



Stepfamilies Tip Sheet: Stepparent Rights and Responsibilities



Definition of a stepparent

According to Section 4 of the Family Law Act 1975 [Cth], the Australian legal definition of a stepparent is someone who:

1. is not the biological parent of a child; and
2. is or was married to or lived with one of the child's biological parents; and
3. treats the child as a member of the family during their marriage or de facto relationship with the biological parent.

Stepparents are legally defined as a 'relative' of the child and are therefore able to make an application to the Family Law Courts pursuant to the Family Law Act.

Parental rights

It's important to get a sense of your rights and responsibilities as a stepparent as understanding these will help you answer several questions, such as:

- Who has parental responsibility?
- What are parental rights?
- Who has parental rights? E.g. who can agree to medical treatment, sign school forms
- Can stepchildren be listed on your Medicare card?
- What rights do stepparents have?

Parental responsibility, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to a child.

The Family Law Act 1975 [Cth] provides that there is a presumption of 'equal shared parental responsibility'. This means that parents are jointly responsible for making all major and long term decisions for their children, such as education, medical decisions and religion. Parents are therefore responsible for the care of their children until they reach the age of 18.

After a family separates, this presumption continues and it can only be changed by a Court Order, where in very limited circumstances, a parent may seek an order for sole parental responsibility such that they are the only person responsible for making decisions for the child. In making an Order for sole parental responsibility, the Court will consider the best interests of the child. In the event of the death of a parent, parental responsibility passes to the surviving biological parent; not automatically to a surviving stepparent.

Though stepparents can and do carry out parenting roles, they do not automatically, as a matter of right, assume the legal parental responsibility of a child. As a result, ordinarily stepparents are not legally able to authorise medical care, sign school forms, apply for passports and/or obtain birth certificates etc. An exception is with emergency medical situations where neither biological parent is able to provide consent to an operation, a stepparent may be consulted to provide consent.

Without any positive action, stepparents do not have any legal rights with respect to parental responsibility.

Medicare Card

Having your stepchildren listed on your Medicare Card may help when taking your stepchild to the GP and will minimise any out-of-pocket expenses. To ensure your stepchildren are listed on your Medicare Card, you will need to complete an application to copy or transfer from one Medicare Card to another form and provide documentation proving your relationship, for example, a copy of Parenting Orders.

Completion of this form requires the original cardholder's signature. If the other parent does not consent, an Order to this effect can be sought from the Family Law Courts. Go to www.humanservices.gov.au for further information.

Children may also obtain their own Medicare Card when they reach 15.

Getting parental rights

- Adoption – what does it mean and involve? Under what circumstances can you/can't you adopt?
- Parenting Orders – what are Parenting Orders, what do they involve, in what circumstances can you/can't you get a Parenting Order?
- Legal Guardianship – what is it, who has it, who can get it?



Adoption

Adoption is a social, psychological and legal process which a child is given the legal status of a child within a family other than their birth family. This option can only be considered by stepparents in exceptional circumstances, for example, when the biological parent is deceased or not actively involved in the child's life, or it can be shown to be in the best interests of the child. Generally, an Adoption Order will only be granted when Parenting Orders are not sufficient to protect the welfare of a child. This can be a lengthy and difficult process, and generally Parenting Orders are the more appropriate solution.

Adoption will bestow full parental responsibilities upon the stepparent equal to that of a biological parent.

You will need to be married or living in a de facto relationship for a minimum of 2 years. It is also important to obtain leave [or permission] from the Family Court, otherwise difficulties could arise whereby the non-custodial parent will continue to have rights under the Family Law Act.

The Family Court may grant leave for adoption proceedings if it considered to be in the child's best interests.

When determining a 'child's best interests', the Court will consider the following:

- Benefit of a child having a meaningful relationship with both parents;
- Need to protect the child from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence;
- Views of the child;
- Nature of the child's relationship with parents, grandparents and other relatives (includes stepparents);
- The extent to which the parents have been involved in the child's life;
- The extent to which the parents have maintained the child;
- Likely effect on the child;
- Practical difficulties;
- The capacity of the parent, grandparent or other relative to provide for the needs of the child, including emotional and intellectual needs;
- Maturity, gender, lifestyle and background of the child and parents;
- The parents attitude to the child and responsibilities of parenthood;
- Right to enjoy Indigenous Australian culture;
- Any family violence.

If the court grants leave for adoption proceedings to commence on the basis of it being in the child's best interests, adoption extinguishes the parental responsibility of the other parent. Therefore, the non-custodial parent ceases to be the child's legal parent and the adoptive parent becomes the child's legal parent. In addition, the child ceases to be a child of the previous marriage or de facto relationship and any previous Parenting Orders will no longer be in force.

However, it is intended under adoption legislation that Adoption Orders will rarely be granted to a relative or step-parent. It is now generally recognised that the preferred alternative for people in this situation wishing to adopt is to apply for a Parenting Order from the Family Court.

Adoption legislation varies in each State and Territory. You should seek independent legal advice in your State or Territory if you wish to pursue this option.



Parenting Orders

Stepparents can apply to the Family Law Courts for a Parenting Order as 'other people significant to the care, welfare and development of a child'. Parenting Orders can deal with a wide range of issues, from major and long-term issues to day-to-day ones, such as the following:

- Who the child lives with;
- How much time the child spends and/or communicates with each parent and other significant people, such as grandparents and stepparents;
- Allocation of parental responsibility;
- Change of name – i.e. to surname of stepparent;
- Special occasions;
- Any other aspect of the care, welfare and development of the child.

These orders would usually be made with the agreement of the biological parents of the child. Such orders from the Family Court must take account of the wishes of the child and the court may require the parties to attend counselling and consider a report in order to ensure that the arrangements are in the best interests of the child.

In the event that an Order was made giving a stepparent parental responsibility, this would effectively give them all the responsibilities of the biological parents.

Alternatively, specific issues can be dealt with by including particular Orders, such as the following:

- The stepparent is at liberty to obtain all school notices, reports, photograph order forms and any other correspondence ordinarily provided to parents;
- The stepparent is at liberty to attend all school events that a parent is ordinarily invited to attend;
- The stepparents and parents keep each other informed with respect to any illness, significant injury or medical treatment obtained for the child;
- The stepparent is authorised to obtain all information available in relation to the child's education/schooling and health/medical issues, including listing the child on their Medicare Card;
- The stepparent is authorised to attend changeover on behalf of the biological parent;
- Special occasions, such as stepparent's or siblings birthdays; [SF1]
- Change of name (if both parents consent to the child's surname being changed to that of the stepparent, an application can be made to Births Deaths Marriages in your State).

These Orders can be made by agreement between the parents or by Order of the Court. The paramount consideration of the Court is always what is in the best interests of the child. It is also possible for an Order to be made enabling a stepparent to spend time and communicate with a child following separation from that child's biological parent.

Legal Guardianship

A legal guardian has the rights and duty to protect a child and has all the powers of a parent.

An Order for Guardianship may be made by the State Supreme Courts (or relevant tribunals) for a child 16 years or over. Most, if not all, States have similar legislation. The Court will consider the child's needs and circumstances in determining whether an Order should be made. Alternatively, a stepparent may be appointed as a child's legal guardian in the last surviving natural parent's Will.

Before you decide on any of the above options, it is important to obtain independent legal advice about the best choice for your family.

Where to access further help

Stepfamilies Australia
www.stepfamily.org.au

Family Relationships Advice Line
1800 050 321
Lifeline 13 11 14

Raising Children
www.raisingchildren.net.au

Kids Helpline 1800 55 1800 or
www.kidshelp.com.au



Drummond Street Services acknowledges the traditional owners of the land where we work and pay respects to elders past, present and future.