

South Australia

Youth Court (Adoption) Rules 2018

under the *Adoptions Act 1988*

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Part 1- Preliminary

1—Short title

These rules may be cited as the *Youth Court (Adoption) Rules 2018*.

2—Commencement

These rules will come into operation on the day on which section 7 of the *Adoption (Review) Amendment Act 2016* comes into operation.

3—Interpretation

- (1) In these rules, unless the contrary intention appears—
adoption jurisdiction of the Court means the jurisdiction of the Court under the *Adoption Act 1988*;
adoption order means an order of the Court under section 8 of the *Adoption Act 1988* and includes, if the case requires, an adoption order within the meaning of section 14 of that Act;
Court means the Youth Court.
- (2) A term used in these rules that is defined in the *Adoption Act 1988* has the same meaning in these rules as it has in that Act (unless the contrary intention appears).

4—Application of rules

These rules apply to the adoption jurisdiction of the Court. The adoption jurisdiction of the Court is also governed by the *Youth Court (General) Rules 2016*.

5—Object of rules

The object of these rules is the fair, effective, expeditious and efficient conduct of the proceedings of the Court.

6—Forms

- (1) It is sufficient compliance with these rules, as to the form of any document, if the document is substantially in accordance with the form specified by these rules.
- (2) Forms not provided by these rules may be prepared at the direction of the Court or by the Registrar on behalf of the Court.
- (3) All forms for use specifically in the adoption jurisdiction must use numbering with the prefix A.
- (4) The forms set out in Schedule 1 must be used for the purposes specified in that Schedule or these rules.

Part 2—Adoption applications

7—Adoption application

An application to the Court under section 8 of the *Adoption Act 1988* must be made in the prescribed form set out in Schedule 1.

Prescribed form—

Form A1 Originating Application – Adoption Order

8—Service

- (1) A copy of an application for an adoption order must be served personally on—
 - (a) if the child who is the subject of the application is of or above the age of 10 years – the child;
and
 - (b) each other party to the application.
- (2) The copy of an application must include notification of the place, date and time for the hearing of the application.
- (3) If it is not reasonably practicable to serve a copy of an application personally on a party, or the whereabouts of such a party cannot, after reasonable enquiries, be ascertained, the copy of the application may be served on that person by—

- (a) posting it to the person at the person's last known place of residence or employment; or
 - (b) sending it by fax or email to a fax number or an email address provided by the person (in which case the application will be taken to have been served at the time of sending); or
 - (c) in any other manner authorised by the Court.
- (4) The Court will not proceed to hear an application for an adoption order unless each party served with the application has had at least 5 days notice of the hearing.
- (5) The Court may dispense with service of an application on a child or other party under this rule if the Court considers that there is a proper reason to do so, including, for example—
- (a) if the party is a birth parent who resides outside Australia; or
 - (b) if the child or other party is too young to understand the purpose or implications of the application or accompanying documents, or it is otherwise inappropriate in the circumstances to serve the documents on them.

9—Application to dispense with consent

An application to the Court under section 18 of the *Adoption Act 1988* must be made in the prescribed form set out in Schedule 1, accompanied by a supporting affidavit in the prescribed form.

Prescribed forms—

Form A8 Application for an Order of the Court
Form A5 Affidavit

9A—Application to dispense with or recognise the validity of consent before application for adoption order made

An application to the Court by the Chief Executive under section 19(1) of the *Adoption Act 1988* must be made in the prescribed form set out in Schedule 1, accompanied by a supporting affidavit in the prescribed form.

Prescribed forms—

Form A7 Application to Dispense with or Recognise the Validity of Consent
Form A5 Affidavit

Part 3—Discharge applications

10—Discharge application

- (1) An application to the Court for the discharge of an adoption order under section 14 of the *Adoption Act 1988* must be made in the prescribed form set out in Schedule 1.

Prescribed form—

Form A2 – Application to Discharge an Adoption Order

- (2) An application must—
- (a) state the orders that are sought; and
 - (b) state the grounds of the application; and
 - (c) include particulars of the factual allegations or circumstances relied on to make out the grounds of the application; and
 - (d) be signed by the applicant, or on the applicant's behalf by the applicant's legal representative.
- (3) All statements and particulars in an application must be in plain language, and be set out and expressed clearly, specifically and succinctly.

11—Material supporting applications—other requirements

- (1) An application to the Court as referred to in rule 11 must also be supported by an affidavit in the prescribed form that sufficiently sets out the evidence on which the application is based.

Prescribed form—

Form A5 Affidavit

- (2) Leave to file further material may be sought orally and at any stage of the proceedings and, unless the Court allows or directs otherwise, served on the other parties at least 5 business days before the next date for the hearing of the proceedings.”

12—Service

- (1) A copy of an application for the discharge of an adoption order must be served personally on—
 - (a) if the child who is the subject of the application is of or above the age of 10 years – the child; and
 - (b) each other party to the application.
- (2) The copy of an application must include notification of the place, date and time for the hearing of the application.
- (3) If it is not reasonably practicable to serve a copy of an application personally on a party, or the whereabouts of such a party cannot, after reasonable enquiries, be ascertained, the copy of the application may be served on that person by—
 - (a) posting it to the person at the person’s last known place of residence or employment; or
 - (b) sending it by fax or email to a fax number or an email address provided by the person (in which case the application will be taken to have been served at the time of sending); or
 - (c) in any other manner authorised by the Court.
- (4) The Court will not proceed to hear an application for the discharge of an adoption order unless each party served with the application has had at least 5 days notice of the hearing.
- (5) The Court may dispense with service of an application on a child or other party under this rule if the Court considers that there is a proper reason to do so, including, for example—
 - (a) if the party is a birth parent who resides outside Australia; or
 - (b) if the child or other party is too young to understand the purpose or implications of the application or accompanying documents, or it is otherwise inappropriate in the circumstances to serve the documents on them.

13—Investigations

- (1) If the Court directs that an investigation be conducted under section 14(2) of the *Adoption Act 1988*, the Court must specify the particular circumstances to be investigated.
- (2) An investigation referred to in subrule (1) may only investigate the circumstances relating to the grounds on which a discharge order may be made as stated in the application for the discharge order.

Part 4—Miscellaneous

14—Application for recognition of international adoption order

An application to the Court under section 21(2) of the *Adoption Act 1988* for the recognition of an international adoption order must be made in the prescribed form set out in Schedule 1.

Prescribed form—

Form A3 Originating Application – Recognition of an Adoption
Order Made Outside Australia

14A—Other Applications

Any other application, other than an interlocutory application, not specifically addressed by rules 7 to 15 is to be made in the prescribed form set out in Schedule 1.

Prescribed form—

Form A8 Application for an Order of the Court

15—Notification of applications

- (1) The Court will give the Chief Executive notice of any application—
 - (a) for an adoption order; or
 - (b) for the discharge of an adoption order; or

- (c) for the recognition of an international adoption order.
- (2) The form of the notice will be decided by the Registrar and will be given to the Chief Executive by email sent to an email address agreed between the Registrar and the Chief Executive.

16—Representation of party under 18 years

- (1) If the Court considers that it is in the best interests of a party in any proceedings under the *Adoption Act 1988* who is less than 18 years of age to make an order under this rule, the Court may order that the party be represented by a legal practitioner.
- (2) If the Court makes an order under subrule (1) so as to provide for representation by a legal practitioner employed or engaged by the Legal Services Commission, the Court will notify the Commission by email sent to an email address agreed between the Registrar and the Commission.

16A—Responses

- (1) This rule applies to any application to the Court other than—
 - (a) an interlocutory application; or
 - (b) an application of a kind excluded from the application of this rule by the Court by practice direction.
- (2) A party to an application who opposes the application in whole or part must file a response in the Court, and serve the response on the other parties, at least 5 business days before the scheduled date for hearing in relation to the application.
- (3) A response to an application must—
 - (a) be in the prescribed form set out in Schedule 1; and
 - (b) state clearly the order or orders sought in the application that are opposed and any order that is not opposed; and
 - (c) if an order is proposed as an alternative to an order sought in the application, indicate that clearly, and specify the proposed order and which order it would replace; and
 - (d) in relation to each ground of the application, state whether the ground is—
 - (i) admitted; or
 - (ii) disputed; or
 - (iii) not admitted, but not disputed for the purposes of the determination of the application; and
 - (e) in relation to each separate particular of a factual allegation in the application, state whether the particular is—
 - (i) admitted; or
 - (ii) disputed; or
 - (iii) not admitted, but not disputed for the purposes of the determination of the application; and
 - (f) if a ground or particular is disputed, state briefly the manner in which the ground or particular is disputed.

Prescribed form—

Form A6 Response

- (4) A response should be supported by material that provides evidence of the respondent's version of events or of any matter relevant to the determination of the application.
- (5) Material in support of a response may be in the form of—
 - (a) affidavits (including annexures); or
 - (b) expert reports; or
 - (c) chronologies of significant events; or
 - (d) subject to a direction of the Court, other documentary evidence.

- (6) Material in support of a response provided under this rule must be filed in the Court and, unless the Court directs otherwise, served on the other parties, at least 5 business days before the first hearing in relation to the application.
- (7) After the expiration of the period that applies under subrule (6), material in support of a response may only be filed in the Court with leave and on such terms or conditions as the Court directs.
- (8) Leave to file further material may be sought orally and at any stage of the proceedings and, unless the Court allows or directs otherwise, served on the other parties at least 2 business days before the next date for the hearing of the proceeding.
- (9) The Court will make such determinations based on the contents of a response, or the failure to file a response, as the Court considers appropriate, and proceed accordingly, subject to the provisions of the *Adoption Act 1998*.

16B—Interlocutory applications

- (1) This rule does not apply to an application of a kind excluded from the application of the rule by the Court by practice direction.
- (2) An interlocutory application is to be in the prescribed form set out in Schedule 1, accompanied by an affidavit in the prescribed form evidencing the grounds on which the application is being made.

Prescribed forms—

Form A4 Interlocutory Application

Form A5 Affidavit

- (3) Nothing prevents an interlocutory application from being combined with an application for a final order of the Court.
- (4) The applicant must serve a copy of the application (and accompanying documents) on the other parties as soon as practicable after it is filed in the Court, but not later than 2 business days before the next date for the hearing of the proceedings.
- (5) However, service on another party is not required if the application does not affect the interests of the other party.
- (6) The Court may, on conditions the Court considers appropriate, dispense with a requirement of this rule—
 - (a) if the urgency of the case requires; or
 - (b) by consent of the parties; or
 - (c) if for any other reason the Court considers it appropriate to do so.
- (7) The Court may determine an interlocutory application without hearing oral submissions from the parties if—
 - (a) the application is not contentious; or
 - (b) the Court decides on the application of a party to determine the application on the basis of written submissions.
- (8) On an interlocutory application, the Court may give directions relating to the proceedings irrespective of whether the applicant has asked for such directions in the application.

17—Directions hearings

- (1) This rule applies to any application to the Court for an adoption order or for the discharge of an adoption order.
- (2) An application will be listed for a directions hearing at a time determined by the Court.
- (3) At a directions hearing, the Court may give 1 or more of the following directions:
 - (a) limiting the issues to be determined on the hearing of the application;
 - (b) requiring or relating to the discovery, inspection and copying of evidentiary material;
 - (c) arranging for the calling of any witnesses;
 - (d) arranging for the preparation, provision or production of any report;
 - (e) any other direction that may facilitate the hearing of the application before the Court.

- (4) Nothing in this rule limits any direction that may, in any event, be given before or at the hearing of an application.

18—Proof of service

- (1) If an application or other document is required to be served on another party, the Court may decline to consider the application or document until proof of service of the application has been filed in, or produced to, the Court.
- (2) Proof of service of an application or document may consist of an affidavit in the prescribed form made by the person who served the application or document setting out—
- (a) the date, time and place of service; and
 - (b) how the person to be served was identified; and
 - (c) how service was effected.

Prescribed form—

Form A5 Affidavit

- (3) The Court may, however, require or permit oral evidence of service.

Part 5—Consequential amendments

19—Amendment of *Youth Court (General) Rules 2016*

The *Youth Court (General) Rules 2016* are amended—

- (a) by striking out from rule 3(1) the definition of *adoption jurisdiction*; and
- (b) by striking out from rule 8(5) “for use specifically in the adoption jurisdiction must use numbering with the prefix A and forms”; and
- (c) by striking out Part 3 (and by deleting copies of any applications included in the rules for information purposes only).

Schedule 1—Forms

Schedule 1 – Forms

Adoption Forms:

<u>Form A1 Originating Application – Adoption Order</u>
<u>Form A2 Application to Discharge an Adoption Order</u>
<u>Form A3 Originating Application – Recognition of an Adoption Order Made Outside Australia</u>
<u>Form A4 Interlocutory Application</u>
<u>Form A5 Affidavit</u>
<u>Form A6 Response</u>
<u>Form A8 Interlocutory Application</u>
<u>Form A9 Affidavit of Service</u>
<u>Form A10 Order</u>
<u>Form A11 Notice to Births, Deaths and Marriages</u>

GIVEN under our hands and the Seal of the Youth Court of South Australia

this 8th day of May 2020.

Judge P. ELDRIDGE
Magistrate L. DAVIS
Magistrate D. WHITE
Magistrate O. KOEHN

Please Note: The Schedule of Forms has been updated following Gazettal on 14 May 2020 pursuant to Rule 11(4) of the *Youth Court (General) Rules 2016* (SA).

For the most updated version of an individual form, please navigate to the ‘View the individual approved forms’ link via the Youth Court website.