

Children's Court Rule 2000

[2000-706]



New South Wales

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New South Wales

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Children's Court Rule 2000



New South Wales

Part 1 Preliminary

1 Name of Rule

This Rule is the *Children's Court Rule 2000*.

2 Commencement

This Rule commences on 18 December 2000.

3 Definitions

(1) In this Rule:

assessment order means an order under Division 6 of Part 1 of Chapter 5 of the *Children and Young Persons (Care and Protection) Act 1998*.

assessment report means a report required to be made under Division 6 of Part 1 of Chapter 5 of the *Children and Young Persons (Care and Protection) Act 1998*.

care application has the same meaning as in section 60 of the *Children and Young Persons (Care and Protection) Act 1998*.

care order has the same meaning as in section 60 of the *Children and Young Persons (Care and Protection) Act 1998*.

care proceedings means proceedings before the Court in the exercise of its jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998*.

child means a person who is under the age of 16 years.

Children's Court Advisory Committee means the Children's Court Advisory Committee established under Part 9.

Children's Court Clinic means the Children's Court Clinic established under Part 8.

Children's Registrar means a person employed as a Children's Registrar as referred to in section 10A of the Act.

criminal proceedings means proceedings before the Court in the exercise of its jurisdiction under the *Children (Criminal Proceedings) Act 1987*.

Director of the Children's Court Clinic means the person appointed under Part 2 of the *Public Sector Management Act 1988* to the office of Director of the Children's Court Clinic.

preliminary conference means a preliminary conference arranged and conducted by a Children's Registrar under section 65 of the *Children and Young Persons (Care and Protection) Act 1998*.

proceedings means proceedings before the Court.

Registrar means a Registrar of the Children's Court (other than a Children's Registrar), as referred to in section 11 of the Act.

the Act means the *Children's Court Act 1987*.

young person means a person who is aged 16 years or above but who is under the age of 18 years.

(2) In this Rule:

- (a) a reference to the Registry is to be read, in a case where proceedings have been instituted, as a reference to the Registry of the Court at the place in which the proceedings have been instituted, and
- (b) a reference to the Registrar is to be read, in a case where proceedings have been instituted, as a reference to the Registrar of the Registry in which the proceedings have been instituted.

4 Notes

The explanatory note, table of contents and notes in the text of this Rule do not form part of this Rule.

Part 2 Application of this Rule

5 Rule applies to all proceedings before the Children's Court

- (1) The general practice and procedure of the Court set out in this Rule applies to all proceedings commenced before the Court, unless otherwise specified.
- (2) However, any practice or procedure set out in this Rule in relation to proceedings that is inconsistent with:
 - (a) the Act under which the Court has jurisdiction to hear the proceedings, or
 - (b) any regulation made under that Act,

does not apply to the extent of the inconsistency.

6 Court may waive compliance with Rule

- (1) The Court may, on any terms and conditions that the Court considers appropriate, waive any of the requirements of this Rule in respect of the practice and procedure to be followed in connection with any proceedings before the Court or in connection with any aspect of any proceedings before the Court.
- (2) Compliance may be waived before or after the occasion for compliance arises.

7 Extension or shortening of time

- (1) The Court may, on any terms or conditions that the Court considers appropriate, extend or shorten any time fixed by this Rule, or by any judgment, decision or order of the Court, for doing, or refraining from doing, any act or thing in relation to proceedings.
- (2) Time may be extended under this clause before or after the time expires, whether an application for the extension is made before or after the time expires.

Part 3 Administration of the Court

8 Seal

- (1) The seal of the Court is to have the wording "The Children's Court of New South Wales".
- (2) Each Registrar is to have custody of a seal.
- (3) Each document (including any accompanying copy) that is issued out of the Court is to be sealed with the seal of the Court.

9 Venue

Proceedings before the Court are to be heard at the place where the proceedings were instituted, unless the Court, or the Registrar of the Registry where the proceedings were instituted, otherwise directs.

10 Sittings

Subject to section 19 of the Act, and clause 5 of Schedule 2 to the Act:

- (a) the Court may sit at the places and the times that the Court determines, and
- (b) the Court must sit at the places and times that the Senior Children's Magistrate directs, and
- (c) the Senior Children's Magistrate may, with the concurrence of the Chief Magistrate, make arrangements for a Children's Magistrate to exercise the jurisdiction of the

Children's Court at the premises of a Local Court.

11 Arrangements for sittings

The Senior Children's Magistrate may direct that particular sittings of the Court will deal with care proceedings only or with criminal proceedings only.

Part 4 Filing

12 Filing of documents

- (1) A document for filing is not duly filed unless it is accepted by a Registrar.
- (2) A document must not be accepted for filing unless it complies with this Part.
- (3) An original document must be filed together with sufficient copies to enable service on all parties to proceedings.

13 Place of filing

In relation to care proceedings, a document must be filed:

- (a) in the case of an application or proceedings relating to a child or young person who is normally resident within the metropolitan area of Sydney, Newcastle or Wollongong—with any Registrar within the relevant metropolitan area, or
- (b) in any other case—with the Registrar closest to the place where the child or young person normally resides.

14 Means of filing documents

A document may be filed:

- (a) by hand, or
- (b) by posting it to the relevant Registry, or
- (c) by facsimile transmission, in accordance with clause 15.

15 Filing a document by facsimile transmission

- (1) Any document to be filed may be lodged by facsimile transmission if:
 - (a) the matter is urgent, and
 - (b) where the party filing the document is not legally represented—the party lives more than 20 kilometres from the Registry, and
 - (c) where the party filing the document is legally represented—the legal representative's principal office is more than 20 kilometres from the Registry, and

(d) it is not practicable to lodge the document in any other way.

- (2) A document to be filed must not be lodged by facsimile transmission in any other circumstances without the leave of the Court.

Part 5 General practice and procedure applicable to care proceedings and criminal proceedings

16 Documents to be lodged in time

- (1) Any document that is intended to be tendered in evidence in any proceedings must be lodged with the Court on or before the working day preceding that on which the next hearing of the proceedings is to take place.
- (2) Any such document may not be tendered in evidence in any proceedings unless each party to the proceedings was given a copy of the document on or before the previous working day.

17 Practice directions of the Court

- (1) In any proceedings, the Court may, in respect of any matter for which this Rule does not make provision, give any directions that it considers appropriate in connection with the practice and procedure to be followed in relation to that matter.
- (2) A practice direction given under this Rule that is inconsistent with:
- (a) the Act under which the Court has jurisdiction to hear proceedings in respect of that matter, or
 - (b) any regulation under that Act,
- does not apply to the extent of the inconsistency.

18 Reports

- (1) Any report required by the Court is, unless the Court otherwise directs, to be filed with the Court on or before the working day preceding that on which the next hearing of the proceedings for which the report is required is to take place.
- (2) Unless the Court otherwise directs, the Registrar must, on or before the working day preceding that on which the next hearing of the proceedings is to take place, make a copy of any such report available to all parties to the proceedings.
- (3) For the purpose of making the copy of the report available to the child or young person to whom the proceedings relate, the Registrar must make the copy available to:
- (a) any legal practitioner or agent who is noted in the record of the Court as representing the child or young person, or

(b) if the child or young person is represented by a duty solicitor from the Children's Legal Service Division of the Legal Aid Commission—the duty solicitor.

(4) This clause does not apply to any assessment report submitted by the Children's Court Clinic.

Part 6 Care proceedings

Division 1 Functions of Children's Registrars

19 Functions of Children's Registrars

For the purposes of section 10A of the Act, the following functions are conferred on a Children's Registrar:

- (a) dispensing with the service of any process,
- (b) extending or shortening any time fixed by this Rule, or by any judgment, decision or order of the Court, for doing, or refraining from doing, any act or thing in relation to proceedings,
- (c) making orders in relation to service and substituted service,
- (d) formulating interim orders under section 65 (2) (e) of the *Children and Young Persons (Care and Protection) Act 1998*,
- (e) referring contested interim orders under section 69 or 70 of the *Children and Young Persons (Care and Protection) Act 1998* to a Magistrate sitting as a Children's Court and making directions for the preparation for hearing and set down for an interim hearing,
- (f) referring parties to alternative dispute resolution or to another conference, but only if the parties have agreed and such alternative dispute resolution or conference is permissible under an Act,
- (g) adjourning proceedings,
- (h) any other functions conferred or imposed by or under this Rule.

Note—

Section 10A of the *Children's Court Act 1987* provides that a Children's Registrar has such functions as may be conferred or imposed by the rules or by or under any other Act. The *Children and Young Persons (Care and Protection) Act 1998* confers certain functions on a Children's Registrar. For example, section 65 of that Act requires a Children's Registrar to arrange and conduct a preliminary conference between parties after a care application has been made under that Act.

Division 2 Applications

20 Form of application regarding care proceedings

- (1) Applications used in care proceedings must be in or to the effect of a form approved by the Senior Children's Magistrate.
- (2) However, in the case of an application made under section 45 of the *Children and Young Persons (Care and Protection) Act 1998* the application need not be in or to the effect of any such form but must be in writing.

21 Details to accompany care applications

In addition to the other matters that a care application is required to specify, by or under the *Children and Young Persons (Care and Protection) Act 1998*, a care application must be accompanied by an affidavit in support of the application that:

- (a) states the facts, matters and circumstances on which the applicant intends to rely, and
- (b) states whether or not the child or young person to whom the application relates is currently the subject of an order made by:
 - (i) the Court in the exercise of its jurisdiction under the *Children (Care and Protection) Act 1987* or the *Children and Young Persons (Care and Protection) Act 1998*, or
 - (ii) any other Court in the exercise of its jurisdiction with respect to the custody or guardianship of children or parental responsibility for children.

22 Additional details to accompany certain urgent applications

If an application is made for an emergency care and protection order under section 45 of the *Children and Young Persons (Care and Protection) Act 1998*, the applicant must by affidavit, by oral evidence or in any other manner approved by the Court, provide details of the reasons why the applicant considers that the child or young person is at risk of serious harm sufficient to warrant the Court making an emergency care and protection order.

23 Commencement of proceedings regarding care application

A Registrar with whom a care application is filed must cause the application (including any accompanying copy) to be endorsed with a notice of the time, date and place set down for a preliminary conference or the hearing of the application.

24 Attendance at preliminary conferences

A Children's Registrar may require the attendance of a party, or a party's legal representative, at a preliminary conference.

25 Conduct of preliminary conferences

A preliminary conference is to be conducted in accordance with any practice directions of the Court dealing with preliminary conferences.

Division 3 Special provisions relating to children and young persons

26 Children and young persons as witnesses

- (1) A child or young person to whom care proceedings relate, and who has consented to give evidence in those proceedings, must not be called as a witness in those proceedings otherwise than by, or by leave of, the Court.
- (2) The Court must not call, nor give leave for the calling of, such a child or young person unless the Court has taken into consideration:
 - (a) the child's or young person's age, maturity and level of understanding, and
 - (b) the nature of the evidence that the child or young person is likely to give, and
 - (c) the importance of that evidence to the decision that the Court is required to make in respect of the proceedings, and
 - (d) the likely reliability of that evidence, and
 - (e) the effect that the giving of evidence generally, or the giving of evidence of the nature that the child or young person is likely to give, is likely to have:
 - (i) on the emotional well-being of the child or young person, and
 - (ii) on the child's or young person's relationships with other persons, and
 - (f) any other matters that the Court considers appropriate.
- (3) This clause does not apply where the child or young person is called to give evidence on his or her own behalf.

27 Evidence of school attendance

In any care proceedings, the Court may admit evidence that a child or young person has failed to attend school regularly.

Division 4 Application for appointment of a person to act as guardian ad litem

28 Guardian ad litem for child or young person

- (1) An application for the appointment of a person to act as guardian ad litem for a child or young person under section 100 (1) of the *Children and Young Persons (Care and Protection) Act 1998* may be made at the same time as an application in care

proceedings is made in respect of the child or young person or at any time after that.

(2) Such an application may be made by:

- (a) the person by whom an application in care proceedings was made, or
- (b) the child or young person, or
- (c) a person with parental responsibility, or care responsibility, for the child or young person (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*), or
- (d) a legal practitioner or agent appearing on behalf of the child, or
- (e) the proposed guardian ad litem.

(3) Such an application must be supported by an affidavit setting out:

- (a) the relationship (if any) between the proposed guardian ad litem and the child or young person, and
- (b) the way in which the best interests of the welfare of the child or young person would be promoted by the appointment of the proposed guardian ad litem.

(4) A copy of the order of appointment of a guardian ad litem for a child or young person (whether made by the Court on its own motion or on application made in accordance with this clause) must be served on each party to the proceedings before the next hearing of the proceedings takes place.

29 Guardian ad litem for parents of child or young person

(1) An application for the appointment of a person to act as guardian ad litem for either or both of the parents of a child or young person under section 101 (1) of the *Children and Young Persons (Care and Protection) Act 1998* may be made at the same time as an application in care proceedings is made in respect of the child or young person or at any time after that.

(2) Such an application may be made by:

- (a) the person by whom the application in care proceedings was made, or
- (b) either or both of the parents of the child or young person, or
- (c) a person with parental responsibility, or care responsibility, for the child or young person (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*), or
- (d) a legal practitioner or agent appearing on behalf of either or both of the parents of the child, or

- (e) the proposed guardian ad litem.
- (3) Such an application must be supported by an affidavit setting out:
 - (a) the relationship (if any) between the proposed guardian ad litem and the parent, and
 - (b) the way in which the best interests of the welfare of the parent would be promoted by the appointment of the proposed guardian ad litem.
- (4) A copy of the order of appointment of a guardian ad litem for a parent of a child or young person (whether made by the Court on its own motion or on application made in accordance with this clause) must be served on each party to the proceedings before the next hearing of the proceedings takes place.

Division 5 Records

30 Record of proceedings

- (1) The Court is to cause a record to be kept of any proceedings before it on a care application.
- (2) That record must include:
 - (a) the deposition of any witness in the proceedings, and
 - (b) particulars of any order made by the Court in the proceedings, and
 - (c) any reasons given by the Court for the making of any such order.
- (3) Without limiting subclause (2), the Registrar must maintain any other records, registers and indexes that the Senior Children's Magistrate may direct.

Division 6 General

30A Address for service—legal practitioner

- (1) This clause applies to proceedings under the *Children and Young Persons (Care and Protection) Act 1998*.
- (2) A legal practitioner who has not given an address for service is not entitled to be heard by the Court in proceedings to which the clause applies unless the Court orders otherwise.
- (3) A legal practitioner may give an address for service in proceedings to which the clause applies:
 - (a) by filing a notice of address for service in accordance with Form 1 of Schedule 1, or

- (b) by filing another relevant document that includes an address for service.
- (4) Unless the Court orders otherwise, if a legal practitioner who does not have an address for service files a document in proceedings to which the clause applies, the document must include the legal practitioner's address for service.
- (5) An address for service must be an address in New South Wales.
- (6) A legal practitioner may change the legal practitioner's address for service in the proceedings by filing a notice of address for service in accordance with Form 1 of Schedule 1.
- (7) Unless the Court orders otherwise, a legal practitioner who files a notice of address for service in proceedings under this clause must serve a sealed copy of the notice on each other party to the proceedings.
- (8) If a legal practitioner notifies an address for service under this clause, leaving a copy of a document at, or sending a copy of a document by post addressed to the person at, that address for service is taken to be good service on the person.
- (9) If a legal practitioner notifies an address for service that is an office that has an exchange box in a document exchange of Australian Document Exchange Pty Limited, in the State, leaving a copy of a document, addressed to that legal practitioner, at that exchange box or at another exchange box for transmission to that exchange box is taken to be good service on the person on a day two days after the copy is left.

Part 7 Criminal proceedings

31 Plea

Except in cases where the defendant wishes to make a special plea, the appropriate plea to a charge in criminal proceedings is "guilty" or "not guilty".

32 Presence of person responsible for child or young person

Unless it is impracticable or inappropriate to do so, the Court is to adjourn criminal proceedings against a child or young person who is unaccompanied by a person with parental responsibility, or care responsibility, for the child or young person (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*), so as to give such a person a reasonable opportunity to appear and address the Court on matters relating to the proceedings.

Part 8 Children's Court Clinic

33 Composition of Children's Court Clinic

The Children's Court Clinic established by the Attorney General under section 15B of the Act is to comprise:

- (a) the Director of the Children's Court Clinic, and
- (b) any others persons appointed by the Attorney General, being persons considered by the Attorney General to be suitable to prepare and submit assessment reports.

34 Referral of assessment orders to Children's Court Clinic

If the Court makes an assessment order and the Children's Court Clinic is appointed to prepare and submit the required assessment report, the Registrar must immediately forward to the Director of the Children's Court Clinic:

- (a) a copy of the assessment order, and
- (b) a list of the names and contact details of the person or persons the subject of the assessment order and of the legal representatives of that person or those persons, and
- (c) a list of the names and contact details of any other relevant persons and their legal representatives.

35 Conduct of Children's Court Clinic

If the Court makes an assessment order and the Children's Court Clinic is appointed to prepare and submit the required assessment report, the Director of the Children's Court Clinic must refer the assessment order to the person in the Clinic who the Director considers is the most appropriate to make the assessment report.

36 Assessment reports

- (1) An assessment report prepared by the Children's Court Clinic must be filed with the Court on or before the working day preceding that on which the next hearing of the proceedings is to take place.
- (2) Parties may make application to the Court for access to be granted to the assessment report.

Part 9 Children's Court Advisory Committee

Division 1 Composition of Children's Court Advisory Committee

37 Composition of Children's Court Advisory Committee

- (1) The Children's Court Advisory Committee established by the Attorney General under section 15A of the Act is to comprise:
 - (a) the Chairperson of the Committee (who is the Senior Children's Magistrate), and
 - (b) the Director of the Children's Court Clinic, and

- (c) the following persons appointed by the Attorney General (and called **appointed members** in this Part):
- (i) any one or more Children's Magistrates nominated by the Senior Children's Magistrate,
 - (ii) a Children's Registrar nominated by the Director-General of the Attorney General's Department,
 - (iii) a person nominated by the Managing Director of the Legal Aid Commission,
 - (iv) a person nominated by the Director-General of the Department of Community Services,
 - (v) a person nominated by the Director-General of the Department of Juvenile Justice,
 - (vi) a person nominated by the Director-General of the Attorney General's Department,
 - (vii) a person nominated by the Police Commissioner,
 - (viii) a person nominated by the Law Society and the Bar Association jointly,
 - (ix) one person, who is under the age of 18 years at the time of appointment, chosen by the Attorney General, after consulting with the Minister for Community Services and the Minister for Juvenile Justice,
 - (x) two persons, chosen by the Attorney General, after consulting with the Minister for Community Services and the Minister for Juvenile Justice, to represent the community, being persons who have qualifications or experience in a relevant field.

(2) For the purposes of subclause (1) (c) (x), the following fields are **relevant fields**:

- (a) family support,
- (b) child development,
- (c) children's services (within the meaning of section 200 of the *Children and Young Persons (Care and Protection) Act 1998*),
- (d) education,
- (e) indigenous affairs,
- (f) health (including mental health),
- (g) disability.

Division 2 Provisions relating to members of Children's Court Advisory Committee

38 Term of office

An appointed member holds office for the period (not exceeding 3 years) that is specified in the instrument appointing the member but the member is eligible (if otherwise qualified) to be re-appointed.

39 Remuneration

An appointed member is entitled to be paid any remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the member.

40 Deputies

- (1) The Attorney General may, from time to time, appoint a person to be the deputy of the Chairperson of the Children's Court Advisory Committee, or the deputy of the Director of the Children's Court Clinic. The Attorney General may revoke any such appointment.
- (2) The person or body that nominated an appointed member may, from time to time, nominate a person to be the deputy of the member. The nomination must be in writing addressed to the Attorney General and delivered to the Attorney General's official address. The person or body may revoke any such nomination of a deputy.
- (3) In the absence of a member of the Children's Court Advisory Committee, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of a member, a deputy:
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) in the case of an appointed member, is entitled to be paid any remuneration (including travelling and subsistence allowances) that the Attorney General may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (6) Clauses 38 (Term of office) and 41 (Vacancy in office of appointed member) apply to the deputy of a member in the same way as they apply to the member.

41 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Attorney General, or

(d) is removed from office by the Attorney General under this clause.

(2) The person or body that nominated an appointed member may request that the member be removed from office for any reason.

(3) The Attorney General may remove an appointed member from office for any reason.

42 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be nominated to fill the vacancy.

43 Nomination of person as appointed member

A nomination of a person to be an appointed member must be in writing addressed to the Attorney General and delivered to the Attorney General's official address.

Division 3 Procedure of Children's Court Advisory Committee

44 General procedure

The procedure for the calling of meetings of the Children's Court Advisory Committee and for the conduct of business at those meetings is, subject to this Rule, to be as determined by the Committee.

Part 10 Repeal and savings

45 Repeal of Children's Court Rule 1988

The *Children's Court Rule 1988* is repealed.

46 Savings

(1) Any act, matter or thing that, immediately before the repeal of the *Children's Court Rule 1988*, had effect under that Rule continues to have effect under this Rule.

(2) In particular:

(a) this Rule applies to and in relation to all proceedings whether commenced before or after the commencement of this Rule, and

(b) proceedings pending and orders or directions made, appointments made, documents filed or served, or any other act or thing done, before the commencement of this Rule must, if of a kind to which this Rule applies, be treated as if pending, made, filed, served, or done, as the case requires, in accordance with this Rule.

(3) Despite subclause (2):

- (a) this Rule does not operate to revive any period of time for the doing of any act or thing, being a period of time that, under the *Children's Court Rule 1988*, has expired before the commencement of this Rule, and
- (b) a period of time under the *Children's Court Rule 1988* that is running, but has not yet expired before the commencement of this Rule, continues to run as if this Rule had not come into operation if the matter in respect of which it is running is a matter to which this Rule applies.

Schedule 1 Forms

(Clause 30A)

Form 1 Notice of address for service

Children's Court of New South Wales

File number (or
details of
application)

Filed at

Filed on

Hearing date

1 Name

2 Address for
service

3 Telephone
number

4 Fax number

5 DX and
suburb/town (if
applicable)

Name of party for
whom legal
practitioner acts

The person named in 1 above or his or her legal practitioner can sign this form.

Date

Signature

Print legal
practitioner's name
(if applicable)