

# Childrens Court Amendment Rule 2024

Explanatory notes for SL 2024 No. 76

Made under the

*Childrens Court Act 1992*

## General Outline

### Short Title

*Childrens Court Amendment Rule 2024*

### Authorising law

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

Under section 7(3) of the *Childrens Court Act 1992*, 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
- that is necessary or convenient to be prescribed for the carrying out or giving effect to a law giving jurisdiction to the Childrens Court.

### Acknowledgement of sex jurisdiction under the *Births, Deaths and Marriages Registration Act 2023*

Section 69 of the *Births, Deaths and Marriages Registration Act 2023* (new Act) confers jurisdiction on the Childrens Court.

For example, the Childrens Court may hear and determine an application under the new Act:

- made by a parent or other person ('eligible person') for an order directing the Registrar to accept an application to alter the record of sex of the child in the relevant child register (section 44);
- made by a parent or other person ('eligible person') for an order directing the Registrar to accept an application for a recognised details certificate for the child (section 55);
- by a child for an order directing the Registrar to accept an application to alter the record of sex of the child in the relevant child register (section 45);
- by a child for an order directing the Registrar to accept an application for a recognised details certificate for the child (section 56); or
- for a dispensation order made by a relevant person (section 62).

The *Childrens Court Amendment Rule 2024* (Amendment Rule) applies to all acknowledgement of sex proceedings commenced by an application made under any of the following provisions of the new Act, Part 5—

- division 2, subdivision 3;
- division 3, subdivision 3;
- division 4.

#### Appellate jurisdiction (acknowledgement of sex)

The Childrens Court constituted by a Childrens Court judge has jurisdiction to hear and decide appeals from the Childrens Court exercising its original jurisdiction when constituted by a Childrens Court magistrate or a magistrate. The Rules apply to the Childrens Court hearing and deciding an appeal.

## **Policy objectives and the reasons for them**

The purpose of the Amendment Rule is to support the operation of the new acknowledgement of sex framework in the new Act by bringing into the scope of the *Childrens Court Rules 2016* acknowledgement of sex proceedings started by an acknowledgement of sex application under Part 5 of the new Act.

On 14 June 2023, the new Act was passed by the Legislative Assembly. On its commencement on 24 June 2024, the new Act will repeal and replace the existing *Births, Deaths and Marriages Registration Act 2003* to ensure registration services remain relevant, responsive and contemporary.

A key objective of the new Act, amongst other objectives, is to strengthen the legal recognition of trans and gender diverse peoples. The most extensive changes introduced by the new Act occur in Part 5; with the most significant of these relating to the requirements for altering a record of sex on the relevant child register or the issue of a recognised details certificate.

Under the new framework a person aged 16 years and over may apply directly to the Registry of Births, Deaths and Marriages (RBDM) to alter their record of sex by providing a declaration that the person lives, or seeks to live, as a person of that sex.

#### *New framework for children aged under 16.*

For children under 16, the new Act provides two alternative pathways.

The first, an administrative path, enables the parents, or one parent or person with parental responsibility for a child (in certain circumstances), to apply directly to RBDM to alter the record of the child's sex.

The second, a path through the Childrens Court, allows either:

- (a) an eligible person for the child; or
- (b) a child of at least 12 years but less than 16 years who does not have the support of their parents or person(s) with their parental responsibility;

to apply to the Childrens Court for an order directing the Registrar to accept an application to alter the record of sex of the child in the relevant child register.

Both the administrative and court pathways allow for a concurrent application to be made that seeks approval of a proposed change of first name for the child.

An alternative pathway is provided for a child born outside of Queensland through an application for a recognised details certificate. The process to obtain this certificate largely

mirrors the framework for an acknowledgement of sex application. A key difference is that a child who was born in another Australian State or Territory, cannot apply to change their name at the same time. In this situation, a change of name must be sought from the originating jurisdiction where the person's birth or adoption was registered.

#### *Dispensation of consent of a stated party*

Dispensing with parental consent is a mechanism found in Part 5, division 4 of the new Act which allows the Childrens Court to determine that the consent of a parent or person with parental responsibility is not required to proceed with an application to alter the record of the child's sex or obtain a recognised details certificate.

If a relevant person obtains a dispensation order, the person may apply under the administrative path attaching a copy of the dispensation order, and the Registrar must consider and decide the application to register the alteration of the record of the child's sex or change of the child's name, without the need for the consent of the non-consenting party.

The new Act introduces a framework for dispensing with parental consent with a strong 'best interests' focus that places the child at the centre of decision making.

## **Achievement of policy objectives**

The *Childrens Court Rules 2016* provide for the procedures of the Childrens Court. The Amendment Rule retains the structure of the *Childrens Court Rules 2016* and applies, where relevant, existing rules to acknowledgement of sex applications and acknowledgment of sex proceedings.

A small number of new rules are introduced to inform procedures that are to apply to a child that starts an acknowledgement of sex application (child applicant) to better support and distinguish their role as a party to the proceedings rather than as a child that is the subject of proceedings brought by an eligible person under the new Act.

The policy objectives of the Amendment Rule are achieved by providing clear rules:

- that bring acknowledgment of sex proceedings and an appeal to the court under the new Act into the scope of the *Childrens Court Rules 2016*;
- about procedural matters related to proceedings initiated under the new Act which include, but are not limited to—
  - how an acknowledgement of sex proceeding is started;
  - the form and content of an originating application;
  - documents to be filed if an acknowledgement of sex proceeding is started;
  - parties' obligations to file notices of address for service in proceedings;
  - service of documents in a proceeding;
  - how a child that starts an acknowledgement of sex proceeding (a child applicant) is to be heard in the proceedings and the directions that the Childrens Court may make to facilitate an applicant child;
  - how the court is to case manage acknowledgment of sex proceedings under the new Act, in particular proceedings where the proceeding is initiated by a child applicant;
  - evidence in proceedings, including affidavits, subpoenas and evidence given by children the subject of proceedings; and
  - appeals.

*New rules and specific changes to existing rules*

*Rule 12A (form and content of originating application)*

This rule provides that an originating application may include or be accompanied by an application for any other order or relief that could otherwise be made or granted by the court on an application in the proceeding.

*Rule 14A (documents to be filed)*

This rule sets out what documents must be filed when an acknowledgment of sex proceeding is started.

*Rule 18A (documents in language other than English)*

This rule provides that if a document filed in court is written in a language other than English, a certified translation of the document must also be filed.

*Rule 72A (court may consider other relevant proceedings)*

This rule provides that the court may consider whether the child the subject of the proceeding or a parent of the child is a party to a proceeding under the *Domestic and Family Violence Protection Act 2012* (DFVP proceeding), or DFVP proceeding is relevant to the proceeding and whether to issue a direction about the DFVP proceeding.

The court may consider whether there are any other relevant proceedings and whether to issue another direction about a matter related to the relevant proceeding. A relevant proceeding is a proceeding relevant to the acknowledgment of sex proceeding, including a proceeding under the *Family Law Act 1975* (CTH).

*Rule 72B (court may direct particular children to give information)*

This rule applies to applicant children and provides the court may direct the child to give to give the court further information, about the content of the application filed or an affidavit filed by or on behalf of the child in a manner it considers appropriate.

In deciding whether to issue a direction, the court must have regard to the child's age, whether the child is legally represented and the nature of the information to be given by the child.

*Rule 72C (court may direct way particular children make submissions)*

This rule applies to applicant children and provides that the court may direct the child to make submissions in the way it considers appropriate, including, for example, that a submission is to be made orally or in writing.

In deciding whether to issue a direction, the court must have regard to the child's age, whether the child is legally represented and the nature of the information to be given by the child.

*Amendment of rule 42 (way a child is to participate in proceeding)*

Rule 42 has been reorganised to acknowledge the two distinct roles a child has under the new Act, in particular as a child applicant or as a subject child of an application brought by an eligible person for the child. Accordingly, new subrule (1)(b) applies to a child that starts an acknowledgement of sex proceeding by an application made under the new Act, section 45 or 56 (a child applicant) and a child that is otherwise the subject of proceedings brought by an eligible person for the child.

New subrule (1A) is similar to rule (1)(a) to (d) of the *Childrens Court Rules 2016*.

New subrule (2)((b)(iii) applies to a child applicant and provides that in making a decision under subrule (1A), the court must consider the child's age and whether the child is legally represented.

#### *Amendment of rule 91 (examination of person making affidavit)*

New subrules (1A) and (1B) are inserted so that rule 91 applies to an acknowledgement of sex proceeding started by a child (a child applicant).

The new subrules provide that if an affidavit to be relied on is an affidavit of the child, the court, in deciding whether to make an order under subrule (1), must have regard to the child's age, whether the child is legally represented and the nature of the evidence to be given by the child and whether the child's evidence may be given in another way.

## **Consistency with policy objectives of authorising law**

The Amendment Rule is consistent with the policy objective of the *Childrens Court Act 1992* and the new Act.

## **Inconsistency with policy objectives of other legislation**

The Amendment Rules are not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The Amendment Rule will ensure that procedures are in place to provide guidance for how acknowledgement of sex proceedings are dealt with in the Childrens Court.

There are no significant costs for Government in the implementation of the Amendment Rules. Any costs to Government will be funded from within existing resources.

## **Consistency with fundamental legislative principles**

The Amendment Rule is consistent with fundamental legislative principles.

## **Consultation**

The President of the Childrens Court has been consulted about the Amendment Rule. The Amendment Rule is made with the President's agreement pursuant to section 7(2) of the *Childrens Court Act 1992*.

The following stakeholders were consulted during the development of the Amendment Rule:

- Legal Aid Queensland;
- Equality Australia;
- Transcend;
- Rainbow Families;
- LGBTIQ+ Legal Service; and
- Queensland Law Society.

Stakeholders' comments were considered and, where appropriate, amendments were made to the Amendment Rule during the drafting process.

The Amendment Rule relates to the administration of courts and is not subject to regulatory impact analysis requirements under *The Queensland Government Better Regulation Policy*.