

STEP PARENT RIGHTS AND RESPONSIBILITIES

AM I A STEPPARENT?

S4 Family Law Act 1975 (Cth) defines a stepparent as a person who:

- » Is not a parent of the child;
- » Is, or has been, married to or a de facto partner of, a parent of the child; and
- » Treats, or at any time while married to or a de facto partner of the parent, treated the child as a member of the family formed with the parent.

A de facto relationship includes same sex couples.

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

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.

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



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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 obtain their own Medicare card when they reach 15.

GETTING PARENTAL RIGHTS

- » **Adoption – what does it mean, involve, under what circumstances can you/can't you adopt?**
- » **Parenting Orders – what are parenting Orders, what does it 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.

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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, sex, 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 are able to 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 issues, 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.

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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;
- » 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).

The above 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.

PARENTAL RESPONSIBILITIES

- » **Child maintenance – in what circumstances could a stepparent be liable?**
- » **Other responsibilities?**
- » **Are stepparents included in calculations for entitlements?**

Child Maintenance (Child Support)

The Department of Human Services – (formerly Child Support Agency) cannot order a stepparent to pay child support.

A Court is the only body that can make an order for a stepparent to make child support payments if it is determined that it is proper for the stepparent to have that duty. However, a stepparent's duty is always secondary to the duty of biological parent to maintain the child.

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In determining whether it is proper for a stepparent to maintain a child, the Court will consider the following:

- » Whether the child receives a proper level of financial support from the biological parents;
- » The length and circumstances of the marriage or relationship between the stepparent and biological parent;
- » The relationship between the stepparent and child;
- » The arrangements that have existed for the maintenance of the child during the relationship;
- » Any special circumstances which, if not taken into consideration, would result in injustice or undue hardship to any person.

The responsibility to maintain a stepchild exists regardless of whether the separated stepparent has contact with the child. In determining an appropriate amount, the Court has discretion based on the circumstances and the extent to which the primary duty of the parents to maintain the child is being, and can be fulfilled.

Child Support Administrative Assessments

As stated above, the Department of Human Services cannot order a stepparent to pay child support. When determining appropriate child support payments, the child support formula considers the combined income of the biological parents and the care arrangements of the child. Stepparents' incomes are not taken into account.

If a parent has a child from a subsequent relationship, an amount for that child's support will be deducted from the parent's income. This deduction may be made for both the paying and/or receiving parent's income where they have a child from a new relationship.

Although a stepparent may have a moral duty to maintain a step child, no legal duty applies

and generally stepchildren are not included in the child support formula. However, in special circumstances where a parent has a reduced capacity to pay child support as a result of a legal duty to maintain another person, such as a stepchild, they may apply for a change of assessment. Special circumstances may include where neither of the child's biological parents can support the child for reasons such as illness or death and therefore the stepparent is required to support the child.

For more information, see drummond street's research paper 'How the Child Support System works for Stepfamilies' at www.ds.org.au or www.stepfamily.org.au

CUSTODY RIGHTS

- » **What rights do step parents have if biological parent dies?**
- » **What can families do to ensure a step parent will get custody if biological parent dies? (Guardianship clause in Will)**

If a biological parent dies, a stepparent is able to make an application to the Family Law Courts seeking Orders to spend time and communicate with a child or possibly even for the child to live with them. However, if the other biological parent is willing and able to provide proper care to the child, the paramount consideration of the court will be to facilitate a meaningful relationship between the parent and child. Orders will be made in consideration of the best interests of the child.

The last surviving biological parent may wish to ensure that a stepparent is appointed as the child's legal guardian in the event of their death. This can be done by way of a guardianship clause in the biological parent's Will directing that the stepparent become legally responsible for the child upon the biological parent's death. Consideration should be given to appointing a guardian where there is

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a potential for dispute. However, a guardianship clause is only a direction and is not binding. If a dispute arises, the final decision rests with the Family Court.

INHERITANCE

- » Legal position
- » Wills
- » **What do families need to do to ensure step children are included in an inheritance**

There is no absolute requirement to include stepchildren in your Will. However, if you wish to provide for your stepchild, they must be named in your Will.

If provisions are not made for a stepchild, a stepchild is an eligible claimant for the purposes of contesting the stepparent's Will, but they will only be successful in limited circumstances.

Intestacy

If a person dies intestate (that is without a Will) a statutory scheme applies in relation to the distribution of their assets which lists relatives in order of their entitlement. Stepchildren are not included. Therefore, a stepchild who has not been adopted by a stepparent will not be entitled to anything if the stepparent dies without a Will.

Where a stepparent has adopted a stepchild, the stepchild will have the same entitlements as a biological child. However, they will not inherit from the other biological parent unless specifically named in the Will. Whereas, if a parenting order is granted through the Family Court, the child will not inherit automatically from the stepparent and will retain the automatic right of inheritance from their biological parents. For this reason it is important to be clear of your intentions in your Will.

NEED MORE INFORMATION?

Department Human Services – Child Support
www.humanservices.gov.au

Family Law Courts
www.familycourt.gov.au

Family Relationships Online
www.familyrelationships.gov.au

For referrals to a Family Lawyer, contact the Law Institute in your State or Territory.

Please note that information sheets are advisory only and do not constitute legal advice. We strongly recommend that you obtain independent legal advice, should you have any specific queries.