

Intrafamily adoption factsheet

Intrafamily adoption is the adoption of a person by a step parent or close relative.

Formally adopting a step-child 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.

The NSW *Adoption Act 2000* (“the Act”) and the NSW *Adoption Regulation 2015* (“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.

This Factsheet provides an overview of the legal requirements and processes you need to know when thinking about intrafamily adoption in NSW. See [the Act](#) and [the Regulations](#) for all the legal requirements.

If after reading this factsheet and reviewing information on the website you are considering intrafamily adoption and have further questions contact FACS Adoption Services on 02 9716 3003 or adoption.permanentcare@community.nsw.gov.au.

What does the law say?

When the court is making a decision 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 generally relates to the adoption of a child who is present in NSW at the time the adoption application is filed.

The step-parent or relative/s making the application must live in, or be permanent residents of NSW.

There are some circumstances where the Court may make an exception. It is recommended you seek legal advice regarding any exceptions.

Who can be adopted?

A child can be adopted if they are:

- less than 18 years old on the date the adoption application is made
- 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
- a child under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

Who can apply for an intrafamily adoption?

The Act says:

1. The Court must not make an adoption order in favour of a step-parent unless:
 - the child is at least five years old
 - they have lived with the child and the child's birth or adoptive parent for a continuous period of at least two years immediately before the adoption application being made (this is not required if the child to be adopted is aged over 18)
 - consent has been given for the adoption by the appropriate persons, this may include the non-custodial parent, the child or any person who has parental responsibility for the child
 - the Court is satisfied that the adoption is clearly preferable in the best interests of the child over any other action that could be taken by law.
2. The Court must not make an adoption order in favour of a relative unless:
 - they are a grandparent, aunt, uncle, brother or sister of the child
 - they have had a stable and ongoing relationship with the child for at least two years
 - consent has been given for the adoption by the appropriate persons, this may include both parents, the child or any person who has parental responsibility for the child
 - the Court is satisfied that the adoption is clearly preferable in the best interests of the child over any other action that could be taken by law.

How to prepare an adoption application

If you are considering adopting a relative child or step-child, you can lodge 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 for information about court procedures 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 a 'Contracted Adoption Assessor'.

A list of Contracted Adoption Assessors and information about current fees for a court report are available on the FACS [Community Services website](#). If there is not a Contracted Adoption Assessor in your area contact the Adoption and Permanent Care Program on 02 9716 3003.

Additional travel costs may also be charged by the Contracted Adoption Assessor if they have to travel a long distance to undertake the work.

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

When you make an adoption application, the Act says you must have consent from parents and anyone with parental responsibility for the child. However exceptions to this can be made when:

- the Court waives this requirement
- in a joint 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 his or her 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 Regulations](#) 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, which are included on the FACS [Community Services website](#), are only valid when they are signed in front of an independent witness and when all other pre-requisites outlined in the Act and Regulations have been met.

Mandatory written information

A person or child consenting to a child's adoption must be provided with the Mandatory Written Information prior to giving their consent. A copy of this is available on the FACS [Community Services 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, the Regulations say that a person or child consenting to an adoption must have 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 72 hours after receiving registered counselling, but not more than 30 days after. If the parent giving consent is the birth mother of a newborn baby they must also wait until 5 days after the baby's birth to receive registered counselling.

Additional travel costs may also be charged by the registered counsellor if they have to travel a long distance to undertake the work.

Adoption of a child of Aboriginal or Torres Strait Islander descent

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

Because of this, 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 FACS Adoption Services on 02 9716 3003 to arrange for consultation with an approved counsellor.

If the person giving consent refuses such counselling, FACS 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 FACS in intrafamily adoption

If a child is 12 or more years of age, and is giving sole consent to their own adoption, FACS must give at least 14 days notice of the adoption application to the parent/s or person/s whose consent would otherwise be needed. In some situations, the Court can dispense with the giving of notice.

You will need to provide FACS Adoption Services with the name and contact details of the parent/s to be informed. The [request form](#) for FACS to give notice is available on the FACS Community Services website.

This form should be forwarded by email after the child has given consent to adoption.permanentcare@community.nsw.gov.au

More information

Supreme Court contact details

Supreme Court of New South Wales
Queen's Square
GPO Box 3
SYDNEY 2001
(or DX 829 SYDNEY)

Phone: 1300 679 272

Website: www.supremecourt.justice.nsw.gov.au/

Please note: FACS Adoption Services 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 application.

Other information you will need

All the information referred to in this fact sheet is available on the FACS Community Services website. Go to www.community.nsw.gov.au: Parents, carers & families > Fostering and adoption > Adoption > Want to adopt? > Adopting within the family.