



Adoption Order Kit

For applicants seeking an adoption order
FAMILY COURT OF WESTERN AUSTRALIA

Is this kit for me?

This kit is for prospective adoptive parents seeking an order in relation to an adoption in the Family Court of Western Australia.

The information in this kit has been broken down into separate sections:

1. Applications:
 - a. General applications (Ancillary applications).
 - i. Adoption by a step parent.
 - ii. Overseas adoptions.
 - b. Child adoption/Adult adoption
2. Affidavits

Any forms mentioned in this kit can be obtained from the Court registry or the Family Court of WA website www.familycourt.wa.gov.au.

Adoptions in the Family Court

The Family Court of WA is responsible for making orders in relation to adoptions.

The Department for Child Protection (DCP) is the only agency in WA which is allowed to **arrange** an adoption. If you are considering adopting a child, you should contact the Department first.

Department for Child Protection

The Department for Child Protection is the agency in charge of adoptions in WA. If you are considering adopting a child, requesting information about an adoption or making an application to the Family Court for an adoption order you should contact the Department for Child Protection: Adoption Service on 08 9222 2555.

Comprehensive information packages for each type of adoption are available from their website www.childprotection.wa.gov.au or through a direct link on the Family Court of WA website.

The Adoptions Officer

The Court's Adoptions Officer is responsible for managing adoption applications to the Family Court. Any correspondence sent to the Court in relation to an adoption case should be addressed to the 'Adoptions Officer'.

The Adoptions Officer can only give you advice about matters of Court practice and procedure; the Adoptions Officer cannot give you legal advice.

It is strongly recommended you seek independent legal advice from a solicitor who is familiar with adoption procedures if you have any questions about your legal responsibilities or the legal consequences of an adoption.

Types of application

There are four main types of application relating to adoptions.

1. Child adoption applications.
2. Adult adoption applications.
3. General applications (Ancillary applications).
4. Overseas adoption applications.

General applications (Form 3)

A Form 3 is required if you wish to make an application under the *Adoption Act 1994* for an order other than an adoption order. These types of applications are sometimes called ancillary applications.

A Form 3 must be filed if you want to apply to the Court for an order about any of the following issues:

1. To dispense with the requirement to obtain a person's consent under section 24 of the *Adoption Act 1994*.
2. To dispense with the requirement to serve notice of the application under section 25(2) of the *Adoption Act 1994*.
3. To dispense with the requirement for an adoption plan under section 73 of the *Adoption Act 1994*.
4. For a declaration of an overseas adoption order (see the section on overseas adoptions for more information) under section 138(1) of the *Adoption Act 1994*.
5. To dispense with the requirement to give notice of intention to apply for an adoption order under section 60 of the *Adoption Act 1994*.
6. To intervene in proceedings for an adoption order under section 63 of the *Adoption Act 1994*.
7. For any other order other than an adoption order, under section 71 of the *Adoption Act 1994*.
8. To vary an adoption plan under section 76(1) of the *Adoption Act 1994*.
9. To discharge an adoption order under section 77(1) of the *Adoption Act 1994*.
10. To prevent access to information under section 83(1) of the *Adoption Act 1994*.
11. To regain access to information, if you are the person affected by an order preventing access to information under section 83(4) of the *Adoption Act 1994*.
12. To obtain a copy of a section 61 report or a report from a representative of a child, under section 84(4) of the *Adoption Act 1994*.

What other documents will I need to file?

You will always need to file the following Court forms:

1. Form 1 (Cover sheet)
2. Form 3 (Application form)
3. Form 2 (Notice of address for service)
4. Affidavit.

You will also need to file the following documents:

5. Certificates (originals or certified copies) including:
 - a. Birth certificate of the child to be adopted
 - b. Marriage certificate of applicants (where applicable).

There may be additional documents required for certain types of application, read the 'international adoptions' section of this kit for more information.

How do I complete the Form 3?

Enter the details of the parties into the space provided. Remember to write exactly which orders you are seeking as well as the relevant section of the *Adoption Act 1994*, the child's legal name, place and date of birth in the space provided. You can include multiple orders on one form.

Completing your affidavit

See the affidavits section of this kit for more information about affidavits generally.

You will need to submit an affidavit with your Form 3, it must address the factors identified by the relevant section of the *Adoption Act 1994*.

It is recommended you seek legal advice before filing an affidavit.

Information for step parents

If you are the child's step parent and the child is under 18 years of age, you may apply to the Court for a determination that an order of adoption is preferable to any other parenting order being made under the Family Law Act. Such applications are made pursuant to section 68(1)(fa) of the *Adoption Act 1994*. This is a matter the Court must determine before an adoption order is made.

What do I need to do?

File a General Application (Form 3) with the Court.

Remember to include the child's full name, place and date of birth.

You will need to attach an affidavit to your application setting out the basis for your claim.

What documents do I need to file?

You will always need to file the following Court forms:

1. Form 1 (Cover sheet)
2. Form 3 (Application form)
3. Form 2 (Notice of address for service)
4. Affidavit.

You will also need to file the following documents:

5. Certificates (originals or certified copies) including:
 - a. Birth certificate of the child to be adopted
 - b. Marriage certificate of applicants (where applicable).

Affidavit checklist for step parent adoption

See the 'affidavits' section of this kit for more general information about affidavits.

For the purposes of a Form 3 application for a declaration in cases involving adoption by a step parent you will need to include details in your affidavit to support your application.

Overseas adoptions

The Department for Child Protection (DCP) has many fact sheets available which deal with the process of adopting a child from overseas. Before lodging an application for an adoption, you must contact the Department's Adoption Service or go to their website www.childprotection.wa.gov.au.

Where a child has been adopted in a foreign country the adoptive parents may apply to the Family Court of WA to have the overseas adoption recognised in Western Australia. Read section 138(3) of the *Adoption Act 1994*.

Translation

Applying for a declaration of an overseas adoption order may require filing certificates or documents which are not written in English. Any person seeking to file a document in another language will need to complete an 'Affidavit of Translation' and include a translated copy of that document with their application.

Applications seeking a declaration concerning an overseas adoption order

You will need to file the following Court forms:

1. Form 1 (Cover sheet)
2. Form 3 (Application form)
3. Form 2 (Notice of address for service)
4. Affidavit.

You will also need to file the following documents:

5. Certificates (originals or certified copies) including:
 - a. Birth certificate of the child to be adopted
 - b. Marriage certificate of applicants (where applicable)
 - c. Change of name certificate for the child to be adopted (where applicable).
6. Adoption certificate showing that an adoption ordered has been made by the adoption authority of the child's home country. You will need to supply a certified copy of the original form, along with a translation.
7. Any other relevant documents.

Affidavit checklist for declaration of an overseas adoption order

See the 'affidavits' section of this kit for more general information about affidavits.

For the purposes of this application you will need to include details in your affidavit concerning:

- Evidence that you were living in the country (for at least 12 months) where the adoption order was made at the time it was made.
- That the adoption order gives the adopted parents rights, superior to those of the birth parents, in relation to all the duties and responsibilities expected of the child's parents.
- That the adoption order is in the child's best interests.

Adoption applications (Form 4)

The Department for Child Protection (DCP) Adoption Service has developed extensive packages for each type of adoption, leading clients step by step through the process.

Before lodging an application for an adoption order you must contact the DCP Adoption Service on 08 9222 2555.

If you have adopted a child who was born overseas, you will need to follow the instructions in the 'Overseas adoptions' section of this kit.

If you are applying to adopt a person over the age of 18 years, read the section of this kit about 'Adult adoption applications'.

What documents do I need to file?

You will need to file the following Court forms:

1. Form 1 (Cover sheet)
2. Form 4 (Application form)
3. Form 2 (Notice of address for service)
4. Affidavit.

As well as:

5. DCP report for the Judge.
6. Certificates (originals or certified copies) including:
 - a. Birth certificate of the child to be adopted
 - b. Marriage certificate of applicants (where applicable)
 - c. Change of name certificate for the child to be adopted
 - d. Death certificate of the natural parents of a child to be adopted (where applicable).

You will also need to file the following documents:

(or make an application to dispense with the requirement. See 'general applications' for more information):

7. Written consent of the birth parents (and the child, if the child is over 12 years old), sworn and witnessed.
8. Adoption plan signed by all eligible parties (birth parents, adoptive parents).
9. Evidence of notification to birth parents and DCP of intention to adopt (at least 60 days prior to the filing of the application).
10. Evidence that the birth parents have undergone counselling about the consequences of the order.
11. If the child is over 12 years old, evidence that the child has undergone counselling about the consequences of the proposed order.

Remember to include translations if documents are in a language other than English.

Completing the Form 1 and Form 4

The Form 1 is the 'coversheet' for your application; it must be stapled to the front of all documents. Complete the form by adding the names of the parties after the appropriate heading. Include the adoption file number if it is known.

The matter is submitted for filing in the name of the adopted child.

The Form 4 is the application form. Enter the name, address and occupations of the parties in the spaces provided.

Include the names, dates and place of birth of all parties concerned.

State in precise terms the orders you are seeking and under which section of the *Adoption Act 1994* you are applying. Remember to include the child's name, place and date of birth.

Affidavit checklist for adoptions (both minor child and adult child)

See the 'affidavits' section of this kit for more general information about affidavits.

For the purposes of a Form 4 application you will need to include details in your affidavit concerning:

- The status or residence of the applicant/s.
- The intention of the applicants to remain in WA.
- That the child is present in WA.
- A history of the child's life, including information about all related adults and children.
- A history of the child's relationship with the adoptive parents.
- Evidence that the applicants were parents or step parents of the person being adopted prior to them turning 18 years (if relevant).
- Evidence that the natural parents of the person being adopted have been informed of the application at least 30 days prior to it being made (or that a prior order has been made dispensing with this requirement).
- Evidence that the welfare and the interests of the person being adopted are best promoted by the application.

Remember to follow the instructions in the affidavit kit about how to correctly format your affidavit.

Adult adoption applications

An adult adoption application is necessary when the person being adopted is over the age of 18 years.

What forms will I need?

You will need to file the following Court forms:

1. Form 1 (Cover sheet)
2. Form 4 (Application form)
3. Form 2 (Notice of address for service)
4. Affidavit.

As well as:

5. The written, sworn consent to the adoption, by the person to be adopted (if over 18 years).
6. Certificates (originals or certified copies) including:
 - a. Birth certificate of the person to be adopted
 - b. Marriage certificate of applicants (where applicable)
 - c. Change of name certificate for the person being adopted (where applicable)
 - d. Death certificate of the natural parents of the person being adopted (where applicable).

You will also need to file the following documents:

(or make an application to dispense with the requirement, see 'general applications' for more information):

7. Affidavit from DCP to confirm that the person to be adopted and the adoptive parent/s have received information and counselling.
8. The Court may request a copy of a report from DCP in relation to the proposed adoption.

Affidavit checklist for an adult adoption

See the 'affidavits' section of this kit for more general information about affidavits.

For the purposes of a Form 4 application for adoption of an adult you will need to address the issues in the checklist at the top of this page, where appropriate.

Affidavits

All applications will need to be filed with a sworn affidavit. The affidavit is where you state the facts which support your case and satisfy the evidentiary requirements under the *Adoption Act 1994*. You should always seek legal advice before filing an affidavit. Family Court staff cannot tell you what information to include in your affidavit.

Completing an affidavit

There are strict rules about affidavits. If you do not follow these rules the Court will not accept your affidavit and your application will not progress.

- The affidavit must be typed, not hand written.
- Each paragraph must be numbered.
- It must contain all the relevant facts (see the relevant sections of this kit for more information).
- It must not contain comments or arguments – it must contain only facts (things you have personally seen, heard or done). The affidavit should only contain information to help the Court make the decision.
- Any material referred to in the affidavit (other documents etc) must be attached to the affidavit and marked as an ‘annexure (A to Z)’. You must attach an annexure note to each document. The annexure note must be signed on the same day, and by the same person who witnessed the affidavit.

This is the annexure marked “ ”, referred to in the	
Affidavit of:	_____ (Full Name)
Sworn/Affirmed this:	_____ day of _____ 20_____
Before me:	_____ (signature of witness)

How do I sign the affidavit?

You will need to have your affidavit ‘witnessed’ by a Justice of the Peace (JP), Lawyer or Notary Public.

A Notary Public is lawyer appointed by the Supreme Court of WA. They are mainly used in commercial situations to authorise international documents. A Notary Public can endorse documents with an official seal, but unlike a JP they will charge for their services.

Your affidavit must be signed by yourself and the JP next to the signing clause at the end of the affidavit and at the foot of each page. All annexures must also be signed and dated by the same JP.

Where do I find a Justice of the Peace?

There is usually a JP at the Family Court of WA between 9:30am and 1:00pm. If a JP is not available you may find one at the Justices’ Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices’ Association on 1300 657 788 or visit their web page www.dotag.wa.gov.au.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre, or
- Private law firm with experience in adoption applications.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice

Need more information?

For more information about the Family Court of Western Australia, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of Western Australia registry.

Who else can help?

- **Department for Child Protection**
Adoption Service
www.childprotection.wa.gov.au
08 9222 2555
- **Community Legal Centres**
Association of Western Australia
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia**
Family Law Unit
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice. The Family Court respects your right to privacy and the security of your information.

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