

Childrens Court Amendment Rule 2018

Explanatory notes for SL 2018 No. 165

Made under the

Childrens Court Act 1992

General Outline

Short Title

Childrens Court Amendment Rule 2018

Authorising law

Section 7(1) of the *Childrens Court Act 1992* (the Act) provides that the procedure of the Childrens Court is governed by the Childrens Court Rules. Section 7(2) of the Act provides that the Childrens Court Rules may be made by the Governor in Council with the agreement of the President of the Childrens Court.

Under section 7(3) of the Act, a rule may make a provision about any matter that is:

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

Section 102 of the *Child Protection Act 1999* (CP Act) confers jurisdiction on the Childrens Court. Rule 3 of the *Childrens Court Rules 2016* (the Rules) sets out the application of the Rules. For example, the Childrens Court can hear and decide applications for court assessment orders and child protection orders under the CP Act.

Policy objectives and the reasons for them

The policy objective of the *Childrens Court Amendment Rule 2018* (Amendment Rule) is to amend the Rules as a consequence of amendments by the *Child Protection Reform Amendment Act 2017* (Amendment Act) in relation to the Childrens Court and the promotion of the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures.

Additional principles for Aboriginal or Torres Strait Islander children

Section 7 of the Amendment Act replaces section 5C of the CP Act with new additional principles that apply to the administration of the CP Act in relation to Aboriginal or Torres Strait Islander children. These principles recognise the right of Aboriginal and Torres Strait Islander

people to self-determination (section 5C(1)(a)) and apply the five elements of the Child Placement Principle (prevention, partnership, placement, participation and connection) (section 5C(2)).

Section 8 of the Amendment Act inserts new principles governing how courts (and other decision-makers) are to approach child protection proceedings involving Aboriginal and Torres Strait Islander children (section 6AB – applies to Childrens Court).

Independent Aboriginal or Torres Strait Islander entity

Section 8 of the Amendment Act removes the recognised entity from the CP Act and introduces the new independent Aboriginal or Torres Strait Islander entity.

The purpose of the new independent Aboriginal or Torres Strait Islander entity is to facilitate the participation of the child and their family in decision-making under the CP Act. Participation in court proceedings is optional for the independent Aboriginal and Torres Strait Islander entity.

Achievement of policy objectives

The policy objective of the Amendment Rule is achieved by:

- removing references to the superseded ‘recognised entity’ and ‘consulted entity’;
- removing rules mandating participation by the recognised entity or consulted entity;
- inserting new rules that allow optional participation by the independent Aboriginal or Torres Strait Islander entity; and
- updating rules that refer to the Child Placement Principles and other child protection principles so that they are consistent with references to the new principles in the CP Act.

Consistency with policy objectives of authorising law

The Amendment Rule is consistent with the policy objectives of the Act and the CP Act.

Inconsistency with policy objectives of other legislation

The Amendment Rule is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Rule will ensure that the procedures of the Childrens Court are consistent with the relevant changes to the CP Act. There are no significant costs for Government in the implementation of the Amendment Rule.

Consistency with fundamental legislative principles

The Amendment Rule is consistent with fundamental legislative principles.

Consultation

The Department of Justice and Attorney-General has self-assessed the regulatory proposal to be excluded from further regulatory impact analysis under exclusion category

(a) of the *Queensland Government Guide to Better Regulation*, as the amendments are consequential to the *Child Protection Reform Amendment Act 2017*.

The Director of Child Protection Litigation has been consulted. The Chief Magistrate and Deputy Chief Magistrate agreed to the Amendment Rule.

The President of the Childrens Court has agreed to the Amendment Rule.