

Children's Court Rule 2000

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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 holding office as such under Chapter 9 of the *Health Services Act 1997*.

dispute resolution conference means a dispute resolution 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.

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

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 President directs, and
- (c) the President 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 President may direct that particular sittings of the Court will deal with care proceedings only or with criminal proceedings only.

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.

Part 4 Filing

12 Filing documents

- (1) A document must not be accepted for filing unless it complies with this Part or Part 4A.
- (2) A document may be filed:
 - (a) in accordance with this Part:
 - (i) by hand, or
 - (ii) by posting it to the relevant Registry, or
 - (iii) by facsimile transmission, or
 - (b) by electronic transmission in accordance with Part 4A.
- (3) An original document must be filed under this Part together with sufficient copies to enable service on all parties to proceedings.

13 Place of filing

In relation to care proceedings, a document filed under this Part 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 (Repealed)

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 4A Electronic case management

15A Definitions

- (1) In this Part:

coversheet means a page that is generated by JusticeLink that includes details about the case in which the document is being filed (including the case number).

JusticeLink means the electronic case management system of that name established for the Court under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

Online Registry means the electronic case management system of that name established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

registered user means a person who is registered as a user of the Online Registry.

upload, in relation to a document, means to transfer an electronic version of the document from a computer or other device to JusticeLink.

- (2) In this Part, a reference to filing a document in Court includes a reference to any other method of sending a document to the Court.

15B Electronic filing of documents

- (1) This clause applies to any document that is permitted to be filed using JusticeLink.

Note—

The Children's Court is authorised to use JusticeLink for the purposes of certain criminal and other proceedings—see Schedule 1 to the *Electronic Transactions (ECM Courts) Order 2005*.

- (2) In any proceedings, a document permitted to be filed using JusticeLink may be filed in the Court on behalf of a party to the proceeding by a person who is:
- (a) a party to proceedings (including a police prosecutor or a caseworker employed by the Department of Family and Community Services), or

- (b) a relevant legal practitioner for a party in proceedings.
- (3) A document that is filed by means of JusticeLink is taken to have been filed when JusticeLink gives notification of receipt of the document.
- (4) Notification of receipt of a document, and of the date and time of the receipt, is to be given, by means of JusticeLink, to the person by whom the document was filed.
- (5) When filed by means of JusticeLink, a document that is required to be signed by a person is taken to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2000* if the person's name is printed where his or her signature would otherwise appear.

15C Uploading documents

- (1) This clause applies to any document that may be, or is required to be, uploaded and submitted for filing on JusticeLink.
- (2) A true and complete copy of the document must be uploaded in the format approved by the President.
- (3) Each document uploaded must be accurately described.
- (4) If the document is an affidavit, the description of the document must include the name of the deponent and the date that the affidavit was sworn or affirmed.
- (5) If an affidavit or statement of evidence is uploaded, it must include:
 - (a) a clear, legible copy of the signature of the deponent of the affidavit or person making the statement, and
 - (b) if the document has been witnessed, a clear legible copy of the signature of the witness, and
 - (c) if the document is an affidavit executed in New South Wales, a duly completed certificate under the *Oaths Act 1900*.
- (6) A person who has filed a document by uploading it is taken to have agreed that, if the Court so requires, he or she will file the original document in accordance with the Court's directions.

15D Electronic issuing of a document

- (1) The Court may, by means of JusticeLink, issue any document authorised to be issued under the *Electronic Transactions Act 2000*.
- (2) The date on which the document was issued must be set out in the document.
- (3) When issued by means of JusticeLink, a document that is required to be signed by a

person is taken to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2000* if the person's name is printed where his or her signature would otherwise appear.

15E Coversheet generated by JusticeLink

- (1) The coversheet is to include a seal and a note of the date and time of filing.
- (2) If a document is submitted for filing under clause 15B and accepted by JusticeLink, the person who submitted the document will be sent a copy of the document submitted for filing with a coversheet inserted as the first page of the document.
- (3) If a coversheet has been inserted as the first page of the document in accordance with subclause (2), the coversheet is taken to be part of the document for the purposes of this Part.
- (4) If, as a result of the filing of a document, JusticeLink has automatically listed the proceedings, then the coversheet will include a notice of the date, time and place that the proceedings have been listed.
- (5) If the document submitted for filing under clause 15C includes the other associated documents as attachments under that clause, then the document and the other associated documents will all be included under the one coversheet.

15F Registration of users for Online Registry

- (1) Any person may apply to be a registered user by completing and submitting the application form, and agreeing to comply with the terms and conditions, published on the Online Registry website.

Note—

The Children's Court is authorised to use the Online Registry for the purposes of use in proceedings, but only so as to enable information concerning the progress of the proceedings to be provided in electronic form to legal practitioners representing parties to the proceedings. See Schedule 5 to the *Electronic Transactions (ECM Courts) Order 2005*.

- (2) A person applying to be a registered user must provide such information as may be required by the application form including whether or not the applicant is a legal practitioner.
- (3) A registrar of the Court may direct that the registration of a person be cancelled if, in the opinion of the registrar, the person should not have been registered as a user of the Online Registry.

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 (Repealed)

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.

18A Forms

- (1) The President:
 - (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 Rule with respect to certain application forms under the *Children and Young Persons (Care and Protection) Act 1998*.

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 dispute resolution conference between parties after a care application has been made under that Act.

Division 2 Applications

20 Application forms

- (1) Despite clause 18A, an application under section 45 of the *Children and Young Persons (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.
- (3) This clause does not apply to any care application made by filing a contract breach notice within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

Note—

Section 61A of the *Children and Young Persons (Care and Protection) Act 1998* provides that a care application is made if the Director-General files a contract breach notice with the Children's Court.

21 Report to accompany care applications

For the purposes of section 61 (2) of the *Children and Young Persons (Care and Protection) Act 1998*, the report that is required to accompany a care application must:

- (a) provide a summary of the facts, matters and circumstances on which the applicant intends to rely, and
- (b) state 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 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 dispute resolution conference or the hearing of the application.

24 Attendance at dispute resolution conferences

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

25 Conduct of dispute resolution conferences

A dispute resolution conference is to be conducted in accordance with any practice directions of the Court dealing with dispute resolution 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 President may direct.

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 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.

Division 7 General

30F 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.
- (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.

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 clause 13 of Schedule 1 to 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.

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.

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.

32A Additional factors for appearance by audio visual link: section 5BA of Evidence (Audio and Audio Visual Links) Act 1998

(1) The following are specified as additional factors that the Court is to take into account in determining whether it is in the interests of the administration of justice to make a direction under section 5BA (1) of the *Evidence (Audio and Audio Visual Links) Act 1998* that an accused child detainee is to appear before the Court by audio visual link:

(a) the nature of the proceedings concerned,

(b) the right of the accused child detainee to be given the fullest opportunity to be heard and to participate in the proceedings,

- (c) whether the accused child detainee would be significantly advantaged or disadvantaged if directed to appear by audio visual link,
 - (d) the availability of Children's Magistrates to hear the proceedings by audio visual link,
 - (e) the need for the accused child detainee's lawyer to obtain initial or detailed instructions from the accused child detainee,
 - (f) the need for the accused child detainee's lawyer to discuss a brief of evidence with the accused child detainee,
 - (g) (Repealed)
 - (h) the maturity of the accused child detainee,
 - (i) the accused child detainee's need for the support of a parent, carer or other support person during the proceedings,
 - (j) the wishes of the accused child detainee,
 - (k) (Repealed)
 - (l) any special needs of the accused child detainee, including the impact of any intellectual or physical disability or mental illness that the accused child detainee may have,
 - (m) whether the accused child detainee requires the assistance of an interpreter and the availability of an appropriate interpreter.
 - (n)-(q) (Repealed)
- (2) Expressions used in this clause that are defined in section 3 of the *Evidence (Audio and Audio Visual Links) Act 1998* have the meanings set out in that section.

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.

Part 8 Children's Court Clinic

33 Composition of Children's Court Clinic

- (1) The Children's Court Clinic established by the Minister for Health 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 Minister for Health, being persons considered by the Minister for Health to be suitable to prepare and submit assessment reports.
- (2) Any appointment under subclause (1) (b) that was in force immediately before 1 July 2011 is taken to be an appointment made by the Minister for Health.

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 President), 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 President,
 - (ii) a Children's Registrar nominated by the Secretary of the Department of Justice,
 - (iii) a person nominated by the Chief Executive Officer of the Legal Aid Commission,
 - (iv) a person nominated by the Secretary of the Department of Family and Community Services,
 - (v) a person nominated by the Secretary of the Department of Justice,
 - (vi) (Repealed)
 - (vii) a person nominated by the Police Commissioner,
 - (viii) a person nominated by the Law Society of New South Wales,
 - (viii a) a person nominated by the Bar Association of New South Wales,
 - (ix) one person, who is under the age of 25 years at the time of appointment,

chosen by the Attorney General, after consulting with the Executive Director of Juvenile Justice, Department of Justice and the Minister for Family and Community Services,

- (x) two persons, chosen by the Attorney General, after consulting with the Executive Director of Juvenile Justice, Department of Justice and the Minister for Family and Community Services, to represent the community, being persons who have qualifications or experience in a relevant field,
- (xi) a person nominated by the Secretary of the Department of Education,
- (xii) two persons nominated by the Chief Executive Officer of the Aboriginal Legal Service.

(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. 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

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)

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.*

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.

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

Name of *Children's Magistrate/Registrar:

Date:

At:

** Delete whichever does not apply.*