



Children, Young Persons, and Their Families Amendment Rules 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

These rules are made under section 448 of the Oranga Tamariki Act 1989 on the advice and with the consent of the Executive Council.

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Rules

1 Title

These rules are the Children, Young Persons, and Their Families Amendment Rules 2017.

2 Commencement

These rules come into force on 1 September 2017.

3 Principal rules

These rules amend the Children, Young Persons, and Their Families Rules 1989 (the **principal rules**).

4 Part 5 replaced

Replace Part 5 with:

**Part 5
Service**

Service: documents to be served

34 Documents to be served

- (1) If no other person is required to do so by the Act or these rules, the Registrar must serve, or cause to be served, without delay, the following documents:
 - (a) the documents issued for service under rule 17(3);
 - (b) any summons issued under the Act or these rules;
 - (c) any other document required to be served under the Act or these rules or that the Judge directs must be served.
- (2) The Registrar may serve, or cause to be served, any other document that he or she considers should be served in any proceedings under the Act.

Service: how documents to be served

35 How documents to be served

- (1) A document required by the Act or these rules to be served on a person in a particular manner must be served on the person in that manner, regardless of rules 36 to 45.
- (2) A document not required by the Act or these rules to be served on a person in a particular manner may be served on the person by—
 - (a) personal service (*see* rules 36 to 39); or
 - (b) service on a lawyer who accepts the document on behalf of the person (*see* rule 40); or
 - (c) service at the person's address for service (*see* rules 41 to 45); or
 - (d) service in a manner and at a place that the court or Registrar directs.
- (3) If all reasonable efforts have been made to serve documents in a manner required or (as the case requires) a manner permitted by these rules, but the documents have not been served in that manner, in certain circumstances a Judge may, under rule 46A, make an order for substituted service (that is, an order dispensing with, or changing, the service required by these rules).

Service: personal service

36 Who may carry out personal service

- (1) A document that must be served personally may be served by—

- (a) a Registrar, bailiff, or other employee appointed under the State Sector Act 1988 for the conduct of the business of the court:
 - (b) an individual who is authorised by the Secretary for Justice to serve documents under the Act:
 - (c) an officer or employee of a corporation that is authorised by the Secretary for Justice to serve documents under the Act:
 - (d) a constable:
 - (e) a Police employee authorised by the Commissioner of Police to serve documents under the Act:
 - (f) a social worker:
 - (g) a party's lawyer or an agent of a party's lawyer:
 - (h) a party's agent, delegate for the purpose, or employee.
- (2) Except where service is effected by a person referred to in subclause (1)(d), (e), or (f), no party may effect personal service, but the party may be present when service is effected.

37 Personal service

Personal service of a document may be effected by—

- (a) leaving the document with the person to be served or, if that person does not accept it, by putting it down in that person's presence and bringing it to that person's attention; or
- (b) leaving the document for the person to be served at that person's place of residence with another person who resides at that residence and who appears to be of or over the age of 18 years.

38 Service on chief executive

If the chief executive is a party to any proceedings, any document that is required to be served on the chief executive must be served—

- (a) by delivering the document to the principal manager of the department for the area in which the child or young person who is the subject of the proceedings resides; or
- (b) by leaving the document with any person who indicates that he or she is authorised to accept service on behalf of the chief executive.

39 Service on constable

If the person to be served is a party to the proceedings in his or her capacity as a constable, it is sufficient service to deliver the document to be served to any constable or Police employee.

*Service: lawyer may accept service on behalf of person***40 Service on lawyer accepting service on behalf of person**

- (1) Service of a document on a person may be effected by serving it on a lawyer who accepts service of it on behalf of the person.
- (2) A lawyer accepts service of a document if the lawyer—
 - (a) notes on a copy of the document that he or she accepts service of it on behalf of the person; and
 - (b) signs and dates the note.
- (3) If a lawyer accepts service of a document on behalf of a person, the document must, unless the contrary is proved, be treated as served on the date on which the lawyer signed the note.

*Service: at address for service***41 Address for service**

- (1) Subject to subclause (2), each party in a proceeding, unless he or she has sooner given his or her address for service in accordance with that subclause, must give an address for service at the end of the first document filed by him or her or on the information sheet filed under rule 16.
- (2) A party (other than the party who is commencing proceedings) may give an address for service by stating it in a notice filed in the court and by serving a copy of the notice on each other party to the proceedings.
- (3) Any address for service may from time to time be altered by reasonable notice to the Registrar and to each other party to the proceedings.
- (4) If a party has no address for service, the Judge or the Registrar may direct that a particular address is the party's address for service.
- (5) Any person, other than a party to the proceedings, who is given or served with a document in the proceedings must give an address for service at the end of the first document filed by, or on behalf of, that person in the proceedings.

42 Service at address for service

A document may be served at an address for service by leaving the document at that address between 9 am and 5 pm.

43 Methods of service if address for service is lawyer's office

If an address for service given by a party under these rules is the office of a lawyer acting for the party, and the lawyer has a post office box address, a document exchange box number, or an electronic address, a document may be served on the party by—

- (a) posting the document to the post office box; or

- (b) leaving the document at a document exchange for direction to the document exchange box number; or
- (c) transmitting the document to the electronic address.

44 When and how documents under rule 43 to be treated as served

- (1) A document posted under rule 43(a) must, unless the contrary is proved, be treated as having been served on the earlier of—
 - (a) the day on which it was received; and
 - (b) the fifth working day after the day on which it was posted.
- (2) A document left at a document exchange under rule 43(b) must, unless the contrary is proved, be treated as having been served on the earlier of—
 - (a) the day on which it was received; and
 - (b) the second working day after the day on which it was left at the document exchange.
- (3) A document transmitted under rule 43(c)—
 - (a) before 5 pm on a day must be treated as having been served on that day unless the contrary is proved;
 - (b) on or after 5 pm on a day must be treated as having been served on the first working day after the day on which it was received unless the contrary is proved.
- (4) A document transmitted under rule 43(c) must be treated as having been received in a complete and legible form unless—
 - (a) the contrary is proved; or
 - (b) the lawyer receiving the document gave in relation to the document the notice required by rule 45(1)(b).

45 Lawyer must acknowledge document transmitted electronically

- (1) A lawyer to whom a document is transmitted under rule 43(c) must, promptly after receiving the document, give the person who served the document—
 - (a) a notice acknowledging receipt of the document and confirming the date of service of the document; or
 - (b) if the document was incomplete or illegible, or both, when it was received, a notice stating that the document was incomplete or illegible, or both, when it was received.
- (2) A notice under subclause (1) may be—
 - (a) given in writing; or
 - (b) transmitted electronically.

*Service: directions***46 Directions as to service**

- (1) The applicant may, and must on the direction of a Registrar, make an interlocutory application without notice to the court for a direction that a person who is not a party be served, if an application is required by the Act or these rules to be served—
 - (a) on a person specified by the court; or
 - (b) on a person the court directs.
- (2) However, only in the circumstances stated in subclause (3) may a Registrar direct that an application be made under subclause (1) in respect of an application—
 - (a) for a declaration under section 67 of the Act; or
 - (b) for a variation or discharge under section 125 of the Act.
- (3) The circumstances are that it appears from the application for a declaration under section 67 or the application for a variation or discharge under section 125 of the Act, and any documents filed with it, or from any other documents held by the court, that a person who is not a party to the proceedings has an interest in the proceedings and should be served.
- (4) An application under subclause (1) must state the reasons why the person specified in the application should be served.
- (5) If the court is satisfied that the person specified in the application should be served, it must direct accordingly.
- (6) This rule, so far as applicable and with all necessary modifications, applies to every application notice of which is required by the Act or these rules to be given—
 - (a) to any person specified by the court; or
 - (b) to such person or persons as the court directs.

*Service: substituted service***46A Order dispensing with or changing service required**

- (1) A person may, by an interlocutory application, apply for an order for substituted service if—
 - (a) all reasonable efforts have been made to serve a document in a manner required or (as the case requires) in a manner permitted by these rules; and
 - (b) the document has not been served in that manner; and
 - (c) either—
 - (i) prompt service of the document cannot be effected; or

- (ii) the document has come to the knowledge of the person on whom it is to be served.
- (2) In response to the application, the Judge may, if satisfied of the matters specified in subclause (1)(a) to (c), make—
 - (a) an order dispensing altogether with the service required; or
 - (b) an order for substituted service that changes, in any way, the service required (for example, an order permitting the document to be brought to the notice of the person to be served using social media, or by advertisement, or by some other means).
- (3) In response to the application, the Registrar may, if satisfied of the matters specified in subclause (1)(a) to (c), make an order of the kind described in subclause (2)(b).
- (4) If an order for substituted service does not dispense altogether with the service required, compliance with the requirements of the order—
 - (a) must be treated as having the same effect as personal service; and
 - (b) is sufficient to comply with the service as required by these rules.
- (5) If the court makes an order for substituted service requiring that a document be brought to the notice of the person to be served by an advertisement, the advertisement must be in form CYPF 11.

Service: proof of service

46B Proof of personal service

- (1) Proof that a document has been served personally on a person may be given by—
 - (a) oral evidence given on oath before the court; or
 - (b) an affidavit of service in form CYPF 12.
- (2) If the person on whom the document was served is personally known to the person who makes the affidavit of service, that affidavit must set out the circumstances that enable the deponent to state the deponent's personal knowledge of the person served.
- (3) If the person served is not personally known to the person who makes the affidavit of service, the identity of the person served—
 - (a) may not be proved by a mere acknowledgement by the person served; but
 - (b) may be proved by—
 - (i) written acknowledgement proved to be in the handwriting of the person served; or
 - (ii) a satisfactory photograph; or
 - (iii) any other means satisfactory to the court.

- (4) If a document is served by an officer of the court or a constable, Police employee, or social worker, the service may be proved—
- (a) by stating that the document has been served and stating the date and mode of service—
 - (i) in an endorsement on the original document, or on a copy of it, signed by the person who served the document; or
 - (ii) in a certificate attached to the original document, or on a copy of it, signed by the person who served the document; or
 - (b) in either of the ways referred to in subclause (1).

46C Proof of substituted service

- (1) Proof that a document has been served (by substituted service) by publishing an advertisement in 1 or more newspapers must be given by an affidavit of advertising in form CYPF 13.
- (2) The service of a document by substituted service in any other way may be proved—
 - (a) on oath before the court; or
 - (b) by affidavit; or
 - (c) by any other means satisfactory to the Registrar.

46D Attaching copy of document to affidavit of service or certificate of service

- (1) An affidavit of service of a document need not have a copy of the document attached to it as an exhibit if—
 - (a) the original or a copy of the document has, at the time of service, been filed in the court; and
 - (b) the affidavit contains a description of the document that—
 - (i) enables the document to be identified; and
 - (ii) if the document is dated, includes the date of the document.
- (2) Despite rule 46B(4)(a)(ii), a certificate of service under that rule need not have a copy of the document attached to it if—
 - (a) the original or a copy of the document has, at the time of service, been filed in the court; and
 - (b) the certificate of service contains a description of the document that—
 - (i) enables the document to be identified; and
 - (ii) if the document is dated, includes the date of the document.
- (3) The court may direct a party to attach a copy of a document to an affidavit of service or a certificate of service.
- (4) A direction under subclause (3) overrides subclauses (1) and (2).

*Service of orders***46E Service of orders**

- (1) The Registrar must, as soon as practicable after the making of any order (including any interim or ancillary order) under the Act, take all reasonable steps to serve a copy of the order on the parties.
- (2) If a party is represented by a lawyer, service of a copy of the order on his or her lawyer is deemed to be service on that party.
- (3) If any party is not represented by a lawyer, service may be effected by—
 - (a) sending a copy of the order to the party’s address for service; or
 - (b) transmitting the order to the party’s last known electronic address.
- (4) If service cannot be effected under subclause (3) because no address for service or electronic address has been given by the party, and the party resides in New Zealand, service may be effected by sending a copy of the order by a letter that is—
 - (a) addressed to that party at the party’s last known or usual place of residence or business in New Zealand; and
 - (b) delivered to that address by a postal or courier service that records details of delivery to the address.
- (5) If service cannot be effected under subclause (3) because no address for service or electronic address has been given by the party, and the party resides overseas, service may be effected by sending a copy of the order by a letter that is—
 - (a) addressed to the party at that party’s last known or usual place of residence or business overseas; and
 - (b) sent to that address by airmail.

46F Copy of orders to be sent to principal manager

The Registrar must, as soon as practicable after making any order (including any interim or ancillary order) under the Act, deliver or send a copy of the order to the principal manager for the district in which the court that made the order is situated.

5 Schedule 1, form CYPF 11 amended

In Schedule 1, form CYPF 11 heading, replace “r 42(3)” with “r 46A(5)”.

6 Schedule 1, form CYPF 13 amended

In Schedule 1, form CYPF 13 heading, replace “r 43(4)” with “r 46C(1)”.

Michael Webster,

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 September 2017, amend the Children, Young Persons, and Their Families Rules 1989 to—

- enable lawyers to accept service of documents by any electronic means:
- enable the following persons to undertake personal service:
 - an individual who is authorised by the Secretary for Justice:
 - an officer or employee of a corporation that is authorised by the Secretary for Justice:
 - a Police employee authorised by the Commissioner of Police:
- add, as an example of an order for substituted service of a document, an order permitting the document to be brought to the notice of the person to be served using social media:
- reflect the change made by the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Act 2016 that a social worker is no longer able to be a party to proceedings under the Oranga Tamariki Act 1989 in his or her capacity as a social worker:
- provide that service of an order on a party who does not have a lawyer acting for him or her may be effected by transmitting the order to the party's last known electronic address.

Issued under the authority of the Legislation Act 2012.

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These rules are administered by the Ministry for Vulnerable Children, Oranga Tamariki.