SUPREME COURT PRACTICE NOTE SC EQ 13

Supreme Court – Adoptions

Commencement

1. This Practice Note was issued on 17 July 2026 and commences on 17 July 2026.

Application

2. This Practice Note applies to proceedings under the *Adoption Act 2000* (NSW) ("the *Adoption Act*"), and proceedings under the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth)* ("the Hague Convention Regulations") ("adoption proceedings").

List Management

3. Adoption proceedings are case-managed by the Adoptions List Judge ("List Judge"). The registry functions are performed by the Registrar in Equity ("Registrar"), assisted by the Adoptions Clerk.

4. The List Judge sits on the first Wednesday of each month during term at 9:00 AM to deal with applications that are allocated a return date and directions hearings. In a case of urgency, an earlier return date may be obtained by arrangement with the List Judge's Associate.

General obligations, including candour

5. In all adoption proceedings, the Court expects that:

   (a) each party not appearing in person shall be represented at any hearing by a legal practitioner familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made;

   (b) legal practitioners will have communicated with each other with a view to reaching agreement on consent orders recording the directions to be made in accordance with this Practice Note; and

   (c) each party will abide by their duty 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 the making of the order.[1]

Applications for adoption orders

6. **Initiating proceedings.** Applications for adoption orders under the *Adoption Act* ("adoption applications") may be commenced by the Secretary, Department of Communities and Justice (or

[1] See Uniform Civil Procedure Rules (UCPR) r 56.3.

the Principal Officer of an accredited adoption service provider in NSW)[2] on behalf of the proposed adoptive parent or parents, or the proposed adoptive parent or parents with the consent of the Secretary, or a child who is 18 or more years of age for his or her own adoption.[3] However, the consent of the Secretary to an application for an adoption order is not required if the applicant is a step parent or relative of the child, or if the application relates to an intercountry adoption.[4]

7. An application for an adoption order is commenced by summons, naming as the plaintiff(s) the Secretary, the Principal Officer or the proposed adoptive parent/s, according to the circumstances of the case ("the plaintiff"). Applications for the adoption of more than one child by the same proposed adoptive parents may be joined in one summons; however, the summons should claim a separate order for adoption in respect of each child. The summons may also include in an appropriate case claims for consent dispense orders and orders dispensing with notice. Where a child's birth certificate does not correctly identify a child's parent, a claim may be included for a declaration of parentage under the *Status of Children Act 1996.* Where registration of an adoption plan is sought, a claim may be included for an order that the adoption plan be registered.[5]

8. Where appropriate in accordance with the *Adoption Act* s 80, *Adoption Regulation 2015* cl 89, and *Uniform Civil Procedure Rules 2005* ("UCPR") r 56.6, the summons may include a claim for orders or directions to be sought at a preliminary hearing, in which case the summons must contain an appointment for hearing.[6] The appointment will be allocated at the time of filing and, unless special arrangements have been made with the List Judge's Associate, will ordinarily be the first list day to occur after 14 days from the date of filing.

9. The summons should not name any defendant(s), unless a declaration of parentage under the *Status of Children Act 1996* is also sought in the summons, in which case the alleged parent in respect of whom the declaration is sought must be joined as a defendant. Unless the summons names a defendant or includes claims for orders or directions to be made at a preliminary hearing, the summons shall not contain an appointment for hearing.[7] If the plaintiff and/or proposed adoptive parents and/or child wish to be present when the adoption order is made if the matter is uncontested, the summons should include a statement to that effect.

10. **Documents to be filed by plaintiff.** The plaintiff must file the following documents with the summons or as soon as practicable thereafter:

    (a) an affidavit of the plaintiff in support of the application (made by a delegate of the Secretary, Principal Officer, or the proposed adoptive parent/s, according to the circumstances of the case), addressing the matters outlined in UCPR r 56.8, so far as they are relevant.[8]

    (b) an affidavit made by the author of the s 91 report, annexing a copy of the report prepared pursuant to s 91 of the *Adoption Act*. The deponent must state, in the affidavit, that he/she has read and agrees to be bound by the expert code of conduct contained UCPR Sch 7, and annex a copy of his/her curriculum vitae. The s 91 report must have been prepared or updated no more than six months prior to the filing of the adoption application.[9]

    (c) an affidavit of each of the proposed adoptive parents, made not more than 60 days before it is filed.[10]

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[2] Principal Officers of accredited adoption service providers are able to commence the application in their own right. In some circumstances, Barnardos commence applications as delegate of the Secretary in circumstances where the exercise of aspects of parental responsibility for the child has been delegated to the Principal Officer.

[3] If the subject child is over 18 years of age, the application may be commenced by any person named in s. 87, noting those persons are listed in the alternative.

[4] *Adoption Act* s 87.

[5] A precedent form of summons is available on the Court's website.

[6] See UCPR r 56.5.

[7] See UCPR r 56.2.

[8] A precedent form of affidavit is available on the Court's website.

[9] A precedent form of affidavit is available on the Court's website.

[10] A precedent form of affidavit is available on the Court's website.

(d) at least two affidavits made by referees for the proposed adoptive parents, annexing a handwritten referee certificate, made not more than six months before it is filed. The referees must not be related to the proposed adoptive parents and must have known the proposed adoptive parents for a period greater than two years.[11]

(e) a draft minute of each proposed adoption order, in duplicate. A separate adoption order is required for each child the subject of the proceedings. Where a consent dispense order and/or an order dispensing with notice is sought, those orders must be included in the draft minute. The draft minute of order should also annex copies of any adoptions plans which are to be approved by the Court. If an adoption plan is, at any stage of the proceedings, updated, a revised order annexing the most current version of the adoption plan should be filed prior to any orders being made and a request made for the previous version held on the Court file to be removed. The adoption plan should also clearly indicate the date on which it was prepared, to avoid any confusion about which plan is most up to date.[12]

(f) a draft order granting leave for the plaintiff to provide copies of the final adoption plan (whether approved or registered) to the parent/s, defendants or other significant persons in the plan (such as sibling/s, grandparent/s, or culturally significant person).

(g) a memorandum of adoption order, printed double sided and in the format required by the Registry of Births, Deaths and Marriages.[13] A copy of the child's birth certificate should be annexed to the memorandum to assist the Adoptions Clerk to finalise the memorandum before it is sent to the Registry of Births, Deaths and Marriages.

(h) affidavits of service made by the person/s who personally served notice on a child's parent/s (or person with parental responsibility for a child), annexing a copy of the notice served (under the *Adoption Act* ss 54(3)(a), 72(1) or 88(1)), or if personal service is not effected, an affidavit of postal service which explains why that course of service has been adopted.[14]

(i) in the event that notice cannot be served in accordance with (h) above and an order dispensing with the giving of notice is sought, an affidavit explaining what attempts have been made to effect service, why they have been unsuccessful, and evidence of any reasonable inquiries made to locate the person.

(j) if the plaintiff is seeking a consent dispense order (under s 67), and/or an order dispensing with the requirement to give notice of the proceedings (under s 88(4)), or to be relieved from notifying a person that an application to dispense with their consent is being made (under s 72(2)), brief written submissions as to why the grounds for such an order are established. The Court requires strict proof of the matters upon which such orders can be made.[15] Brief written submissions can also be filed in relation to any other issues that the plaintiff considers it appropriate to address.

(k) an Adoption Matter Summary form providing relevant high-level information for the Court, including a photograph of the child/ren and summary of their wishes in respect of the adoption application.[16]

11. **Appearance.** A child's parent (or other person having parental responsibility for the child, or other interested person) who wishes to oppose an adoption application must file an appearance in the Registry within 14 days after being served with notice of the proceedings.[17]

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[11] A precedent form of affidavit and format of the referee certificate is available on the Court's website.

[12] A precedent form of minute is available on the Court's website.

[13] A precedent form of a memorandum in the required form is available on the Court's website. Since November 2020, Births Deaths and Marriages have provided two birth certificates to an adopted person, once the adoption order is made, the second being an integrated birth certificate. For further information see: https://www.service.nsw.gov.au/transaction/apply-adoption-information-andor-integrated-birth-certificate.

[14] A precedent form of affidavit of service is available on the Court's website.

[15] See paragraphs 41 and 42.

[16] A precedent Adoption Matter Summary Form is available on the Court's website.

[17] See *Adoption Act* ss 54(3), 72(1) and 88(1).

12. **Uncontested adoption applications.** After 14 days have elapsed since the child's parent/s (or person with parental responsibility) have been served with notice of the proceedings, and no appearance has been filed, the plaintiff must request the Adoptions Clerk to refer the application to a Judge, and the Adoptions Clerk will then refer the matter to a Judge to be dealt with in conformity with UCPR r 56.4, which provides that unless the Court orders otherwise, adoption applications are to be dealt with in the absence of the public and without attendance by or on behalf of the plaintiff. However, if the plaintiff has included in the summons (as referred to in paragraph 9), or in the request for referral to a Judge, a statement that the plaintiff and/or proposed adoptive parents and/or child wish to be present when the adoption order is made, then if the Court decides that an adoption order should be made, the Judge will sit in court to make the order, having given reasonable notice to the plaintiff. The Court will always endeavour to accommodate the convenience of the plaintiff/proposed adoptive parents in this respect.

13. **Contested applications – directions hearing.** Where an appearance is filed, the Adoptions Clerk will refer the matter to the List Judge for case management. The List Judge will, pursuant to UCPR r 56.4, order that the matter not proceed in the absence of the plaintiff, will list the matter for a directions hearing, and will give the parties at least five days' notice of the appointment. The matter may not appear in the public list or, if it does, may be identified by a pseudonym or de-identified information, in which case the Court will inform the parties of the court room the day prior to the directions hearing.

14. At the directions hearing, if the person(s) who has filed an appearance wishes to oppose the application, the Court will usually make an order, pursuant to the *Adoption Act* s 118, joining that person as a defendant. The Court may also, in an appropriate case, make orders for the joinder of the proposed adoptive parents if they are not already a party (see paragraph 36), the appointment of a guardian ad litem for a parent or a child, or of a legal representative for the child (see paragraphs 25 and 31 to 34), or may defer consideration of making such orders to the preliminary hearing.

15. The Court will also make orders for the service and filing of evidence and/or directions about making information available to the parties. Evidence is to be filed electronically, and the Court will ensure copies are retained in a manner which maintains that confidentiality. If, for any reason, a party is not able to file material electronically, the plaintiff is to assist in the filing of the evidence.

16. At the directions hearing, the parties are expected to have conferred for the purpose of providing a timetable to the Court for this to occur. Ordinarily, this will include:

    (a) service of the plaintiff's documents on the defendant(s). If the plaintiff intends to seek the leave of the Court to make redactions to that evidence the plaintiff should be prepared to tender evidence in support of the application for leave at the directions hearing, and provide prior notice of intention to make such application to the other parties;[18]

    (b) service and filing of an affidavit or affidavits by the defendants, setting out their responses to the plaintiff's evidence, their proposals for the care of the child, and matters pertaining to their parenting capacity and their relationship with the child.

17. The Court will also ordinarily make an order under the *Adoption Act* s 194(2) that all parties to the proceedings (and the proposed adoptive parents, if they are not the plaintiff) may inspect and receive a copy of the s 91 report. If such an order is to be opposed, the plaintiff should notify the other parties prior to the directions hearing.

18. Directions for additional expert evidence and evidence of other lay witnesses will not normally be made at the directions hearing. The Court will adjourn the proceedings for a preliminary hearing, to take place following the completion of the timetable, where practicable within three months of the first directions hearing.

[18] This evidence is usually in the form of a risk assessment which is guided by the provisions in the *Children and Young Persons (Care and Protection) Act 1998* Ch 8, Part 2, Div 1A

19. **Contested applications – preliminary hearing.** A date for the preliminary hearing will generally be allocated at the monthly directions hearing referred to in paragraph 4 above. If it is considered necessary to vary the date for the preliminary hearing, the parties are expected to lodge with the List Judge's Associate draft consent orders adjusting the timetable for the making of orders in Chambers, or if there is no consent or it is otherwise appropriate, to arrange with the List Judge's Associate for the matter to be relisted.

20. Prior to the preliminary hearing, the parties are expected to have conferred, to have considered what further lay and expert evidence is required, whether the matter would benefit from mediation, whether the child should be separately represented, and whether the proposed adoptive parents (if they are not the plaintiff) should be joined, and to have prepared a draft list of the real issues in dispute. At the commencement of the preliminary hearing, the plaintiff must provide to the List Judge:

    (a) a copy of any affidavits which have been served since the directions hearing;

    (b) a draft list of the real issues in dispute; and

    (c) a draft minute of directions.

21. The Court expects the parties to attend the preliminary hearing in person, subject to any prevailing COVID protocols. If a party is unable to appear in person, that party should contact the List Judge's Associate to arrange alternative means of appearing.

22. The aim of the preliminary hearing is to give the child's parents and the proposed adoptive parents of the child an opportunity to explain to each other, and to the Court, the matters they wish the Court to consider when making a decision about the child's proposed adoption. The preliminary hearing is to be conducted with as little formality as the Judge thinks appropriate and with the object of encouraging the participants to understand each other's position, to identify their real issues and concerns and to enable the Court to emphasise directly to the participants the child-focussed nature of the inquiry and the paramountcy of the interests of the child.

23. The Court may settle the list of issues and will make such orders as may be appropriate including in respect of:

    (a) any further lay and expert evidence, if necessary, which will generally be confined to the real issues in dispute as settled (see paragraph 24);

    (b) appointment of a guardian ad litem for a child's parent or a child, or of a legal representative for the child (see paragraphs 25 and 31 to 34);

    (c) joinder of the proposed adoptive parents, if they are not the plaintiff (see paragraph 36);

    (d) referral for mediation (see paragraph 37);

    (e) return of subpoenas (see paragraph 38); and

    (f) setting the matter down for hearing, or adjournment of the matter for further directions (see paragraph 43).

24. **Expert Evidence.** The plaintiff is required to file a report under the *Adoption Act* s 91 (see paragraph 10b). Where a party considers that further expert evidence may be appropriate, Practice Note SC Eq 5 – *Expert Evidence in the Equity Division* applies. Applications for expert evidence directions should ordinarily be made at the preliminary hearing.

25. **Appointment of a guardian ad litem.** At any stage of the proceedings, including at a preliminary hearing, the Court may under the *Adoption Act* s 123 determine that it is appropriate to appoint a guardian ad litem for a child if there are special circumstances that warrant the appointment (such as the child has special needs because of age, disability or illness), and the child will benefit from the appointment, to safeguard and represent the interests of the child and to instruct a legal

practitioner representing the child.[19] The Court may determine that it is appropriate to appoint a guardian ad litem for a child's parent under the *Adoption Act* s 124 if it is of the opinion that the child's parent is incapable of giving proper instructions to his or her legal practitioner. Where the Court considers it appropriate to appoint a guardian ad litem:

(a) after making an order under s 123 or 124 appointing a guardian ad litem (which per s 124AA need not name a particular person), the Court will direct the Registrar, within 48 hours of such order, to notify Justice Legal in the Department of Communities and Justice by email (guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au) of the name of the person in respect of whom a guardian ad litem has been appointed, whether the person is a child or parent and what their involvement is in the proceedings, the details of the proceedings including the court file number and child's name, the jurisdiction and court location, the date and time the matter is next listed and the nature of the listing, and whether a legal representative acts for the person and if so the contact details of the legal representative.

(b) after Justice Legal has been notified by the Court of the appointment of a guardian ad litem,[20] Justice Legal will notify the Registrar within three working days of the nominee, and provide a letter of confirmation to the Registrar and the guardian.[21]

26. **The voice of the child.** Section 9 of the Adoption Act obliges decision makers to ensure that a child participates in any decision made under the *Adoption Act* that will have a significant impact on the child's life.

27. When making a decision under the Adoption Act that will affect a child, including a decision as to whether to make an order for the adoption of a child, any decision concerning an adoption plan, and any decision to dispense with the requirements under the *Adoption Act* for notice of or consent to the adoption, the Court will seek to hear the voice of the child.

28. In each case the Trial Judge will, prior to making any order under the Adoption Act including for the adoption of the child, take all steps that are practicable and appropriate in the particular circumstances of the case and taking into account the age and understanding of the child to ensure that the voice of the child is heard.

29. It is the expectation of the Court that it will hear of the voice of the child in the report provided to the Court under *Adoption Act* s 91.

30. The voice of the child can include, but is not limited to, evidence given to the Court in the form of a report, evidence given orally or by audio visual means, but may also include such other communication to the Court whether verbally or by means of visual representations as the Court considers best reflects the child's voice. The views of the child/ren should also be addressed in the written submissions filed prior to the final hearing or referral in Chambers, including any change in views that has occurred.

31. **Appointment of a legal practitioner to represent a child.** In order that the Court can hear the voice of the child, in every case, at the earliest opportunity, including at a directions hearing before the List Judge, the Court will invite submissions from the parties, and thereafter consider whether to appoint a legal practitioner to represent the child under the *Adoption Act* s 122(2)(b) having regard to:

(a) whether the child's views concerning the proposed adoption and adoption plan have been adequately placed before the Court, including in the report received by the Court under *Adoption Act* s 91;

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[19] If the Court appoints a guardian under s 123, the Court must appoint a legal practitioner to represent the child pursuant to s 122(2)(a) of the Adoption Act, as to which see paragraphs 31 to 34.

[20] Justice Legal will not act on a notification unless it comes from the Court, although legal representatives involved in the proceedings can draw the appointment to Justice Legal's attention.

[21] Per s 124AA the individual appointed as guardian ad litem is taken to be appointed when the Court receives written notice of the appointment from the administrator of the Guardian Ad Litem Panel naming the person.

(b) whether the child has expressed any wishes about the proposed adoption and the contact the child should have with the child's parents;

(c) whether the child has expressed any wish to have a separate voice in the adoption process;

(d) the age of the child, particularly if the child is aged 12 years or more and is capable of giving consent under *Adoption Act* s 55;

(e) the capacity of the child;

(f) the capacity of the child's parents;

(g) the nature of the relationship between the child's parents;

(h) the nature of the relationship between the child's parents and the proposed adoptive parents;

(i) the extent to which the adoption application is opposed;

(j) the extent to which any issues arise as to the child's Aboriginal or Torres Strait Islander heritage; and

(k) any other matter the Court considers to be relevant to the best interests of the child.

32. Subject to any view expressed by the child, taking into account their age and maturity, the Court will, unless there is a good reason to do otherwise, appoint a legal practitioner to represent the child where:

(a) there is an application to discharge an adoption order and the child is under the age of 18;

(b) the application is for an Aboriginal or Torres Strait Islander child or there is a dispute as to whether the child is an Aboriginal or Torres Strait Islander child within the meaning of the Act;

(c) the child is over 12 and does not have capacity to consent to the adoption; or

(d) the Secretary applies to the Court for interim or final orders for parental responsibility.

33. The Court will be inclined to appoint a legal practitioner for a child where:

(a) the child has particular cultural needs, is placed with proposed adoptive parents who are not of the same cultural background, or where the birth family have raised concerns about the cultural plan;

(b) the child is not having any ongoing contact with anyone in their birth family, or where there is a significant dispute about the arrangements for contact;

(c) there is a high level of conflict between the birth family, the proposed adoptive parents, or the agency with case management;

(d) credible allegations have been made about the capacity and ability of the proposed adoptive parents to provide long term care for the child;

(e) the adoption involves a child being separated from their siblings, particularly if they have previously lived with their siblings, or their siblings are living with the child's parents or extended family;

(f) a legal practitioner may be able to assist in the development of, or revision of, the Adoption Plan;

(g) a child is over 12 years of age;

(h) there is a proposal to remove a child permanently from the jurisdiction; or

(i) a child's parent is living with a disability that may impact on their capacity to participate in the proceedings.

34. If the Court forms the view that a legal practitioner should be appointed:

(a) The Court will direct the Registrar, within 48 hours of such directions, to notify the Legal Aid Commission by email (CRSYD@legalaid.nsw.gov.au) of the name of the child, the details of the proceedings including the court file number, jurisdiction, location and date and time the matter is next listed and the nature of the listing.

(b) After the Legal Aid Commission has been notified by the Court of the intention to appoint a legal practitioner for the child, the Legal Aid Commission will notify the Registry of the Court and the List Judge's Associate, within three working days of the name of the legal practitioner, and provide a letter of confirmation to the Registrar, the Associate and legal practitioner. The List Judge will make orders in Chambers appointing the legal practitioner at the earliest possible opportunity and advise the parties.

35. **Protections for a child giving evidence.** If a legal practitioner appointed to represent a child informs the Court that the child wishes to give evidence in the proceedings the Court will, in consultation with the legal practitioner, make such directions as are appropriate in the circumstances of the case to ensure that the child may be guided and protected.

36. **Joinder of parties.** At any stage of the proceedings, including at a preliminary hearing, the Court may make orders under the *Adoption Act* s 118 joining parties to the proceedings. Except where they are the plaintiffs, proposed adoptive parents are not ordinarily parties to the proceedings. However, they have a significant interest in the proceedings, and the Court expects that the plaintiff will consult with them and keep them informed of the issues and the evidence as they develop, and if it appears that their interests and those of the plaintiff might diverge, recommend that they seek independent legal advice. If the proposed adoptive parents wish to be joined as parties, they may apply to be so joined pursuant to s 118.

37. **Mediation.** At any stage of the proceedings, including at a preliminary hearing, at the request of the parties, or of its own motion, the Court may refer the parties to mediation, either generally or in respect of a particular issue in the case, to be conducted by an appropriately qualified mediator.

38. **Return of Subpoenas.** If the Court issues a subpoena for production at the request of a party, the Court will list the matter for return of subpoena during the next monthly Adoption List before the List Judge. Any party causing a subpoena to be issued must give reasonable notice to the other parties of the return date and a copy of the subpoena. Upon return of the subpoena the Court will ordinarily grant access to the parties to the documents produced, unless there is an objection. Where a self-represented party seeks leave to issue subpoenas, an application should be made in writing to the List Judge, via the Adoptions Clerk, setting out the reasons for requesting the issuing of the subpoena and enclosing a draft of the subpoena(s).

39. Once access orders have been granted by the List Judge, the Registry will ensure, where possible, that parties are able to access the material produced in response to the subpoena via the online portal. The remainder of the Court file will not be accessible to any party, given the supressed nature of the case.

40. **Transfer of Children's Court file**. UCPR r 33.13 provides for requests to be made to the Registrar for the transfer of files from other courts. Any request must be made by way of formal application[22] and requires the applicant to notify the parties from the proceedings to which the request relates to so that those parties can either consent or object to the file being accessed. Upon receiving the court file, the Registrar will list the matter in the monthly call over, referred to at (4) above. During the call over, the List Judge will confirm that all relevant parties have been made aware of the request to access the file. The Registrar will ordinarily grant access to the Court file to the parties unless there is an objection.

41. **Orders dispensing with the requirement for consent.** UCPR r 56.6 indicates that applications for orders dispensing with the requirement of a person's consent may be appropriate for a preliminary hearing. However, the question whether it is in the child's best interests that the requirement for a person's consent be dispensed with (particularly where s 67(1)(d) is relied upon) is closely connected with whether an adoption order should be made, and it is often preferable to consider the application for a consent dispense order concurrently with the adoption order, rather than at a preliminary hearing. On the other hand, there are circumstances in which it is desirable to deal with the issue of dispensing with the requirement for consent before a child is placed with proposed adoptive parents, and where sought, the Court will allocate a date for a preliminary hearing. Dispensing with the requirement for a person's consent is a grave step, not to be taken lightly. The Court requires strict proof of the grounds upon which such an order can be made.

42. **Orders dispensing with notice.** UCPR r 56.6 indicates that applications for dispensing with notice under the *Adoption Act* s 88(4) may be appropriate for a preliminary hearing. The provisions of the *Adoption Act* requiring the giving of notice of adoption applications are important safeguards and requirements of procedural fairness. The Court will not lightly dispense with the notices required by and under the *Adoption Act*.

43. **Setting down for hearing.** The Court aims to set contested matters down for hearing within three months of the preliminary hearing and expects the parties to be ready for a hearing within that time. When setting the matter down for hearing, the Court will normally make the usual order for hearing contained in Annexure A to this Practice Note. The plaintiff must also file, prior to the final hearing, submissions which clearly address the views and wishes of the child/ren, including if a view about any significant matter (including the adoption and family time) has changed over time, and the view of the child/ren at the date of final hearing or referral of the matter.

44. **Hearing.** In contested matters, evidence at the hearing is to be on affidavit and the hearing is otherwise to be conducted in such manner, and with such formality, as the Judge hearing the matter considers appropriate in the circumstances of the case. Uncontested matters are to be conducted with as little formality as the Judge hearing the matter considers appropriate. Pursuant to the *Adoption Act* s 119, the hearing is in closed court. The Court ordinarily accedes to requests that persons (in addition to the parties and their lawyers) who have a legitimate interest in the proceedings, and in particular proposed adoptive parents where they are not a party, may be present during the hearing.

45. Any original affidavits, copies of which have been served during the course of the proceedings and which are contained in the Court Book, are to be filed in Court at the commencement of the final hearing.

46. **Evidence.** Under the *Adoption Act* s 126, the Court has a discretion to act on any statement, document, information, or matter that may, in its opinion, assist it, whether or not it would be admissible in evidence. In relation to an Aboriginal child or a Torres Strait Islander child, such material may include, but is not limited to documented oral statements of community Elders, of community organisations, and of Aboriginal corporations or family members, reports of self-identification and historical materials dependent on oral tradition.

[22] The application form is available on the Court's website.

47. **Reasons for Decision.** The Court's practice in each case, whether contested or uncontested, is to give short reasons for its decisions, especially where an application is made to dispense with the consent of the child's parents.

48. **Orders**. Where an adoption order is made (whether uncontested, or after a contested hearing), the Adoptions Clerk will arrange for the adoption order and memorandum of adoption to be provided to the Registry of Births, Deaths and Marriages. The Adoptions Clerk will also provide an original copy of the adoption order to:

    (a) the Adoption Information Unit in the Department of Communities and Justice;

    (b) the legal representative of the plaintiff (or the plaintiff, if self-represented); and

    (c) any adoption agency involved in the application.

49. The child's parents (and other defendants or significant persons such as siblings and grandparents) do not automatically receive a copy of the adoption order, however any person named in the order that is referred to in (10(f)) above will, at the conclusion of proceedings, be provided with a copy of the order with any approved or registered adoption plan annexed to it.

Adoption Plans

50. **Registration of adoption plans.** An application under the *Adoption Act* s 50 for registration of an adoption plan may be included in the summons for an adoption order. The application should be supported by affidavit evidence annexing a verified copy of the executed adoption plan and establishing that the plan does not contravene the adoption principles, that the parties to the adoption understand the provisions of the adoption plan and have freely entered into it, and that the provisions of the adoption plan are in the child's best interests and proper in the circumstances.

51. The adoption plan is registered by the Court making an order that it be registered. A copy of the registered adoption plan must remain on the Court file. A copy will also be annexed to the final orders and a copy of the adoption plan provided to any person named in the adoption plan once an order to that effect has been made by the Court under paragraph 10(f) and 48 above. As an adoption plan that is registered has effect, on the making of the relevant adoption order, as if it were part of the order, it is important that its provisions be drafted in precise and enforceable terms and contain all the requisite particulars.[23]

52. **Review of adoption plans.** A party who has signed an adoption plan, including a registered adoption plan, may make an application under the *Adoption Act* s 51 for review of the adoption plan by filing a motion in the proceedings in which the adoption order was made. If parties have reached a consent position about a new adoption plan prior to the motion being filed, this may be considered and approved in Chambers. Otherwise, the motion will ordinarily be made returnable on the first list day occurring after 14 days from the filing of the motion, unless special arrangements have been made with the List Judge's Associate. Unless the Court otherwise orders, the motion must be served on every party to the adoption who signed the adoption plan, and any other person (including a non-consenting parent of the child who has not agreed to the registered adoption plan) whose interests will be affected by the proposed review of the registered adoption plan.

53. Evidence in support of the application for a review of an adoption plan must include –

    (a) a verified copy of the executed adoption plan, and

    (b) the proposed changes to the adoption plan, and

    (c) the grounds on which the application is made, and

[23] For the requisite particulars see *Adoption Regulation 2015* cl 75.

(d) the facts, matters and circumstances relied on to show that it is in the best interests of the child and proper in the circumstances to change the adoption plan, and

(e) any steps taken prior to filing the application to re-negotiate the adoption plan, including through the Post Adoption Information Unit, Department of Communities and Justice[24] or relevant accredited adoption service provider.

54. At the first return of the review application, the Court will: set a timetable for the service of evidence, consider whether to appoint (or reappoint) a legal practitioner for the child and set the review application down for interim hearing. The Court expects the parties to attend the interim hearing in person, subject to any prior leave of the Court to appear by another means such as audio-visual link. If a party is unable to appear in person, that party should contact the List Judge's Associate to arrange alternative means of appearing.

55. The aim of the interim hearing is to give the child, the child's parents, the adoptive parents and anyone else whose interests are affected by the proposed review, an opportunity to explain to each other, and to the Court, the matters they wish the Court to consider when making a decision about any change to the adoption plan, as part of the review application. The interim hearing is to be conducted with as little formality as the Court thinks appropriate and with the object of encouraging the participants to understand each other's position, to identify their real issues and concerns and to enable the Court to emphasise directly to the participants the child-focussed nature of the inquiry and the paramountcy of the interests of the child. At the interim hearing, the Court will consider, amongst other things, how best to hear the voice of the child.

56. If agreement cannot be reached about the terms of the new adoption plan, the review application will be set down for final hearing. Following the final hearing, the Court may, by order: make such changes (if any) to the provisions of the adoption plan as it considers appropriate, or revoke the adoption plan, or confirm the adoption plan. The Court may change the provisions, or revoke, an adoption plan only if it is satisfied that it is proper in the circumstances and in the child's best interests.[25]

57. Before changing the provisions of, or revoking an adoption plan, the Court will, to the extent that is reasonably practicable, ensure that the child has had an opportunity to express their views about any proposed changes to the adoption plan.

58. An adoption plan that is changed by an order of the Court has the same effect as if it were the adoption plan originally agreed by the parties.

59. Any reviewed adoption plan must comply with *Adoption Act* s 46.

60. **Proceedings in respect of non-compliance with registered adoption plans**. An application in respect of non-compliance with a registered adoption plan is to be made to the Court by motion in the proceedings in which the adoption order was made. An application can be made by a party to the adoption plan, as well as any person who was not a party to the proceedings or party to the adoption plan, but in whose favour provision was made in the adoption plan (per r 39.49 of the UCPR).

61. The motion will ordinarily be made returnable on the first list day occurring after 14 days from the filing of the motion, unless special arrangements have been made with the List Judge's Associate. Unless the Court otherwise orders, the motion must be served on every party to the adoption who has agreed to the adoption plan, and any other person (including a non-consenting parent of the child who has not agreed to the adoption plan) whose interests will be affected by the proceedings.

62. Evidence in support of the application should include –

[24] Further information regarding the Services available for adopted children under 18 years and their families is accessible at https://dcj.nsw.gov.au/documents/children-and-families/adoption/Services_for_adopted_children_under_18_years_and_their_families_fact_sheet.pdf

[25] Per s. 51 of the *Adoption Act 2000*.

(a) a verified copy of the registered adoption plan;

(b) the facts, matters and circumstances relied on to show that there has been non-compliance with the adoption plan;

(c) whether any reasons have been given as to why there has been non-compliance with the adoption plan; and

(d) any steps taken prior to filing the application to discuss and/or resolve any non-compliance with the adoption plan, including through the Post Adoption Information Unit, Department of Communities and Justice or relevant accredited adoption service provider.

63. At the first return of the motion, a timetable will be made for the service of further evidence, and to set the application down for interim hearing. The Court expects the parties to attend the interim hearing in person, subject to any prior leave of the Court to appear by another means such as audio-visual link. If a party is unable to appear in person, that party should contact the List Judge's Associate to arrange alternative means of appearing.

64. The aim of the interim hearing is to give the parties an opportunity to explain to each other, and to the Court, the matters they wish the Court to consider in the application. The interim hearing is to be conducted with as little formality as the Judge thinks appropriate, and with the object of encouraging the parties to identify the real issues and concerns in respect of the application.

65. If following the interim hearing, the parties reach agreement about terms of a new adoption plan, one or more of the parties to the adoption plan may seek a review of the adoption plan pursuant to s 51, which may be considered and approved in Chambers.

66. If following the interim hearing, agreement is not reached, the application will be listed for final hearing.

67. As a last resort, where it is alleged, or appears to the Court (at any stage of the motion filed in accordance with paragraph 60), that a person is guilty of contempt of the Court by virtue, for example, of breaching a registered adoption plan, the Court may, by order, direct the Registrar to apply by motion, or to commence proceedings, for punishment of contempt.[26]

Reports prepared in accordance with s. 78 of the *Adoption Act*

68. If a report is required to be filed pursuant to s 78 of the Adoption Act, and there is no extant proceeding regarding the child, the report can be filed with a cover letter requesting that the Registry create a Court file number. Once the adoption application is ready, the Secretary can subsequently file the summons under the same court file number, created for the s. 78 report.[27]

Hague convention applications

69. Applications for adoption orders in respect of adoptions of children from countries who are party to the Hague Convention on Intercountry Adoption are instituted by the proposed adoptive parents ("the plaintiffs") by application in Form 3 under the Hague Convention Regulations. The plaintiff(s) should attach to the application a verified copy of each of the reports referred to in Article 15 and Article 16 of the Convention. The application must contain an appointment for hearing, which will be allocated upon filing and will ordinarily be the first list day occurring after 14 days from the filing of the application, unless special arrangements have been made with the List Judge's Associate.

70. The application must be supported by an affidavit in Form 2 referred to in the Hague Convention Regulations. The affidavit must annex verified copies of official documentation so as to show that:

(a) the child was habitually resident in the Convention country;

[26] Pt 55 r 11(1) Supreme Court Rules

[27] See *Adoption of G* [2022] NSWSC 631

(b) the application has been made in accordance with the Convention, the laws of the Commonwealth and of New South Wales, and the laws of the Convention country in question. This involves showing that the NSW Central Authority has prepared and transmitted to the central authority of the Convention country the report referred to in Article 15 of the Convention, and that the Central Authority of the Convention country has prepared and transmitted to the NSW central Authority the report referred to in Article 16 of the Convention. Those reports should be annexed to the Form 3 application.

(c) the Central Authority of the Convention country has agreed to the adoption;

(d) the NSW Central Authority (being the Secretary) has agreed to the adoption;

(e) the child is in Australia; and

(f) the child is allowed to reside permanently in Australia (for which purpose evidence of a visa is required).

71. The plaintiffs must file with the application:

(a) a draft minute of each proposed adoption order, in duplicate, in Form 8 referred to in the Hague Convention Regulations. A separate adoption order is required for each child the subject of the proceedings;

(b) a memorandum of adoption order, printed double sided and in the format required by the Registry of Births, Deaths and Marriages.[28]

72. The plaintiffs must serve the application on the Secretary at least ten days before the appointed hearing. The Secretary may be served by delivery of the application to the Director, Open Adoption and Permanency Services, 6 Parramatta Square, 10 Darcy Street Parramatta NSW 2150 or Locked Bag 5000, Parramatta NSW 2124 (Attention: Intercountry Adoptions), or email to IntercountryAdoption@facs.nsw.gov.au. The plaintiffs must file at or before the hearing an affidavit proving that a copy of the application has been served on the Secretary.

73. On the return date, the application will be heard and determined, unless it is controversial, in which case directions may be made for the further conduct of the application.

74. If the plaintiffs file an affidavit of service before the hearing, and the Secretary has not by five days before the date appointed for the hearing filed a statement in accordance with Form 5 referred to in the Hague Convention Regulations in accordance with reg 15(2C), the Court may on the plaintiffs' written request to the List Judge's Associate vacate the hearing and deal with the matter in Chambers.

Applications for declarations of validity

75. Applications under the *Adoption Act* s 117 for declarations of validity under s 116 of an adoption order made in a country other than Australia that is not a party to the Hague Convention on Intercountry Adoption may be instituted by any of the parties to the adoption. Proceedings are instituted by summons claiming a declaration to the effect that the order is one that complies with s 116. The summons must include particulars of the child and the overseas adoption order.[29] Unless the Court otherwise orders, it is not necessary to join a defendant. The application must contain an appointment for hearing, which will be allocated at the time of filing and will ordinarily be the first list day occurring after 14 days from the filing of the summons, unless special arrangements have been made with the List Judge's Associate.

76. The plaintiffs must file with the summons affidavits by each of the adoptive parents, which must:

[28] A precedent form of a memorandum in the required form is available on the Court's website.

[29] A precedent form of summons is available on the Court's website.

(a) annex a true copy of the overseas adoption order and state when and where it was made;

(b) prove that at the time when the legal steps that resulted in the adoption were commenced, the adoptive parent or parents had been resident in that country for 12 months or more, or were domiciled in that country.

(c) describe the course of the overseas adoption proceedings, annexing true copies of any application, affidavits, judgments or other official documents, to show that no denial of natural justice was involved in the making of the order.[30]

77. Ordinarily, where the matters referred to in paragraphs 46(a) and (b) are established, the Court will not require evidence, but will presume (as authorised by s 116(5)), that the adoption is in accordance with and has not been rescinded under the law of the overseas country; that in consequence of the adoption, the adoptive parent or parents, under the law of that country, have a right superior to that of the adopted person's birth parents in relation to the custody of the adopted person; and that under the law of that country the adoptive parent or parents were, because of the adoption, placed generally in relation to the adopted person in the position of a parent or parents.[31] However, evidence of those matters may be required where there is any doubt.

78. The plaintiffs must lodge with the summons a draft minute of the order.[32]

79. The plaintiffs must serve a copy of the summons and supporting affidavits on the Secretary.[33] The Secretary may be served by delivery of the summons to the Director, Open Adoption and Permanency Services, 6 Parramatta Square, 10 Darcy Street Parramatta NSW 2150 or Locked Bag 5000, Parramatta NSW 2124 (attention: Intercountry Adoptions), or email to IntercountryAdoption@facs.nsw.gov.au. The plaintiffs must file at or before the hearing an affidavit proving that a copy of the summons has been served on the Secretary, at least five clear days – in effect, a week – before the appointed hearing.

80. On the return date, the application will be heard and determined, unless it is controversial, in which case directions may be made for the further conduct of the application.

Access to Court files

81. The Court file in adoption proceedings is not open to inspection by, or made available to, any person – including parties to the proceedings - unless so ordered by the Court. Applications under the *Adoption Act* s 194(2) to inspect or copy documents held on the Court file may be made orally in the course of proceedings before the Court, or in writing to the Registrar, who may refer the application to a Judge. If in the course of adoption proceedings a party or other interested person, including proposed adoptive parents, wishes to have access to the Court file or any particular documents on it, application should be made to the Judge dealing with the matter.

82. Ordinarily, parties to proceedings will be granted access to all documents on the Court file relevant to the proceedings, except to the extent that to do so would unacceptably jeopardise the safety, welfare or privacy of a child or a proposed adoptive parent. Proposed adoptive parents who are not parties will ordinarily be permitted access to particular documents to enable the plaintiff to obtain instructions or to address issues in the proceedings.

Applications for access to prescribed information in Court files

[30] A precedent form of affidavit is available on the Court's website.

[31] Although on the face of s 116(5) the presumptions it founds are in respect of s 116(1), it is clear that they are intended to relate to s 116(2): see *Adoption of MSAT* [2014] NSWSC 1950 at [17].

[32] A precedent form of order is available on the Court's website.

[33] See UCPR r 56.10.

83. Applications under the *Adoption Act* s 143(2) for the supply of prescribed information from records of proceedings in the Court may be made in writing to the Registrar. When making such an application, the applicant should, so far as practicable:[34]

    (a) identify the proceedings in the Court to which the application relates, by file number and name;

    (b) specify the status of the applicant (e.g. adoptee, parent, adoptive parent, or non-adopted sibling);

    (c) specify the prescribed information that is sought;[35] and

    (d) produce evidence of the facts on which the application is based showing the basis on which and reason for which the applicant claims to be entitled to the information.

84. An application may be dealt with informally by correspondence, or by personal attendance of the applicant, without conducting a formal hearing.[36] In considering any application, the Court applies the guidelines referred to in the *Adoption Act* s 142 and contained in *Adoption Regulation,* cll 105 – 110.

85. The Registrar may decide to supply the information which is the subject of the request if satisfied that it is prescribed information to which the applicant is entitled and that it is in accordance with the guidelines and otherwise appropriate to do so, or may refer the matter to a Judge for consideration.

86. When deciding to supply prescribed information, the Court may require that it be supplied by or in the presence of an appropriate person, such as a Registrar or counsellor.

The Hon. A S Bell
Chief Justice of New South Wales
17 July 2026

Related Information
Practice Note SC Eq 5 – Expert Evidence in the Equity Division

Amendment history
17 July 2026: This Practice Note replaces the previous version of SC EQ 13 that was issued on 7 February 2025.
7 February 2025: This Practice Note replaces the previous version of SC EQ 13 that was issued on 16 March 2023.
16 March 2023: This Practice Note replaces the previous version of SC EQ 13 that was issued on 4 May 2016.

[34] See UCPR r 56.12(3).

[35] For what information may be sought by the various classes of applicant, see *Adoption Regulation 2015* Part 6.

[36] See UCPR r 56.12.

ANNEXURE A

USUAL ORDER FOR HEARING

1. **By no later than five working days before the trial date the parties are to provide to the Associate to the Trial Judge a Court Book containing the pleadings, affidavits to be relied on, documentary evidence to be tendered, any objections thereto (limited to those that are essential having regard in particular to s 190(3) of the *Evidence Act 1995*), and a short outline of written submissions.**