



Childrens Court Act 1992

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Queensland

Childrens Court Act 1992

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Childrens Court Act 1992

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

Part 1 Preliminary

1 Short title

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

3 Definitions

In this Act—

Childrens Court judge means a District Court judge appointed to the Childrens Court.

Childrens Court magistrate means a magistrate appointed to the Childrens Court.

court means the Childrens Court.

judge means a Childrens Court judge.

president means the president of the Childrens Court.

procedure includes practice.

rules means the Childrens Court Rules.

Part 2

The Childrens Court of Queensland

4 Childrens Court established etc.

- (1) The Childrens Court of Queensland is established.
- (2) The court is a court of record.
- (3) The court is to have a seal, which must be judicially noticed.

5 Members and constitution of the Childrens Court

- (1) The members of the Childrens Court are the judicial officers mentioned in subsections (2) and (3).
- (2) If an Act expressly requires the Childrens Court to be constituted by a Childrens Court judge, the court must be constituted by either of the following—
 - (a) a Childrens Court judge;
 - (b) if a Childrens Court judge is not available—a District Court judge.

Examples of when a Childrens Court judge is not available—

- 1 A child is committed to be tried or sentenced before a Childrens Court judge at a place where the Childrens Court sits only a few times in a year. At the time the child would ordinarily be dealt with at the place, there is no Childrens Court judge available, but a District Court judge is available. The District Court judge may constitute the Childrens Court and deal with the child.
 - 2 A child is due to be tried or sentenced before a Childrens Court judge. A Childrens Court judge is present at the place and at the time but, in the judge's capacity as a District Court judge, is needed for the jurisdiction of the District Court. Another District Court judge is available. The other District Court judge may constitute the Childrens Court and deal with the child.
- (3) If the Childrens Court is not required to be constituted by a Childrens Court judge, it may be constituted by—
 - (a) a Childrens Court magistrate; or

- (b) if a Childrens Court magistrate is not available—any magistrate; or
 - (c) if neither a Childrens Court magistrate nor other magistrate is available—2 justices of the peace.
- (4) Subsection (3)(c) does not affect the limitations placed on justices of the peace under the *Justices of the Peace and Commissioners for Declarations Act 1991* or another Act.
- (5) In this section—
available means available having regard to the orderly and expeditious exercise of the jurisdiction of the District Court and Childrens Court.

6 Jurisdiction

- (1) The Childrens Court has the jurisdiction conferred on it by any Act.
- (2) The *Child Protection (International Measures) Act 2003* includes provisions about the exercise of jurisdiction under this Act.

7 Rules of court

- (1) The procedure of the Childrens Court is governed by the Childrens Court Rules.
- (2) The Governor in Council may, with the president’s agreement, make rules of court (the ***Childrens Court Rules***) under this Act.
- (3) A rule may make provision about any matter—
 - (a) that is required or permitted to be prescribed under a law giving jurisdiction to the Childrens Court; or
 - (b) that is necessary or convenient to be prescribed for carrying out or giving effect to a law giving jurisdiction to the Childrens Court.

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

8 Directions

- (1) To the extent that any matter relating to Childrens Court procedure is not provided for by the rules, the matter may be dealt with by directions under this section.
- (2) The president may issue directions of general application with respect to the procedure of the court.
- (3) A Childrens Court judge may issue directions in relation to a particular case before the court when constituted by the judge.
- (4) After consulting with the president, the chief magistrate may issue directions of general application with respect to the procedure of the court when constituted by a Childrens Court magistrate, magistrate or justices.
- (5) A Childrens Court magistrate, a magistrate or justices may issue directions in relation to a particular case before the court when constituted by the Childrens Court magistrate, the magistrate or justices, as the case may be.

8A Leadership of the court

- (1) The president has the function of ensuring the orderly and expeditious exercise of the jurisdiction of the court when constituted by a Childrens Court judge.
- (2) The chief magistrate has the function of ensuring the orderly and expeditious exercise of the jurisdiction of the court when constituted by a Childrens Court magistrate, magistrate or justices.

Part 3 Appointment of judicial officers

Division 1 The president

9 Childrens Court president

- (1) There is to be a president of the court.
- (2) The Governor in Council may appoint a Childrens Court judge to be the president of the court.
- (3) The president may resign office by written resignation given to the Governor.
- (4) The resignation does not affect the appointment or powers of the president as a Childrens Court judge.
- (5) If—
 - (a) the office of president is vacant; or
 - (b) the president is on leave or otherwise absent or is, for another reason, unable to perform all the ordinary functions of the president's office;

the Governor in Council may, on the recommendation of the Attorney-General, appoint a Childrens Court judge to be the acting president.

10 Functions of president

The president has the function given by section 8A(1) and the other functions conferred on the president by this Act or any other Act.

Division 2 Childrens Court judges

11 Childrens Court judge

- (1) The Governor in Council may, on the recommendation of the Attorney-General, appoint 1 or more District Court judges as Childrens Court judges.
- (2) In choosing a District Court judge to be recommended as a Childrens Court judge, the Attorney-General must have regard to the appointee's particular interest and expertise in jurisdiction over matters relating to children.
- (3) The appointment of a person as a Childrens Court judge does not affect the person's appointment as a District Court judge or the person's powers as a District Court judge.

12 Acting judge

The Governor in Council may, on the recommendation of the Attorney-General, appoint a District Court judge to act as a Childrens Court judge if, in the Governor in Council's opinion, the conduct of the business of the court requires it.

13 Termination of office

- (1) A Childrens Court judge ceases to hold the office if the judge ceases to hold office as a District Court judge.
- (2) A Childrens Court judge may resign office by written resignation given to the Governor.
- (3) The resignation does not affect the appointment or powers of the judge as a District Court judge.

Division 3 Childrens Court magistrates

14 Childrens Court magistrates

- (1) The Governor in Council may, on the recommendation of the Attorney-General, appoint 1 or more magistrates as Childrens Court magistrates.
- (2) The appointment of a person as a Childrens Court magistrate does not affect the person's appointment as a magistrate or powers as a magistrate.
- (3) For the purpose of the *Magistrates Act 1991*, the duties of a magistrate include those performed as a Childrens Court magistrate if the magistrate is a Childrens Court magistrate.

15 Termination of office

- (1) A Childrens Court magistrate ceases to hold the office if the person ceases to hold office as a magistrate.
- (2) A Childrens Court magistrate may resign office by written resignation given to the Attorney-General.
- (3) The resignation does not affect the appointment or powers of the magistrate as a magistrate.

16 Acting magistrate

The Governor in Council may, on the recommendation of the Attorney-General, appoint a magistrate to act in the office of a Childrens Court magistrate if, in the Governor in Council's opinion, the business of the Court requires it.

Division 4 Miscellaneous

17 Jurisdiction not affected by vacancies

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

Part 4 **Sittings of the court**

18 **Where court may be constituted**

- (1) The court may be constituted—
 - (a) if it is constituted by a judge—at a place where a Magistrates Court or the District Court may be held; or
 - (b) if it is constituted by a Childrens Court magistrate, a magistrate or justices—at a place where a Magistrates Court may be held.
- (2) Subject to subsection (1), the court as constituted by any of its members—
 - (a) may exercise jurisdiction throughout Queensland; and
 - (b) may sit in more than 1 place at the same time.

19 **Separation of court's proceedings**

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

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

- (1) In a proceeding before the court relating to a child, the court must exclude from the room in which the court is sitting any person who is not—
 - (a) the child; or
 - (b) a parent or other adult member of the child's family; or
 - (c) if the proceeding is a criminal proceeding—
 - (i) a victim, or a relative of a deceased victim, of the offence alleged to have been committed by the child; or

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- (ii) a person who is a representative of a victim, or of a relative of a deceased victim, of the offence alleged to have been committed by the child; or

Examples for subparagraph (ii)—

- a person who provides support or assistance to a victim or a relative of a deceased victim
 - a member of an organisation that is providing support or assistance to a victim, or a relative of a deceased victim, of an offence in relation to a proceeding for the offence
- (iii) a person who, in the court's opinion, has a proper interest in the proceeding; or
- (iv) an accredited media entity; or
- (d) a witness giving evidence; or
- (e) a person who is an intermediary under the *Evidence Act 1977*, part 2, division 4C for a witness giving evidence; or
- (f) if a witness is a complainant within the meaning of the *Criminal Law (Sexual Offences) Act 1978*—a person whose presence will provide emotional support to the witness; or
- (g) a party or person representing a party to the proceeding, including, for example, a police officer or other person in charge of a case against a child in relation to an offence; or
- (h) a representative of the chief executive (child safety) or the chief executive (youth justice); or
- (i) the public guardian under the *Public Guardian Act 2014*; or
- (j) if the proceeding is a child protection proceeding under the *Child Protection Act 1999*—the chief executive (child safety); or
- (k) if the child is an Aboriginal or Torres Strait Islander person—

- (i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
 - (ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child; or
- (l) an infant or young child in the care of an adult who may be present in the room.
- (2) However, the court may, on application by a party to the proceeding or on its own initiative, make an order (an *exclusion order*) excluding from the room a person mentioned in subsection (1)(c)(ii), (iii) or (iv) if the court is satisfied that the order is necessary—
 - (a) to prevent prejudice to the proper administration of justice; or
 - (b) for the safety of any person, including the child.
- (3) In considering whether to make the exclusion order, the court must consider the following matters—
 - (a) the primacy of the principle of open justice;
 - (b) the public interest;
 - (c) the youth justice principles under the *Youth Justice Act 1992*;
 - (d) the age of the child;
 - (e) any special vulnerabilities of the child;
 - (f) whether the child is unable to meaningfully participate in the proceeding because of the presence of the person proposed to be excluded by the exclusion order;
 - (g) the seriousness of the offence alleged to have been committed by the child;
 - (h) any cultural considerations relating to the child;

- (i) whether the presence of the person proposed to be excluded by the exclusion order may prejudice any future court proceedings;
 - (j) any submissions made under subsection (4);
 - (k) any other matter the court considers relevant.
- (4) The following persons may make submissions to the court in relation to the making of the exclusion order—
- (a) a party to the proceeding;
 - (b) a person proposed to be excluded by the exclusion order;
 - (c) another person mentioned in subsection (1), with the leave of the court.
- (5) Also, the court may permit to be present in the room—
- (a) a person who is engaged in—
 - (i) a course of professional study relevant to the operation of the court; or
 - (ii) research approved by the chief executive (child safety) or the chief executive (youth justice); or
 - (b) a person who, in the court’s opinion, will assist the court.
- (6) Despite subsections (1) and (2), if the court is hearing a matter under the *Mental Health Act 2016*, section 172 or 173, the court must exclude from the room a person mentioned in subsection (1)(c) unless the court is satisfied it is in the interests of justice to permit the person to be present.
- (7) Also, this section does not affect any order made, or that may be made, by the court under the *Evidence Act 1977*, section 21A—
- (a) excluding any person (including a defendant) from the place in which the court is sitting; or
 - (b) permitting any person to be present while a special witness within the meaning of that section is giving evidence.

- (8) This section—
- (a) applies even if the court’s jurisdiction is being exercised conjointly with another jurisdiction; and
 - (b) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.

- (9) In this section—

accredited media entity means an entity listed as an accredited media entity in the Supreme Court’s media accreditation policy.

chief executive (child safety) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

chief executive (youth justice) means the chief executive of the department in which the *Youth Justice Act 1992* is administered.

child’s community means the child’s Aboriginal or Torres Strait Islander community, whether it is—

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

community justice group, for a child, means—

- (a) the community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, for the child’s community; or
- (b) a group of persons within the child’s community, other than a department of government, that is involved in the provision of any of the following—
 - (i) information to a court about Aboriginal or Torres Strait Islander offenders;

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- (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
 - (iii) other activities relating to local justice issues; or
 - (c) a group of persons made up of the elders or other respected persons of the child's community.

criminal proceeding means a proceeding against a child under the *Youth Justice Act 1992* for an offence or for the sentencing of the child for an offence.

relative, of a deceased victim of an offence alleged to have been committed by a child, means—

- (a) a spouse, child, stepchild, parent, step-parent, sibling, step-sibling, aunt, uncle, grandparent or grandchild of the deceased victim; or
- (b) a child, other than a child mentioned in paragraph (a), for whom the deceased victim had parental responsibility; or
- (c) a person who, under Aboriginal tradition or Island custom, is regarded as a person mentioned in paragraph (a) or (b).

Supreme Court's media accreditation policy means the media accreditation policy in effect and made under or appended to a practice direction of the Supreme Court.

21 Court sitting times

Subject to the rules and the directions of the president or chief magistrate under section 8, proceedings before the court—

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

Part 5 **Jury trials**

22 **Jury in criminal trials**

- (1) All indictable offences prosecuted in the Childrens Court must be tried by a Childrens Court judge and a jury.
- (2) Subsection (1) is subject to an Act that allows or requires an indictable offence prosecuted in the Childrens Court to be tried in another way.
- (3) Despite section 18(1)(a), a trial by a Childrens Court judge and a jury must be held at a place where a District Court may be held.
- (4) The *Jury Act 1995* states the law about the following—
 - (a) the obligation to perform jury service;
 - (b) organisation of juries generally;
 - (c) the selection of a jury;
 - (d) arrangements for a jury during a trial;
 - (e) juror’s remuneration and allowances.

23 **Issues of law and fact**

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

Part 6 **General**

24 **Annual report**

- (1) As soon as practicable after the end of each financial year, but no later than 5 months after the end of the financial year, the president must give to the Attorney-General a report of the administration and operation of the Childrens Court during the year.

- (2) The Attorney-General must cause a copy of the report to be laid before the Legislative Assembly within 14 days of receiving it.
- (3) If, at the time the Attorney-General would otherwise be required to lay the report before the Legislative Assembly, the Legislative Assembly is not sitting, the Attorney-General must give a copy of the report to the clerk of the Parliament.
- (4) The clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.
- (5) For the purposes of its publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be published by the Legislative Assembly, when it is given to the clerk.
- (6) The first report must cover the period from the commencement of section 4 until the end of the first full financial year of the court's operation.

25 Ordinary privileges, protection and immunity allowed

- (1) In this section—
court of concurrent jurisdiction means—
 - (a) in relation to the Childrens Court when constituted by a judge—the District Court; or
 - (b) in relation to the Childrens Court when constituted by a Childrens Court magistrate, a magistrate or justices—a Magistrates Court.
proceeding means a proceeding in the Childrens Court.
- (2) A person who is—
 - (a) a judicial officer presiding over a proceeding; or
 - (b) a legal practitioner appearing in a proceeding; or
 - (c) a witness attending in a proceeding;has the same privileges, protection or immunity as the person would have if the proceeding were in the court of concurrent jurisdiction.

26 Contempt

- (1) A judge has the same power to punish a person for contempt of the court as the judge has to punish a person for contempt of the District Court.
- (2) The *District Court of Queensland Act 1967*, section 129 applies in relation to the Childrens Court when constituted by a judge in the same way as it applies in relation to the District Court.
- (3) In the performance of duties in relation to the Childrens Court, a Childrens Court magistrate, a magistrate or justices have the same power to punish for contempt as a magistrate has or justices have, as the case may be, to punish for contempt of a Magistrates Court.
- (4) The *Justices Act 1886*, section 40 applies in relation to the court when constituted by a Childrens Court magistrate, a magistrate or justices in the same way as it applies in relation to a Magistrates Court.

27 Court officials

- (1) Every person holding office as the clerk, registrar or other court official of a Magistrates Court held at a place is taken to hold the same office in relation to the Childrens Court constituted by a Childrens Court magistrate, a magistrate or justices held at the place.
- (2) Every person holding office as a registrar, deputy registrar, sheriff or other court official of the District Court held at a place is taken to hold the same office in relation to the Childrens Court constituted by a judge held at the place.

28 Court records

The records of the court held at a place must be kept in the custody of the registrar or clerk of the court at the place.

28A Access to court records for approved research

- (1) The chief executive may authorise a person to have access to a record, or information from a record, to allow the person to carry out research.
- (2) However, the chief executive may authorise access only if the chief executive is satisfied—
 - (a) the record or information will not be used or published in a way that could reasonably be expected to result in the identification of any of the individuals to whom it relates; and
 - (b) it would not be inappropriate to authorise the access in all the circumstances including, for example, the cost to the department of providing the access.
- (3) The registrar or clerk of a court may give a person access to a record or information from a record under an authorisation under this section.
- (4) In this section—

record means a court record or part of a court record.

29 Judicial notice

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

30 References to Childrens Court

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

expressly to the Childrens Court or a Childrens Court constituted under an Act other than this Act.

30A Approved forms

The president may approve forms for use under this Act.

31 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 7 Transitional and validation provisions

Division 1 Transitional provision for Child Protection Act 1999

32 Transitional provision for Child Protection Act 1999

- (1) This section applies if, before the commencement of the *Child Protection Act 1999*, chapter 3, part 4—
 - (a) a person appealed, under part 4A, against a supervision order or care order; and
 - (b) the appeal has not been finally decided.
- (2) The appeal may be dealt with under the *Child Protection Act 1999*.
- (3) In this section—

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

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

Division 2 Transitional provision for Justice and Other Legislation Amendment Act 2008

33 Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 3

- (1) This section applies if, immediately before the commencement of this section, a person holds office as a Childrens Court magistrate.
- (2) The person's term of appointment is taken to end 5 years after the person was first appointed.

Division 3 Transitional and validation provisions for Penalties and Sentences and Other Legislation Amendment Act 2012

34 Definition for div 3

In this division—

commencement means the commencement of this section.

35 Validation provision for Childrens Court Rules

- (1) Despite the *Statutory Instruments Act 1992*, section 54, the *Childrens Court Rules 1997*—
 - (a) are taken not to have expired on 1 September 2008; and
 - (b) continue in force until they are repealed under this Act.
- (2) Anything done, purported to have been done or omitted to be done under the *Childrens Court Rules 1997* before the commencement has the same effect as it would have had if the *Childrens Court Rules 1997* had not expired.
- (3) Without limiting subsection (2)—

[s 36]

- (a) an order, direction or decision made under the *Childrens Court Rules 1997* before the commencement is taken to be, and to have always been, made under the *Childrens Court Rules 1997* as if those rules had not expired; and
 - (b) a right, privilege or liability purportedly acquired, accrued or incurred under the *Childrens Court Rules 1997* before the commencement is taken to be, and to have always been, a right, privilege or liability acquired, accrued or incurred under the *Childrens Court Rules 1997* as if those rules had not expired; and
 - (c) a form approved or purported to have been approved under the *Childrens Court Rules 1997* before the commencement is taken to be, and to have always been, approved under the *Childrens Court Rules 1997* as if those rules had not expired.
- (4) The amendment of the *Childrens Court Rules 1997* by the *Childrens Court Amendment Rule (No. 1) 2010* has the same effect as it would have had if the *Childrens Court Rules 1997* had not expired.

36 Transitional provision for approved forms

- (1) This section applies if, immediately before the commencement, a form was approved for a purpose under the *Childrens Court Rules 1997*.
- (2) The form is taken to have been approved under section 30A for the purpose.

Division 4 **Transitional provision for Youth
Justice and Other Legislation
Amendment Act 2014**

37 **Application of provision about open and closed
proceedings**

Part 4, division 2 applies to a proceeding for an offence even if 1 or both of the following happened before the commencement of this section—

- (a) the commission of the offence;
- (b) the start of the proceeding for the offence.

Division 5 **Transitional provision for Child
Protection Reform Amendment Act
2014**

38 **Term of office of current Childrens Court magistrates**

- (1) This section applies to a person holding an appointment as a Childrens Court magistrate immediately before the commencement of this section.
- (2) The person's appointment continues on the same conditions until the person ceases to hold the office of Childrens Court magistrate under section 15.
- (3) Subsection (2) applies despite a term of appointment stated in the person's instrument of appointment.
- (4) Subsection (2) does not affect the power of the Governor in Council under this Act to change the conditions of the appointment.