

Step-parents' Rights and Responsibilities

General standing of a step-parent

As a general rule, no legal relationship exists between a step-parent and their partner's children. As a result, the step-parent is not able to authorise medical care or sign school forms for the children. Adoption is usually the only way to create a relationship which gives the step-parent the rights and responsibilities of a natural parent. It is a complicated and somewhat lengthy process; many pros and cons must first be considered.

Legally speaking, who is a step-parent?

Many Australian laws such as the Family Law Act include de facto partners within the definition of "step-parent". Therefore, marriage is not a prerequisite to being a step-parent.

What may a step-parent be entitled to?

Health Information

An organisation (such as a hospital) that provides a health service to a child may disclose health information about the child to a step-parent under certain circumstances. Essentially, the child must be physically incapable of consenting to the disclosure of the information, the disclosure must be necessary to provide appropriate care of the child, and it must not be against any wish expressed by the child at any time.

Post-Separation Custody Rights

It is possible that a court may allow a step-parent 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, so no rights are guaranteed.

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

Post-Separation Child Maintenance Payments

A court is able to order a step-parent to make child support payments depending upon all the circumstances of the situation such as the relationship existing between the step-parent and the child.

Can a step-parent be a legal guardian?

The Guardianship Tribunal or the NSW Supreme Court may make an order for guardianship upon receiving a step-parent's application. The Tribunal may not make an order, however, for a child less than 16 years old. 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.

Step-parents, Step-children and Inheritance

A step-parent 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 step-parent will not be entitled to anything if the step-parent dies intestate (that is, without a will).

Step-parents and Adoption

The process of adoption is the only way for step-parents to acquire the same legal rights as the birth parents of a child, and has the benefit of uniting the family in a legal sense.

Effect of adoption

If a step-parent adopts their partner's child, they are given the same parental responsibility (as in all the duties, powers, responsibilities and authority which, by law, parents have in relation to children) as the child's natural parents.

Who may adopt?

In order to adopt a step-child, the step-parent must be either married to the child's natural parent, or must have been in a de facto relationship with the natural parent for two or more years. The Act does not recognise same sex couples as capable of being in a de facto relationship.

What are the possible disadvantages of adoption?

Following a divorce, the adoptive parent retains all the responsibilities of a biological parent, including child support. This may be difficult for an adoptive parent who believed that these parental responsibilities would cease upon divorce.

How to adopt?

Inquiries as to your eligibility and suitability for adoption should be made with a legal practitioner. The process of making an application to the court for an Adoption Order may include counselling with the child to ensure they are giving a valid consent and seeking the consent of the other natural parent of the child to the adoption. The precise requirements and process may change depending upon factors such as the age of the stepchild to be adopted.

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