



Step Parent Adoption

Introduction

Adoption is a complex procedure with far reaching effects. It permanently changes the legal identity and family status of a child. Adoption is primarily designed to provide a clear legal position and status within a family to a child who would not otherwise have these advantages.

In most circumstances parenting orders though the Family Court are the appropriate means of providing the child with security and stability. This is because the child can be provided with status within a family without distorting relationships as occurs with adoption.

Adoptions in Tasmania are guided by the Adoption Act, 1988 and Adoption Regulations, 2006.

Adoption by a step parent

In Tasmania, the Magistrates Court cannot make an order in favour of a step parent unless it is satisfied that:

- An order for custody or guardianship would not make adequate provision for the welfare and interests of the child
- An adoption order would better serve the welfare and interests of the child
- that there are special circumstances to warrant the making of an adoption order

Special circumstances usually relate to situations where there is 'no' man as defined under adoption legislation whose consent to the adoption is required.

Other eligibility criteria

The applicant needs to be married to or in a registered relationship with the child's parent for at least three years. The period of three years can include a period in which the two persons have resided together in a stable continuous relationship immediately before their marriage or registration of their deed of relationship.

The applicant must be of good character and satisfy requirements in relation to criminal offences.

Consents to adoption

The written consent of the mother to the child's adoption by the step parent is always required.

The consent of the biological father is required in the case of children of a previous marriage or when the father was not married to the mother but has legally established his paternity.

Paternity is legally established in different ways including being named on the child's birth certificate or through a child support or maintenance order.

Views of children involved

The formal consent of a child is not required by the legislation, however, the views and wishes of the child according to their age and understanding must be ascertained and considered. In all cases the child must be counselled about the meaning and effect of the proposed adoption and must be given an opportunity to express their feelings. These views must be made known to the court and the court cannot make an order unless these views and wishes have been taken into account.

Options other than adoption

- Change of surname - In some circumstances an informal change of name might be all that is desired by parents. In some instances, a change in surname can occur through Births, Deaths and Marriages. Please contact Births, Deaths and Marriages or check their website for information and eligibility criteria.
- Family Court Orders - Quite often parenting orders through the family court can meet the needs of a child without the need for adoption. Please contact the Family Court for advice.

Leave from Family Court

If the Adoption and Permanency Service is able to accept a step parent application in relation to a child whose paternity has been legally established the prospective adoptive applicants are referred to the Family Court to seek leave to commence adoption proceedings. If an adoption order is made without such leave, this does not terminate the non custodial parent's right to seek access and custody.

Overage step parent adoptions

A Court can make an order in respect of a person aged over 18 years in certain circumstances. The 'child' must have been brought up, educated and maintained by the prospective adoptive parent as their child. A substantial period of dependence needs to be demonstrated before the age of 18. Legal advice suggests that this period needs to be at least nine years. A person who is or has been married may not be adopted.

Obtaining more information

If you would like to speak with someone about your situation please contact the Adoptions and Permanency Service on (03) 6166 0422 or adoption.service@dhhs.tas.gov.au.



