

NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT (ADOPTION OF CHILDREN) RULES

As in force at 1 March 2011

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Rules as in force at 1 March 2011. Any amendments that commence after that date are not included.

LOCAL COURT (ADOPTION OF CHILDREN) RULES

Rules under the *Local Court Act*

1 Citation

These Rules may be cited as the *Local Court (Adoption of Children) Rules*.

2 Application

These Rules apply to each proceeding under the *Adoption of Children Act* commenced in the Court on or after the commencement of these Rules.

3 Interpretation

- (1) In these Rules, unless the contrary intention appears:

Adoption Act means the *Adoption of Children Act*.

applicant means the person or, where 2 persons wish to jointly adopt a child, one or both of the persons, as the case may require, who makes or make an application to the Court.

application means an application for an order for adoption made under section 38 of the Adoption Act.

child means a child within the meaning of the Adoption Act.

Minister means the Minister responsible for the administration of the Adoption Act.

spouse means a spouse within the meaning of the Adoption Act.

- (2) Unless the contrary intention appears, a word or expression used in the *Local Court Rules* shall have the same meaning in these Rules as it has in the *Local Court Rules*.

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- (3) An act, matter or thing which is required to be done by an applicant or any other person who is a party to proceedings under the Adoption Act may be done by the applicant's or other person's legal representative.

4 Form of application

An application shall be in accordance with Form 1 in the Schedule.

5 Affidavit in support of application

An application shall be supported by an affidavit by the applicant which shall state:

- (a) in relation to the child:
- (i) the age and sex of the child; and
 - (ii) the identity of the child so far as it is known to the applicant; and
 - (iii) the whereabouts of the child; and
 - (iv) particulars of the person or persons with whom the child resides or who has the care and custody of the child; and
 - (v) whether any, and what, proceedings have been brought or orders made by a court concerning the guardianship, care, custody or maintenance of or access to the child, and shall have attached to it copies or certified extracts of any such orders or, if no such proceedings have been brought, a statement to that effect; and
 - (vi) whether the child is a non-citizen child within the meaning of the Adoption Act; and
 - (vii) where the child is a non-citizen child within the meaning of the Adoption Act:
 - (A) whether the child has been in the care of the applicant; and
 - (B) whether the applicant has received written notice from the Minister (under section 21(1)(a) of the Adoption Act) that the applicant is suitable to adopt a non-citizen child before the child came into or was placed in the care of the applicant; and

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- (viii) whether any and what insurance has been effected on the life of the child or for the benefit of the child; and
 - (b) in relation to the applicant:
 - (i) the age and sex of the applicant and, where 2 persons are making the application jointly, the relationship (if any) of the applicants; and
 - (ii) the place of residence in the Territory of the applicant; and
 - (iii) where the applicant is married, particulars of the applicant's marriage, including the church or other place and the date of the marriage ceremony and, if known, the name of the minister or other authorised person who performed the marriage ceremony; and
 - (iv) where the applicant is an Aborigine and is living in a traditional marriage, whether the traditional marriage is a relationship that is recognised as a traditional marriage by an Aboriginal community or Aboriginal group to which the applicant, the applicant's spouse or, where 2 persons are making the application jointly, one or both of the applicants belongs or belong, and whether it has been so recognised for 2 years or more; and
 - (v) where the applicant is married and his or her spouse is not an applicant, whether the applicant is living with the spouse; and
 - (vi) whether the applicant is a relative of the child and how he or she is related to the child; and
 - (vii) where the applicant has previously been married, particulars of each former marriage and of its termination, and shall have attached to it a copy of a relevant certificate of death or certificate of a relevant decree absolute; and
 - (viii) the assets and income of the applicant; and
 - (ix) whether the applicant has any children (including adopted children) and if so the respective sexes and ages of those children; and

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- (x) whether, at any time before or after the birth of the child, the applicant or any other person has made, given or received or agreed to make, give or receive any, and if so what, payment or reward for or in consideration of:
 - (A) the adoption or proposed adoption of the child; or
 - (B) the giving of consent or the signing of an instrument of consent to the adoption of the child; or
 - (C) the transfer of the custody, care or control of the child with a view to the adoption of the child; or
 - (D) the making of arrangements with a view to the adoption of the child; and
 - (xi) in the case of an applicant who is a person referred to in section 15(1) of the Adoption Act, whether for the purposes of section 15(3) of the Adoption Act the Minister is of the opinion that exceptional circumstances exist which make the making of an order for the adoption of the child desirable, and shall have attached to it a copy of a document that is evidence of the Minister's opinion; and
- (c) any other matters necessary to support the application.

6 Filing of application and affidavit

- (1) An application shall be filed in the Court and, on filing, the application shall be taken to have been made.
- (2) On the filing of an application, the Registrar shall:
 - (a) fix a date and time for the holding of a pre-hearing conference; and
 - (b) return to the applicant sufficient number of copies of the application for service.
- (3) An affidavit in support of an application referred to in rule 5 shall be filed in the Court at the same time the application is filed.
- (4) An applicant shall, not later than 7 days after filing his or her application, serve a copy of the application, together with a copy of the affidavit in support referred to in rule 5, on:
 - (a) the Solicitor for the Northern Territory for and on behalf of the Minister; and

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- (b) each person who wishes to be a party to the proceedings and whose name and address for service has been advised to the applicant in accordance with section 39(3) of the Adoption Act.
 - (5) At the hearing of an application, the Court may order that a copy of an application and the affidavit in support be served on a person the Court joins as a party to the proceedings under section 40(2) of the Adoption Act.

7 Appearance

- (1) A person who is served a copy of an application and the affidavit in support under rule 6(4)(b) may file in the Court an appearance not later than 7 days after service on him or her of the application and the affidavit.
- (2) An appearance shall be in accordance with Form 2 in the Schedule.
- (3) On the filing of an appearance the Registrar shall return to the person filing the appearance sufficient copies of the appearance for service of it on the applicant and the Solicitor for the Northern Territory.
- (4) The person who files an appearance shall, not later than 7 days after filing the appearance, serve a copy of the appearance on the applicant and the Solicitor for the Northern Territory.

8 Service

- (1) An application or an appearance referred to in rule 7 may be served on a person:
 - (a) by leaving it at the address for service of the person to be served; or
 - (b) by sending it by prepaid post to the person to be served at his or her address for service.
- (2) An applicant shall, not later than 7 days after serving a copy of an application and the affidavit in support under rule 6(4), file in the court an affidavit of service of the application.
- (3) An affidavit of service referred to in subrule (2) shall state by whom the application was served and, with relevant times and dates, the facts constituting service.

8A Pre-hearing conference

- (1) The date fixed for a pre-hearing conference under rule 6(2)(a) shall be 28 days after an application is filed, or as soon as practicable thereafter.
- (2) A pre-hearing conference shall be held informally and each party to the application shall attend the pre-hearing conference:
 - (a) in person;
 - (b) by a legal practitioner; or
 - (c) subject to rule 8B, by videoconference or teleconference.
- (3) At the pre-hearing conference the Court may:
 - (a) give such directions as it thinks necessary for the expeditious determination of the proceedings; or
 - (b) of its own motion or on application by a party:
 - (i) adjourn the pre-hearing conference and fix a date for the adjourned pre-hearing conference; or
 - (ii) fix a date for the hearing of the application.

8B Attendance at conference by videoconference, &c.

- (1) A party wishing to attend a pre-hearing conference by videoconference or teleconference may, not less than 24 hours before the time set for the conference, seek the permission of the Court to do so and the Court may, in its discretion, grant or refuse to grant such permission.
- (2) Permission under this rule may be granted informally by telephone and without notice to any other party.
- (3) A party who has been granted permission to attend a pre-hearing conference under this rule shall give such notice to the other parties of his or her attendance at the pre-hearing by videoconference or teleconference as the Court may direct.
- (4) The Court may direct that the party granted permission to attend the pre-hearing conference under this rule provide and meet the expense of any equipment necessary to enable the videoconference or teleconference to take place.

9 Application not opposed by Minister

Where, at the hearing of an application:

- (a) the Minister does not appear as a party; and
- (b) the report from the Minister referred to in section 41 of the Adoption Act does not express opposition to the making of the order for adoption applied for,

the court may presume that the Minister does not oppose the order for adoption applied for.

Schedule

rule 4

FORM 1

NORTHERN TERRITORY OF AUSTRALIA

Adoption of Children Act

APPLICATION FOR AN ORDER FOR ADOPTION

In the Local Court
at

No. 19

TO: The Solicitor for the Northern Territory, representing the Minister responsible for the administration of the *Adoption of Children Act*.

APPLICANT:

Full Name:

Address:

Telephone Number:

APPLICANT'S SOLICITOR (IF ANY):

Name:

Address:

Telephone Number:

Dated

Signed

Take notice that this application for an order for adoption will be heard on *date* at *time* in the Local Court at *place*.

FILED: *date*

Registrar

FORM 2

rule 7(2)

NORTHERN TERRITORY OF AUSTRALIA

Adoption of Children Act

APPEARANCE

In the Local Court
at

No. 19

TO: *Name of applicant*

AND TO: The Solicitor for the Northern Territory, representing the Minister responsible for The Administration of the *Adoption of Children Act*.

TAKE NOTICE THAT the person whose details appear below wishes to be a party to these adoption proceedings.

Full Name:

Address:

Telephone Number:

ADDRESS FOR SERVICE OF DOCUMENTS WITHIN NORTHERN TERRITORY:

SOLICITOR (IF ANY)

Name:

Address:

Telephone Number:

Dated

Signed

FILED: *date*

Registrar

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Local Court (Adoption of Children) Rules (SL No. 43, 1994)

Notified	7 December 1994
Commenced	7 December 1994

Amendments of Local Court (Adoption of Children) Rules (SL No. 32, 1995)

Notified	20 September 1995
Commenced	20 September 1995

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 <i>Oaths, Affidavits and Declarations Act 2010</i> (Act No. 39, 2010) and <i>Gaz</i> G7, 16 February 2011, p 4)

3 LIST OF AMENDMENTS

r 3	amd Act No. 40, 2010, s 149
r 5	amd Act No. 40, 2010, s 150
r 6	amd No. 32, 1995, r 2; Act No. 40, 2010, s 151
r 7	amd Act No. 40, 2010, s 152
r 8	amd Act No. 40, 2010, s 153
rr 8A – 8B	ins No. 32, 1995, r 3