February 2010. 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

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

Reprint No.	Amendments included	Effective	Notes
1B	2010 SL No. 5	1 February 2010	

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

Childrens Court Amendment Rule (No. 1) 2010 SL No. 5

notfd gaz 29 January 2010 pp 233–4S
 ss 1–2 commenced on date of notification
 remaining provisions commenced 1 February 2010 (see s 2)

6 List of annotations

Short title

r 1 amd 2000 SL No. 47 s 3

Commencement

r 2 amd 2000 SL No. 47 s 4

Definitions

r 3 amd 2000 SL No. 47 s 5(1)
 def “**Adoption Act application**” ins 2010 SL No. 5 s 4(2)
 def “**authorised officer**” om 2000 SL No. 47 s 5(2)

- def “**authorising law**” amd 2000 SL No. 47 s 5(3)
 om 2010 SL No. 5 s 4(1)
 def “**child**” om 2000 SL No. 47 s 5(2)
 def “**department**” om 2010 SL No. 5 s 4(1)
 def “**director**” om 2000 SL No. 47 s 5(2)
 def “**jurat**” ins 2010 SL No. 5 s 4(2)
 def “**parent**” om 2000 SL No. 47 s 5(2)
 def “**protection application**” amd 2000 SL No. 47 s 5(4); 2010 SL No. 5 s 4(3)

Application of rules

- r 4** amd 2000 SL No. 47 s 6
 sub 2010 SL No. 5 s 5

Starting proceedings

- r 5** amd 2000 SL No. 47 s 7; 2010 SL No. 5 s 6

Filing documents

- r 6** amd 2010 SL No. 5 s 7

Guardian to be served—Adoption Act 2009

- r 6A** ins 2010 SL No. 5 s 8

Guardian to be served—Child Protection Act 1999

- r 6B** ins 2010 SL No. 5 s 8

PART 3—AFFIDAVITS

- pt hdg** sub 2000 SL No. 47 s 10

Contents of affidavit

- r 7** prev s 7 om 2000 SL No. 47 s 8
 pres s 7 ins 2000 SL No. 47 s 10

Form of affidavit

- r 8** prev s 8 om 2000 SL No. 47 s 8
 pres s 8 ins 2000 SL No. 47 s 10

Swearing or affirming affidavit

- r 9** sub 2000 SL No. 47 s 10
 amd 2010 SL No. 5 s 9

Certificate of reading or signature for person making affidavit

- r 10** sub 2000 SL No. 47 s 10
 amd 2010 SL No. 5 s 10

Alterations

- r 11** sub 2000 SL No. 47 s 10

Exhibits

- r 12** sub 2000 SL No. 47 s 10

Irregularity

- r 13** sub 2000 SL No. 47 s 10

Endnotes

Filing

r 14 sub 2000 SL No. 47 s 10

Service

r 15 sub 2000 SL No. 47 s 10
amd 2010 SL No. 5 s 11

Examination of person making affidavit

r 16 sub 2000 SL No. 47 s 10
amd 2010 SL No. 5 s 12

Scandal and oppression

r 17 sub 2000 SL No. 47 s 10

Affidavit taken before party

r 18 sub 2000 SL No. 47 s 10

PART 4—COURT ORDERED CONFERENCES

pt hdg sub 2000 SL No. 47 s 10

Qualifications or experience of chairperson

r 19 sub 2000 SL No. 47 s 10
amd 2010 SL No. 5 s 13

PART 5—ORDERS FOR SEPARATE LEGAL REPRESENTATION OF A CHILD

pt hdg sub 2000 SL No. 47 s 10

Order to be sent to Legal Aid Queensland

r 20 sub 2000 SL No. 47 s 10
amd 2010 SL No. 5 s 14

Legal Aid Queensland to advise registrar

r 21 sub 2000 SL No. 47 s 10

PART 6—PROOF OF SERVICE

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

Affidavit of service

r 22 sub 2000 SL No. 47 s 10
amd 2010 SL No. 5 s 15

Court ordered conferences

r 24 om 2000 SL No. 47 s 10

Consent orders

r 25 om 2000 SL No. 47 s 10

Service of documents

r 26 om 2000 SL No. 47 s 10

PART 7—GENERAL

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

Subpoenas

r 27 sub 2010 SL No. 5 s 16

Power to amend

r 28 sub 2000 SL No. 47 s 11

Effect of noncompliance with rules

r 29 amd 2000 SL No. 47 s 12

Approval of forms

r 30 amd 2000 SL No. 47 s 13

PART 8—TRANSITIONAL PROVISIONS

pt hdg ins 2000 SL No. 47 s 14

Transitional—Applications pending at 1 October 1997

r 31 sub 2000 SL No. 47 s 14

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

r 32 ins 2000 SL No. 47 s 14

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