



Section: Family & Children's Services (FACS) Adoption Unit
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STEP ADOPTION

In regard to Step adoptions the following applies:

The *Adoption of Children Act* reflects the view that the Commonwealth *Family Law Act* is the most appropriate means of providing legal recognition to parent-child relationships in new family relationships, and that in all but exceptional circumstances; a residency order (formerly guardianship or custody) through the Family Court is more appropriate than adoption.

Most parents decide that a residency order from the Family Court is the best way of incorporating children into new family relationships, and that such an order best meets the current and future needs of their children.

As adoption permanently changes legal relationships between a child and its biological and adoptive parents, it is essential to consider the suitability of arrangements other than adoption prior to lodging an adoption application.

Adoption of your spouse's child *may* only be approved if a Court is satisfied that

- A Residency order under the Family Law Act would not make adequate provision for the welfare and interests of the child,
- Adoption would make better provision for the welfare and interests of the child than such an order, *and*
- Exceptional circumstances make adoption desirable.

The existence of 'exceptional circumstances' is determined by the Court, and *may* include (but is not limited to)

- The level of involvement between the child and the non-resident parent,
- The child's relationship with the extended family,
- Factors negatively affecting the relationship between the child and its birth parents,
- Factors relating to security of the child, and
- Inheritance rights of the child.

Attached are:

- A table indicating some of the differences between adoption and residency orders (Attachment A), and
- Information on the stages involved in the adoption of your spouse's child (Attachment B)

Please note

- Any child over 12 years of age, must consent to his/her own adoption
- You must have been married 2 years at the time the adoption order is finalised
- You or your spouse must be an Australian citizen

- You, your spouse and the children must be resident in the NT
- Consent must be given by biological father if on birth certificate

In addition, ideally, you will be aged over 25 and not more than 40 years older than the child.

Please seek independent legal advice with a solicitor who specialises in Family Law to assess your situation prior to proceeding further.

For further information please contact the FACS Adoption Unit.

Attachment A - Some differences between adoption and residency orders (formerly guardianship and custody orders)

	Adoption	Residency - long term decisions (Formerly Guardianship)	Residency - day to day decisions (Formerly custody)
Degree of Responsibility with regard to the child	Care and custody and long term welfare	Care and custody and long term welfare	Daily care and control
Permanence / Variability Of order	Permanent	Can be varied or challenged, expires when child turns 18	Can be varied or challenged, expires when child turns 18
Child's birth registration	Amended	Not usually amended	Not usually amended
Change of child's name	Amended	Permitted if both birth parents approve	Permitted if both birth parents approve
Financial support from non-custodial parent	Ceases on granting of order	Not changed	Not changed
Legally formalised access arrangements	No	Order may include	Order may include
Legal parents	Residential birth parent and adoptive parent	Birth parents	Birth parents
Legal relationships	With residential birth parent (and his/her family), and adoptive parent (and his/her family)	With birth parents and birth parents' families	With birth parents and birth parents' families
Legal rights of adoptive parent's family's	Established	<i>Not applicable</i>	<i>Not applicable</i>
Legal rights of non-custodial parent and non-custodial parent's family	Severed	Maintained	Maintained
Automatic inheritance from birth family	No	Yes	Yes

Attachment B - Stages in the adoption of your spouse's child(ren).

Stage 1

The Family Law Act provides several avenues for the legal recognition of parent-child relationships in new family relationships, including a provision regarding adoption by stepparents, which may be relevant to you. Please seek independent legal advice as to the options available in your circumstances and whether you need to obtain a Family Court order granting you leave for adoption proceedings to be commenced. When making appointments, state that the issue is a family law matter concerning parent-child relationships and that you require a lawyer who practices in the area of family law. Your lawyer should advise you as to the effects of Sections 60G, 61E and 61C of the Family Law Act, with particular reference to your circumstances, bearing in mind the decisions in *D'Arcy and Lay*; Clark (1994) FLC 92-466 or (1994) 116 FLR 72 and *Fogwell ats Ashton* (1993) FLC 92-429.

Options for obtaining independent legal advice are:

- The solicitor of your choice
- Northern Territory Legal Aid Commission - 8999 3000 (Darwin), 8951 5377 (Alice Springs), 8973 8704 (Katherine), 1800 019 343 (Free call)
- Darwin Community Legal Service - 8941 3394
- North Australian Aboriginal Legal Aid Service (NAALAS) - 8981 5266 (Darwin)
- Central Australian Aboriginal Legal Aid Service (CAALAS) - 8952 2933
- Family court Family Law Hwlpline 1902283534

Stage 2

If you decide to pursue an adoption order after obtaining legal advice and/or a Family Court order, please contact the Family & Children's Services Adoption Unit and arrange an interview to discuss your exceptional circumstances. Please bring to the interview the Family Court order granting you leave to file an Application for Adoption, or a statement from your solicitor indicating why the Family Law Act does not apply in your situation.

Stage 3

Ascertain the willingness of the child's other biological parent to consent to the adoption (if he/she is shown on the child's birth certificate). It is your responsibility to locate your spouse's former partner and ascertain his/her willingness to consent. Once you have ascertained his/her willingness to consent, notify the Adoption his/her willingness.

Stage 4

Other biological parent

- After he/she has been located and indicated a willingness to consent to the adoption, he/she must receive counselling from an approved person to ensure that his/her consent is informed and freely given. The Department will provide this.
- He/she signs consent a minimum of seven days after counselling has occurred.

Applicant

- Contact the Adoption Unit and request application forms. You will receive five forms - adoption application form, medical report form, reference form, life story format, authority to release criminal history form (the cost of the criminal history check is to be met by you).
- Once you have returned the completed forms to the Adoption Unit and your criminal history has been checked and cleared, your assessment/home study will commence. This will usually be completed within 12 months.

Stage 5 The residential biological parent (your spouse) completes a consent form.

Stage 6 The Adoption Unit completes a report for the Local Court.

Stage 7 You initiate adoption proceedings in the Local Court.

Stage 8 The Local Court will determine whether or not to make an adoption order in your favour.