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ADOPTION ACT 1994

ADOPTION RULES 1995

WESTERN AUSTRALIA

ADOPTION RULES 1995

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ADOPTION ACT 1994
ADOPTION RULES 1995

Made by the Judges of the Family Court of Western Australia under section 142 of the Act.

PART 1 — PRELIMINARY

Citation

1. These rules may be cited as the *Adoption Rules 1995*¹.

Interpretation

2. (1) In these rules, "Registrar" has the meaning that it has in the *Family Court Act 1975*.

(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.

Exemption from rules

3. 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.

Repeal

4. The *Adoption of Children Rules 1970* are repealed.

¹ These rules are made 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.

".

PART 2 — PROCEDURE GENERALLY***Division 1 — Filing*****Filing of documents**

5. (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;
- (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.

Address for service

6. (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.

Marking of filed documents

7. 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**Interpretation**

8. A reference in rules 13, 14 and 15 to an application is a reference to an application under a provision referred to in the Table to rule 9 and to an application for an adoption order.

Form of general applications

9. An application under a provision of the Act referred to in the Table to this rule is to be in the form of Form 3 of Schedule 1.

TABLE

Provision	Description of application
section 24 (1)	to dispense with requirement under section 17 (1) for a person's consent
section 25 (1)	to dispense with a requirement to serve notice under section 21 (1) or to extend the period for service of notice
section 36 (1)	to make further provision for a child's guardianship
section 50 (1)	in relation to a disputed matter in the negotiation of an adoption plan
section 57	to apply for an adoption order before the expiration of 6 months after the day on which the child was placed with a view to adoption
section 60	in relation to a requirement to give notice under section 58 (1) or 59 (2)
section 63	to intervene in proceedings for an application for an adoption order
section 71	for an order other than an adoption order on an application for an adoption order
section 73	to dispense with the requirement for an adoption plan
section 76 (1)	to vary adoption plan
section 77 (1)	to discharge an adoption order
section 83 (1)	to prevent access to information
section 83 (4)	by a person affected by an order under section 83 (2)
section 138 (3)	for declaration that an overseas order complies with section 138 (1)

Evidence in support of general applications

10. An application under a provision referred to in the Table to rule 9 is to be filed in the Court together with supporting affidavit evidence.

Form of applications for adoption orders

11. An application for an adoption order is to be in the form of Form 4 of Schedule 1.

Evidence in support of applications for adoption orders

12. (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; and
 - (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;
- (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.

Service of applications

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

Hearing not necessary if application non-contentious

14. 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 party's lawyer,

unless the Court directs otherwise.

Notice of hearing of applications

15. 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 — Appeals**Notice of appeal**

16. An appeal under section 114 (1) or (2) of the Act is to be instituted by filing a notice of appeal in the form of Form 5 of Schedule 1.

Time in which to appeal

17. (1) An appeal under section 114 (1) or (2) is to be instituted —
- (a) not more than 28 days after the day on which the appellant received notice of the decision that is the subject of the appeal; or
 - (b) within such further time as the Court may allow.

(2) For the purposes of this rule, a person is to be taken as having received notice of the decision that is the subject of the appeal on the day on which written notice of the decision would have been received by the person in the ordinary course of post.

Registrar to appoint time for directions hearing

18. In addition to the requirements of rule 7, the Registrar is to ensure that a notice of appeal and any service copy of the notice of appeal contain details of an appointment for a directions hearing and that the appointment is set for a day not less than 21 days from the day on which the notice was filed.

Service of notice of appeal

19. A sealed copy of the notice of appeal under rule 16 is to be served within 14 days after the notice is filed or within such other time as the Court directs —

- (a) in the case of an appeal under section 114 (1) of the Act, on the Director-General and on any other party to the appeal;
- (b) in the case of an appeal under section 114 (2) of the Act, on the Director-General in accordance with section 116 of the Act and on any other party to the appeal.

Directions hearing

20. At the directions hearing the Court may give such directions as it thinks are reasonably required in relation to the hearing of the appeal, service on any other person and the procedure and evidence relating to the appeal.

Notice of hearing of appeal

21. The Registrar is to give not less than 28 days' notice of the time and place of the hearing of the appeal, or such other period of notice as the Court directs, to all persons entitled to be heard on the appeal.

Division 4 — Serving and sending documents**Time for service**

22. 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.

How service effected

23. 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;
- (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;
- (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;
 - (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;
 - (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 lawyer of 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 lawyer) and causing the envelope to be placed in the box;

or

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

Affidavits of service

24. 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.

Acknowledgment of service

25. (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 that person's lawyer.

(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 lawyer 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.

Proof of certain kinds of service

26. (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.

How documents to be sent by Court

27. (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

Witness summonses

28. (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.

Failure or refusal to comply with witness summons

29. 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.

Form of adoption order

30. An adoption order is to be in the form of Form 8 of Schedule 1.

Register of applications, appeals and orders

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

Court to provide certain information to Director-General

32. The Registrar is to cause to be given to the Director-General —

- (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 Director-General from giving his or her authority in relation to access to information.

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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 lawyer and lawyer'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 party's lawyer

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 lawyer of 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 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]

and further, 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 5 — NOTICE OF APPEAL

[Rule 16]

Notice of Appeal under section 114

TAKE notice that the appellant appeals against — [strike out that which is inapplicable]

[section 114 (1)] a decision of the Director-General on the review under Division 1 of Part 5 of the Act made on [date] as follows —

[section 114 (2)] a decision of an adoption applications committee made on [date] as follows —

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

[set out decision appealed from]

The decision appealed from is *the whole of OR part of* the decision of the Director General OR adoption applications committee. [strike out that which is inapplicable]

The grounds on which this appeal is made are as follows —

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

[Set out the grounds of the appeal briefly but with particularity]

The appellant seeks the following orders —

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

DATED this day of .

.....
SIGNATURE of appellant/s or lawyer of appellant/s

NOTICE OF DIRECTIONS HEARING

This appeal has been SET DOWN FOR A DIRECTIONS HEARING in the Family Court of Western Australia at 150 Terrace Road, Perth in the State of Western Australia on the day of
at a.m./p.m.

.....
REGISTRAR

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 lawyer 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 lawyer]

..... [Date of signing]

..... [Name of lawyer and name of firm (print)]

.....

..... [Address]

..... [Telephone no.]

..... [Fax no.]

..... [DX no.]

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

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FORM 8 — ADOPTION ORDER

[Rule 30]

BEFORE THE COURT

THIS DAY OF .

APPLICATION having being made under the *Adoption Act 1994* for an adoption order in relation to a child/adult previously known as

.....
[name by which the adoptee was known before the adoption order becomes effective]

who was born on the day of , at

IT IS ORDERED that the child/adult be adopted by

and

..... [full name of each adoptive parent]

of

..... [address of adoptive parent/s]

AND that the name by which the adoptee is to be known after this order becomes effective is to be

.....

BY THE COURT

REGISTRAR



SIGNED

I. W. P. McCALL.
ALAN J. BARBLETT.
NICHOLAS TOLCON.
MICHAEL M. HOLDEN.



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