

Intrafamily adoption factsheet

Intrafamily adoption is the adoption of a person by a stepparent or close relative. The [Adoption Act 2000](#) NSW ('the Act') and the [Adoption Regulation 2015](#) NSW ('the Regulations') set out the requirements that step-parents and relatives must meet if they wish to adopt a child. Adoption applications are heard and determined by the NSW Supreme Court ('the Court').

The Act defines a step parent as a person who is not a birth parent, parent or adoptive parent of the particular person, and is married to, or the de facto partner of the particular person's birth parent or adoptive parent.

A relative is defined as a grandparent, aunt, uncle, brother or sister of the child whether the relationship is of the whole blood or half blood or by marriage, and whether or not the relationship depends on the adoption of a person.

Formally adopting a stepchild or close relative can be an emotional and overwhelming time for everyone involved. Intrafamily adoption is also a legal process, so it is important that you understand what the law says so that you can navigate through the system as smoothly as possible.

This factsheet provides an overview of the legal requirements and processes you need to know when thinking about intrafamily adoption in NSW.

This factsheet does not relate to the adoption of children from another country.

If after reading this factsheet and reviewing information on the website you are considering intrafamily adoption and have further questions contact NSW Department of Communities and Justice (DCJ) Open Adoption and Permanency Services on 02 9716 3003 or adoption.permanentcare@dcj.nsw.gov.au.

What does the law say?

When the court is deciding about the adoption of a child, the guiding principle is that the adoption must be in the child's best interests both in childhood and in later life, above any other alternative for the child's care. Other legal alternatives include care or parenting orders, which give parental responsibility for all or aspects of the child's care without the need for an adoption.

Who does the Act apply to?

The Act requires that the child being adopted permanently resides in NSW at the time the adoption application is filed.

The step-parent or relative/s making the application must permanently reside in NSW at the time that the application is filed.

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Who can be adopted?

A child can be adopted if they are:

- at least 5 years old for a step-parent adoption application
- Any age if the child has established a relationship of at least 2 years' duration with the relative
- less than 18 years old on the date the adoption application is made and the step parent has lived with the child and the child's birth or adoptive parent for a continuous period of not less than 2 years immediately before the application for the adoption order
- 18 years or older on the date the adoption application is made and are cared for, or were cared for as their child before turning 18, by the step- parent or relative/s making the application

Who can apply for an intrafamily adoption?

An application for an intrafamily adoption order may be made solely by one person or jointly by a couple, or by the child if they are over 18 years of age.

The Court must not make an adoption order in favour of a couple unless the couple have been living together for a continuous period of not less than 2 years immediately before the application for the adoption order.

The Court must not make an order in favour of a couple if one of them is a step parent unless the requirements noted above are met.

How to prepare an adoption application

If you are considering adopting a relative child or step-child, you can file an adoption application directly with the NSW Supreme Court.

You can contact Legal Aid on 1300 888 529 or a private solicitor to obtain advice and assistance to help you prepare your application and guide you through the process. The Law Society of NSW can provide names of lawyers in your region. Visit www.lawsociety.com.au or call 02 9926 0333

You can also contact the Supreme Court of NSW on 1300 679 272 or <https://supremecourt.nsw.gov.au/> for information about court procedures and relevant templates and forms.

Do you need a court report?

If the child you wish to adopt is under the age of 18 years, you are required to provide a written report to the Court concerning the proposed adoption.

The report must be prepared by an 'Independent Assessor'. A list of approved www.dcj.nsw.gov.au

Independent Assessors and information about current fees for a court report are available on the DCJ [website](#).

Additional travel costs may also be charged by the Independent Assessor if they must travel a long distance to undertake the work.

Who needs to give consent for a child's adoption?

The Court must not make an adoption order unless, in addition to the requirements noted above, consent has been given to the adoption by the appropriate persons. This may include the non-custodial parent (for step-parent adoption), both parents (for relative adoption), the child, or any person who has parental responsibility for the child. The consent of the parent/s or anyone with parental responsibility may not be required if:

- the Court waives this requirement
- in a joint step-parent application, if the person whose consent is required is the proposed adoptive parent
- the child, who is 12 or more years of age with sufficient maturity and understanding, gives sole consent to their adoption
- the child is 18 or more years of age.

Children 12 or more years of age must consent to their adoption. An exception for children aged 12 or more years but less than 18 years of age can be made, if it is established that they do not have the cognitive capacity, maturity or sufficient understanding to give an informed consent. Or if the child is not in a physical or mental condition to properly consider consent.

Witnessing consent to adopt a child

An independent person must witness the consent to adopt a child.

Only certain people, including an independent lawyer or registered adoption counsellor, can witness consent documents. See clause 81 of the [Adoption Regulation 2015](#) for all people who are qualified to witness a consent. Your solicitor will arrange a suitable witness according to the Act. No fees are payable to a person for witnessing a consent to adoption.

The consent documents are only valid when they are signed in front of an independent witness.

Mandatory Written Information

A person or child consenting to a child's adoption must be provided with the Mandatory Written Information (MWI) prior to giving their consent. A copy of this is available on the DCJ [website](#).

Registered Counselling

Adoption is a legal process where the legal rights and responsibilities for a child are transferred from the child's parent/s to the adoptive parent/s. Because of this, there is a requirement that a person or child consenting to an adoption must receive counselling from a counsellor with specific qualifications who is listed on a register of counsellors (often referred to as a Registered counselling). The purpose of the registered counselling is to ensure that the person consenting understands the legal and emotional effects of adoption on parents and children.

A person can give consent for an adoption 72 hours after receiving registered counselling, but not more than 30 days after.

Registered counsellors will charge for their services and this may include additional travel costs if they travel a long distance to undertake the work.

Your Independent Assessor can provide details of Registered Counsellors who undertake work for intrafamily and step parent adoption matters. For further information see the DCJ [website](#).

If you are unable to find a Registered Counsellor within a reasonable distance from the applicant or person requiring counselling, please contact Open Adoption and Permanency Services at adoption.permanentcare@dcj.nsw.gov.au

Adoption of a child of Aboriginal or Torres Strait Islander descent

When thinking about adoption for children of Aboriginal or Torres Strait Islander decent, connections to family, community and country need to be considered as a priority.

The Act requires that the person giving consent to the adoption of an Aboriginal or Torres Strait Islander child receives adoption counselling that considers Aboriginal and Torres Strait Islander customs and culture, and being cared for in accordance with that culture.

You can contact DCJ at adoption.permanentcare@dcj.nsw.gov.au to arrange for consultation with an approved counsellor. If the person giving consent refuses such counselling, DCJ must provide them with written information on Aboriginal or Torres Strait Islander customs and culture regarding adoption issues. They must sign an acknowledgment that they have read and understood the information.

Responsibilities of DCJ in intrafamily adoption

If a child is 12 or more years of age, and is giving sole consent to their own adoption, DCJ must give at least 14 days notice of the adoption application to the parent/s or person/s with parental responsibility whose consent would otherwise be needed (the relevant people).

You will need to provide DCJ Open Adoption and Permanency Services with the name and contact details of the relevant people to be informed. The [request form](#) for DCJ to give notice is available on our website and should be forwarded by email to DCJ adoption.permanentcare@dcj.nsw.gov.au after the child has formally given consent.

DCJ will advise you and the court when the notice has been provided to the relevant people. If DCJ has been unable to provide the notice they will provide the court with details of the attempts made. The court may dispense with the requirement to provide the notice in certain circumstances.

More information

For all information and resources references in this factsheet, please see: <https://dcj.nsw.gov.au/children-and-families/adoption/adopting-a-child/adopting-within-the-family.html>

Please note: DCJ is unable to provide legal advice on intrafamily adoption. It is the responsibility of the applicants to seek and obtain appropriate legal advice in the preparation of an adoption