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Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 1999 (No. 1)

Statutory Rules 1999 No. 1

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated 25 NOV 1999 1999.

WILLIAM DEANE

Governor-General

By His Excellency's Command,

DARYL WILLIAMS

Attorney-General



Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 1999 (No. 1)¹

Statutory Rules 1999 No. 1²

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made under the

Family Law Act 1975

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1 Name of Regulations

These Regulations are the *Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 1999 (No. 2)*.

1

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*

Schedule 1 amends the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, heading

substitute

3 Interpretation

[2] Regulation 3

omit

In these Regulations,

insert

(1) In these Regulations,

[3] Regulation 3, after definition of *State of origin*

insert

working day means a day that is not a Saturday,
Sunday or public holiday.

[4] Regulation 3

insert

(2) A reference in these Regulations to a form by number
is a reference to the form so numbered in Schedule 3.

[5] After regulation 3

insert

3A Headings of certain documents

A document to be filed in, or issued out of, a court in proceedings that is in a form set out in Schedule 3:

- (a) must be headed in accordance with Form 1; and
- (b) may identify the proceedings in accordance with the rules of the court.

[6] Paragraph 4 (a)

substitute

- (a) a country mentioned in Schedule 2, on and from the date mentioned in relation to the country;

[7] After subregulation 14 (2)

insert

- (2A) The application must:
 - (a) be in accordance with Form 3; and
 - (b) include an affidavit in accordance with Form 2.
- (2B) At the same time as the application is made, the applicant, or applicants, must give a copy of the application to the State Central Authority for the State where the child who is the subject of the application habitually resides.
- (2C) As soon as practicable, the State Central Authority must give notice, in accordance with Form 4, of the application to any person of whom the Authority is aware as having an interest in whether the application is granted.

- (2D) A person to whom the notice is given:
- (a) no later than 5 working days before the court hearing, may file with the court a statement in accordance with Form 5 that sets out briefly the matters on which the person wishes to rely in support of the court making an order other than the order sought in the application; and
 - (b) must include with that statement an affidavit in accordance with Form 2.
- (2E) As soon as practicable before the court hearing, the applicant, or applicants, may file with the court a reply to a statement filed under subregulation (2D), being a reply that:
- (a) is in accordance with Form 6; and
 - (b) includes an affidavit in accordance with Form 2.
- (2F) An order made by the court must be in accordance with Form 7.

[8] After subregulation 15 (2)

insert

- (2A) The application must:
- (a) be in accordance with Form 3; and
 - (b) include an affidavit in accordance with Form 2.
- (2B) At the same time as the application is made, the applicant, or applicants, must give a copy of the application to the State Central Authority for the State:
- (a) if the application is made by 1 applicant — where the applicant habitually resides; or
 - (b) if the application is made by more than 1 applicant — where the applicants habitually reside.

-
- (2C) The State Central Authority:
- (a) no later than 5 working days before the court hearing, may file with the court a statement in accordance with Form 5 that sets out briefly the matters on which the Authority wishes to rely in support of the court making an order other than the order sought in the application; and
 - (b) must include with that statement an affidavit in accordance with Form 2.
- (2D) As soon as practicable before the court hearing, the applicant, or applicants, may file with the court a reply to a statement filed under subregulation (2C), being a reply that:
- (a) is in accordance with Form 6; and
 - (b) includes an affidavit in accordance with Form 2.
- (2E) An order made by the court must be in accordance with Form 8.

[9] After subregulation 20 (2)

insert

- (2A) The application must:
- (a) be in accordance with Form 3; and
 - (b) include an affidavit in accordance with Form 2.
- (2B) At the same time as the application is made, the applicant, or applicants, must give a copy of the application to the State Central Authority for the State:
- (a) if the application is made by 1 applicant — where the applicant habitually resides; or
 - (b) if the application is made by more than 1 applicant — where the applicants habitually reside.

-
- (2C) As soon as practicable, the State Central Authority must give notice, in accordance with Form 4, of the application to the Minister for Immigration and Multicultural Affairs at the principal office of the Department of Immigration and Multicultural Affairs in Canberra.
- (2D) The Minister for Immigration and Multicultural Affairs:
- (a) no later than 5 working days before the court hearing, may file with the court a statement in accordance with Form 5 that sets out briefly the matters on which the Minister wishes to rely in support of the court making an order other than the order sought in the application; and
 - (b) must include with that statement an affidavit in accordance with Form 2.
- (2E) As soon as practicable before the court hearing, the applicant, or applicants may file with the court a reply to a statement filed under subregulation (2D), being a reply that:
- (a) is in accordance with Form 6; and
 - (b) includes an affidavit in accordance with Form 2.
- (2F) An order made by the court must be in accordance with Form 9.

[10] After subregulation 22 (2)

insert

- (2A) The application must:
- (a) be in accordance with Form 3; and
 - (b) include an affidavit in accordance with Form 2.

-
- (2B) At the same time as the application is made, the State Central Authority must give notice, in accordance with Form 4, of the application to:
- (a) the adoptive parents, or adoptive parent, of the child to whom the adoption or decision relates; and
 - (b) the Minister for Immigration and Multicultural Affairs at the principal office of the Department of Immigration and Multicultural Affairs in Canberra.
- (2C) A person to whom notice of the application is given:
- (a) no later than 5 working days before the court hearing, may file with the court a statement in accordance with Form 5 that sets out briefly the matters on which the person wishes to rely in support of the court making an order other than the order sought in the application; and
 - (b) must include with that statement an affidavit in accordance with Form 2.
- (2D) As soon as practicable before the court hearing, the State Central Authority may file with the court a reply to a statement filed under subregulation (2C), being a reply that:
- (a) is in accordance with Form 6; and
 - (b) includes an affidavit in accordance with Form 2.
- (2E) An order made by the court must be in accordance with Form 10.

[11] After regulation 24

insert

24A Jurisdiction of Family Court of Australia

- (1) Jurisdiction is conferred on the Family Court of Australia in a matter to which a provision of Part 4 applies.

- (2) If jurisdiction is invested, in the matter, in a court of a State under a law of the State, the Family Court is divested of jurisdiction in the matter.
- (3) Subregulation (2) does not have effect in relation to:
 - (a) proceedings instituted in the Family Court before the day on which jurisdiction in the matter is invested in the State court; or
 - (b) proceedings on appeal from a decision of the Court in proceedings mentioned in paragraph (a).

24B Appeals may be made to Full Court of Family Court of Australia

- (1) An appeal may be made to a Full Court of the Family Court from a decision of the Family Court:
 - (a) constituted by a single judge; and
 - (b) exercising jurisdiction under subregulation 24A (1).
- (2) Jurisdiction is conferred on the Family Court for appeals instituted under subregulation (1).

24C Evidence given in an appeal

- (1) In an appeal mentioned in regulation 24B, the Family Court:
 - (a) must have regard to the evidence given in the proceedings out of which the appeal arose; and
 - (b) has power to draw inferences of fact; and
 - (c) may, in its discretion, receive further evidence on questions of fact.
- (2) For paragraph (1) (c), evidence may be given in the following ways:
 - (a) by affidavit;
 - (b) by oral examination before the Family Court, constituted by a Full Court or by a judge sitting alone;
 - (c) in a manner directed by the Family Court.

24D Time for instituting appeal

An appeal mentioned in regulation 24B must be instituted:

- (a) within the time prescribed by the Rules of Court; or
- (b) within a further time that is allowed by the Rules of Court.

24E Orders that may be made on appeal

The Full Court may, in relation to an appeal mentioned in regulation 24B:

- (a) affirm, reverse or vary the decree or decision that is the subject of the appeal; and
- (b) make a decree or decision that, in the opinion of the Court, ought to have been made in the first instance.

24F Appeals to High Court

An appeal does not lie to the High Court, from a decree of a court exercising jurisdiction under regulation 24A or 24B, except by special leave of the High Court.

[12] Subregulation 34 (1)

omit

Regulations 5, 6 and 7

insert

Regulations 5, 6, 7, 8, 9, 12 and 13

[13] Schedule 2*substitute***Schedule 2 Convention countries**

(paragraph 4 (a))

Item	Country	Date
1	Andorra	1 December 1998
2	Burkina Faso	1 December 1998
3	Canada (extending only to the provinces Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, Saskatchewan and the Yukon Territory)	1 December 1998
4	Colombia	1 December 1998
5	Costa Rica	1 December 1998
6	Cyprus	1 December 1998
7	Denmark	1 December 1998
8	Ecuador	1 December 1998
9	Finland	1 December 1998
10	France	1 December 1998
11	Republic of Lithuania	1 December 1998
12	Mexico	1 December 1998
13	Republic of Moldova	1 December 1998
14	Norway	1 December 1998
15	Republic of Paraguay	1 December 1998
16	Peru	1 December 1998
17	Philippines	1 December 1998
18	Poland	1 December 1998

Item	Country	Date
19	Romania	1 December 1998
20	Spain	1 December 1998
21	Sri Lanka	1 December 1998
22	Sweden	1 December 1998
23	The Netherlands	1 December 1998
24	Venezuela	1 December 1998
25	Republic of Mauritius	1 January 1999
26	New Zealand	1 January 1999
27	Republic of Burundi	1 February 1999
28	Republic of El Salvador	1 March 1999
29	Israel	1 June 1999
30	Brazil	1 July 1999
31	Georgia	1 August 1999
32	Austria	1 September 1999
33	Chile	1 November 1999

12	<i>Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 1999 (No.)</i>	1999,
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[14] After Schedule 2*insert***Schedule 3 Forms**

(subregulation 3 (2))

Form 1 Heading of documents for use in court proceedings

(regulation 3A)

Family Law (Hague Convention on Intercountry Adoption) Regulations 1998IN THE *(insert name of court exercising jurisdiction)*NO. *(insert number of proceedings)* of *(insert year in which document is filed or issued)*DATE OF FILING:*/ISSUE:* *(insert date of filing or issue)*IN RELATION TO THE ADOPTION OF *(insert forename(s) and surname(s) of child who is the subject of the proceedings)*
OR *(otherwise identify the proceedings in accordance with the rules of the court)*

** omit if inapplicable*

Form 2 Affidavit

(paragraphs 14 (2A) (b), 14 (2D) (b), 14 (2E) (b),
15 (2A) (b), 15 (2C) (b), 15 (2D) (b), 20 (2A) (b),
20 (2D) (b), 20 (2E) (b), 22 (2A) (b), 22 (2C) (b) and
22 (2D) (b))

I*/WE*, (*insert forename(s) and surname(s) of deponent(s)*),
(*insert occupation(s) of deponent(s)*), of (*insert address of
deponent(s)*), declare the following under oath:

- (a) I*/We* am*/are* the deponent(s) for this document and have read the document and any attachment to the document; and
- (b) the facts stated in the document, and any attachment to the document, that are within my*/our* knowledge are correct; and
- (c) all other facts stated in the document, and in any attachment to the document, are correct to the best of my*/our* knowledge or belief.

SWORN by the deponent(s)
at (*insert place where declaration made*)
on (*insert date of declaration*)

.....
(*signature(s) of deponent(s)*)

.....
(*name of deponent(s)*)

.....
(*title or position of deponent(s)*)

BEFORE ME:

.....
(signature of person before whom affidavit is sworn)

.....
(name of signatory)

.....
(title or position of signatory)

* omit if inapplicable

Form 3 Application for order

(paragraphs 14 (2A) (a), 15 (2A) (a), 20 (2A) (a) and
22 (2A) (a))

(insert heading for document in accordance with Form 1)

**Application for order under regulation
14*/15*/20*/22*****1 Identity of the child and his or her parents****1.1 Child**

Surname:

Forenames:

Sex:

Age:

Date and place of birth:

Father's surname:

Other names:

Mother's maiden surname:

Other names:

1.2 Applicant(s)**2.1 Mother:**

Surname:

Other names:

Occupation:

Address:

2.2 Father:

Surname:

Other names:

Occupation:

Address:

2 Order sought

Under regulation 14 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, application is made for an order for the adoption of (*insert forename(s) and surname(s) of child*), an Australian child, into (*insert name of Convention country*), a Convention country.

OR

Under regulation 15 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, application is made for an order for the adoption in Australia of (*insert forename(s) and surname(s) of child*) from (*insert name of Convention country*), a Convention country.

OR

Under regulation 20 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, application is made for an order terminating the legal relationship between (*insert forename(s) and surname(s) of child*) and his*/her* pre-adoption parents.

OR

Under regulation 22 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, application is made for a declaration by the court that the adoption of*/decision made in accordance with Article 27 of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in relation to* (*insert forename(s) and surname(s) of child*) is not recognised.

3 Attachments to applications made under regulation 14*/15*/20*

(for an application under regulation 14 or 15)

The following documents are attached:

- (a) the report prepared on the applicant(s) by the Central Authority of the receiving State under Article 15 of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption; and
- (b) the report prepared on the child by the Central Authority of the State of origin under Article 16 of that Convention.

OR

(for an application under regulation 20)

A copy of the adoption compliance certificate issued in the Convention country, and in force for the adoption, is attached.

4 Any other matters in relation to this application

(information may be written here or in an attachment to this application)

DATED.....

.....
(signature(s) of applicant(s))

.....
(if the applicant is the State Central Authority, the title or position of the Authority)

Affidavit

(insert affidavit in accordance with Form 2)

** omit if inapplicable*

Form 4 Notice of application

(subregulations 14 (2C), 20 (2C) and 22 (2B))

Family Law (Hague Convention on Intercountry Adoption) Regulations 1998

Notice of application for order under regulation 14*/20*/22*

(insert title of State Central Authority) for (insert name of State or Territory)

TO: *(insert full name and title of person to whom notice is given)*

OF: *(insert address of person)*

THE ATTACHED APPLICATION is set down for hearing by the *(insert name of court)* at *(insert place where application is to be heard)* on *(insert date of hearing)* at *(insert time of hearing)*.

IF YOU WISH the court to make an order, or orders, other than the order sought in the attached application, you may, no later than 5 working days before the hearing, file with the court a brief statement that:

- (a) is mentioned in paragraph 14 (2D) (a)*/20 (2D) (a)*/22 (2C) (a)* of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the matters on which you rely in support of the court making the order*/orders* that you seek; and
- (b) includes an affidavit in accordance with paragraph 14 (2D) (b)*/20 (2D) (b)*/22 (2C) (b)* of those Regulations.

IF YOU DO NOT RESPOND TO THE APPLICATION, OR DO NOT APPEAR AT THE HEARING, the court may make the order*/orders* sought in the attached application, or a similar order*/similar orders*, without considering what you have to say in response to the application, or in your absence.

DATED.....

.....
(signature of State Central Authority)

.....
(name of State Central Authority)

Attachment

The application under regulation 14*/20*/22* (including any attachment to the application) to which the notice relates is attached.

** omit if inapplicable*

Form 5 Response to application

(paragraphs 14 (2D) (a), 15 (2C) (a), 20 (2D) (a) and 22 (2C) (a))

(insert heading for document in accordance with Form 1)

Response to application for order under regulation 14*/15*/20*/22*

IN RESPONSE TO the application made by *(insert forename(s) and surname(s) of applicant(s))* filed in the *(insert name of court)* on *(insert date of filing of application)*, a copy*/notice* of which was given to me*/us* on *(insert date on which copy, or notice, of the application was given to respondent(s))*, I*/WE*, *(insert forename(s) and surname(s) of respondent(s))* state as follows:

(insert brief statement of the matters in support of the court making an order other than the order sought in the application)

DATED.....

.....
(signature(s) of respondent(s))

.....
(name of respondent(s))

.....
(title or position of respondent(s))

Affidavit

(insert affidavit in accordance with Form 2)

** omit if inapplicable*

Form 6 Reply to response to application

(paragraphs 14 (2E) (a), 15 (2D) (a), 20 (2E) (a) and
22 (2D) (a))

(insert heading for document in accordance with Form 1)

**Reply to response to application under
regulation 14*/15*/20*/22***

IN REPLY TO the response to my*/our* application made by
(insert forename(s) and surname(s) of respondent(s)) filed in the
(insert name of court) on *(insert date of filing of response)*,
I*/WE* state as follows:

(insert brief reply to matters stated in response to application)

DATED.....

.....

(signature(s) of applicant(s))

.....

(name of applicant(s))

.....

(title or position of applicant(s))

Affidavit

(insert affidavit in accordance with Form 2)

** omit if inapplicable*

Form 7 Adoption order — Australian child

(subregulation 14 (2F))

*(insert heading for document in accordance with Form 1)***Adoption order — Australian child**

ON THE BASIS that this court is satisfied that it may, in accordance with regulation 14 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, make the following orders in these proceedings:

THE COURT AUTHORISES, in accordance with that regulation, *(insert forename(s) and surname(s) of applicant(s))*, *(insert occupation of applicant(s))*, of *(insert address of applicant(s))* to adopt *(insert forename(s) and surname(s) of child)*, an Australian child, into *(insert name of Convention country)*, a Convention country.

THE COURT approves the following forename(s) as the forename(s) of the child:

(insert forename(s) approved by the court)

THE COURT approves the following surname(s) as the surname(s) of the child:

(insert surname(s) approved by the court)

DATED: *(insert date of order)*

(Seal of court)

Form 8 Adoption order — child from Convention country

(subregulation 15 (2E))

(insert heading for document in accordance with Form 1)

Adoption order — child from a Convention country

ON THE BASIS that this court is satisfied that it may, in accordance with regulation 15 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, make the following orders in these proceedings:

THE COURT AUTHORISES, in accordance with that regulation, *(insert forename(s) and surname(s) of applicant(s))*, *(insert occupation of applicant(s))*, of *(insert address of applicant(s))* to adopt in Australia *(insert forename(s) and surname(s) of child)*, a child from *(insert name of Convention country)*, a Convention country.

THE COURT approves the following forename(s) as the forename(s) of the child:

(insert forename(s) approved by the court)

THE COURT approves the following surname(s) as the surname(s) of the child:

(insert surname(s) approved by the court)

DATED: *(insert date of order)*

(Seal of court)

Form 9 Order terminating parental relationship

(subregulation 20 (2F))

(insert heading for document in accordance with Form 1)

Order terminating legal relationship between child and parents

ON THE BASIS that this court is satisfied that it may, in accordance with regulation 20 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, make the following orders in these proceedings:

THE COURT ORDERS, in accordance with that regulation, on application by *(insert forename(s) and surname(s) of applicant(s))*, *(insert occupation of applicant(s))*, of *(insert address of applicant(s))*, that the adoption of the child *(insert forename(s) and surname(s) of child)*, by the applicant(s) terminates the legal relationship between the pre-adoption parents of that child and the child.

THE COURT approves the following forename(s) as the forename(s) of the child:

(insert forename(s) approved by the court)

THE COURT approves the following surname(s) as the surname(s) of the child:

(insert surname(s) approved by the court)

DATED: *(insert date of order)*

(Seal of court)

Form 10 Declaration of non-recognition

(subregulation 22 (2E))

*(insert heading for document in accordance with Form 1)***Declaration that adoption or decision is not recognised**

ON THE BASIS that this court is satisfied that it may, in accordance with regulation 22 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, make the following orders in these proceedings:

THE COURT DECLARES, in accordance with that regulation, on application by *(insert forename(s) and surname(s) of applicant(s))*, *(insert occupation of applicant(s))*, of *(insert address of applicant(s))*, that the adoption of*/the decision made in accordance with Article 27 of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in relation to* *(insert forename(s) and surname(s) of child)* is not recognised.

THE COURT approves the following forename(s) as the forename(s) of the child:

(insert forename(s) approved by the court)

THE COURT approves the following surname(s) as the surname(s) of the child:

(insert surname(s) approved by the court)

DATED: *(insert date of declaration)*

(Seal of court)

** omit if inapplicable*

Notes

1. These Regulations amend Statutory Rules 1998 No. 249.
2. Made by the Governor-General on *2* 1999, and notified in
the *Commonwealth of Australia Gazette* on *2* 1999.

25 November
2 December

1999,

*Family Law (Hague Convention on Intercountry
Adoption) Amendment Regulations 1999 (No.)*

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