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**FAMILY COURT ACT 1997**



**FAMILY COURT (SURROGACY)  
RULES 2009**



Western Australia

## **Family Court (Surrogacy) Rules 2009**

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### CONTENTS

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1. Citation
2. Commencement
3. Terms used in these rules
4. Application of these rules
5. Application of *Family Court Rules 1998*
6. Application of *Family Law Rules 2004*  
(Commonwealth)
7. Application for parentage orders
8. Ancillary application
9. Response to an application
10. Service of application or response
11. Hearing not necessary if application  
non-contentious
12. Notice of hearing of applications



Family Court Act 1997

## Family Court (Surrogacy) Rules 2009

Made by the Judges of the Family Court of Western Australia under section 244 of the Act.

### 1. Citation

These rules are the *Family Court (Surrogacy) Rules 2009*.

### 2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day on which the *Surrogacy Act 2008* section 20 comes into operation.

### 3. Terms used in these rules

- (1) In these rules —

***ancillary application*** means an application for an order other than a parentage order;

***approved***, in relation to forms, means approved by the Chief Judge;

***arranged parents*** has the meaning given in the *Surrogacy Act 2008* section 14;

***birth parents*** has the meaning given in the *Surrogacy Act 2008* section 14;

***Family Court (Surrogacy) Rules 2009*****r. 4**

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***child*** means the child in respect of whom an application for a parentage order is made;

***Council*** has the meaning given in the *Surrogacy Act 2008* section 15;

***parentage order*** has the meaning given in the *Surrogacy Act 2008* section 14.

**4. Application of these rules**

These rules apply for the purposes of the exercise by the Court of its jurisdiction under the *Surrogacy Act 2008*.

**5. Application of *Family Court Rules 1998***

The *Family Court Rules 1998* referred to in the Table apply to the exercise by the Court of its jurisdiction under the *Surrogacy Act 2008*.

**Table**

r. 3	r. 4
r. 5	r. 6
r. 7	r. 8
r. 9	r. 11
r. 36	

**6. Application of *Family Law Rules 2004 (Commonwealth)***

- (1) The *Family Law Rules 2004 (Commonwealth)*, as adopted and applied by the *Family Court Rules 1998* rule 12 for the exercise by the Court of its jurisdiction under the *Family Court Act 1997*, are adopted and apply for the purposes of the exercise by the Court of its jurisdiction under the *Surrogacy Act 2008*.

**Family Court (Surrogacy) Rules 2009****r. 7**

- (2) Each rule of the *Family Law Rules 2004* (Commonwealth) adopted and applied under subrule (1) applies for the purposes of that subrule with the modifications described in the *Family Court Rules 1998* rule 13(3) and (4).

**7. Application for parentage orders**

- (1) An application for a parentage order is to be in an approved form.
- (2) The application is to be filed in the Court together with —
- (a) if the *Surrogacy Act 2008* section 16(1) applies, a copy of the Council's approval; and
  - (b) if the application is made by 2 persons jointly, the marriage certificate, if any, of the applicants.
- (3) The application is to be accompanied by affidavit evidence as to facts on the basis of which the Court may be satisfied as required by the *Surrogacy Act 2008* section 21(2).

**8. Ancillary application**

- (1) An ancillary application under a provision of the *Surrogacy Act 2008* referred to in the Table is to be in an approved form.

**Table**

<b>Provision</b>	<b>Description of application</b>
s. 20(3)	for leave to lodge application for parentage order out of time
s. 21(3)	to dispense with a requirement referred to in s. 21(2)(b), (c), (d) or (f)
s. 23	for ancillary orders
s. 27	to discharge a parentage order

*Family Court (Surrogacy) Rules 2009***r. 9**

<b>Provision</b>	<b>Description of application</b>
s. 30	for approval to vary an approved plan
s. 31	alleging breach of approved plan
s. 36	to exclude a person from having access to information

- (2) An ancillary application is to be filed in the Court and accompanied by affidavit evidence as to the facts relied on in support of the orders sought in the application.
- (3) The affidavit evidence referred to in subrule (2) is to be separate from affidavit evidence in support of an application for a parentage order.

**9. Response to an application**

- (1) A person who seeks to oppose an order sought in an application for a parentage order or an ancillary application or seeks a different order is to file a response in an approved form.
- (2) A response is to be filed in the Court accompanied by affidavit evidence as to the facts relied on in support of the response.

**10. Service of application or response**

A sealed copy of an application for a parentage order, an ancillary application or a response, and the affidavit in support of the application or response is to be served on persons and in a manner, as the Court directs.

**11. Hearing not necessary if application non-contentious**

Unless the Court directs otherwise, a non-contentious application for a parentage order or ancillary application may be dealt with in the absence of any party to the application or the party's lawyer.



**Family Court (Surrogacy) Rules 2009**

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**r. 12****12. Notice of hearing of applications**

If the Court decides that there should be a hearing in relation to an application, the Principal 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.

Dated: 11 February 2009.

Judges' signatures:

The Hon. Justice  
STEPHEN THACKRAY

The Hon. Justice  
JANE CRISFORD

The Hon. Justice  
CAROLYN ELVINA MARTIN

The Hon. Justice  
STEPHEN CROOKS

The Hon. Justice  
JULIENNE PENNY