



*Childrens Court Act 1992*

# **Childrens Court Rules 2016**

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Queensland

# Childrens Court Rules 2016

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# Childrens Court Rules 2016

## Part 1 Preliminary

### 1 Short title

These rules may be cited as the *Childrens Court Rules 2016*.

### 2 Commencement

These rules commence on 1 July 2016.

### 3 Application of rules

- (1) These rules apply to—
  - (a) CAO proceedings; and
  - (b) child protection proceedings; and
  - (c) adoption proceedings; and
  - (d) applications made under the Trans-Tasman Proceedings Act in any civil or criminal proceeding before the court; and
  - (e) an appeal to the court under—
    - (i) the Child Protection Act, section 117; or
    - (ii) the Adoption Act, section 243.

*Note—*

These rules do not apply to the Court of Appeal.

- (2) These rules apply to the following proceedings to the extent that the court directs—
  - (a) a proceeding for an order transferring a child protection order to a participating State under the Child Protection Act, section 214;

- (b) a proceeding for an order transferring a child protection proceeding to the Childrens Court in a participating State under the Child Protection Act, section 228;
- (c) an appeal to the court against a decision mentioned in the Child Protection Act, section 239(1).

#### **4 Definitions**

- (1) The dictionary in schedule 1 defines particular words used in these rules.
- (2) For a rule about a CAO proceeding or child protection proceeding, the words and expressions used in the rule have the same meaning as they have in the Child Protection Act.
- (3) For a rule about an adoption proceeding, the words and expressions used in the rule have the same meaning as they have in the Adoption Act.
- (4) However, subrules (2) and (3) do not apply if the rule where the term is used makes it clear that the term does not have the same meaning as in the Child Protection Act or the Adoption Act.

#### **5 Main objects of rules**

The main object of these rules is to provide for flexible procedures that allow the court to decide a proceeding—

- (a) consistently with—
  - (i) for a CAO proceeding or child protection proceeding—the child protection principles; or
  - (ii) for an adoption proceeding—the adoption principles; and
- (b) fairly; and
- (c) as soon as possible; and
- (d) with the minimum cost; and
- (e) with the minimum legal technicality; and

- (f) in accordance with the nature, importance and complexity of the issues to be resolved in the proceeding; and
- (g) in relation to a proceeding involving an Aboriginal or Torres Strait Islander child—having regard to Aboriginal tradition or Island custom.

## **6 Court may make order or issue direction on own initiative or application**

Subject to a contrary intention in an Act or these rules, the court may make an order or issue a direction under these rules—

- (a) on the court’s own initiative; or
- (b) on the application of a party.

## **7 Order or direction may be inconsistent with rules**

If an order or a direction of the court is inconsistent with another provision of these rules, the court’s order or direction prevails to the extent of the inconsistency.

## **8 Effect of noncompliance with rules**

- (1) Noncompliance with a rule does not invalidate a proceeding unless the court directs otherwise.
- (2) If a rule has not been complied with, the court may—
  - (a) waive the noncompliance; or
  - (b) set aside all or part of the proceeding; or
  - (c) make another order it considers appropriate.

*Example of an order for paragraph (c)—*

an order enforcing the performance of a duty imposed on a person under these rules

## Part 2 Starting proceedings

### 9 What part is about

This part—

- (a) explains how to start a proceeding; and
- (b) states the documents that the litigation director is to file in a child protection proceeding; and
- (c) if a child protection application for an Aboriginal or Torres Strait Islander child is filed—explains how to notify the court of the name and contact details of an independent Aboriginal or Torres Strait Islander entity for the child.

### 10 Starting proceedings

- (1) A proceeding is started when 1 of the following documents is filed in the court—
  - (a) a child protection application;
  - (b) an Adoption Act application;
  - (c) a notice of appeal.
- (2) An application mentioned in subrule (1)(a) or (b) is an *originating application*.

### 11 Where originating application may be filed

- (1) An originating application may be filed in—
  - (a) a registry of a Magistrates Court of—
    - (i) a district in which a child the subject of the proceeding resides; or
    - (ii) the district in which a respondent resides; or
    - (iii) if all parties to the proceeding agree, in writing, to the filing of the originating application in another district—the other district; or

- 
- (b) if the application cannot be filed in a registry mentioned in paragraph (a)—any central Magistrates Court registry.

*Note—*

Under the Child Protection Act, section 114 and the Adoption Act, section 240, a magistrate constituting the Childrens Court may order that a proceeding be transferred to the court constituted by a magistrate at another place.

- (2) However, an originating application must be filed in accordance with any requirement stated in a practice direction of the Chief Magistrate relating to the filing of the application in—
- (a) a particular registry of a Magistrates Court; or
- (b) a registry of a Magistrates Court of a particular district.
- (3) In this rule—

***central Magistrates Court registry*** means the registry of a Magistrates Court at Brisbane, Rockhampton, Townsville or Cairns.

***Chief Magistrate*** means a District Court judge or magistrate who is appointed as the Chief Magistrate under the *Magistrates Act 1991*, section 5(6).

***district*** means a district of a Magistrates Court mentioned in the *Justices Regulation 2014*, schedule 1.

## 12 Form and content of originating application

- (1) An originating application for a proceeding must—
- (a) be in the approved form for the proceeding; and
- (b) state the provision of the Act under which the originating application is brought; and
- (c) name the applicant; and
- (d) state the decision the applicant is seeking; and
- (e) name as respondents all persons directly affected by the decision the applicant is seeking; and

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- (f) state the grounds of the application; and
- (g) state a postal address and contact telephone number for the applicant; and
- (h) be drafted in plain English; and
- (i) be as brief as the nature of the proceeding permits; and
- (j) contain a statement of all the material facts on which the applicant relies but not the evidence by which the facts are to be proved; and
- (k) be consecutively numbered on each page; and
- (l) be divided into consecutively numbered paragraphs and, if necessary, subparagraphs.

*Note—*

For notices of appeal, see also rule 123.

- (2) An originating application for a proceeding may contain an email address or facsimile number for the applicant.
- (3) A failure to comply with subrule (1) does not invalidate the originating application.

### **13 Documents to be filed if child protection proceeding started**

- (1) This rule applies if a child protection proceeding is started.
- (2) The litigation director must file an affidavit that exhibits the following documents—
  - (a) an assessment, carried out by the chief executive (child protection), of whether the child the subject of the application is in need of protection and that formed the basis for filing the application, including the outcome of that assessment;
  - (b) an assessment of the most recent strengths and needs of the child and the child's parents;
  - (c) documents relating to the most recently completed family group meeting for the child, including a case plan if a plan was developed at the meeting;

- 
- (d) previous applications or orders made for the child under the Child Protection Act, including court assessment orders or temporary assessment orders;
- (e) referral to an external agency that provides support to the child’s family, or a member of the child’s family;
- Examples of an external agency—*
- Queensland Health, a domestic and family violence service
- (f) any independent assessment or report about the child or a parent of the child;
- (g) the child’s birth certificate;
- (h) any child protection history report, criminal history, domestic violence history or traffic history of a person relevant to the proceeding.
- (3) However, the documents must be filed only if—
- (a) the document is in the possession or control of the chief executive (child protection); and
- (b) the document is relevant to the proceeding.
- (4) The affidavit must be filed—
- (a) at the same time as the child protection application is filed; or
- (b) if it is not practicable to file the document at the same time as the application is filed—
- (i) within the period stated in a practice direction; or
- (ii) by a day the court directs the document is to be filed; or
- (iii) if subparagraph (i) or (ii) does not apply—within 10 business days after the first appearance for the proceeding.
- (5) In this rule—
- child protection history report***, of a person, means a report made by the chief executive (child protection) of the history of the interactions between the person and the department (child

protection) concerning a matter under the Child Protection Act, including details about any court appearances.

*department (child protection)* means the department in which the Child Protection Act is administered.

#### **14 Child protection application for Aboriginal or Torres Strait Islander child**

- (1) This rule applies if a child protection application for an Aboriginal or Torres Strait Islander child is filed.
- (2) If the application is for a child protection order, the litigation director must, as soon as practicable after filing the application, file a document stating the name and contact details of the independent Aboriginal or Torres Strait Islander entities for the child, if any, to the extent the information is known to the director when the document is filed.
- (3) If the application is for a court assessment order, the chief executive (child protection) must, as soon as practicable after filing the application or receiving notice of its filing, file a document stating the name and contact details of the independent Aboriginal or Torres Strait Islander entities for the child, if any.

## **Part 3 Documents in proceedings**

#### **15 What part is about**

This part explains how—

- (a) a document may be filed in the court; and
- (b) the court may make or issue a document electronically.

#### **16 How documents may be filed**

- (1) A document may be filed—
  - (a) by delivering it to the registry personally; or



- 
- (b) by sending it to the registry by post; or
  - (c) electronically, including by fax or email.
- (2) If a document is filed electronically under subrule (1)(c), the person filing the document must—
- (a) keep a paper copy of the document; and
  - (b) if the court directs the person to give the paper copy of the document to the court—give the court the paper copy.
- (3) A document filed electronically at the registry—
- (a) has the same status as a document filed personally or by post; and
  - (b) is taken for all purposes to be a document in a court file; and
  - (c) if a person may inspect a filed document under an Act or these rules—may be inspected in either electronic or paper form, at the discretion of the registrar.

## **17 When document is filed**

- (1) A document is taken to be filed when the registrar—
- (a) stamps the court’s seal and the date of filing on the front of the document and each copy of the document that accompanied it; and
  - (b) if the document is an Adoption Act application or a child protection application—notes on the application the date, time and place for hearing the application.
- (2) A document filed electronically, if accepted by the registrar, is taken to have been filed—
- (a) if the whole of the document is received by the registry before 4:30pm on a day the registry is open for business—on that day; or
  - (b) otherwise—on the next day the registry is open for business.

(3) In this rule—

*stamp*, for a document that is filed electronically, includes electronically stamp.

## **18 Filed document to include address for service**

A document filed in the court must include the address for service of the person filing it.

## **19 Court may make or issue documents electronically**

(1) The court may make or issue a document electronically.

(2) If the court makes or issues a document electronically, the registrar must electronically stamp the court's seal on the front of the document.

# **Part 4 Service**

## **Division 1 Preliminary**

### **20 What part is about**

This part explains how—

- (a) a person in a proceeding is to tell the court and the other parties where a document can be given or served on the person in a proceeding; and
- (b) a document is to be served or given in a proceeding; and
- (c) a guardian is to be served.

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## **Division 2                      Notice of address for service**

### **21            Notice of address for service—parties to proceeding**

- (1) As soon as practicable after a person is served with a child protection application or an Adoption Act application, the person must file and serve a notice of address for service in the approved form.
- (2) However, the child the subject of a child protection application is not required to file and serve a notice of address for service unless the child wishes to participate in the proceeding.
- (3) As soon as practicable after a person is served with a notice of appeal, the person must, if the person wishes to participate in the appeal, file and serve a notice of address for service in the approved form.
- (4) A party to a proceeding must file and serve a notice of any change in the party's address for service as soon as practicable after the change.

### **22            Notice of address for service—public guardian**

- (1) If the public guardian has given written notice of an intention to appear in a proceeding under the Child Protection Act, section 108B(2), the public guardian must file and serve on the participants in the proceeding a notice of address for service in the approved form stating—
  - (a) the public guardian is appearing in the proceeding under the Child Protection Act, section 108B; and
  - (b) the public guardian's role in the proceeding under the Child Protection Act, section 108C.
- (2) The public guardian must file and serve a notice of any change in the guardian's address for service.

### **23 Notice of address for service—guardian**

- (1) This rule applies if—
  - (a) a person with impaired capacity for a matter relating to a proceeding is a party to the proceeding; and
  - (b) the person with impaired capacity has a guardian for the matter relating to the proceeding.
- (2) The guardian must file and serve a notice of address for service in the approved form as soon as the guardian becomes aware of the proceeding.

*Note—*

the guardian is not a party to the proceeding

- (3) However, if the proceeding is an appeal, the guardian must file and serve a notice of address for service only if the guardian wishes to participate in the appeal.
- (4) The guardian must file and serve a notice of any change in the guardian's address for service.

### **24 Notice of address for service—Legal Aid Queensland if representing child**

If Legal Aid Queensland allocates a lawyer under rule 41(a) to represent a child the subject of a proceeding under the Child Protection Act, section 110 or the Adoption Act, section 235, the lawyer must file—

- (a) a notice of address for service; and
- (b) if there is a change in the lawyer's address for service—a notice of the change in the address for service.

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## Division 3                      Service generally

### 25            Parties to proceeding to be served

- (1) A party filing a document in the court for a proceeding must serve a copy of the document on each other party to the proceeding.
- (2) However, the child who is the subject of a proceeding must not be served with a copy of a filed document for a proceeding unless—
  - (a) if the proceeding is a CAO proceeding or child protection proceeding—the child is a participating child for the proceeding; or
  - (b) the court orders that the child is to be served with the copy; or
  - (c) an Act requires the child be served with the copy.
- (3) Without limiting subrule (2), subrule (1) applies only to the extent permitted by this division or an Act.

### 26            Document must be served at least 3 business days before court event

- (1) This rule applies to a document filed in the court if—
  - (a) the document relates to a court event; and
  - (b) an Act, these rules, a practice direction or a court direction requires the document to be served on a person.
- (2) The document must be served on the person as soon as practicable after the document has been filed but, in any event, at least 3 business days before the day set for the court event.
- (3) In this rule—

***court event*** means—

  - (a) an appearance before the court; or
  - (b) a hearing or part of a hearing; or

- (c) a court ordered conference.

## **27 Method of service**

- (1) This rule applies to a requirement to serve a document on a person, unless the document must be personally served on the person.

*Note—*

Personal service is required under the Child Protection Act, sections 41, 56 and 227.

- (2) If a person is represented by a lawyer in a proceeding for which the document is being served, the document must be served on the person—
- (a) by giving it personally to the person’s lawyer; or
  - (b) by sending it by post to the address of the lawyer’s place of business; or
  - (c) if the lawyer for the person has—
    - (i) a fax number—by faxing it to the person at that number; or
    - (ii) an email address—by emailing it to the person at that address; or
  - (d) by leaving it with someone who—
    - (i) is at the address of the lawyer’s place of business; and
    - (ii) is apparently an adult and apparently employed there; or
  - (e) if the court approves another electronic method to send a document and the person’s lawyer has an address for service using that method—by transmitting it electronically to the lawyer at that address; or
  - (f) in another way ordered by the court.
- (3) If a person is not represented by a lawyer in a proceeding for which the document is being served, a document must be served on a person in 1 of the following ways—

- (a) by personally serving the document on the person under rule 28;
  - (b) by sending it by post to the person's relevant address;
  - (c) if the person provides—
    - (i) a fax number—by faxing it to the person at that number; or
    - (ii) an email address—by emailing it to the person at that address;
  - (d) by leaving it with someone who—
    - (i) is at the person's relevant address; and
    - (ii) is apparently an adult and apparently residing or employed there;
  - (e) if the court approves another electronic method to send a document and the person has an address for service using that method—by transmitting it electronically to the person at that address;
  - (f) in another way ordered by the court.
- (4) However, if a person serves a document on another person under subrule (2)(d), the person must also give the document personally to the other person at the next reasonable opportunity.

*Example of a reasonable opportunity—*

at the next appearance in the proceeding

- (5) In this rule—
- relevant address**, for serving a document on a person, means—
- (a) the address for the person stated in the person's notice of address for service; or
  - (b) if the person does not have an address for service or no longer resides at that address—the person's last known residential address.

## **28 Personal service**

- (1) To serve a document personally, the person serving it must—
  - (a) give the document, or a copy of the document, to the person to be served; and
  - (b) tell the person to be served what the document is.
- (2) However, if the person does not accept the document or copy, the person serving it may serve it by putting it down in the person's presence and telling the person what it is.
- (3) It is not necessary to show to the person served the original of the document.

## **29 Substituted service**

- (1) The court may, on application by a person required to serve a document, make an order substituting another way of serving the document if, for any reason, it is impracticable to serve a document in a way provided under an Act or these rules.
- (2) An application under subrule (1) is an application in a proceeding for these rules.

*Note—*

See part 7, division 2 for how this application is to be made in a proceeding.

- (3) The court order may include—
  - (a) the steps to be taken for bringing the document to the attention of the person to be served with the document; and
  - (b) that the document is to be taken to have been served on the happening of a stated event or at the end of a stated period.
- (4) The court may make an order under this rule even though the person to be served with the document is not in Queensland or was not in Queensland when the proceeding started.



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### **30 Informal service**

- (1) This rule applies if—
  - (a) for any reason, a document is not served in a way provided in an Act or these rules but the document or a copy of it came into the possession of the person who was to be served with the document; and
  - (b) the court is satisfied on evidence before it that the document came into the person's possession on or before a particular day.
- (2) The court may make an order that the person is taken to have been served under the Act or these rules with the document on the day it came into the person's possession or a later day stated in the order.

### **31 Dispensing with, limiting and altering service requirement**

- (1) This rule applies to a requirement to serve a document, other than a document required to be personally served under an Act.
- (2) The court may decide to—
  - (a) dispense with the requirement; or
  - (b) limit or alter the requirement, including by—
    - (i) identifying the parts of the document that must be served; or
    - (ii) imposing conditions about the service.

*Example—*

The court may decide to dispense with the requirement to serve a document if a reasonable attempt to locate the person required to be served has been made and the person can not be found.

*Examples of conditions—*

- requiring the document to be served on a party's lawyer
- requiring the document to be redacted in a particular way before it is served

- (3) In making a decision under subrule (2) about a document to be served on a child, the court must consider whether it is appropriate for the child to be served a particular document in the absence of a decision under subrule (2), having regard to the child's age and ability to understand the document.
- (4) The court may, at any time, give leave to a party to a proceeding to use a document required to be served under these rules that has not been served or that was served later than the time specified for service of the document.
- (5) In making a decision under subrule (2) or (4), the court must—
  - (a) consider as paramount—
    - (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
    - (ii) for a decision in an adoption proceeding—the adoption principles; and
  - (b) also consider—
    - (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
    - (ii) the requirement to provide procedural fairness to another person.

## **32 Affidavit of service**

- (1) Service of a document 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 dates and 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 of the document 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.

## **Division 4                      Service on guardians**

### **33            Guardian to be served**

- (1) This rule applies to a person if—
  - (a) the person is required to serve a child protection application or an Adoption Act application on another person; and
  - (b) the person knows, or reasonably believes, that the person to be served—
    - (i) is a person with impaired capacity for a matter; or
    - (ii) has a guardian.
- (2) If the person does not know whether the person to be served has a guardian for a matter, the person must make a

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reasonable attempt to find out whether the person to be served has a guardian for a matter.

*Example of a reasonable attempt to find out whether the person to be served has a guardian—*

contacting the QCAT registry to find out if QCAT has appointed a guardian

*Note—*

The chief executive may make an application to QCAT for an order appointing a guardian for a matter of dispensation under the Adoption Act, section 30.

- (3) If the person is aware, because of the attempt made under subrule (2) or otherwise, that the person to be served has a guardian for a matter, the person must serve the application on the guardian.

### **34 Serving documents on guardian who has filed notice of address for service**

- (1) This rule applies if a guardian files a notice of address for service under rule 23 in a proceeding.
- (2) A person who is required to serve a document on a party to the proceeding must also serve the document on the guardian.

## **Part 5 Participants in proceedings and other particular entities**

### **Division 1 Preliminary**

#### **35 What part is about**

This part explains—

- (a) who is a participant in a CAO proceeding or child protection proceeding; and
- (b) how these rules apply to particular participants in a CAO proceeding or child protection proceeding; and

- 
- (c) particular requirements that apply if the court makes an order that a child be represented by a lawyer in a CAO proceeding or a child protection proceeding under the Child Protection Act, section 110 or an adoption proceeding under the Adoption Act, section 235; and
  - (d) the making of orders and issuing of directions in relation to a child's participation in a CAO proceeding, child protection proceeding or adoption proceeding; and
  - (e) how a participant may attend an appearance in a proceeding electronically; and
  - (f) how the court is to hear, in a CAO proceeding or child protection proceeding, the views of the following entities for an Aboriginal or Torres Strait Islander child—
    - (i) an independent Aboriginal or Torres Strait Islander entity for the child;
    - (ii) a member of the child's family.

### **36 Who is a *participant* in a CAO proceeding or child protection proceeding**

Each of the following is a *participant* in a CAO proceeding or child protection proceeding—

- (a) a party to the proceeding;
- (b) a separate representative for the child the subject of the proceeding;
- (c) a person who is not a party, if the court has, by order, allowed the person to take part in the proceeding under the Child Protection Act, section 113;
- (d) if a guardian of a party has filed a notice of address for service under rule 23—the guardian;
- (e) if the public guardian has given written notice of an intention to appear in the proceeding under the Child Protection Act, section 108B(2)—the public guardian.

## **Division 2                    Treating particular participants in    CAO and child protection    proceedings as parties**

### **37            Separate representative of child**

If a child the subject of a child protection proceeding has a separate representative, these rules apply to the separate representative to the same extent they would apply to a party.

*Note—*

The Child Protection Act, section 110(6) states the status of a lawyer who separately represents a child in the proceeding.

### **38            Non-party to the proceeding**

If the court makes an order under the Child Protection Act, section 113 allowing a person who is not a party to take part in a CAO proceeding or child protection proceeding, these rules apply to the person to the extent necessary to give effect to the order.

*Note—*

See the Child Protection Act, section 113(2) and (4).

### **39            Public guardian**

If the public guardian has given written notice of an intention to appear in a CAO proceeding or child protection proceeding under the Child Protection Act, section 108B(2), a reference in these rules to a party in the proceeding is taken to include a reference to the public guardian—

- (a) unless the contrary intention appears or the context requires otherwise; and
- (b) to the extent necessary for the public guardian to perform the guardian's role in the proceeding under the Child Protection Act, section 108C.

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## **Division 3                      Representation of child by Legal Aid Queensland**

### **40            Particular orders to be sent to Legal Aid Queensland**

- (1) This rule applies if the court makes an order under the Child Protection Act, section 110 or the Adoption Act, section 235 that a child be represented by a lawyer in a proceeding.
- (2) The registrar must serve a copy of the order and all material filed in the court on Legal Aid Queensland as soon as practicable after the order is made.

### **41            Legal Aid Queensland to advise registrar if representing child**

Legal Aid Queensland must, as soon as practicable after receiving a copy of an order under rule 40, file—

- (a) if Legal Aid Queensland allocates a lawyer to represent a child the subject of a proceeding under the Child Protection Act, section 110 or the Adoption Act, section 235—a document stating the lawyer’s name and contact details; or

*Note—*

the lawyer must file a notice of address for service under rule 24

- (b) if Legal Aid Queensland does not allocate a lawyer to represent a child the subject of a proceeding under the Child Protection Act, section 110 or the Adoption Act, section 235—a document stating the decision not to make an allocation and the reasons for the decision.

## **Division 4                      Children**

### **42            Way child is to participate in proceeding**

- (1) The court may make an order or issue a direction to assist a child who is the subject of a CAO proceeding, child protection

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proceeding or adoption proceeding to participate in the proceeding, including, for example, issuing a direction that—

- (a) the child may have a person nearby during all or part of an appearance in the proceeding to support the child; or

*Example—*

support of an Aboriginal or Torres Strait Islander child provided by an appropriate person in accordance with Aboriginal tradition or Island custom

- (b) the child may appear at an appearance in a particular way; or
- (c) service on the child under rule 31 is to occur in a particular way; or
- (d) there is a requirement that something be done to assist a child to understand and participate in the proceeding.

*Notes—*

- 1 See the Child Protection Act, section 106, for the court's duty to ensure that parties understand the nature, purpose and legal implications of the proceeding.
  - 2 See also rule 67(2)(c) for the court's general capacity to issue directions to ensure a party understands a proceeding.
- (2) In making a decision under subrule (1), the court must—
- (a) consider as paramount—
- (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
  - (ii) for a decision in an adoption proceeding—the adoption principles; and
- (b) also consider—
- (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
  - (ii) the requirement to provide procedural fairness to another person.



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### **43 Way child is to be heard in proceeding**

- (1) This rule applies if the court is to hear from a child who is the subject of a CAO proceeding, child protection proceeding or adoption proceeding, other than when the child gives evidence.

*Notes—*

- 1 Part 8, division 4 provides for the way a child is to give evidence.
  - 2 The Child Protection Act and the Adoption Act provide for the court to ascertain a child's views and wishes in particular circumstances. See, for example, the Child Protection Act, section 59(1)(d) and the Adoption Act, section 179.
- (2) The court may hear from a child in the way the court considers appropriate, including, for example, by—
- (a) hearing from the child orally in court or another place or with the use of technology, including an audio visual link or audio link; or
  - (b) hearing from the child without the other participants being present; or
  - (c) receiving a document from the child; or
  - (d) receiving submissions by, or on behalf of, the child; or
  - (e) if a proceeding is a CAO proceeding or child protection proceeding—receiving submissions by a direct representative of the child or the public guardian; or
  - (f) if a proceeding is a child protection proceeding—receiving submissions by a separate representative of the child; or
  - (g) if the child is an Aboriginal or Torres Strait Islander child—receiving submissions from a person who may appropriately speak for the child in accordance with Aboriginal tradition or Island custom.
- (3) In making a decision under this rule, the court must—
- (a) consider as paramount—

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- (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
  - (ii) for a decision in an adoption proceeding—the adoption principles; and
- (b) also consider—
- (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
  - (ii) the requirement to provide procedural fairness to another person.

#### **44 Telling child about significant orders and directions in CAO or child protection proceeding**

- (1) The chief executive (child protection) must tell the child the subject of a CAO proceeding or child protection proceeding about significant orders and directions that occur in the proceeding, including a direction that a court ordered conference be held or an order under the Child Protection Act, section 110 that the child be represented by a lawyer in a proceeding.
- (2) However, the chief executive must comply with subrule (1) only to the extent that—
  - (a) is reasonably practicable in the circumstances; and
  - (b) the chief executive reasonably considers is appropriate in the circumstances, having regard to the child’s age or ability to understand the matter.

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## **Division 5                    The public guardian**

### **45            Accessing documents**

- (1) This rule applies if the public guardian may access and make copies of a document under the Child Protection Act, section 108D.
- (2) The public guardian may request access to a document before the court in a CAO proceeding or child protection proceeding—
  - (a) if the public guardian needs to access documents urgently and the registrar consents to receiving the request in person—in person; or
  - (b) otherwise—in writing or electronically.
- (3) The registrar may comply with the request by—
  - (a) allowing the public guardian personally to access and copy the documents; or
  - (b) if the public guardian requests a copy of the document—giving the copy by post or electronically.

### **46            Receiving documents filed in court under the Child Protection Act**

- (1) This rule applies if the public guardian has given written notice of an intention to appear in a proceeding under the Child Protection Act, section 108B(2).
- (2) The court may direct that a document filed in the court that must be served on the other participants in the proceeding must also be served on the public guardian.

## **Division 7                      Attending appearance in CAO or child protection proceeding by electronic means**

### **48            Attending appearance by audio visual link or audio link**

- (1) The court may, on its own initiative or on the application of a participant orally or in writing, direct that a participant (an *appearing participant*) or a witness attend a future appearance for a CAO proceeding or child protection proceeding by audio visual link or audio link.
- (2) A written application under subrule (1) must—
  - (a) be filed in the court before the appearance; and
  - (b) state—
    - (i) how and when notice of the application has been given to the other participants to the proceeding; and
    - (ii) whether any other participant objected to the application; and
    - (iii) whether the appearing participant is aware of any issues in the proceeding that are likely to be contested between the parties during the appearance.
- (3) An application under subrule (1) is an application in a proceeding for these rules.

*Note—*

See part 7, division 2 for how this application is to be made in a proceeding.

- (4) The court must, in considering whether to make the direction, have regard to—
  - (a) the distance the appearing participant or witness would have to travel to attend the place where the appearance is to be held; and

- 
- (b) any other practicality that would make it difficult for the appearing participant or witness to attend the appearance in person.

## **Division 8                      Lawyers**

### **49            Lawyers may act for participants**

- (1) Every act required or permitted to be done by a participant in the conduct of a proceeding in the court may be done by the participant's lawyer.
- (2) However, subrule (1) does not apply to a document that must be signed by a participant.

*Example for subrule (2)—*

an affidavit

## **Division 9                      Participation of particular entities for Aboriginal or Torres Strait Islander children**

### **49A        Way particular entities may express views at appearance in CAO or child protection proceeding**

- (1) This rule applies if—
- (a) the child the subject of a CAO proceeding or child protection proceeding is an Aboriginal or Torres Strait Islander child; and
- (b) at an appearance in the proceeding, any of the following entities is to express the entity's views about Aboriginal tradition or Island custom relating to the child—
- (i) an independent Aboriginal or Torres Strait Islander entity for the child;
- (ii) a member of the child's family.
- (2) The entity may express the views orally or in writing.

*Note—*

See the Child Protection Act, section 6AB for the matters to which the court must have regard when exercising a power under that Act in relation to an Aboriginal or Torres Strait Islander child.

## **Part 6                      Compliance with litigation director's duty of disclosure in child protection proceedings**

### **Division 1                      Preliminary**

#### **50            What part is about**

This part explains—

- (a) the litigation director's obligations to file and serve a disclosure form; and
- (b) when and how the litigation director is to comply with the director's duty of disclosure in relation to a child protection proceeding under the Child Protection Act, section 189C; and
- (c) the litigation director's obligation to file a document stating that the duty of disclosure has been complied with; and
- (d) the matters relevant for an application for an order of the disclosure of a document or information under the Child Protection Act, section 191.

### **Division 2                      Disclosure form**

#### **51            What is a *disclosure form***

- (1) A *disclosure form* is a document to be filed in the court and served in a child protection proceeding that—

- 
- (a) lists the classes of document relevant to the proceeding that are usually in the possession or control of the chief executive (child protection); and
  - (b) may list any document or other class of document in the possession or control of the litigation director that is relevant to the proceeding; and
  - (c) states that—
    - (i) the disclosure form is given in accordance with the litigation director's duty to disclose documents under the Child Protection Act, section 189C; and
    - (ii) the litigation director may, under the Child Protection Act, section 191(2), refuse to disclose a document.
- (2) Also, a *disclosure form*—
- (a) may list the documents the litigation director refuses to disclose on a ground mentioned in the Child Protection Act, section 191(2); and
  - (b) for any documents listed as mentioned in paragraph (a)—must state the information required to be given to the party under the Child Protection Act, section 189C(5) about the documents.

## 52 Litigation director to file and serve disclosure form

- (1) In a child protection proceeding, the litigation director—
  - (a) may file and serve a disclosure form at any time; but
  - (b) must, subject to any direction given by the court under subrule (2), file and serve a disclosure form within 20 days after the date of the first mention for the proceeding.
- (2) The court may direct the litigation director to file and serve a disclosure form at any time.
- (3) Subrule (4) applies if the court—

- (a) makes an order that a conference between the parties be held; and
  - (b) directs the litigation director to file and serve a disclosure form so that disclosure can occur before the conference.
- (4) The court may issue any other direction necessary to ensure documents on the disclosure form are disclosed before the conference.

## **Division 3                      Seeking disclosure of document**

### **53            Party may request litigation director disclose document**

- (1) A party to a child protection proceeding may make a written request to the litigation director for disclosure of a particular document that is relevant to the proceeding.
- (2) The written request must—
  - (a) for a document to which the Child Protection Act, section 190 applies—describe the document as required under subsections (2) and (3) of that section; or
  - (b) otherwise—include an adequate description of the document.
- (3) The litigation director must respond to the request as soon as reasonably practicable after receiving the request.
- (4) Subrules (5) and (6) apply if—
  - (a) the party makes a written request under subrule (1) for disclosure of a document before a court ordered conference; and
  - (b) there is no ground on which the litigation director may refuse to disclose the document under the Child Protection Act, section 191(2); and
  - (c) the litigation director considers it would not be reasonably practicable to disclose the document before the court ordered conference.



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- (5) The litigation director may apply to the court for leave to disclose the document to the party by a particular day.
  - (6) The court may, on an application by the litigation director under subrule (5), give leave to the litigation director to disclose the document to the party by any day and on any conditions the court considers appropriate.
  - (7) An application under subrule (5) is an application in a proceeding for these rules.

*Note for subrule (7)—*

See part 7, division 2 for how this application is to be made in a proceeding.

## **54 Application for disclosure—Child Protection Act, s 191**

- (1) An application for disclosure of a document or information under the Child Protection Act, section 191(4) is an application in a proceeding for these rules.

*Note—*

See part 7, division 2 for how this application is to be made in a proceeding.

- (2) If the court orders the disclosure of a document or information, the court may make an order about how the document is to be disclosed, including that the document is to be—
  - (a) redacted before it is to be disclosed; or
  - (b) inspected only and not copied; or
  - (c) disclosed only to the lawyers of a party; or
  - (d) disclosed to an expert to be considered in a report.

## **Division 4 Disclosing document**

### **55 When litigation director may disclose document**

- (1) The litigation director may disclose a document at any time.

- (2) However, the litigation director must disclose a document relevant to the child protection proceeding—
- (a) if the court orders or directs the disclosure; or
  - (b) after a party to the proceeding requests under rule 53 that the document be disclosed to the party.

*Note—*

See also the Child Protection Act, section 191 for the litigation director's power to refuse to disclose a document.

- (3) Also—
- (a) the litigation director must complete the disclosure before the proceeding is decided; and
  - (b) the court may issue a direction about disclosure, including that disclosure be completed by a particular day.

## **56 How litigation director may disclose document**

- (1) The litigation director may disclose a document relevant to a child protection proceeding by—
- (a) disclosing the document in accordance with a court order; or
  - (b) if no order has been made—disclosing the document in accordance with a practice direction; or
  - (c) if no order or practice direction has been made—
    - (i) serving a copy of the document on a party; or
    - (ii) producing the document, or a copy of the document, for inspection under subrule (2).
- (2) The litigation director may produce the document, or a copy of the document, for inspection by—
- (a) notifying the parties to the proceeding in writing of a convenient place and time to inspect the document; and
  - (b) producing the document for inspection at the time and place; and

- 
- (c) allowing or arranging for copies of the document to be made.
  - (3) The litigation director must, when serving a document or making it available for inspection, state that disclosure of a document or information disclosed by the litigation director under the Child Protection Act, section 189C is an offence.

*Note—*

See the Child Protection Act, section 189E.

## **57 Disclosing document to other parties**

- (1) This rule applies to a document to be disclosed, under rule 55, to a party to a child protection proceeding.
- (2) The litigation director—
  - (a) may also disclose the document, under rule 55, to any other party to the proceeding; or
  - (b) may give written notice to any other party to the proceeding—
    - (i) notifying that party about the disclosure; and
    - (ii) inviting the other party to request the disclosure to that party of the document; or
  - (c) if the litigation director refuses to disclose the document to any other party to the proceeding under the Child Protection Act, section 191(2)—must notify the other party in writing of the refusal.
- (3) If a party mentioned in subrule (2)(b) requests the disclosure of a document, the litigation director must immediately disclose the document, under rule 55, to the party.

## **58 Directions about hearings to ensure duty of disclosure complied with within a reasonable period before hearing**

- (1) This rule applies if the court issues directions about things that must be done before a hearing in a child protection proceeding.

- (2) The directions must include any direction necessary to ensure the litigation director's duty of disclosure is complied with within a reasonable period before the hearing.

## **59 Disclosed document not required to be filed**

The litigation director is not required to file a document disclosed by the litigation director unless—

- (a) the Child Protection Act or these rules require the document to be filed; or
- (b) the court directs that the document be filed.

## **60 Litigation director to consider matters for disclosure duty**

In complying with the litigation director's duty of disclosure under the Child Protection Act, section 189C, the litigation director must consider whether—

- (a) a disclosure form has been filed in the court and served on the parties to the proceeding; and
- (b) all documents relevant to the proceeding have been disclosed under rule 55; and
- (c) all documents required, under an order of the court under the Child Protection Act, section 191(4), to be disclosed to the parties have been disclosed; and
- (d) for a document the subject of a written notice under rule 57(2)(b)—
  - (i) the litigation director has disclosed the document under rule 56 to the party to whom the notice was given; or
  - (ii) the party to whom the notice was given does not request the disclosure of the document within 10 days after receiving the notice.

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**61      Litigation director to file document stating disclosure duty complied with**

The litigation director must file a written notice before the child protection proceeding is finally decided stating that the director—

- (a) understands the director's duty of disclosure under the Child Protection Act, section 189C and the consequences under the Child Protection Act, section 189D for failing to disclose a document; and
- (b) has considered the matters mentioned in rule 60; and
- (c) has complied and will continue to comply with the duty of disclosure to the best of the director's knowledge and ability.

**Part 7                      Court case management**

**Division 1                Court case management in child protection proceedings**

**62      What division is about**

This division provides a framework for how the court must manage a child protection proceeding, including by considering—

- (a) how the proceeding is to be conducted; and
- (b) how the court is to receive evidence in the proceeding; and
- (c) who should be a party to or participant in the proceeding; and
- (d) any other proceedings that are relevant to the proceeding; and
- (e) whether directions should be issued for the proceeding.

### **63 Court to manage child protection proceedings**

The court must manage a child protection proceeding to ensure the proceeding is resolved in accordance with the main objects of these rules.

### **64 Way court may manage child protection proceeding**

- (1) The court may manage a child protection proceeding by making an order or issuing a direction it considers appropriate about the conduct of a proceeding.
- (2) Without limiting subrule (1), the court may do any of the following for the proceeding at any time—
  - (a) decide the way the proceeding is to be conducted, including by—
    - (i) setting a timetable for the proceeding; or
    - (ii) directing when stages in the proceeding are to be completed;
  - (b) direct that documents in the proceeding be amended;
  - (c) identify the issues in the proceeding;
  - (d) decide the issues that need to be investigated;
  - (e) decide the issues that are to be addressed at an appearance in the proceeding;
  - (f) decide the order in which the issues in the proceeding are to be resolved;
  - (g) if the court considers alternative dispute resolution is appropriate for the proceeding—encourage the parties to use alternative dispute resolution;
  - (h) help the parties to settle all or some of the issues in the proceeding;
  - (i) encourage the parties to cooperate with each other in the proceeding;

- 
- (j) decide when and how an appearance in the proceeding is to happen, including by directing that technology be used for the proceeding;

*Note—*

See also rule 48.

- (k) deal with as many issues in the proceeding as possible at each appearance;
- (l) deal with issues at an appearance without requiring the attendance of some or all of the parties;
- (m) deal with issues in the proceeding without an appearance;
- (n) make an order or issue a direction to promote the quick resolution of the proceeding, including by adjourning the proceeding on the court's own initiative or by application in the proceeding.

*Note—*

See part 7, division 2 for how this application is to be made in a proceeding.

## **65 Evidence in child protection proceeding**

The court may issue a direction about evidence in a child protection proceeding, including about the following—

- (a) how evidence is to be given by a witness, including whether the witness is to give evidence orally or by affidavit;
- (b) the filing of affidavits;
- (c) the content of an affidavit to be used in the proceeding;
- (d) a direction about the admission of facts or documents;
- (e) whether to exempt a witness from attending an appearance in the proceeding;
- (f) reducing the costs of a proceeding relating to the appearance of a witness appearing in the proceeding;
- (g) the return date for subpoenas;

- (h) the way the court is to be informed of a particular matter.

*Note—*

The Child Protection Act, section 105 provides that the court may inform itself in any way it thinks appropriate.

## **66 Expert evidence**

- (1) The court must consider whether to make an order in a child protection proceeding requiring a written social assessment report about the child and the child’s family to be prepared and filed in the court under the Child Protection Act, section 68(1)(a).
- (2) The court may issue directions about whether and how expert evidence is to be taken in a child protection proceeding, including, for example, by issuing a direction—
  - (a) about the matters for which expert evidence is to be provided; or
  - (b) about the type of expert that is to provide the expert evidence; or
  - (c) about the number of experts to be called in the proceeding, including directing that the parties agree on a single expert for an issue; or
  - (d) about the appointment of an expert by the court or jointly by the parties; or
  - (e) about matters to be included in the terms of reference or document list for an expert, including directing the parties to seek agreement to the draft terms of reference or document list to be used by the expert.

## **67 Participation in child protection proceedings**

- (1) At an early stage of a child protection proceeding and at any other time, the court must identify who should be a party to or participant in the child protection proceeding.



*Note—*

Part 5 contains rules about participants in a child protection proceeding.

- (2) The court must, in identifying who should be a party to or participant in a child protection proceeding, consider issuing directions about each of the following—
- (a) whether a party or a person is to take steps to find out who should be a party to or participant in the proceeding;
  - (b) if the court considers that a person should be a party to or participant in the proceeding—how the person is to be served or notified of the proceeding;
  - (c) things to be done to—
    - (i) help decide whether a party to the proceeding understands the nature, purpose and legal implications of the proceeding; or

- (ii) ensure the party understands the proceeding;

*Note—*

See the Child Protection Act, section 106, for the court's duty to ensure that parties to a child protection proceeding understand the nature, purpose and legal implications of the proceeding.

- (d) how the child's wishes or views, if able to be ascertained, are to be made known to the court under the Child Protection Act, section 59(1)(d);
- (e) whether the court should allow a person who is not a party to the proceeding to participate in the proceeding under the Child Protection Act, section 113;
- (f) if a party has a guardian for a matter relating to the proceeding—how the guardian is to be given notice of the proceeding or be served or given a document in the proceeding;

*Note—*

See also rule 33.

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- (g) whether the public guardian should be given notice of the proceeding, and how the public guardian is to be given notice of the proceeding.

*Note—*

The public guardian has the right to appear in a child protection proceeding under the Child Protection Act, section 108B.

## **68 Legal representation of parties**

- (1) The court must consider—
  - (a) whether a party should be represented, and has had reasonable opportunity to obtain legal representation; and
  - (b) whether an order should be made that a child be represented by a lawyer under the Child Protection Act, section 110.
- (2) When considering whether a child should be represented by a lawyer under the Child Protection Act, section 110, the court must consider the following matters—
  - (a) the circumstances of the child, including, for example, whether the child has particular needs that are to be considered in the proceeding;
  - (b) the circumstances of the child’s family, including, for example, whether a parent of the child is also a child;
  - (c) the factual or evidentiary complexity of the proceeding, including, for example, whether expert evidence will be used in the proceeding;
  - (d) whether appointing a representative under the Child Protection Act, section 110 is necessary for—
    - (i) the child protection proceeding to be conducted in a way that is consistent with the best interests of the child; or
    - (ii) the court to decide the child protection proceeding in the best interests of the child.

- (3) The court may issue directions about the representation of a party.

*Notes—*

- 1 directing a party to help another party, including a child, to apply to Legal Aid Queensland or a Legal Aid service provider for legal assistance under the *Legal Aid Queensland Act 1997*
- 2 directing the registry to send to Legal Aid Queensland the magistrate's written request that Legal Aid Queensland consider giving a party legal assistance under the *Legal Aid Queensland Act 1997*
- 3 directing a party to help another party, including a child, to seek assistance from a community legal service or a service that provides legal assistance to Aboriginal people or Torres Strait Islanders

## 69 Arrangements for child

On an adjournment of a child protection proceeding, the court must consider whether to make any of the following orders—

- (a) an interim order under the Child Protection Act, section 67(1)(a) about temporary custody of a child, including whether making the order would be in accordance with the paramount principle under that Act;
- (b) an interim order under the Child Protection Act, section 67(1)(b) about contact with a child, including whether making the order would be in accordance with the paramount principle under that Act;

*Note—*

The Child Protection Act, section 99 provides for the continuation of an order pending the decision on an application for another order.

- (c) an order under the Child Protection Act, section 68(1)(b) authorising a medical examination or treatment of the child and requiring a report of the examination or treatment be filed in the court;
- (d) an order under the Child Protection Act, section 68(1)(c) about the child's contact with the child's family during the adjournment;

- (e) an interim contact order about a matter the subject of a reviewable decision under the Child Protection Act, section 99MA for a child who is a party to the proceeding.

## 70 Court to consider domestic violence and other relevant proceedings

- (1) In a child protection proceeding, the court must consider—
  - (a) whether to make a protection order under the *Domestic and Family Violence Protection Act 2012*, section 43(2); and
  - (b) whether to vary a domestic violence order under the *Domestic and Family Violence Protection Act 2012*, section 43(3); and
  - (c) whether the child or a parent of the child is a party to a DFVP proceeding, or a DFVP proceeding is otherwise relevant to the proceeding; and
  - (d) if paragraph (c) applies, whether to issue another direction about the DFVP proceeding.

*Example—*

The court may direct the registrar to request information from another court about a DFVP proceeding.

- (2) The court must also consider whether there are any other relevant proceedings, and whether to issue a direction about a matter related to the relevant proceeding.
- (3) In this rule—

***DFVP proceeding*** means a proceeding under the *Domestic and Family Violence Protection Act 2012*.

***relevant proceeding*** means a proceeding relevant to the child protection proceeding, including—

- (a) criminal proceedings; and

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*Note—*

The Child Protection Act, section 103 states that the court's jurisdiction is not affected merely because a criminal proceeding is pending against a person mentioned in that section.

- (b) an application for a review of a reviewable decision under the Child Protection Act; and
- (c) a proceeding in which a court is exercising jurisdiction conferred on the court under the *Family Law Act 1975* (Cwlth).

## **71 Court to consider other procedural matters for child protection proceeding**

The court must consider each of the following for a child protection proceeding—

- (a) whether to make an order under the Child Protection Act, section 68(1)(d) requiring the chief executive to convene a family group meeting, regardless of whether a meeting has already been held in the proceeding;
- (b) whether to make an order under the Child Protection Act, section 68(1)(e) that a conference between the parties be held, regardless of whether a conference has already been held in the proceeding;
- (c) whether to make an order under the Child Protection Act, chapter 2, part 5, division 1 not otherwise mentioned in this part;
- (d) whether to make an order under the Child Protection Act, section 114 transferring the proceeding to another court;
- (e) whether to hear 2 or more applications together under the Child Protection Act, section 115;

*Example of when to consider whether to hear 2 applications together—*

there are 2 separate applications and the children the subject of the applications are siblings

- (f) whether to make an order or issue a direction under the Child Protection Act, chapter 6, part 6, division 3 or these rules about disclosure.

## **72 Exercise of particular powers in relation to Aboriginal or Torres Strait Islander children**

- (1) This rule applies if a child the subject of a child protection proceeding is an Aboriginal or Torres Strait Islander child.
- (2) The court must consider how the court is to be informed of, and whether to issue directions to ensure the court is informed of—
  - (a) matters relevant to how the additional principles mentioned in the Child Protection Act, section 5C(1) apply to the child; and
  - (b) matters relevant to how the child placement principles mentioned in the Child Protection Act, section 5C(2) apply to the child; and
  - (c) matters relevant to how the additional provisions for placing Aboriginal and Torres Strait Islander children in care mentioned in the Child Protection Act, section 83 apply to the child.
- (3) Also, the court must consider whether to issue directions to ensure the court is informed of the views of any of the following entities about Aboriginal tradition or Island custom relating to the child—
  - (a) an independent Aboriginal or Torres Strait Islander entity for the child;
  - (b) a member of the child’s family.

*Note—*

See the Child Protection Act, section 6AB for the matters to which the court must have regard when exercising a power under that Act in relation to an Aboriginal or Torres Strait Islander child.

- (4) A direction issued under subrule (3) may require that a copy of a document filed in the proceeding be given to an entity mentioned in that subrule.

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## **Division 2                      Applications in proceedings**

### **73            Application in proceeding**

- (1) Subject to rule 74 or unless an Act or another rule states otherwise, if a person makes an application in a proceeding, the application must—
  - (a) be in the approved form; and
  - (b) be filed in the court; and
  - (c) be served on each party to the proceeding; and
  - (d) state the decision the applicant is seeking from the court; and
  - (e) identify the proceeding, including by reference to the name of the parties and the file number for the proceeding.
- (2) However, if an application is in a child protection proceeding and is made by a person who is not a party to the proceeding—
  - (a) the person is not required to serve the application on each party to the proceeding; and
  - (b) the registrar must give written notice to the litigation director of the application; and
  - (c) the litigation director must serve the document on the other parties to the application.
- (3) Without limiting subrule (1), the court may issue directions about how an application made under subrule (1) is to be heard and decided, including—
  - (a) directing the parties to the application to file material by a particular day; and
  - (b) directing that the application be decided with or without a hearing.

- (4) If the court directs that the application is to be decided with a hearing, the registrar must notify the applicant of the day and time of the hearing.

## **74 Oral applications**

- (1) A party to a proceeding may make an oral application for any order or relief the court may make or grant on a written application.
- (2) If a party makes an oral application under subrule (1), the court may—
  - (a) permit the application to proceed orally, in a way and on the conditions the court considers appropriate; or
  - (b) direct the party to make the application in writing in accordance with rule 73.
- (3) In deciding whether to permit the application to proceed orally under subrule (2)(a), the court must—
  - (a) consider as paramount—
    - (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
    - (ii) for a decision in an adoption proceeding—the adoption principles; and
  - (b) also consider—
    - (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
    - (ii) the requirement to provide procedural fairness to another person.



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## **Division 3                      Concurrent contact review proceedings with child protection proceeding**

### **75            Court to consider suspension of contact review proceeding under the Child Protection Act, s 99MA**

- (1) This rule applies if the registrar is notified that a contact review proceeding has been suspended under the Child Protection Act, section 99MA(3)(b).
- (2) The court must deal with the notification as soon as practicable, and may direct the registrar to bring forward the next appearance in the proceeding to deal with the notification.
- (3) The court may issue directions to assist the court in deciding how to deal with the notification, including directing the parties to the application to file material by a particular day.
- (4) If the court directs that the notification be dealt with at the next appearance, the registrar must notify the parties to the proceeding that—
  - (a) the notification is to be dealt with at the next appearance in the proceeding; and
  - (b) if the day of the next appearance has been brought forward under subrule (2)—the day has been moved under that subrule.
- (5) The court must consider the notification and may—
  - (a) make an order that the subject matter of the reviewable decision may be dealt with by the tribunal in the contact review proceeding under the Child Protection Act, section 99MA(4); or
  - (b) do any of the following at the next appearance in the proceeding—
    - (i) make an interim order under the Child Protection Act, section 67(1)(b) or 68(1)(c);

- (ii) adjourn the proceeding and issue directions about dealing with the notification;
- (iii) decide the proceeding.

*Note—*

See the Child Protection Act, section 99MA(5) for how the registrar is to notify the tribunal registrar of the court's order or action.

- (6) If the court makes an order under the Child Protection Act, section 99MA(4) in the absence of a party to the child protection proceeding, the registrar must notify the party that the decision was made.
- (7) In this section—

***contact review proceeding*** means a review proceeding under the Child Protection Act, section 99MA.

## **Division 4                      General court powers**

### **76            Extending and shortening time**

- (1) The court may, at any time, extend or shorten a time limit fixed under these rules.
- (2) An extension may be given under subrule (1) even if the time for complying with the relevant requirement has passed.
- (3) In making a decision under subrule (1), the court must—
  - (a) consider as paramount—
    - (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
    - (ii) for a decision in an adoption proceeding—the adoption principles; and
  - (b) also consider—
    - (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and

- (ii) the requirement to provide procedural fairness to another person.

## **77 Power to amend**

- (1) At any stage of a proceeding, the court may allow or direct a party to the proceeding to amend a document in the proceeding in a way and on the conditions the court considers appropriate.
- (2) An amendment under subrule (1) must be filed in the court and served on each other party to the proceeding as soon as practicable after being made.
- (3) Also, the registrar may give leave to amend an originating application or notice of appeal if—
  - (a) the amendment is a technical matter; or
  - (b) the document has not been served and all sealed copies of the document, and the other documents filed with the document, are returned to the court.

## **78 Varying or setting aside errors as a result of slip or omission**

- (1) The court may, on application by a party or its own initiative, vary or set aside an order if the order contains an error made because of an accidental slip or omission.
- (2) However, the court may vary or set aside the order only if—
  - (a) the court gives each party a reasonable opportunity to be heard on whether the order should be varied or set aside, through a hearing or otherwise; and
  - (b) for a party who has applied to have the order varied or set aside—the party has served notice of the application on the other parties to the proceeding.
- (3) In making a decision under subrule (1), the court must—
  - (a) consider as paramount—

- (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
  - (ii) for a decision in an adoption proceeding—the adoption principles; and
- (b) also consider—
- (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
  - (ii) the requirement to provide procedural fairness to another person.

## **Part 8 Evidence**

### **Division 1 Preliminary**

#### **79 What part is about**

This part explains matters relating to the court receiving evidence, including—

- (a) matters about affidavits; and
- (b) matters about subpoenas; and
- (c) how a child is to give evidence; and
- (d) how the registrar is to deal with exhibits after a proceeding has been finalised.

### **Division 2 Affidavits**

#### **80 Respondent in proceeding may file affidavit**

- (1) This rule applies if a proceeding is started by the filing of a child protection application or an Adoption Act application.

- (2) Each respondent named in the application may file in the court and serve on the applicant an affidavit in response to the application.
- (3) The court can not draw any inference against a respondent solely because the respondent did not file and serve an affidavit under this rule.

*Note—*

The court may, under rule 65, issue a direction about evidence in a child protection proceeding.

## **81 Particular children may be asked to make affidavit only with court's leave**

A person may ask a child, other than a child who is a respondent, to swear or affirm an affidavit in a proceeding only with the leave of the court.

*Note—*

There are limitations on particular children giving evidence under the Child Protection Act, section 112 or the Adoption Act, section 238.

## **82 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.

## **83 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 to a proceeding on whose behalf it is filed.
- (3) An affidavit must be made in the first person.

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- (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.

#### **84 Affidavit taken before party**

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

#### **85 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 (a *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

*Note—*

For persons who may take an affidavit, see the *Oaths Act 1867*, parts 4 and 6A.

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- (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

*Note—*

The capacity mentioned in paragraph (e) refers to the person who may take the affidavit listed in the note under paragraph (d).

- (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 (also a *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.

## **86 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.
- (4) In this rule—

*jurat* see rule 85(3) and (4).

## **87 Alterations**

- (1) This rule applies if there is an alteration in any part of an affidavit.
- (2) The affidavit may be—
  - (a) filed in the court; and
  - (b) served on each other party to the proceeding.
- (3) However, unless the court orders otherwise, the affidavit may be used only if the person who makes the affidavit and the person who takes the affidavit initials the alteration.
- (4) In this rule—



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*alteration* includes an insertion of material between the lines of the text of the affidavit, erasure or other alteration of the affidavit.

## **88 Exhibits**

- (1) A document used with and mentioned in an affidavit is an exhibit.
- (2) A 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; and
  - (c) have a certificate in the approved form on or attached to the exhibit.
- (6) An exhibit to an affidavit must be filed when the affidavit is filed.
- (7) Subrules (8) and (9) apply if—
  - (a) an exhibit to an affidavit is made up of a group of documents; or
  - (b) there is more than 1 documentary exhibit to an affidavit.
- (8) The documents are to be presented in a way that will assist the court's efficient and quick reference to them.
- (9) As far as practicable—
  - (a) the documents are to be bound in 1 or more paginated books; and
  - (b) despite subrule (5)(c), each book must have a certificate in the approved form on or attached to the front of the book dealing with the exhibits in the book; and

- (c) an index to each book is to be bound immediately after the certificate.
- (10) A certificate mentioned in subrule (5)(c) or (9) must be signed by—
- (a) if the affidavit is taken under rule 86—the person who took the affidavit; or
  - (b) otherwise—the person who made the affidavit and the person who took the affidavit.
- (11) If a document or an original thing has been filed in the court, whether or not as an exhibit to an affidavit, in a subsequent affidavit filed in the court—
- (a) the document or thing must not be made an exhibit to the affidavit; and
  - (b) the document or thing may be referred to in the affidavit in a way sufficient to enable the document or thing to be identified.

## **89 Irregularity**

- (1) An affidavit may, unless the court orders otherwise, be filed in the court and served 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 that it was used by leave.
- (3) An affidavit used under subrule (2) is afterwards taken as a regular affidavit.

## **90 Filing and serving an affidavit**

An affidavit to be used in a proceeding must, unless the court orders otherwise, be filed in the court and served on each other party to the proceeding.

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## 91 Examination of person making affidavit

- (1) If an affidavit is to be relied on in a proceeding, the court may order the person who made the affidavit to attend a hearing (an *examination hearing*) at which the person is to be examined or cross-examined before the court about the affidavit.

*Note—*

The child the subject of a CAO proceeding or child protection proceeding, or a child in an adoption proceeding, may give evidence or be cross-examined only with the leave of the court under the Child Protection Act, section 112 or the Adoption Act, section 238.

- (2) Subrule (3) applies if an affidavit to be relied on in a proceeding is served on a party to a proceeding more than 3 business days before an appearance in the proceeding and the party wishes the person who made the affidavit to attend an examination hearing about the affidavit.
- (3) The party who wishes the person to attend the examination hearing must serve a notice to that effect on the party to the proceeding on whose behalf the affidavit is filed in the court at least 1 business day before the date the person is required to attend the hearing.
- (4) If the person who made the affidavit does not attend the examination hearing in compliance with the notice, the court may refuse to receive the affidavit into evidence.
- (5) However, the court may—
  - (a) dispense with the requirement of a person who made an affidavit to attend an examination hearing about the affidavit; and
  - (b) direct that an affidavit be used without the person who made the affidavit having attended an examination hearing about the affidavit.
- (6) Unless the court orders otherwise, a party to a proceeding who serves a notice under subrule (3) for the person who made an affidavit to attend an examination hearing about the affidavit is not liable to pay the expenses of the attendance.

## **92 Scandal and oppression**

If there is scandalous or oppressive matter in an affidavit filed or used in a proceeding, the court may make any order to ensure the matter is removed from the proceeding, including an order that—

- (a) the affidavit be removed from the court record for the proceeding; or
- (b) the affidavit be removed from the court record for the proceeding and destroyed; or
- (c) the scandalous or oppressive matter in the affidavit be struck out; or
- (d) the party on whom the affidavit was served—
  - (i) return the affidavit to the party who filed the affidavit so it can be amended or destroyed; or
  - (ii) destroy the affidavit.

## **Division 3 Subpoenas**

### **93 Request for subpoena**

- (1) A person may request a subpoena.
- (2) However, a person may request a subpoena directed at a child only with the leave of the court.

*Note—*

There are limitations on particular children giving evidence under the Child Protection Act, section 112 or the Adoption Act, section 238.

- (3) The request must—
  - (a) be in the approved form; and
  - (b) state the name of the person to whom the subpoena is directed; and
  - (c) attach the subpoena that is to be issued by the court; and
  - (d) be filed.

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## 94 Issuing subpoena

- (1) The following may issue a subpoena requiring the attendance of a person before the court to give evidence in a proceeding or to produce a stated document or thing—
  - (a) if the party to a proceeding requests the subpoena—the court or the registrar;
  - (b) if the court decides to issue the subpoena on its own initiative—the court.
- (2) A subpoena issued under this rule must be—
  - (a) filed in the court; and
  - (b) served on the person to whom the subpoena is directed and each other party to the proceeding.

## 95 Requirements for subpoena

- (1) A subpoena may be directed only to 1 person.
- (2) The name or designation by office or position of the person to whom the subpoena is directed must appear on the subpoena before it is issued.

*Example of designation by office or position—*  
the medical superintendent of XYZ hospital

- (3) A subpoena must—
  - (a) include a notice advising the person who must comply with the subpoena that the person has the right to apply to the court to have the subpoena set aside under rule 97; and
  - (b) state when and where the person must produce a document or thing or give evidence; and
  - (c) state that the court may order the party on whose behalf the subpoena is issued to pay a non-participant the costs under rule 100(3).
- (4) Also, a subpoena requiring a person to produce a document or thing must—

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- (a) for a document to which the Child Protection Act, section 190 applies—describe the document as required under subsections (2) and (3) of that section; or
  - (b) otherwise—include an adequate description of the document or thing.
- (5) For subrule (3)(b), if a non-participant in a proceeding must produce a document or a thing, the subpoena must state that the non-participant must produce the stated document or thing at—
- (a) the registry of the court from which the subpoena was issued; or
  - (b) another place ordered by the court.

## **96 Person to comply with subpoena**

- (1) A person to whom a subpoena is directed must comply with the subpoena.
- (2) However, the person is not required to comply with a subpoena if the person—
  - (a) is prohibited from giving the evidence or document by a law; or
  - (b) may refuse to give evidence in a proceeding or to produce a stated document or thing under a law.

*Example of a law—*

The Child Protection Act, section 191 provides that a person may refuse to give information in a proceeding in particular circumstances.

## **97 Setting aside subpoena**

- (1) A person to whom a subpoena is directed may apply to the court for an order setting aside all or part of the subpoena on any sufficient grounds, including on any of the following grounds—
  - (a) want of relevance;
  - (b) privilege;

(c) oppressiveness.

- (2) An application under subrule (1) is an application in a proceeding for these rules.

*Note—*

See part 7, division 2 for how this application is to be made in a proceeding.

- (3) A party to the proceeding to which the subpoena relates may apply to the court to be heard on the application to set aside all or part of the subpoena.
- (4) The court may hear and decide an application made under subrule (3) at the hearing of the application to set aside all or part of the subpoena.

## **98 Production by non-participant**

- (1) This rule applies if a non-participant in a proceeding is named in a subpoena for production of a stated document or thing.
- (2) The non-participant in a proceeding may comply with the subpoena by—
- (a) producing the document or thing to the court; or
  - (b) having another person produce the stated document or thing to the court.
- (3) If a document or thing is produced at the registry, the registrar must—
- (a) issue a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as the court directs.
- (4) This rule does not apply to a subpoena to the extent it requires a named person to attend to give evidence orally.

## **99 Inspecting subpoenaed documents or things**

- (1) On production to the registry of a document or thing stated in a subpoena, the registrar must hold the document or thing

subject to the court's direction and must not allow anyone to view the document or thing other than as directed by the court or under these rules.

- (2) A party may apply to the court to view, or view and copy, the document or thing produced.
- (3) An application under subrule (2) is an application in a proceeding for these rules.

*Note—*

See part 7, division 2 for how this application is to be made in a proceeding.

- (4) If the application is made by a person mentioned in the Adoption Act, section 239, the court may allow the person to view the document or thing produced only if the court is satisfied—
  - (a) the document or information is relevant to a submission the person may make to the court under the Adoption Act, section 239; and
  - (b) the person needs to view the document or information to make the submission; and
  - (c) it is in the best interests of the child the subject of the proceeding for the person to view the document or information; and
  - (d) each person to whom the document or information relates—
    - (i) has been informed that the document or information may be viewed by the person; and
    - (ii) has been given a reasonable opportunity to make submissions to the court about the person being allowed to view the document or information.
- (5) The court may—
  - (a) grant the application, with or without conditions, including that the document is to be—
    - (i) redacted before it is to be disclosed; or



- (ii) inspected only and not copied; or
  - (iii) disclosed only to the lawyers of a party; or
  - (iv) disclosed to an expert to be considered in a report;  
or
- (b) refuse the application.

**100 When court may order costs for non-participant complying with subpoena**

- (1) This rule applies if a subpoena requires a non-participant in a proceeding to attend court to give evidence in the proceeding or produce a stated document or thing.
- (2) State non-participants are not entitled to receive conduct money to meet the expenses of complying with the subpoena.
- (3) The court may order the party on whose behalf the subpoena was issued to pay a non-participant (other than a State non-participant) the following costs—
  - (a) a travelling allowance;
  - (b) an accommodation allowance;
  - (c) an attendance allowance;
  - (d) the losses and expenses, including legal costs, incurred by the non-participant in complying with the subpoena.
- (4) The court may make an order under subrule (3) only if—
  - (a) before complying with the subpoena, the non-participant gives the issuing party notice that substantial costs would be incurred in properly complying with the subpoena, including an estimate of the costs; and
  - (b) the court considers—
    - (i) substantial costs have been or would be incurred by the non-participant in complying with the subpoena; and

- (ii) it is reasonable in the circumstances to make the order.
- (5) The court may fix the amount payable under subrule (3)(d) having regard to—
  - (a) the costs incurred by the non-participant; and
  - (b) the amount to be paid to the non-participant under subrule (3)(a) to (c); and
  - (c) the scale of costs under—
    - (i) if the court is constituted by a Childrens Court judge or a District Court judge—the *Uniform Civil Procedure Rules 1999*, schedule 1; or
    - (ii) otherwise—the *Uniform Civil Procedure Rules 1999*, schedule 2, part 1 and part 2, column A.
- (6) An order under this rule must be made before—
  - (a) the application starting the proceeding is withdrawn; or
  - (b) an order is made finally deciding the proceeding at first instance.

- (7) In this rule—

**accommodation allowance** means the amount payable to a relevant person under the *Uniform Civil Procedure (Fees) Regulation 2009*, part 4 as an accommodation allowance.

**attendance allowance** means the amount payable to a relevant person under the *Uniform Civil Procedure (Fees) Regulation 2009*, part 4 as an attendance allowance.

**relevant person** see the *Uniform Civil Procedure (Fees) Regulation 2009*, section 11.

**State non-participant** means any of the following non-participants—

- (a) a public service employee or other employee of the State in the employee's official capacity;
- (b) the State or an entity of the State.

*travelling allowance* means—

- (a) for a person who travelled by air—the amount payable for the cheapest economy class airfare available on the day the person was required to travel by air to and from the court; or
- (b) for a person who travelled another way—the amount payable to a relevant person under the *Uniform Civil Procedure (Fees) Regulation 2009*, part 4 as a travelling allowance.

## **101 Return of subpoenaed documents or things**

- (1) This rule applies to a document or thing if—
  - (a) the document or thing is not tendered or admitted into evidence at the hearing of a proceeding for which it was produced; and
  - (b) either—
    - (i) the matter was heard and the hearing of the proceeding for which it was produced has ended; or
    - (ii) the matter was not heard and the period for which the matter was listed for hearing has ended.
- (2) The registrar must—
  - (a) return the document or thing to the person required to produce it; or
  - (b) if the document is a copy and the person stated to the registrar that the document may be destroyed—destroy the document.

## **Division 4                      Evidence given by children**

### **102      Court may issue directions about how children give evidence**

- (1) This rule applies to a child who is to give evidence in a proceeding.

*Note—*

The child the subject of a CAO proceeding or child protection proceeding, or a child in an adoption proceeding, may give evidence or be cross-examined only with the leave of the court under the Child Protection Act, section 112 or the Adoption Act, section 238.

- (2) The court may make orders or issue directions about how the child is to give evidence, including—
- (a) that a person be excluded from the court room while the child gives evidence; and
  - (b) that the child have a person nearby throughout the child’s evidence to support the child; and
  - (c) that the child’s evidence be given with the use of technology, including an audio visual link or audio link.

*Note—*

The court may also make an order or issue a direction under the *Evidence Act 1977*, section 21A if the child is a special witness under section 21A of that Act.

- (3) In making an order or issuing a direction under subrule (2), the court must—
- (a) consider as paramount—
    - (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
    - (ii) for a decision in an adoption proceeding—the adoption principles; and
  - (b) also consider—

- (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
- (ii) the requirement to provide procedural fairness to another person.

## Division 5                      Return of exhibits

### 103      Return of exhibits

- (1) This rule applies to an exhibit held by the court in a finalised proceeding.
- (2) The registrar may give written notice to a party, the lawyer for a party or any other person who appears to the registrar to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry within 28 days.
- (3) If the exhibit is not collected from the registry within 3 months after the notice is given, the registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.
- (4) The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.
- (5) If the registrar returns, destroys or otherwise disposes of an exhibit under this rule, the registrar must ensure a note is placed on the court file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.
- (6) In this rule—  
*exhibit* includes an unfiled document held by the court.  
*finalised proceeding* means a proceeding—
  - (a) in which the court has dismissed an application without deciding it; or
  - (b) in which an application has been withdrawn; or



- (c) who is to receive a report about a conference.

### **105 Application of part**

This part applies if the court orders, under the Child Protection Act, section 68(1)(e), a conference to be held between the parties to a proceeding for a child protection order for a child.

### **106 Court to issue direction stating matters to be dealt with at conference**

- (1) This rule applies if the court orders under the Child Protection Act, section 68(1)(e) that a conference be held between the parties to a proceeding for a child protection order to decide or resolve a particular matter in dispute.
- (2) The court must issue a direction stating the particular matter that the parties are to try to decide or resolve at the conference.

*Note—*

The court may also issue a direction about who may receive a copy of the report of the conference under rule 112.

### **107 Qualifications or experience of chairperson—Child Protection Act, s 69**

- (1) For the Child Protection Act, section 69(2), the chairperson of the conference must have—
  - (a) an ability to communicate effectively with a broad range of people, including—
    - (i) children and young people; and
    - (ii) if a participant in a proceeding is an Aboriginal person or Torres Strait Islander—Aboriginal people or Torres Strait Islanders; and
  - (b) knowledge and an understanding of the issues and processes for the protection of children under the Child Protection Act; and

(c) accreditation as a mediator by a recognised mediation accreditation body.

(2) In this rule—

***Mediator Standards Board*** means the Mediator Standards Board Limited ACN 145 829 812.

***national mediator accreditation system*** means the industry-based accreditation system for mediators developed and maintained by the Mediator Standards Board.

***recognised mediation accreditation body*** means an organisation that is a member of the Mediator Standards Board and is able to accredit mediators under the national mediator accreditation system.

## **108 Notice of conference**

(1) As soon as practicable after the registrar convenes the conference under the Child Protection Act, section 69(1), the registrar must give written notice of the day, time and place for the conference to—

- (a) each party to the proceeding; and
- (b) the chief executive (child protection); and
- (c) if a party to the proceeding is legally represented—the party’s lawyer; and
- (d) if a child the subject of the proceeding is an Aboriginal or Torres Strait Islander child—each independent Aboriginal or Torres Strait Islander entity for the child that is to participate in the conference.

(2) However, despite subrule (1)(a), the registrar must not give the written notice to the child the subject of the proceeding unless the child is a participating child.

*Note—*

The child the subject of the proceeding must be told about significant events in the proceeding under rule 44.



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**109 Notice to guardian about conference**

- (1) This rule applies if—
  - (a) a party has a guardian for a matter relating to the proceeding, other than the public guardian; and
  - (b) the guardian has filed a notice of address for service under rule 23.
- (2) As soon as practicable after the registrar convenes the conference under the Child Protection Act, section 69(1), the registrar must also give the guardian a written notice stating—
  - (a) the day, time and place for the conference; and
  - (b) that the guardian may attend the conference with the chairperson’s approval under the Child Protection Act, section 70(6).

*Note—*

See also the Child Protection Act, section 70(5).

**110 Notice to public guardian about conference**

- (1) This rule applies if the public guardian—
  - (a) has given written notice of an intention to appear in the proceeding under the Child Protection Act, section 108B(2); or
  - (b) is a guardian for a party and has filed a notice of address for service under rule 23.
- (2) As soon as practicable after the registrar convenes the conference under the Child Protection Act, section 69(1), the registrar must also give the public guardian a written notice stating—
  - (a) the day, time and place for the conference; and
  - (b) that the public guardian may attend the conference.

## **111 Particulars for report of conference—Child Protection Act, s 72**

For the Child Protection Act, section 72(1), the particulars for a report of the conference are—

- (a) whether an agreement in relation to the application the subject of the proceeding has been reached between the parties; and
- (b) if an agreement has been reached for a child protection order—the details of the agreement, including the type and duration of the child protection order; and
- (c) if an agreement has not been reached, or only partially reached—
  - (i) the details of the outstanding issues in the proceeding; and
  - (ii) if agreement has been reached on a proposed interim order—the details of the proposed order.

*Note—*

The Child Protection Act, section 71 deals with the admissibility in court of anything said at a conference.

## **112 Copies of report of conference**

- (1) As soon as practicable after the chairperson files in the court a report of the conference under the Child Protection Act, section 72(1), the chairperson must give a copy of the report to—
  - (a) each party to the proceeding; and
  - (b) if a party to the proceeding is legally represented—the party’s lawyer; and
  - (c) each of the following entities that participated in the conference—
    - (i) if a party to the proceeding is a person with impaired capacity for a matter relating to a proceeding and has a guardian for the matter—the guardian;

- (ii) if the child the subject of the child protection proceeding is an Aboriginal or Torres Strait Islander child—for the child; and
- (d) the chief executive (child protection).
- (2) However, despite subrule (1)(a), the chairperson must not give a copy of the report to the child the subject of the proceeding unless—
  - (a) the child is a participating child; or
  - (b) the court directs the chairperson to give the report to the child.
- (3) Also, the court may direct that—
  - (a) the chairperson must not give a copy of the report to a party or a party’s lawyer; or
  - (b) the chairperson must give a copy of the report to another person, including—
    - (i) the child the subject of the proceeding who attended the conference, even if the child is not a participating child for the proceeding; or
    - (ii) another person who attended the conference with the chairperson’s approval under the Child Protection Act, section 70(6).

## **Part 10 Trans-Tasman proceedings**

### **Division 1 Preliminary**

#### **113 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.

## **114 Application of part**

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**

### **115 Applications in proceeding under Trans-Tasman Proceedings Act**

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

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## **Division 3                      Subpoenas**

### **116      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, each of 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.

## **117 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 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.

## **118 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*).

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- (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**

### **119      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 117(2)(b)(ii).

## **Part 11 Appeals**

### **120 What part is about**

This part explains—

- (a) how to start and prepare for an appeal; and
- (b) the powers the registrar may exercise for an appeal.

### **121 Application of part**

This part applies to an appeal to the court under—

- (a) the Child Protection Act, section 117 or 239; or
- (b) the Adoption Act, section 243.

*Note—*

These rules do not apply to the Court of Appeal.

### **122 Procedure for appeals**

- (1) The notice of appeal may be filed in any registry of the District Court.
- (2) On the filing of the notice of appeal, the registrar of the District Court must, as soon as practicable, send the registrar of the Magistrates Court from which the appeal is brought a copy of the notice of appeal.

*Note—*

Under section 27(1) of the Act, the registrar of the Magistrates Court held at a place is taken to hold office as the registrar of the Childrens Court constituted by a Childrens Court magistrate, a magistrate or justices held at the place.

- (3) The registrar of the Magistrates Court must, within 7 days of receiving a copy of the notice of appeal, send the registrar of the District Court copies of all documents used in or relevant



to the proceeding from which the appeal is brought, including, but not limited to, the following documents—

- (a) initiating documents;
- (b) affidavits or written statements of evidence;
- (c) transcripts or notes of oral evidence;
- (d) exhibits;
- (e) any documents embodying the formal decision, including the reasons for the decision.

### **123 Notice of appeal**

The notice of appeal must be in the approved form and state the following—

- (a) the name and last known address of each other person entitled to appeal against the decision;
- (b) details of the decision being appealed against, including whether all or part of the decision is being appealed.

*Notes—*

- 1 For the persons entitled to appeal against the decision, see the Child Protection Act, sections 117 and 239(2) and the Adoption Act, section 243.
- 2 A notice of appeal must state fully the grounds of the appeal and the facts relied on. See the Child Protection Act, sections 118(5) and 239(6) and the Adoption Act, section 244(5).
- 3 A notice of appeal must be filed and a copy served on the other persons entitled to appeal against the decision. See the Child Protection Act, sections 118(2) and 239(4) and the Adoption Act, section 244(2).

### **124 Registrar may issue directions about documents in an appeal to be filed and served**

The registrar may issue directions about documents and number of copies to be filed and served on another party to the appeal if an Act does not state those things about the documents.

### **125 Registrar may set directions hearing for appeal**

The registrar may set a time, day and place for a directions hearing before the court for an appeal.

### **126 Registrar to give notice of hearing**

- (1) If an appeal has not been listed for a directions hearing under rule 125, the registrar must give written notice to the parties to the appeal of the date, time and place of the hearing of the appeal.
- (2) The notice must be given—
  - (a) for an appeal under the Child Protection Act, section 239—as soon as practicable after the notice of appeal has been filed; or
  - (b) otherwise—at least 21 days before the day on which the appeal is to be heard.

### **127 Outline of argument**

- (1) This rule applies to an appeal under—
  - (a) the Child Protection Act, section 117; or
  - (b) the Adoption Act, section 243.
- (2) The appellant must, within 28 days after filing the notice of appeal, file and serve an outline of argument on each other party to the appeal.
- (3) A respondent to the appeal must, within 28 days after being served with the appellant's outline of argument for the appeal, file and serve an outline of argument on each other party to the appeal.
- (4) The court may dispense with compliance with this rule if urgent circumstances exist.
- (5) In this rule—

*outline of argument* means a written statement, prepared by an appellant or respondent, of the issues and arguments in the appeal, including the following—

- (a) a concise, logical statement of any factual and legal conclusions the appellant or respondent argues the court should form that are different from, or additional to, the factual and legal conclusions formed in the decision being appealed;
- (b) the reasons why the court should form the factual and legal conclusions sought, including precise references to the evidence relied on to dispute the factual and legal conclusions formed in the decision being appealed;
- (c) a concise, logical summary of submissions that includes citations of authorities and passages relied on and references to any statutory provisions, previous decisions and other material relied on;
- (d) a list of all documents, including exhibits, the appellant or respondent may wish to rely on in the appeal.

## **Part 12                      Repeal**

### **128      Repeal**

The Childrens Court Rules 1997, SL No. 309 are repealed.

## **Part 13                      Transitional provisions**

### **129      Application of these rules**

- (1) Unless the court directs otherwise, these rules apply to the next step in a CAO proceeding, child protection proceeding or adoption proceeding started in the court, but not completed, before the commencement of this rule.
- (2) If a difficulty arises in the application of subrule (1) to a particular proceeding, the court may, on application by a party

or on its own initiative, make an order it considers appropriate to resolve the difficulty.

- (3) In making a decision under subrule (2), the court must—
- (a) consider as paramount—
    - (i) for a decision in a CAO proceeding or child protection proceeding—the child protection principles; or
    - (ii) for a decision in an adoption proceeding—the adoption principles; and
  - (b) also consider—
    - (i) any unreasonable prejudice or detriment that may be caused to a party or potential party to the proceeding; and
    - (ii) the requirement to provide procedural fairness to another person.

### **130 References to Childrens Court Rules 1997**

In subordinate legislation or a document, a reference to the *Childrens Court Rules 1997* may, if the context permits, be taken to be a reference to these rules.

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## Schedule 1      Dictionary

## rule 4

***address for service***, of a person, means the service address or electronic service address stated in the person's child protection application, Adoption Act application, notice of appeal or notice of address for service.

***Adoption Act*** means the *Adoption Act 2009*.

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

*Note—*

These rules do not apply to an application to the Supreme Court under the Adoption Act.

***adoption principles*** means—

- (a) the main object under the Adoption Act, section 5; and
- (b) the principles under the Adoption Act, sections 6 and 7.

***adoption proceeding*** means a proceeding for an Adoption Act application.

***approved form*** means a form approved under section 30A of the Act.

***audio link***, other than for part 10, see the *Evidence Act 1977*, section 39C.

*Note—*

Audio link is defined in the Trans-Tasman Proceedings Act, section 4 and that definition applies in part 10 of these rules.

***audio visual link*** see the *Evidence Act 1977*, schedule 3.

***CAO proceeding*** means a proceeding for a court assessment order under the Child Protection Act.

***chief executive (child protection)*** means the chief executive of the department in which the Child Protection Act is administered.

***Child Protection Act*** means the *Child Protection Act 1999*.

***child protection application*** means an application under the Child Protection Act for the making, extension, amendment or revocation of a court assessment order or child protection order.

***child protection principles*** means—

- (a) the purpose of the Child Protection Act under section 4 of that Act; and
- (b) the principles of the administration of the Child Protection Act under chapter 1, part 2, division 1 of that Act, other than sections 5D, 5E and 6AA of that Act.

***child protection proceeding*** means a proceeding in the court under the Child Protection Act for the making, extension, amendment or revocation of a child protection order.

***disclosure form*** see rule 51.

***electronically*** means by electronic or computer-based means.

***electronic service address*** means—

- (a) any of the following to which a document required to be given to the person under the Child Protection Act, the Adoption Act or these rules may be sent—
  - (i) email address;
  - (ii) fax number;
  - (iii) an address at which the person receives documents sent by electronic or computer-based means other than fax or email; or
- (b) the address or number of someone else the person has authorised to accept documents on the person's behalf, including, for example, the person's representative.

***entity of the State*** includes a department and an entity established under an Act for a public purpose.

***guardian***, for a person with impaired capacity for a matter relating to a proceeding, means—

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- (a) if a guardian is appointed under the *Guardianship and Administration Act 2000* for the person for the matter—the guardian; or
  - (b) if paragraph (a) does not apply but the person’s enduring document under the *Powers of Attorney Act 1998* gives power to an attorney under that Act for the matter—the attorney.

***impaired capacity***, for a person for a matter, see the *Guardianship and Administration Act 2000*, schedule 4.

***independent Aboriginal or Torres Strait Islander entity***, for an Aboriginal or Torres Strait Islander child, see the Child Protection Act, section 6(1).

***Legal Aid Queensland*** means Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*, section 41.

***matter*** means a matter under the *Guardianship and Administration Act 2000*.

***non-participant***, in a proceeding, means a person other than—

- (a) a party to the proceeding; or
- (b) for a CAO proceeding or child protection proceeding—a participant in the proceeding; or
- (c) a public service employee or other employee of the State in the employee’s official capacity; or
- (d) the State or an entity of the State.

***notice of address for service*** means a notice of address for service filed and served under part 4, division 2.

***notice of appeal*** means—

- (a) a notice of appeal under the Child Protection Act, section 118 or 239; or
- (b) a notice of appeal under the Adoption Act, section 244.

***originating application*** see rule 10(2).

**participant**, in a CAO proceeding or child protection proceeding, see rule 36.

**participating child**, for a proceeding, means the child the subject of the proceeding if the child has filed and served a notice of address for service in the proceeding, whether personally or by a lawyer.

**party**, to a proceeding or appeal, means—

- (a) for a child protection application, each of the following—
  - (i) the child the subject of the application;
  - (ii) the applicant or a respondent to the application;
  - (iii) if the application is for a court assessment order made by a police officer under the Child Protection Act—the chief executive (child protection); or

*Notes—*

- 1 The Child Protection Act, section 110(6) states the status of a lawyer who separately represents a child in the proceeding.
- 2 See also part 5, division 2 for how particular participants in CAO proceedings and child protection proceedings are treated as parties.

- (b) for an Adoption Act application—
  - (i) each person required, under the Adoption Act, to be served with a copy of the application; and
  - (ii) if the child the subject of the proceeding has a lawyer representing the child in the proceeding under the Adoption Act, section 235—the lawyer; or
- (c) for a notice of appeal, each of the following—
  - (i) the appellant to the appeal;
  - (ii) each person entitled to appeal against the decision who has filed and served a notice of address for service in the appeal.

**registrar** means the registrar of the court under section 27 of the Act.



***separate representative*** see the Child Protection Act, section 110(1)(a).

***service address*** means—

- (a) an address in Queensland where a document required to be given to the person under the Child Protection Act, the Adoption Act or these rules is to be given; or
- (b) the address of someone else the person has authorised to accept documents on the person's behalf, including, for example, the person's representative.

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