

# Stepparents' Rights and Responsibilities in Australia\*



## Who has parental responsibility?

Parents are the legal guardians of their children and are responsible for their care until the age of 18 years.

The *Family Law Act 1975* emphasises that parents have equal parental responsibility for making decisions about major long-term issues for their children, such as children's education, health issues and medical treatment, religion and so on.

Both parents equally share these duties and responsibilities, even after separation, divorce or re-marriage. The parental responsibilities can only be changed by a court order. In the event of the death of a parent, parental responsibility passes to the surviving natural parent, not automatically to the surviving stepparent.

Though stepparents can and do carry out parenting roles, they do not automatically, as a matter of right, assume legal parental responsibility. As a

result, the stepparent is not legally able to authorise medical care, sign school or permissions forms, apply for passports or obtain birth certificates for the step children.

## Can I acquire parental responsibility?

Adoption is one of the ways for a stepparent to acquire parental responsibilities and rights towards a step child. This option can be considered by step-parents in certain exceptional circumstances for example when the natural parent is deceased or not actively involved in their children's lives, or it can be shown to be in the best interests of the child. However, careful thought must be given before you decide to proceed with an adoption as it can be a lengthy and difficult process.

A Parenting Order or a Consent Order from the Family Court may be an alternative option to adoption. Stepparents and other carers may apply to the Family Court of Australia for a

## Am I a stepparent?

*Under the Family Law Act 1975 (Cth) a 'stepparent' in relation to a child, is interpreted as a person who:*

- is not a parent of the child; and
- 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.

The Family Law Act changed on 1 March 2009 to include same sex couples in the definition of de factos.



parenting order, as 'other people significant to the care, welfare and development' of the child.

A parenting order may deal with one or more of the following:

- who the child will live with
- how much time the child will spend with each parent and with other people, such as grandparents
- the allocation of parental responsibility
- how the child will communicate with a parent they do not live with, or other people
- any other aspect of the care, welfare or development of the child.

However as with adoption the Family Court assumes in the majority of cases that it is in the best interests of children for both of their parents to share parental responsibility for them. As such parenting orders may only be granted to a stepparent if there are special or extenuating circumstances.

Before you decide on either of these options, it's a good idea to get legal advice about the best choice for your family.

## Can a stepparent be a legal guardian?

The Guardianship Tribunal [[www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)] or the NSW Supreme Court (most if not all states have similar legislation) may make an

order for guardianship upon receiving a stepparent's application. The Tribunal may not make an order, however, for a child less than 16 years old - either adoption or parenting orders may be available.

For children 16 years or older considerations of the child's needs and circumstances will be taken into account by the Tribunal in determining whether an order should be made. Alternatively, if both natural parents have passed away they may appoint the step-parent as guardian in the last surviving natural parent's Will.

Alternatively, a stepparent may obtain parenting orders from the Family Law Courts which would give them parental responsibility for their step children. That would effectively give them all the responsibilities of birth parents. However the Family Court will only make an order to this effect if it feels it is in the best interests of the child.

Laws might vary from state to state and readers will need to seek further information about the legislation applying in their state or territory.

## What may a stepparent be entitled to?

### Health Information

Children have the right to privacy of their health

information and to make their own decisions regarding their privacy where they are competent to do so. Parents and/or carers do not have automatic access to all health information relating to a child in their care.

In certain exceptional circumstances non-consensual disclosure of information is permissible to a parent including stepparent or foster parent, relative or sibling for example:

- where disclosure is reasonably believed to be necessary to lessen or prevent a serious and imminent threat to the life, health or safety of the individual or another person
- the individual cannot physically communicate consent to the disclosure
- the disclosure is made for compassionate reasons

If the stepparent has parenting orders from the Family Law Courts, he/she is entitled to the same information as a birth parent.

## When a child needs medical treatment

In the event a child is in an accident and neither biological parent is available to give



consent for an operation, medical authorities may in that instance consult the stepparent.

If the stepparent has parenting orders, he/she would have the right to give consent for the treatment.

## Can your stepchildren be listed on your Medicare card?

Having your step children listed on your Medicare card may help when taking your step child to the doctor and it will ensure that any out-of-pocket medical costs you pay for count towards your Medicare Safety Net registration.

To ensure your step children 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. If you're unable to prove your relationship, a document confirming the children are in your care is acceptable. Forms are available from your local Medicare office or at [www.medicareaustralia.gov.au](http://www.medicareaustralia.gov.au). Generally, a child cannot be removed from a parent's Medicare card without the



authority of the parent. However, where a child is in the primary care of a person other than a parent, they may be copied to that person's Medicare card when documentation supporting this is produced. On turning fifteen years of age, a young adult may copy or transfer themselves to a Medicare card of their own.

## Post-Separation Custody Rights

It is possible that a court may allow a stepparent to have custody of the child, or some form of visitation rights. In making this decision, however, the court is primarily concerned with what is in the best interests of the child.

Should the court consider that it is in their best interests of the child to live with or have contact with their separated stepparent, it will make orders to that effect.

## Change of name

A child's name can be changed to that of the stepparent, if desired. An adoption order is not required for this. With the permission of the non-custodial parent, you may apply to the Registry of Births, Deaths and Marriages in your state to

change the child's name on the Registration of Birth. The child's name can also be changed if there is no other surviving parent, or if the Family Court approves the proposed change of name.

For a full list of State and Territory Births, Deaths and Marriages Registries please visit <http://australia.gov.au/topics/law-and-justice/births-deaths-and-marriages-registries>

## What responsibilities for a child does a step-parent have?

### Post-separation child maintenance payments

A court is able to order a stepparent to make child support payments depending upon all the circumstances of the situation including the relationship existing between the step-parent and the child. This responsibility exists regardless of whether the separated step-parent has contact with the child.

### Step-parents, step-children and inheritance

A stepparent is free to distribute their estate to anyone they wish under their Will. There is no absolute requirement to include step-children in the Will. This said, the step children may be able to apply to the courts for a family provision order if in the court's opinion the step-parent

fails to give an adequate gift to the step child. This is made more likely if the step-parent has benefited from the estate of the previously deceased natural parent.

A step child who has not been adopted by a stepparent will not be entitled to anything if the stepparent dies intestate (that is, without a will).

## More information?

### Child Support Agency Australia [www.csa.gov.au](http://www.csa.gov.au)

CSA's online Community Services Directory provides information about organisations across Australia offering services to assist separated parents and families.

### Family Court of Australia [www.familycourt.gov.au](http://www.familycourt.gov.au)

Provides a step by step guide to the proceedings in the Family Court

### Family Law

Online [www.familylaw.gov.au](http://www.familylaw.gov.au)  
Provides family law and referral information and includes family law system information from both government agencies and government funded organisations.

### Law for You [www.law4u.com.au](http://www.law4u.com.au)

Plain English legal information for Australia

### Law Council of Australia [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

Information about different areas of Family Law including children and parenting, marriage and separation, and property dispute. Provides

assistance finding a family lawyer or arbitrator.

### National Association of Community Legal Centres [www.naclc.org.au](http://www.naclc.org.au)

Community legal centres (CLCs) are independent, non-profit community organisations that provide free legal services to the public.

### National Legal Aid [www.nla.aust.net.au](http://www.nla.aust.net.au)

Legal Aid provides a range of services to people who need advice, assistance and representation, and who qualify for legal aid.

### Family Relationships Online <http://www.familyrelationships.gov.au>

Provides information to key changes to the Family Law System

\* Please note that information sheets are advisory only and do not constitute legal advice nor are they law.

Stepfamilies Australia gratefully acknowledges and thanks Emil Ford & Co – Lawyers, Sydney [www.emilford.com.au](http://www.emilford.com.au) and Family Youth & Children's Law Services, Victoria Legal Aid [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) for their assistance compiling this information.



## Stepfamilies Australia

Strengthening Stepfamilies

[www.stepfamily.org.au](http://www.stepfamily.org.au)

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## State Branches

### ACT

Relationships Australia  
Canberra & Region  
(02) 6122 7123  
[www.relationships.com.au](http://www.relationships.com.au)

### NSW

Interrelate Family Centres  
(02) 4016 0505  
[www.interrelate.org.au](http://www.interrelate.org.au)

### NT

Relationships Australia NT  
(08)8923 4999

[www.relationships.com.au](http://www.relationships.com.au)

### QLD

Lifeline Community Care Qld  
(07) 3250 1891  
[www.lccq.org.au](http://www.lccq.org.au)

### SA

Relationships Australia SA  
(08) 8245 8130  
[www.rasa.org.au](http://www.rasa.org.au)

### TAS

Positive Solutions (Mediation and  
Counselling)  
(03) 6223 5612  
[www.positivesolutions.com.au](http://www.positivesolutions.com.au)

### WA

Anglicare WA  
(08) 9263 2092  
[www.anglicarewa.org.au](http://www.anglicarewa.org.au)