



Western Australia

Adoption Act 1994

Adoption Rules 1995

Adoption Rules 1995

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Part 1 — Preliminary

1. Citation

These rules may be cited as the *Adoption Rules 1995*^{1,2}.

2. Interpretation

- (1) In these rules, “**Registrar**” means the Principal Registrar, a Registrar, or a Deputy Registrar of the Court.
- (2) In these rules, a reference to an “**affidavit**” includes a reference to the original or a copy of a document exhibited to the affidavit.

[Rule 2 amended: Gazette 21 Mar 2000 p. 1496.]

3. Exemption from rules

The Court may, in relation to proceedings under the Act, exempt any person from compliance with any procedural requirement of these rules, either wholly or subject to conditions, if it would be just to do so.

[4. Omitted under the Reprints Act 1984 s. 7(4)(f).]

Part 2 — Procedure generally

Division 1 — Filing

5. Filing of documents

- (1) A document that is to be filed in the Court is to be delivered to the Court in a sealed envelope that is addressed to the “Adoptions Officer”.
- (2) The Registrar may refuse to accept for filing in the Court a document in relation to proceedings under the Act that is not —
 - (a) legible and printed or copied by a machine on one side only of the paper;
 - (b) on A4 size white paper that is of durable quality;
 - (c) headed in the form of Form 1 of Schedule 1 and does not have a cover sheet headed in the form of Form 1 of Schedule 1 and upon which cover sheet appears a short description of the document (including, in the case of an affidavit, the name of the deponent and the date of swearing) and the name, address and telephone number of the legal practitioner (if any) filing, delivering, or serving the document or, if the person on whose behalf the document is filed, delivered, or served is not represented by a legal practitioner, the name, address for service and telephone number (if any) of that person;
 - (d) set out so that there is a margin of approximately 30mm and approximately 6mm of space between each line; and
 - (e) numbered on each page,

unless the nature of the document renders such compliance impracticable.

- (3) If a hearing of proceedings under the Act has commenced, a document relating to the proceedings can only be filed with the leave of the Court and in the manner directed by the Court.

[Rule 5 amended: Gazette 21 Mar 2000 p. 1496; 20 Jun 2003 p. 2236; 29 Jan 2013 p. 333.]

6. Address for service

- (1) A person cannot file a document in relation to proceedings under the Act unless a notice of the person's address for service within the State in the form of Form 2 of Schedule 1 is given in or with the document or has been previously filed in the Court.
- (2) A person who has filed a notice of address for service in relation to proceedings under the Act may change the person's address for service by filing a notice in the form of Form 2 of Schedule 1 and serving a sealed copy of the notice on each other party to the proceedings.

7. Marking of filed documents

Where a document has been filed in the Court in relation to proceedings under the Act, the Registrar is to ensure that —

- (a) the date of filing is marked on the document; and
- (b) each service copy of the document bears the seal of the Court.

Division 2 — Applications

8. Interpretation

A reference in rules 13, 14 and 15 to an application is a reference to an application referred to in rule 9, rule 12A and rule 12B and to an application for an adoption order.

[Rule 8 amended: Gazette 29 Jan 2013 p. 333.]

9. Form of general applications

An application to the Court under the Act, other than an application for an adoption order or an application referred to in rule 12A or 12B is to be in the form of Schedule 1 Form 3.

[Rule 9 inserted: Gazette 29 Jan 2013 p. 333.]

10. Evidence in support of general applications

An application referred to in rule 9 is to be filed in the Court together with supporting affidavit evidence.

[Rule 10 amended: Gazette 29 Jan 2013 p. 333.]

11. Form of applications for adoption orders

An application for an adoption order, other than an application for an adoption order under section 78A(1), is to be in the form of Form 4 of Schedule 1.

[Rule 11 amended: Gazette 21 Mar 2000 p. 1496.]

11A. Form of applications for adoption orders under section 78A

An application for an adoption order under section 78A of the Act is to be in the form of Form 4A of Schedule 1.

[Rule 11A inserted: Gazette 21 Mar 2000 p. 1496.]

12. Evidence in support of applications for adoption orders

- (1) An application for an adoption order is to be filed in the Court together with —
 - (a) affidavit evidence that would satisfy the Court —
 - (i) that the Court has jurisdiction to make the adoption order sought in the application;
 - (ii) in the case of an application for an adoption order in relation to a child, that there has been compliance with such of the provisions of section 68(1) and (2) of the Act as are relevant to the application;
 - (iii) in the case of an application for an adoption order in relation to an adult, that there has been compliance with section 69(1) of the Act; and

- (iv) in the case of an application for an adoption order under section 78A, that there also has been compliance with section 78A(2)(a) to (e) of the Act;
 - (b) the birth certificate of the prospective adoptee; and
 - (c) if it proposed that the prospective adoptee be adopted by 2 persons jointly, the marriage certificate, if any, of the prospective adoptive parents.
- (2) If an application under section 71 or 73 of the Act is to be made at the hearing of an application for an adoption order —
- (a) the orders to be sought are to be set out in an application that is separate from the application for the adoption order; and
 - (b) the affidavit evidence in support of the application under section 71 or 73 is to be filed separately from the supporting evidence for the application for the adoption order.

[Rule 12 amended: Gazette 21 Mar 2000 p. 1497.]

12A. Form of application under section 136B

An application for an order under section 136B of the Act is to be in the form of Form 4B of Schedule 1.

[Rule 12A inserted: Gazette 21 Mar 2000 p. 1497.]

12B. Form of application under section 136F

An application for a declaration under section 136F of the Act is to be in the form of Form 4C of Schedule 1.

[Rule 12B inserted: Gazette 21 Mar 2000 p. 1497.]

12C. Evidence in support of applications under section 136B or 136F

A reference in rules 13, 14 and 15 to an application is a reference to an application under a provision of the Act referred to in the Table to this rule.

Table

Provision	Description of application
section 136B	to terminate relationship of child and parent in relation to a simple adoption
section 136F	to refuse to recognise an adoption or a decision to convert a simple adoption

[Rule 12C inserted: Gazette 21 Mar 2000 p. 1497.]

13. Service of applications

A sealed copy of an application and any supporting affidavit is to be served on such persons as the Court directs.

14. Hearing not necessary if application non-contentious

A non-contentious application may be dealt with, subject to section 133 of the Act —

- (a) in chambers;
- (b) in the absence of any party to the application or the legal practitioner for the party,

unless the Court directs otherwise.

[Rule 14 amended: Gazette 29 Jan 2013 p. 334.]

15. Notice of hearing of applications

If the Court decides that there should be a hearing in relation to an application, the Registrar is to give not less than 28 days'

notice of the time and place of the hearing, or such other period of notice as the Court directs, to all persons entitled to be heard.

[Division 3 (r. 16-21) deleted: Gazette 29 Jan 2013 p. 334.]

Division 4 — Serving and sending documents

22. Time for service

Where a document is to be served on a person in relation to proceedings under the Act but the time in which it is to be served has not been provided for under these rules, the document is to be served within such time as the Court directs.

23. How service effected

Service of a document in proceedings under the Act other than a witness summons may be effected —

- (a) in any case, by personal service of a sealed copy of the document upon the person to be served; or
 - (b) if a person has not filed a notice of address for service, by sending by prepaid post addressed to the person to be served at the person's last known address —
 - (i) a sealed copy of the document; and
 - (ii) an acknowledgment of receipt in the form of Form 6 of Schedule 1;
- or
- (c) if a person has filed a notice of address for service —
 - (i) by leaving a sealed copy of the document at the address stated in the notice; or
 - (ii) by sending a sealed copy of the document by prepaid post addressed to the person to be served at the address stated in the notice; or
 - (iii) by transmitting a facsimile of the document to a facsimile machine at the address; or

- (iv) where the address includes the number of a document exchange box of the legal practitioner for the person to be served, by sealing the document in an envelope (complying with any pre-payment requirements of the document exchange and addressed to the legal practitioner) and causing the envelope to be placed in the box;

or

- (d) in such other manner as the Court directs.

[Rule 23 amended: Gazette 29 Jan 2013 p. 334.]

24. Affidavits of service

An affidavit of service of any document in proceedings under the Act must provide evidence of —

- (a) who served the document;
- (b) the day of the week and date on which the document was served;
- (c) where and how it was served; and
- (d) if the document was served personally, the means by which the person served was identified.

25. Acknowledgment of service

- (1) A person on whom a document is served may acknowledge service of the document by an acknowledgment of service.
- (2) An acknowledgment of service must be in the form of Form 6 of Schedule 1 and may be signed by the person on whom the document was served or by the legal practitioner for that person.
- (3) If an acknowledgment of service purports to be signed by the person on whom the document was served then, unless the contrary is proved, service of the document is to be taken to have been effected in accordance with the acknowledgment.
- (4) If a legal practitioner signs an acknowledgment of service on behalf of the person on whom the document was served, the

filing of an acknowledgment is to be taken as being proof that service of the document has been effected in accordance with the acknowledgment.

[Rule 25 amended: Gazette 29 Jan 2013 p. 334.]

26. Proof of certain kinds of service

- (1) If service of a document is conducted in accordance with rule 23(c)(ii) then, unless the contrary is proved, service of the document is to be taken to be effected at the time when the document would have been delivered in the ordinary course of post.
- (2) If a facsimile of a document is transmitted in accordance with rule 23(c)(iii) then service of the document is to be taken to be effected upon completion of the transmission of the document unless it is subsequently established by or on behalf of the person to be served that the document was not in fact received by a facsimile machine at the address or that the facsimile received was not legible or complete.

27. How documents to be sent by Court

- (1) A document to be sent by the Court to a person for the purposes of the Act may be sent by properly addressing and posting (by pre-paid, first class airmail post) the document as a letter to the last known address of the person in which case, unless the contrary is proved, the person is to be taken as having received the document —
 - (a) if posted to an address within Australia, at the time when the letter would have been delivered in the ordinary course of post; and
 - (b) if sent overseas, 28 days after the day on which the letter was posted.
- (2) The Registrar is to ensure that a document to be sent to a person by the Court for the purposes of the Act is sent in a sealed envelope which is marked “Private and Confidential”.

Division 5 — Miscellaneous

28. Witness summonses

- (1) At the direction of the Court the Registrar is to issue, and at the request of a party the Registrar may issue, a witness summons in relation to proceedings under the Act, commanding the person named in the summons to attend before the Court at the time stated in the summons and there to —
 - (a) give evidence;
 - (b) give evidence and produce any books, documents or things in the person's possession or custody or under the person's control; or
 - (c) produce any books, documents or things in the person's possession or custody or under the person's control,in accordance with the summons.
- (2) A witness summons is to be in the form of Form 7 of Schedule 1.
- (3) A witness summons is to be served personally on the prospective witness or in such other manner as the Court directs.
- (4) A person who serves a witness summons must, at the time of service, tender to the person served sufficient money for that person's return travel between his or her place of residence or employment (whichever is appropriate) and the Court.

29. Failure or refusal to comply with witness summons

A person who is served with a witness summons issued under rule 28 must not fail or refuse to comply with the summons without reasonable cause or excuse, proof of which lies on the person.

Penalty: \$1 000.

[30. Deleted: Gazette 5 Dec 1995 p. 5587.]

31. Register of applications and orders

The Registrar is to keep a register of all applications made to the Court under the Act and record in the register the orders made on each application.

[Rule 31 amended: Gazette 29 Jan 2013 p. 334.]

32. Court to provide certain information to CEO

The Registrar is to cause to be given to the CEO —

- (a) a copy of the orders made in relation to each application for an adoption order and each application for an order to discharge an adoption order; and
- (b) notice of each application under section 83(1) of the Act for an order to prevent the CEO from giving his or her authority in relation to access to information; and
- (c) a copy of the orders made in relation to each application made under section 136B or 136F of the Act.

[Rule 32 amended: Gazette 21 Mar 2000 p. 1497-8; 29 Jan 2013 p. 335.]

Schedule 1

Forms

FORM 1 — HEADINGS

[Rule 5(2)(c)]

Adoption Act 1994

In the Family Court of Western Australia

No. of .

IN THE MATTER OF.....

.....

.....

BETWEEN.....

.....

.....

AND..... [Applicant/s/Appellant/s]

.....

.....

[Other parties to application/appeal]

FORM 2 — NOTICE OF ADDRESS (OR CHANGE IN ADDRESS) FOR SERVICE

[Rule 6]

Notice of Address (or Change in Address) for Service

Name.....
.....

Name of legal practitioner and legal practitioner’s firm (if applicable):.....
.....
.....

Address for Service:.....
.....
.....

[address must be within Western Australia]

Telephone no: ().....

Fax no: ().....

DX no:.....

DATED this day of .

.....
SIGNATURE of party or legal practitioner for party

[Form 2 amended: Gazette 29 Jan 2013 p. 335.]

FORM 3 — APPLICATION (GENERAL)

[Rule 9]

Application

(other than for an adoption order)

I/We.....
of.....
.....
.....

[State full name/s and address/es]

apply under section of the *Adoption Act 1994* for the following
order/s —

.....
.....
.....
.....

DATED this day of .

.....
SIGNATURE of applicant/s or legal practitioner for applicant/s

TAKE NOTICE that if you wish to oppose this application you must file a
notice of address for service within 14 days of the day on which you received
this copy of the application.

.....
[Form 3 amended: Gazette 29 Jan 2013 p. 335.]

FORM 4 — APPLICATION FOR ADOPTION ORDER

[Rule 11]

Application for an adoption order

I/We

.....

.....

[State full name, address and occupation of each prospective adoptive parent]

apply to adopt.....

.....

.....

[State full name by which prospective adoptee is known and the date and place of birth of the prospective adoptee]

a child from [insert the name of the Convention country], a Convention country, who is to live in Western Australia. [include if applicable]

In the event that an adoption order is made, I/we apply for the Court to declare that the adoptee be known by the name.....

.....

DATED this day of .

.....
SIGNATURE/S of applicant/s

[*Note that if the application for the adoption order is in relation to a child, a written memorandum of the provisions of the adoption plan in relation to the child is to be filed with the application unless an application will be made for the Court to dispense with the requirement for the adoption plan: section 62 of the Act.]

[Form 4 inserted: Gazette 21 Mar 2000 p. 1498.]

FORM 4A — APPLICATION FOR ADOPTION ORDER UNDER SECTION 78A OF THE ADOPTION ACT 1994

[Rule 11A]

Application for an adoption order of child who is to live in a Convention country

I/We

[State full name, address and occupation of each prospective adoptive parent]

apply to adopt.....

[State full name by which prospective adoptee is known and the sex and date and place of birth of the prospective adoptee]

an Australian child who is to live in [insert the name of the Convention country], a Convention country.

In the event that an adoption order is made, I/we apply for the Court to declare that the adoptee be known by the name.....

DATED this day of .

.....
SIGNATURE/S of applicant/s

[Note that a written memorandum of the provisions of the adoption plan in relation to the child is to be filed with the application unless an application will be made for the Court to dispense with the requirement for the adoption plan: section 62 of the Act.]

[Form 4A inserted: Gazette 21 Mar 2000 p. 1498-9.]

FORM 4B — APPLICATION FOR ORDER UNDER SECTION 136B

[Rule 12A]

Application for an order terminating the legal relationship of child and parent in relation to a simple adoption

I/We
.....
.....

[State full name, address and occupation of each applicant]

apply, under section 136B of the *Adoption Act 1994*, for an order terminating the relationship between

.....
.....

[State the full names of the pre-adoptive parents and any other names by which either parent is, or was previously, known]

and
.....
.....

[State the full name, sex, and date and place of birth of the child]

DATED this day of .

.....
SIGNATURE/S of applicant/s

[Form 4B inserted: Gazette 21 Mar 2000 p. 1499; amended: Gazette 17 Sep 2002 p. 4675; 29 Jan 2013 p. 335.]

FORM 4C — APPLICATION FOR A DECLARATION UNDER SECTION 136F

[Rule 12B]

Application for a declaration under section 136F of the *Adoption Act 1994*

I.....
.....
.....
.....

[State full name and address of the State Central Authority]

, the State Central Authority, apply, under section 136F of the *Adoption Act 1994*, for a declaration by the Court that the adoption of*/decision made in accordance with Article 27 of the Hague Convention in relation to*[*whichever is applicable*].....
.....
.....

[State the full name, sex, date and place of birth of the child]

is not recognised.

DATED this day of .

.....
SIGNATURE/S of applicant/s

[Form 4C inserted: Gazette 21 Mar 2000 p. 1500; amended: Gazette 29 Jan 2013 p. 335.]

.....
[Form 5 deleted: Gazette 29 Jan 2013 p. 335.]

FORM 6 — ACKNOWLEDGMENT OF SERVICE

[Rules 23(b)(ii) and 25(2)]

.....
[State full name of person served with documents]

Date of service:.....

Document/s served:.....

.....

.....

.....

I acknowledge that the documents specified above were served on me on the date specified above.

.....
[Signature of person served]

.....
[Date of signing]

OR

I am the legal practitioner for the person served. On behalf of my client I acknowledge that the documents specified above were served on my client on the date of service specified above.

.....
[Signature of legal practitioner]

.....
[Date of signing]

.....
[Name of legal practitioner and name of firm
(print)]

.....
[Address]

.....
[Telephone no.]

.....
[Fax no.]

.....
[DX no.]

[Form 6 amended: Gazette 29 Jan 2013 p. 336.]

FORM 7 — WITNESS SUMMONS

[Rule 28(2)]

Summons to Witness

To:.....
.....
of.....
.....

You are hereby ordered to attend at this Court at.....a.m./p.m.
on _____ the _____ day of _____
at 150 Terrace Road, Perth in the State of Western Australia and to attend from
day to day unless excused by the Court or a Registrar, until the hearing of the
above-mentioned matter is completed, to —

- (a) give evidence; or
- (b) give evidence and produce any books, documents or things in your possession or custody or under your control as are set out below; or
- (c) produce any books, documents or things in your possession or custody or under your control as are set out below.

[Delete the inapplicable paragraphs]

The books, documents or things to be produced are.....
.....
.....
.....

If you fail or refuse to comply with this summons then —

- (a) a warrant may issue for your arrest; and
- (b) if you so fail without reasonable cause or excuse you commit an offence punishable by a fine not exceeding \$1 000.

DATED this _____ day of _____ .

.....
REGISTRAR

[Form 8 deleted: Gazette 5 Dec 1995 p. 5587.]

[Schedule 1 amended: Gazette 5 Dec 1995 p. 5587; 21 Mar 2000 p. 1498-1500;
17 Sep 2002 p. 4675; 20 Jun 2003 p. 2236.]

Notes

¹ This is a compilation of the *Adoption Rules 1995* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Adoption Rules 1995</i> ²	19 Jan 1995 p. 179-99	19 Jan 1995
<i>Adoption (Amendment) Rules 1995</i>	5 Dec 1995 p. 5586-7	5 Dec 1995
<i>Adoption Amendment Rules 2000</i>	21 Mar 2000 p. 1495-1500 (correction 24 Mar 2000 p. 1643)	21 Mar 2000
<i>Adoption Amendment Rules 2002</i>	17 Sep 2002 p. 4675-6	21 Sep 2002 (see r. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Adoption Amendment Rules (No. 2) 2002</i>	12 Nov 2002 p. 5465	12 Nov 2002
<i>Adoption Amendment Rules 2003</i>	20 Jun 2003 p. 2235-6	20 Jun 2003
Reprint 1: The <i>Adoption Rules 1995</i> as at 1 Aug 2003 (includes amendments listed above)		
<i>Adoption Amendment Rules 2012</i>	29 Jan 2013 p. 332-6	r. 1 and 2: 29 Jan 2013 (see r. 2(a)); Rules other than r. 1 and 2: 30 Jan 2013 (see r. 2(b))

² These rules are made by the Judges of the Family Court under section 142 of the *Adoption Act 1994*. Section 142(2) of the Act provides —

“

If no provision is made by law or rule under subsection (1) in relation to a matter for which rules may be made under that subsection —

- (a) the provisions of the rules and regulations under the *Family Court Act 1975* that are most nearly applicable in relation to the matter are to apply; or
- (b) if there is no provision such as that mentioned in paragraph (a), the rules and regulations under the

Family Law Act 1975 of the Commonwealth that
are most nearly applicable in relation to the matter
are to apply.

”.