

# Stepchildren and adoption

Information for  
parents and step-parents

## Thinking about adoption?

*Adoption agencies receive many enquiries each year about step-parent adoptions. Many people who have the care and responsibility of a stepchild want to formalise their situation and give it legal status. They want to become the legal parent of their stepchild and make the family one legal unit. They want to give security to their relationship and to clarify their rights, responsibilities and commitment in raising the child. They may be thinking that adoption is an ideal way to achieve this.*

This booklet explains the legal situation in Victoria if you are thinking about adoption. As parents of a ‘new’ or ‘blended’ family’ that brings together adults and children from other families, you are usually concerned that everyone feels as if they belong to one family unit. You also want other people to recognise you as a ‘real’ family. It can take time for this to happen.

Adjusting to being a step-family is often not easy. Some of the difficulties you may encounter include your children grieving for the familiar life and family members they have lost. They may play you off against each other and they may not accept the new step-parent.

Later, difficulties may arise in working through matters with the non-custodial parent, including the level or type of contact and the financial support provided to support the child. You may have had other children with your new partner and are concerned that the child from your previous relationship feels different in your family. Your children might have different surnames, which can make it hard for them at school having to explain the difference.

## Implication of adoption

At first glance, adoption may appear to have immediate advantages for your child and your family, for example:

- Your family being recognised by law.
- All family members having the same surname.
- The child sharing rights of inheritance with any other children of your new marriage or de facto relationship.
- Legal links with the child's non-custodial birth family being cut. This might be seen as helping alleviate some of the difficulties that you may be experiencing with the non custodial parent.
- Feeling that the child will grow closer to the step-parent if legal ties are severed with the other parent, thus weakening the ties with the child's former family.
- Hoping that adoption will make you into a 'real' family and that this will help with any problems adjusting to the stepfamily.

In the past, stepchildren were often adopted by their step-parent. The rising incidence of divorce, remarriage and new relationships, has resulted in an increase in the number of blended families. During the 1970s it became common for adoption to be used as a means of officially including children into a parent's new marriage.

Over time, concern has been expressed about the appropriateness of using adoption to legally formalise existing family relationships. Many stepchildren who had been adopted experienced grief about the loss of half of their birth background, as well as confusion about their identity.

These drawbacks might not be seen at first as they emerge over time. The British Agencies for Adoption and Fostering<sup>1</sup> outline some of these issues as follows:

- Adoption permanently severs the legal relationship between the child and relatives who are, or could be, significant to the child.
- It can be used as a means of excluding the child's extended family who would no longer have a legal relationship with the child.
- Adoption may inhibit the ability of family members to clarify their legal relationships and it may also inhibit the ability of the child to clarify their biological background.
- Adoption can make children feel that they have to choose between different adults who are all important to them. This is painful at the time and can lead to problems as they grow older.
- Children who have been adopted feel some sense of loss because the original parent 'gave them up' to someone else. And they may feel a sense of being cut off from their past.
- An adopted child may blame the parent or step-parent as they sometimes idealise the 'lost' parent in their absence, remembering only the good things about the relationship. Alternatively, children may feel rejected and that it was their fault the other parent went away. Feelings like these can undermine self-confidence and hinder a child's development.
- There may also be practical disadvantages.

<sup>1</sup> Stepchildren and adoption: information for parents and step-parents, British Agencies for Adoption & Fostering, 2nd Edition, London, 1996.

An adopted child loses any rights to maintenance and inheritance from the other non-custodial parent and that parent's family, such as grandparents. This may not seem important at the time of adoption, but could matter very much if financial problems were to arise later or if the custodial parent and the step-parent died while the child was still dependent.

In recent years, we have become aware of how important it is for a child to know about their background. You may need to reflect on whether a child should lose their legal tie, relationship and identity with their other family just because their parents' relationship did not survive.

In adoption in Victoria today, it is expected that children will know about their origins and that although the legal ties may be severed, the child has some contact with the other parent and their relatives. Openness, which is knowledge about and even a continued involvement with their birth family, is very important for children.

## Adoption laws

The *Adoption Act 1984* is based on extensive review of adoption legalisation, practice and procedures. It introduced major changes affecting adoptions by relatives and step-parents. There have also been amendments to the Family Law Act. All of these have changed the options for families who are seeking in some way to 'legalise' existing relationships in their family.

In introducing the Adoption (Amendment) Bill, in the second reading speech in the legislative Council on the 18 August 1987, the Minister for Community Services said the following in relation to the adoption of children by relatives including step-parents:

*'The adoption of children by relatives or step-parents has traditionally been seen in Victoria as a means of recognising new family formations. The Government's view has been that family law should be used as the most appropriate means for legal recognition of the parent-child relationship in parent and step-parent situations. Guardianship and Custody provisions are considered appropriate in all but rare cases. Adoption of children by relatives or step-parents will be available only where guardianship and custody orders are inadequate to define the rights and responsibilities of a relative or step-parent, and inadequate to provide reasonable legal security for the child and those providing parenting for the child.'*

It is now expected that orders through the Family Court should be the main option in cases where adoption orders would have been made in the past. This reflects the consideration that in all but a few cases, the welfare and interests of a child raised by a relative or stepparent are better met by a Family Court order than by an adoption order.

The Family Court may grant parenting orders, which include arrangements about where and with whom a child lives and has contact with. The Family Court preserves the child's legal ties to both birth parents and their families while acknowledging the child's new situation.

What this means is that stepfamilies should seriously consider the Family Court as an alternative to adoption.

# What are the differences between adoption and Family Court Orders?

The *Family Law Reform Act 1995* commenced operation in 1996 and does away with the old terminology of ‘guardianship, custody and access’. It introduced the terms ‘parenting orders’ and “parental responsibility”. The *Family Law Act* was amended in 2006 to strengthen the concept of shared parental responsibility, and now uses the terms “living with”, “spending time with”, and “communicating with” instead of residence and contact.

Major differences between an adoption order and Family Court parenting orders are:

## **Varying orders**

An adoption order is less likely to be subject to variation by applications made to the County Court.

## **Order expires**

A parenting order expires when the child turns 18. At the age of 18, a child may, however, apply to be adopted without the need for any other consent. An adoption order does not expire when the child turns 18.

## **Change of name**

After a child is adopted, a new Registration of Birth is provided which reflects the adoptive situation. With a Family Court Order, the child’s Registration of Birth is not altered.

A child's name can be changed to that of the step-parent, 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 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.

## **Inheritance rights**

Once an adoption order is granted, the non-custodial parent ceases to be the child's legal parent and the adoptive parent becomes the child's legal parent. This means that the child will not inherit from their other parent unless specifically named in the will. If a parenting order is granted through the Family Court, the child will not inherit automatically from the step-parent and will retain the automatic right of inheritance from their other parent. For this reason it is important to name the child in your will.

## **Extended family**

In step-parent situations, an adoption order severs the legal relationship between the non-custodial parent's extended family and the child, and grants rights to the applicant's extended family. With parenting orders, the extended family's legal rights are unaltered.

## **Access**

The *Adoption Act 1984* provides for access arrangements with the other parent and/or their family or others, to be legally formalised in adoption orders.

## **Child's sense of security**

An adoption order may enhance a child's sense of belonging in the stepfamily at the expense of severing ties with the non-custodial family. The legal security provided by parenting orders is usually sufficient to help the child feel secure in the new family arrangement. An adoption order in itself will not necessarily enhance a child's sense of belonging. A key factor is the attitudes of the adults involved. If you decide to proceed with a parenting order, an application to the Family Court can be arranged through your solicitor. You do not need to have any further contact with the adoption agency.

## Still thinking about adoption?

It is important for you to know that the Court can only make an order for the adoption of a stepchild when:

1. An Adoption Order would make better provision than a Family Court Order for the welfare and interests of the child.

This is why it is important for you to explore the Family Court as an option.

2. Exceptional circumstances exist which warrant the making of an adoption order. An example of this may be where the non-custodial parent is deceased or has been totally absent from the child's life for many years. Usually a combination of major circumstances is required to meet this requirement.

You can speak to your adoption agency to find out whether your application is likely to meet these provisions of the Adoption Act.

### **Making an adoption application**

You will need to have been married or living in a stable de facto relationship for a minimum of two years to be considered suitable to adopt.

Where there is no marriage certificate to provide a date for the commencement of your relationship, you will have to provide documentary evidence about the length of the relationship. This may include the date of establishing joint bank accounts, joint ownership of property or application for a home or other significant loans, or arrangements that name each party as beneficiary such as health insurance, wills, superannuation and so on.

## **How to apply**

If you decide on adoption and the above criteria have been met, your solicitor will be able to explain the process to you.

## **Contact with the adoption agency**

Once the necessary paperwork has been prepared by your solicitor, the adoption agency will be contacted. The adoption agency is required to provide information about your family to the Court. It will, therefore, be necessary for you and your family to be interviewed by a worker from the adoption agency. Your child's understanding and wishes about adoption will also be ascertained and their views are considered as the decision about adoption will affect their whole life. The other parent will also need to be interviewed and their wishes obtained.

Depending on their age and understanding, a child must receive counselling and information from an approved counsellor regarding the effects of adoption. In addition, the counsellor will be required to provide a report to court prior to the adoption being granted.

The agency worker will need to know about your family, including your background and your current relationships as well as the situation regarding the child's other parent and family, in order to report to Court.

The agency worker will also have to provide information to the Court including any exceptional circumstances which may warrant the making of an adoption order, as well as reasons why an adoption order would or would not make better provision than a parenting order for the welfare of the child.

## **Consents to adoption required**

In all situations, the custodial parent is required to consent to the adoption.

Where the partner of the custodial parent is seeking to adopt the child, it is obligatory for the adoption agency to speak with the other birth parent and to obtain his or her written consent to the adoption. In the case of a step-father wishing to adopt, the child's birth father is required to give consent to the adoption if his name is on the birth certificate, or if he has established paternity in a legally recognised way.

The non-custodial parent's wishes regarding access will also be taken into account and included in the adoption order.

Consents to adoption are usually given in the County Court.

## **Obtaining leave from the Family Court**

If you do wish to pursue adoption, you need to think about obtaining Leave from the Family Court. The Family Law Act makes provision for the Family Court to grant leave for adoption proceedings when it believes it is in the child's best interests

If such leave is not granted from the Family Court, there can be significant consequences whereby rights under the Family Law Act continue to exist irrespective of the adoption order. This may mean, for example, that after an adoption order is granted, the Family Court would still have jurisdiction to make an access order in favour of the non-custodial family. You should discuss this further with your solicitor.

## Granting an Adoption Order

Once all the necessary consents are given and the documents are lodged at Court, a hearing date will be set. Your family, including the child, will be asked to attend the Court hearing where the Judge will make a decision about adoption. If the Judge decides adoption is in the best interests of your child, he or she will make an Adoption Order.

## Getting further advice

After reading this leaflet, you may want someone to explain the procedure in more detail. It is suggested that you contact:

- Your regional adoption agency.
- A solicitor experienced in family matters including step-parent adoption.

### Hume Region

163 Welsford Street  
Shepparton 3630  
Phone: (03) 58 321 500  
Fax: (03) 58 311 851

### Barwon South Western Region

2nd Floor, Cnr Fenwick  
& Little Malop Streets,  
Geelong 3220  
Phone: (03) 52 264 540  
Fax: (03) 52 264 550

### North & West Metropolitan Region

4 Hartington Street  
Glenroy 3046  
Phone: 9304 0799  
Fax: 9300 3872

## **Eastern Metropolitan Region**

883 Whitehorse Road  
Box Hill 3128  
Phone: 9843 6413  
Fax: 9843 6400

## **Southern Metropolitan Region**

### **Connections**

274 High Street  
Windsor 3181  
Phone: 9521 5666  
Fax: 9521 5220

## **North & West Region**

### **Anglicare Western**

41 Somerville Road  
Yarraville 3013  
Phone: 9396 7400  
Fax: 9689 6110

## **Gippsland Region**

### **Anglicare Gippsland**

65 Church Street  
Morwell 3840  
Phone: (03) 51 339 998  
Fax: (03) 51 339 601

## **Loddon Mallee Region**

### **Loddon Mallee Permanent Care**

#### **St Lukes Anglicare**

175-187 Hargreaves Street,  
Bendigo 3550  
Phone: (03) 54 401 100  
Fax: (03) 54 422 316

## **Grampians Region**

### **Permanent Care Team**

#### **Child and Family Services Ballarat Inc**

Ludbrook House  
115 Lydiard Street North  
Ballarat 3350  
Phone: (03) 53 373 333  
Fax: (03) 53 321 724

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pdf format on the Internet at  
[www.dhs.vic.gov.au/permanentcare](http://www.dhs.vic.gov.au/permanentcare)

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