



New South Wales

Children's Court (Miscellaneous Amendments) Rule 2006

under the

Children's Court Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Rule under the *Children's Court Act 1987*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Rule is to amend the *Children's Court Rule 2000* so as to make provision with respect to the following matters:

- (a) the approval of forms for use in connection with proceedings before the Children's Court,
- (b) the use of subpoenas in connection with proceedings before the Children's Court,
- (c) the service of documents for the purposes of proceedings before the Children's Court,
- (d) the delegation of Children's Court functions to a Registrar of the Children's Court,
- (e) matters arising under the *Child Protection (International Measures) Act 2006*.

This Rule is made in connection with the commencement of certain provisions of the *Children and Young Persons (Care and Protection) Amendment Act 2005*, the *Children and Young Persons (Care and Protection) Amendment Act 2006* and the *Child Protection (International Measures) Act 2006*.

This Rule is made under the *Children's Court Act 1987*, including section 23 (the general power to make rules of court).

2006 No 810

Clause 1 Children's Court (Miscellaneous Amendments) Rule 2006

Children's Court (Miscellaneous Amendments) Rule 2006

under the

Children's Court Act 1987

1 Name of Rule

This Rule is the *Children's Court (Miscellaneous Amendments) Rule 2006*.

2 Commencement

This Rule commences on 1 January 2007.

3 Amendment of Children's Court Rule 2000

The *Children's Court Rule 2000* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert after clause 3 (2):

- (3) In this Rule, a reference to a numbered Form is a reference to the Form of that number set out in Schedule 1.

[2] Clause 11A

Insert after clause 11:

11A Delegation of functions

The Court may delegate to a Registrar the exercise of any of the functions conferred on the Court by this Rule, other than this power of delegation.

[3] Clause 18A

Insert after clause 18:

18A Forms

- (1) The Senior Children's Magistrate:
 - (a) may approve forms for documents to be used in connection with proceedings in the Court, and
 - (b) in the case of documents filed with the Court, or issued by the Court, by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*, may approve the format in which such documents are to be filed or issued.
- (2) Copies of the approved forms are to be made available for public inspection at each registry of the Court and on the Court's internet website.
- (3) Subject to this Rule, if a form is approved in relation to a document to be used in connection with proceedings in the Court, a document that is filed with or issued by the Court is to be in that form.

Note. See section 80 of the *Interpretation Act 1987* with respect to compliance with approved forms. See also clause 20 of this Regulation with respect to certain application forms under the *Children and Young Persons (Care and Protection) Act 1998*.

2006 No 810

Children's Court (Miscellaneous Amendments) Rule 2006

Schedule 1 Amendments

[4] Clause 20

Omit clause 20. Insert instead:

20 Application forms

- (1) Despite clause 18A, an application under section 45 of the *Children (Care and Protection) Act 1998* must be in writing, but need not be in any particular form.
- (2) Despite clause 18A:
 - (a) a care proceedings attendance notice under section 109A of the *Children and Young Persons (Care and Protection) Act 1998* must be in Form 2, and
 - (b) an arrest warrant under section 109M of the *Children and Young Persons (Care and Protection) Act 1998* must be in Form 3, and
 - (c) a warrant of commitment under section 109R of the *Children and Young Persons (Care and Protection) Act 1998* must be in Form 4.

[5] Part 6, new Division 6

Insert after Division 5 of Part 6:

Division 6 Subpoenas

30A Form of subpoena

- (1) A subpoena must not be addressed to more than one person.
- (2) Unless the Court orders otherwise, a subpoena must identify the addressee by name or by description of office or position.
- (3) A subpoena for production must:
 - (a) identify the document or thing to be produced, and
 - (b) specify the date, time and place for production.
- (4) A subpoena to attend to give evidence must specify the date, time and place for attendance.
- (5) The date specified in a subpoena must be the date of the hearing to which it relates or any other date as permitted by the Court.
- (6) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.

- (7) A subpoena must specify the last date for service of the subpoena, being a date not earlier than:
 - (a) 5 days, or
 - (b) any shorter or longer period as ordered by the Court and specified in the subpoena,before the date specified in the subpoena for compliance with it.
- (8) The party on whose application a subpoena for production is issued must cause copies of the subpoena to be served not only on the person addressed in the subpoena but also on all of the other parties to the proceedings.

30B Setting aside or other relief

- (1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part.
- (2) An application under subclause (1) must be made on notice to the issuing party.
- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

30C Compliance with subpoena

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.
- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.
- (3) An addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (4) The addressee must comply with a subpoena for production:
 - (a) by attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court, or
 - (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address

2006 No 810

Children's Court (Miscellaneous Amendments) Rule 2006

Schedule 1 Amendments

specified for the purpose in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.

- (5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena for production, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subclause (4) does not discharge the addressee from the obligation to attend to give evidence.

30D Production otherwise than on attendance

- (1) This clause applies if an addressee produces a document or thing in accordance with clause 30C (4) (b).
- (2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.
- (4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.
- (5) The addressee may at the time of production inform the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

30E Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

[6] Part 6, existing Division 6

Renumber Division 6 as Division 7 and clause 30A as clause 30F.

[7] Clause 30F (as renumbered by item [6])

Omit "of Schedule 1" from clause 30F (6).

[8] Clauses 30G–30J

Insert after clause 30F (as renumbered by item [6]):

30G Service of documents generally

- (1) Subject to this Rule, a document may be served on a person:
 - (a) by means of personal service, or
 - (b) by posting a copy of the document, addressed to the person, to the person's address for service, or
 - (c) by leaving a copy of the document, addressed to the person at the person's address for service, with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address.
- (2) In the case of a person having an address for service that is a solicitor's office address, service of a document on the person may also be effected:
 - (a) if the notice advising the address for service includes a DX address, by leaving a copy of the document, addressed to the solicitor, in that DX box at that address or in another DX box for transmission to that DX box, or
 - (b) if the notice advising the address for service includes a fax number, by faxing a copy of the document to that number, or
 - (c) if the notice advising the address for service includes an electronic mail address, by transmitting an electronic copy of the document to that address.
- (3) Unless the contrary is proved, the time at which a document is taken to have been served is:
 - (a) in the case of a document that is left in a DX box in accordance with subclause (2) (a), at the end of the second day following the day on which the copy is so left, or
 - (b) in the case of a copy of a document that is faxed in accordance with subclause (2) (b), at the end of the first day following the day on which the copy is so faxed.

Note. See section 14M of the *Electronic Transactions Act 2000* as to when an electronic copy of a document is taken to have been delivered to an electronic mail address.

2006 No 810

Children's Court (Miscellaneous Amendments) Rule 2006

Schedule 1 Amendments

30H Personal service required only in certain circumstances

- (1) Any document required or permitted to be served on a person in any proceedings may be personally served, but need not be personally served unless this Rule so requires or the Court so orders.
 - (2) Except as otherwise provided by this Rule:
 - (a) a care proceedings attendance notice must be personally served, and
 - (b) a subpoena for attendance must be served in one of the following ways:
 - (i) it may be personally served on the person to whom it is directed,
 - (ii) it may be left, addressed to the person to whom it is directed, at that person's business or residential address, with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address, and
 - (c) a subpoena for production must be served in one of the following ways:
 - (i) it may be served personally on the person to whom it is directed,
 - (ii) it may be left, addressed to the person to whom it is directed, at that person's business or residential address, with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address,
 - (iii) it may be sent by post, addressed to the person to whom it is directed, to the person's business or residential address in an envelope marked with the return address of the party at whose request the subpoena was issued.
- Note.** As to service by post, see section 76 of the *Interpretation Act 1987*.
- (3) If the postal authority returns, as having not been delivered, an envelope, posted as referred to in subclause (2) (c) (iii), to the party by whom or on whose behalf it was posted:
 - (a) service of the document contained in the envelope is taken not to have been effected, and
 - (b) any decision made on the basis of that service is to be set aside.

30I How personal service effected

- (1) Personal service of a document on a person is effected by leaving a copy of the document with the person or, if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.
- (2) If, by violence or threat of violence, a person attempting service is prevented from approaching another person for the purpose of delivering a document to the other person, the person attempting service may deliver the document to the other person by leaving it as near as practicable to that other person.
- (3) Service in accordance with subclause (2) is taken to constitute personal service.

30J Substituted and informal service

- (1) If a document that is required or permitted to be served on a person in connection with any proceedings:
 - (a) cannot practicably be served on the person, or
 - (b) cannot practicably be served on the person in the manner provided by law,the Court may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person concerned.
- (2) An order under this clause may direct that the document be taken to have been served on the person concerned on the happening of a specified event or on the expiry of a specified time.
- (3) If steps have been taken, otherwise than under an order under this clause, for the purpose of bringing the document to the notice of the person concerned, the Court may, by order, direct that the document be taken to have been served on that person on a date specified in the order.
- (4) Service in accordance with this clause is taken to constitute personal service.

2006 No 810

Children's Court (Miscellaneous Amendments) Rule 2006

Schedule 1 Amendments

[9] Part 7A

Insert after Part 7:

Part 7A Matters arising under the Child Protection (International Measures) Act 2006

32B Registration of foreign personal protection measures

- (1) A foreign personal protection measure that a person gives to a Registrar for registration under section 25 of the *Child Protection (International Measures) Act 2006* must be accompanied by a notice of the person's address for service in accordance with Form 1.
- (2) Registration of a foreign personal protection measure is effected by sealing it with the seal of the Court and endorsing it, under the signature of the Registrar, with the date on which it was so sealed.

32C Applications for orders

- (1) Part 6 applies to an application that is made to the Court for an order under the *Child Protection (International Measures) Act 2006*, and to proceedings on such an application, in the same way as it applies to a care application and to proceedings on a care application.
- (2) In addition to the other matters that such an application is required to specify, an application referred to in subclause (1) must be accompanied by a copy of the foreign personal protection measure to which the application relates.
- (3) It is sufficient compliance with subclause (2) if, after the application is filed, a copy of the foreign personal protection measure is annexed to the application by the Registrar.

[10] Schedule 1 Forms

Omit "(Clause 30A)".

[11] Schedule 1, Form 1

Insert "(Clauses 30F and 32B)" immediately below, and to the right of, the heading to Form 1.

[12] Schedule 1, Forms 2, 3 and 4

Insert after Form 1:

Form 2 Care proceedings attendance notice

(Clause 20)

Court details

Court:

Registry:

Case number:

Title of proceedings

Applicant:

Child/Young person:

Hearing details

Date:

Time:

Place:

Order to attend court

Name:

Address:

The Children's Court has ordered you to attend Court in relation to these care proceedings at the time, date and place specified in the hearing details.

Failure to attend may result in your arrest, and if you are a respondent to these proceedings, the Children's Court may deal with the proceedings in your absence.

*Children's Magistrate's/Registrar's Signature:

Name of *Children's Magistrate/Registrar:

Date:

At:

** Delete whichever does not apply.*

2006 No 810

Children's Court (Miscellaneous Amendments) Rule 2006

Schedule 1 Amendments

Form 3 Arrest warrant

(Clause 20)

Court details

Court:

Registry:

Case number:

Title of proceedings

Applicant:

Child/Young person:

Details of person to be arrested

Name:

Address:

Date of birth:

Order

The Children's Court has ordered that [*name of person to be arrested*] be arrested and brought before the Court in relation to these care proceedings. The Children's Court has ordered the arrest of the person on the following grounds:

- (a) *the person failed to attend as required by a care proceedings attendance notice, or
- (b) *the person absconded from care proceedings, or
- (c) **[give other reasons]*.

Direction

This warrant commands all police officers in the State of New South Wales to arrest the person named in this warrant and take and safely convey the person to the Children's Court or, if this is not practicable, before a Registrar.

This warrant is returnable before the Children's Court at [*place*] on [*time*], [*date*] and must not be executed after this time.

*Children's Magistrate's/Registrar's Signature:

Name of *Children's Magistrate/Registrar:

Date:

At:

* *Delete whichever does not apply.*

Form 4 Warrant of commitment for refusal to give evidence

(Clause 20)

Court details

Court:

Registry:

Case number:

Title of proceedings

Applicant:

Child/Young person:

Details of witness

Name:

Address:

Date of birth:

Sentencing order

Period of imprisonment:

Commencing date:

Expiration date:

The Children's Court has ordered that the above witness be committed to imprisonment for a period not exceeding 7 days from the date of sentence. The Court has further ordered that the witness be brought to the Court to be released before the expiration of 7 days if the person:

- (a) consents to be examined on oath and to answer questions concerning the subject matter of the proceedings, or
- (b) produces the document or thing required under the terms of the subpoena.

Direction

This warrant commands all police officers in the State of New South Wales to take and safely convey the witness to the *General Manager of the Correctional Centre/Centre Manager of the Detention Centre/place of security at [*location*] in the said State.

I command the *General Manager/Centre Manager to receive and imprison the witness and keep the witness in accordance with the imprisonment imposed by the Court.

2006 No 810

Children's Court (Miscellaneous Amendments) Rule 2006

Schedule 1 Amendments

*Children's Magistrate's/Registrar's Signature:

Name of *Children's Magistrate/Registrar:

Date:

At:

* *Delete whichever does not apply.*

BY AUTHORITY
