

STEP-PARENTS

A GUIDE TO YOUR RIGHTS AND
RESPONSIBILITIES AS A STEP-PARENT



Am I a step-parent?

The *Family Law Act 1975* (Cth) defines a step-parent as a person who:

- a) is not a parent of the child; and
- b) is, or has been, married to or a de facto partner of, a parent of the child; and
- c) 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.

Parental Rights

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.

In accordance with the Family Law Act 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 religion, medical decisions, education, or name changes. Parents are responsible for the care of their children until they reach the age of 18.

The presumption of **equal shared parental responsibility** continues even after a marriage or relationship breakdown and it can only be changed by a court order, where in certain 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. If an application for sole parental responsibility is made, the court must consider the best interests of the child.

In the event of the death of a parent, parental responsibility passes automatically to the surviving biological parent; not to a surviving step-parent.

Though step-parents can and do carry out parenting roles, they do not automatically, as a matter of right, assume the legal parental responsibility of their step-child.

As a result, ordinarily step-parents are not legally able to:

- Authorise medical care;
- Sign school forms;
- Apply for passports;
- Obtain birth certificates.

An exception to this is where an emergency medical situation arises and neither biological parent is available to provide consent to an operation, a step-parent **may be** consulted to provide consent.

Medicare Card

Having your step-children listed on your Medicare card may help when taking them to the doctor and will minimise any out of pocket expenses.

To have your step-child added to your Medicare card, visit www.humanservices.gov.au and complete an “**Application to copy or transfer from one Medicare card to another**” form. When submitting the form, you will need to provide documents which show your relationship with the child, such as a copy of parenting orders. The form also requires the original cardholder’s signature. If the other parent does not consent, a court order can be sought from the family court.

Once a child reaches the age of 15 they can apply for their own Medicare card.

How to get Parental Rights

If you are a step-parent and you want to get parental rights either during a relationship with a biological parent or after separation, there are a few of options available:

Adoption – permanently transfers all the legal parenting rights and responsibilities from the child’s birth parent(s) to the adoptive parent(s).

Parenting Orders – a set of orders made by a court about parenting arrangements for children.

Legal Guardianship – an order giving a person the power to make decisions about

things like accommodation and health care on behalf of another person.

Adoption

Adoption of a step-child is the legal process for you to become the permanent adoptive parent of your step-child. It legally and permanently transfers all rights and responsibilities for your step-child from one of their birth parents (and their family) to you (and your family).

Adoption in Australia is made at the state government level, and each state has their own legislation and criteria. While the processes and criteria in each state are similar, they are not the same. You should seek independent legal advice in your State or Territory if you wish to pursue this option.

Before making an application for an adoption order, it is important to obtain permission (referred to as leave) from the Family Court, otherwise difficulties could arise whereby the non-custodial parent will continue to have rights under the Family Law Act.

Generally, adoption by a step-parent is only considered in **exceptional circumstances**, such as when a 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.

The courts will only grant an adoption order where parenting orders are not sufficient to protect the welfare of a child.

Parenting Orders

Under the Family Law Act step-parents are eligible to apply for parenting orders 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;
- Which school the child attends;
- How much time the child spends with each parent

- Parental responsibility;
- How the parents communicate with the child
- Change of name – i.e. to surname of step-parent;
- Special occasions such as Christmas and birthdays.

Before making a parenting order the court will consider 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, such as geographical locations of parents;
- 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 makes an order giving a step-parent parental responsibility, this effectively gives the step-parent all the responsibilities of the biological parent.

If an order giving a step-parent parental responsibility is not made, the court can still make specific orders dealing with the rights of a step-parent, such as:

- The step-parent be permitted to obtain all school notices, reports, and any other correspondence ordinarily provided to parents;
- The step-parent is authorised to attend changeover on behalf of the biological parent;
- The step-parents and parents keep each other informed with respect to any illness, significant injury or medical treatment obtained for the child;
- The step-parent is authorised to obtain all information available in relation to the child's health and medical issues, including listing the child on their Medicare card;
- Special occasions, such as step-parent's or siblings birthdays;
- Change of name.

It is also possible for the court to make an order enabling a step-parent to spend time and communicate with a child following separation from that child's biological parent.

Legal Guardianship

A legal guardian is a person appointed by the court to care for a child's personal needs, including shelter, education, and medical care. A legal guardian is not a parent. Unlike in an adoption, the parents retain their rights—and their financial responsibilities for the child.

An order for guardianship may be made by the court which will consider the child's needs and circumstances in determining whether an order should be made.

Alternatively, a step-parent 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.

Child Support

Only a court can make an order for a step-parent to make child support payments if it is

determined that it is proper for the step-parent to have that duty.

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

In determining whether it is proper for a step-parent to maintain a child, the court will consider:

- 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 step-parent and biological parent;
- The relationship between the step-parent 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 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 when determining an appropriate amount of child support to be paid by a step-parent.

Like biological parent separation, the responsibility to maintain a step-child exists after the relationship ends and regardless of whether the separated step-parent has contact with the child.

Child Support Assessments

The Department of Human Services cannot order a step-parent to pay child support.

When an application is made for child support, a formula is used which considers the combined income of the biological parents and the care arrangements of the child. Step-parents' incomes are not taken into account.

A step-parent does not have a legal duty to provide financial support to a step-child. 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 step-child, 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 step-parent is required to support the child.

For more information on child support visit <https://guides.dss.gov.au/child-support-guide>.

Custody Rights

If a biological parent dies, a step-parent is eligible to make an application under the Family Law Act seeking an order to spend time and communicate with a child or to have custody of the child. 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.

The last surviving biological parent may wish to ensure that a step-parent 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 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

If a person dies intestate (without a Will) a legal scheme applies in relation to the distribution of their assets to their remaining relatives. Unlike biological children, step-children do not automatically have a right to inherit anything from the estate unless they are named specifically in the Will.

However, a step-child who has been adopted will have the same entitlements

under the legislative schemes as biological children.

For this reason it is important to be clear of your intentions in your Will. You should seek independent legal advice if you wish to update or make a Will to include your step-children.

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.