



# Supreme Court Rules (Amendment No 373) 2003

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 17 February 2003.

Steven Jupp

Secretary of the Rule Committee

## **Explanatory note**

The object of these Rules is to amend the *Supreme Court Rules 1970* with respect to the rules of court applicable to proceedings before the Court in relation to the adoption of children. These Rules provide for various matters as a consequence of the commencement of the *Adoption Act 2000*.

Matters these Rules provide for include commencing proceedings under the *Adoption Act 2000* in the Court, the form of, and evidence to be provided in support of, adoption orders, matters relating to preliminary hearings and access to Court records.

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## **Supreme Court Rules (Amendment No 373) 2003**

under the

Supreme Court Act 1970

### **1 Name of Rules**

These Rules are the *Supreme Court Rules (Amendment No 373) 2003*.

### **2 Amendment of Supreme Court Rules 1970**

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Rule 2)

### [1] Part 41, rule 15

Omit “*Adoption of Children Act 1965*” from rule 15 (3).

Insert instead “*Adoption Act 2000*”.

### [2] Part 52, rule 69

Omit “*Adoption of Children Act 1965*” from rule 69 (1).

Insert instead “*Adoption Act 2000*”.

### [3] Part 73

Omit the Part. Insert instead:

## Part 73 Adoption of Children

### 1 Interpretation

(1) In this Part:

*Adoption Act* means the *Adoption Act 2000*.

*Adoption Regulation* means the *Adoption Regulation 2002*.

(2) Unless the context indicates otherwise, words and expressions used in this Part have the same meanings as they are given by the Dictionary to the Adoption Act.

(3) Unless the context indicates otherwise, references in this Part to sections are references to sections in the Adoption Act and references in this Part to clauses are references to clauses in the Adoption Regulation.

### 2 Assignment of business

Proceedings in the Court under the Adoption Act are assigned to the Equity Division.

### 3 Duty to make full and frank disclosure

Each party to proceedings in the Court under the Adoption Act has a duty to the Court to make known fully and frankly all matters relevant to the making of an adoption order,

whether those matters tend to support or tend not to support making the order.

#### **4 Commencement of proceedings**

- (1) Proceedings in the Court under the Adoption Act, other than an application for an adoption order:
  - (a) may be commenced by summons under Part 5, or
  - (b) may be made by notice of motion in any earlier proceedings under the Adoption Act relating to the child.
- (2) Unless there have been earlier proceedings in the Court under the Adoption Act relating to the child, an application for an adoption order is to be made by filing a summons not joining any person as defendant. The summons may be in Form 72 with such adaptations as the case may require.
- (3) If there have been earlier proceedings in the Court under the Adoption Act relating to the child, an application for an adoption order may be made by notice of motion in the proceedings.
- (4) Applications for adoption orders for 2 or more children may be joined in one summons if the same person is the proposed adoptive parent, or the same persons are the proposed adoptive parents, of all the children.
- (5) An application for a preliminary hearing under section 80 (2) (which relates to placement for adoption of an Aboriginal child or of a Torres Strait Islander child):
  - (a) may be made by summons, or
  - (b) if there have been earlier proceedings under the Adoption Act relating to the child, may be made by notice of motion in the proceedings.

#### **5 Form of summons**

A summons is to bear, above the title, the word "Child" followed by the child's given names and surname or, if unnamed, the word "Unnamed". A summons is to also bear, above the title, the words and figures "*Adoption Act 2000*".

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**6 How application for adoption order is to be dealt with**

- (1) Unless the Court directs otherwise, an application for an adoption order is to be dealt with and determined by the Court in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (2) If it is not appropriate for an application for an adoption order to be dealt with without the attendance by and on behalf of the plaintiff, the plaintiff must, in the summons, apply for a preliminary hearing and for directions relating to the hearing.

**7 Adoption order to be in prescribed form**

An adoption order must be in Form 74 with such adaptations as the case may require. The plaintiff must either lodge with the summons, or produce at the preliminary hearing, a minute of the proposed order.

**8 Preliminary hearing**

- (1) The plaintiff may, in the summons, apply for a preliminary hearing and, if the plaintiff does so, the summons must contain an appointment for a preliminary hearing.
- (2) A party may obtain a preliminary hearing by filing a notice of motion.
- (3) The party applying for a preliminary hearing must state shortly in the summons or notice of motion the terms, or the effect, of any order or direction for which the party will apply at the preliminary hearing.
- (4) A person other than a party may apply, by notice of motion, for a preliminary hearing and must, in the notice of motion, seek the approval of the Court pursuant to clause 41 (b).
- (5) The Court may, if it thinks fit, grant approval pursuant to clause 41 (b) upon perusal of the notice of motion and the evidence filed in support of the notice, before hearing the notice of motion and without affording to any person other than the applicant an opportunity to be heard.

**9 Proceedings appropriate to commence by summons or notice of motion**

Proceedings appropriate to commence by summons, or by notice of motion in any earlier proceedings under the

Adoption Act relating to the child, include an application relating to:

- (a) a consent dispense order,
- (b) the registration of an adoption plan,
- (c) the review of an adoption plan,
- (d) a child of whom the Director-General is guardian, where a report is required under section 78 (1) about the child,
- (e) placement of a child with a prospective adoptive parent (other than an Aboriginal or Torres Strait Islander child), where a preliminary hearing is required under section 80 (2),
- (f) dispensing with notice under section 88 (4),
- (g) a declaration under section 110 that an adoption is not recognised,
- (h) terminating a legal relationship under section 111,
- (i) a declaration of validity under section 117.

**10 Applications appropriate for preliminary hearing**

- (1) Applications appropriate for a preliminary hearing are applications for any order or direction that the Court should determine before the Court determines the application for an adoption order or other principal application.
- (2) Applications appropriate for a preliminary hearing include an application relating to the following:
  - (a) joinder of a party in accordance with section 118, including joinder of a non-consenting father,
  - (b) giving notice of proceedings to any person,
  - (c) appointing a guardian ad litem in accordance with section 123 or guardian ad litem or amicus curiae in accordance with section 124,
  - (d) a consent dispense order,
  - (e) the placement for adoption of an Aboriginal or Torres Strait Islander child, where a preliminary hearing is required by section 80 (2),
  - (f) the adoption of an Aboriginal or Torres Strait Islander child,

- (g) the registration of an adoption plan,
- (h) dispensing with notice under section 88 (4),
- (i) the revocation of a consent dispense order.

#### **11 Application for further orders**

- (1) If there have been proceedings under the Adoption Act relating to a child, and an adoption order or other final order has been made, an application for any further order under the Adoption Act relating to the child may be made by notice of motion in those proceedings.
- (2) Applications appropriate to be dealt with in this way include an application relating to the following:
  - (a) the discharge of an adoption order,
  - (b) the discharge of an interim order,
  - (c) the review of an adoption plan,
  - (d) the registration of an adoption plan.

#### **12 Filing of report in accordance with section 91**

A plaintiff applying for an adoption order must, when filing the summons or, if there is a preliminary hearing, before the preliminary hearing, file a report made under section 91.

#### **13 Evidence in support of application for adoption order**

- (1) Evidence in support of an application for an adoption order must include evidence of the following:
  - (a) the matters specified in section 90,
  - (b) the facts and circumstances that give the Court jurisdiction in accordance with section 23, 106 or 107,
  - (c) the date and place of the child's birth,
  - (d) the names of the child, including all names that the child has or has had, and the facts relating to any change of the child's name,
  - (e) the names that it is proposed the child should have on the making of the adoption order, showing separately the proposed given name or names and the proposed surname, and all facts relating to any consent required under section 101 (4) and any relevant special reasons under section 101 (5),

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- (f) the name, place of residence and occupation of each person with whom the child resides or who has the child in that person's care or custody,
- (g) the name, place of residence, age and occupation of each proposed adoptive parent,
- (h) if it is proposed that there be one adoptive parent, the facts and circumstances that show that an order may be made having regard to the provisions of section 27,
- (i) if it is proposed that a couple be the adoptive parents, the facts and circumstances that show that an order may be made having regard to the provisions of section 28,
- (j) the following matters relating to consents under the Act or Adoption Regulation:
  - (i) the facts and circumstances relating to which persons' consents are necessary,
  - (ii) the provisions of the Adoption Act or Regulation that make the consents necessary,
  - (iii) consents that have been obtained,
  - (iv) notice or advice to the birth father under section 56,
  - (v) consents for which there is a consent dispense order,
  - (vi) consents for which it is contended that the court should make a consent dispense order,
- (k) whether there is, or has been, an adoption plan, the facts and circumstances relating to the making of any adoption plan, whether the adoption plan has been registered and the terms of any adoption plan that remains in effect,
- (l) the opinions, and reasons for those opinions, of persons who are not related to the proposed adoptive parent or parents relating to the adoptive parent's or parents' character and suitability to be an adoptive parent or adoptive parents,
- (m) the facts and circumstances relating to the principles stated in section 8 (1) and the matters to which the Court is to have regard in accordance with section 8 (2),



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- (n) the facts and circumstances relied on to show that the best interests of the child will be promoted by the adoption,
  - (o) the facts and circumstances relied on to show that the wishes and feelings of the child have been ascertained and that due consideration has been given to those wishes and feelings,
  - (p) whether there have been any proceedings relating to the interests, welfare or adoption of the child under the law of New South Wales or of the Commonwealth or any other place, whether any orders relating to the interests, welfare or adoption of the child have been made in any such proceedings, the terms of those orders and whether they remain in effect,
  - (q) whether the child is, or has ever been, an immigrant and whether the Minister administering the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth has consented to the making of the application for adoption,
  - (r) whether the child is a non-citizen child, showing whether the child is a non-citizen child from a Convention country or from another country outside Australia,
  - (s) whether a proposed adoptive parent is a step-parent or relative of the child,
  - (t) if a proposed adoptive parent is a step-parent of the child, whether leave of the Family Court of Australia has been obtained under section 60G of the *Family Law Act 1975* of the Commonwealth,
  - (u) whether any notice has been given to persons notice to whom is referred to in section 88 (which relates, among other persons, to person whose consent is required and has not been given and has not been dispensed with).

#### 14 Form of consent and witnessing of consent

The Court may take notice, without verification, of an instrument of consent:

- (a) that appears on its face to have been given in accordance with section 61, and

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- (b) that appears on its face to have been witnessed in accordance with section 62,
- (c) that is accompanied by statements that on their face appear to have been made in accordance with sections 61 and 62.

### **15 Notice to be given to Director-General**

- (1) Notice must be given to the Director-General of any application for the discharge of an adoption order, declaration of validity, declaration that an adoption is not recognised or an order terminating a legal relationship.
- (2) The Court must not determine any application referred to in subrule (1) unless the Director-General has had a reasonable opportunity to become a party to the proceedings.
- (3) Despite subrule (2), the Court may determine an application referred to in subrule (1) without the Director-General having a reasonable opportunity to become a party to the proceedings if the Court considers it necessary in the circumstances.

### **16 Proper officer of the Court**

For section 143 (3), a Registrar of the Court is a proper officer of the Court.

### **17 Access to Court records**

- (1) An application under section 143 (2) may be addressed to the Registrar of the Equity Division.
- (2) The Court or a Registrar of the Court may deal with an application for the supply of information from records of proceedings in the Court informally by correspondence or upon the personal attendance of the applicant without conducting a formal hearing.
- (3) A person applying for information under section 143 must fulfil such reasonable requirements as may be made by a Registrar of the Court as to:
  - (a) the verification of facts on which the application is based, and
  - (b) identification of the proceedings in the Court to which the application relates, and

- (c) giving notice to any person, and
- (d) compliance with the requirements of the Adoption Act and the Adoption Regulation, and
- (e) any other matter.

#### 18 Continued effect of former Pt 73

An application for an adoption order pending before the commencement of the Adoption Act is to continue to be dealt with under the provisions of Part 73 as in force before the commencement of *Supreme Court Rules (Amendment No 373) Rule 2003* despite the repeal of that Part.

#### [4] Schedule F

Omit “*Part 73 rule 3 (Adoption of Children Act 1965)*” from item 3 of the Explanatory notes at the beginning of the Schedule.

Insert instead “*Part 73 rules 4 and 5 (Adoption Act 2000)*”.

#### [5] Schedule F, Form 72

Omit the Form. Insert instead:

### Form 72

P 73, rr 4, 5.

#### SUMMONS (APPLICATION FOR ADOPTION ORDER)

The plaintiff claims:

- (1) an order for the adoption of (*given name or names and surname*)  
     In favour of (*name*) solely (*or, alternatively*)  
     In favour of (*name*) and (*name*) jointly.
- (2) an order that the Court approves that the child have (*name or names*) as the child’s given and (*surname*) as the child’s surname.

The plaintiff asks for a preliminary hearing and claims:

- (3) (*state orders claimed, for example*) directions for the conduct of the hearing and for notice to (*named persons*).

#### PARTICULARS

CHILD

(*surname*)

APPLICANT(S)

(*surname*)

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( <i>other names</i> )	( <i>other names</i> )
( <i>sex</i> )	( <i>occupation</i> )
Born 1 May 20 .	( <i>address</i> )
at ( <i>place</i> )	AND
Father: ( <i>surname</i> )	( <i>surname</i> )
( <i>other names</i> )	( <i>other names</i> )
Mother: ( <i>maiden surname</i> )	( <i>occupation</i> )
( <i>other names</i> )	( <i>address</i> )

Appointment for preliminary hearing

Time: 7 May 20 , at a.m.

Place: (*address of Court, for example, Court 9A, Level 9, Supreme Court, Queen's Square, Sydney*)

Plaintiff: (*name, address*)

Plaintiff's address for service: (*Part 9 rule 6*)

Address of Registry:

*(The Summons should follow Forms 1, 3 and 4 and Pt 73 rules 4 and 5 with such modifications as the case may require. If there is a defendant the heading and title should follow Form 2. Form 72 should be adapted for singular, plural and otherwise as the case may require. Italic indications in the Form should not appear in the Summons.)*

### [6] Schedule F, Form 73

Omit the Form.

### [7] Schedule F, Form 73A

Omit the Form.

### [8] Schedule F, Form 73B

Omit the Form.

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**[9] Schedule F, Form 74**

Omit the Form. Insert instead:

**Form 74**

P 73, r 7.

ADOPTION ORDER

**CHILD**

**ADOPTIVE PARENTS**

Surname:

Surname:

Given names:

Other names:

*(sex)*

*(occupation)*

born 1 May 20 .

*(address)*

at *(place)*

AND

Father's surname:

Surname:

Other names:

Other names:

Mother's maiden surname:

*(occupation)*

Other names:

*(address)*

The Court makes orders:

- (1) for the adoption of the child in favour of the adoptive parent(s)
- (2) that the given name(s) of the child be *(name or names)*  
And the surname of the child be *(surname)*

*(Complete as in general form of minute of order under Part 41 rule 11.)*

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**[10] Schedule F, Index of Forms**

Omit the matter relating to Forms 72–74. Insert instead:

- 72. Summons (application for adoption order) (P 73, rr 4 (2), 5).
- 74. Minute of adoption order (P 73, r 7).

BY AUTHORITY

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