

Appendix 2: Summary of legislation

Commonwealth

Immigration (Guardianship of Children) Act 1946

Marriage Act 1961

Family Law Reform Act 1996

New South Wales

Adoption of Children Act 1965

Adoption of Children Regulation 1995

Adoption Information Act 1990

Adoption Information Regulation 1996

Level of court

Supreme Court of New South Wales

Step-parent adoptions

Application may be made to the Supreme Court by a step-parent for formal adoption of a step-child. A social worker is appointed by the New South Wales Department of Community Services (DCS) to provide a written assessment of the case which is submitted with the application to court.

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents. These are only made in exceptional circumstances, that is, where a guardianship or custody order or other order made through the Family Court would not adequately provide for the interests and welfare of the child.

Non-relative adoptions

Eligibility requirements:

- married couple;
- de facto couple who have lived together for more than 3 years and the child has been living with the applicants for more than 2 years, or they are adopting a special needs child;
- single people if the Court can be satisfied that the needs of a particular child would be best met.

This system operates as a hierarchy. However, the paramount consideration is the interest and welfare of the child.

Arrangements may be made by DCS or approved non-government organisations such as Centacare Adoptions Services, Anglicare Adoption Services and Barnardos Australia.

Adoption of Indigenous children

According to the Aboriginal placement principle in the *Children (Care and Protection) Act 1987* (NSW), Indigenous children are placed with adoptive parents of a similar Indigenous background unless this does not appear to be in the best interests of the child.

Victoria

Adoption Act 1984

Adoption Regulations 1998

Adoption (Amendment) Act 1991

Disability Services and other Acts (Amendment) Act 1997

Level of court

Supreme Court and County Court

Step-parent adoptions

In all cases of placement with relatives, guardianship orders, or another order made through the Family Court, are the first consideration. A solicitor may prepare an application for formal adoption by a step-parent or other relative. The application must be notified to the Victoria Department of Human Services (DHS) or an approved non-government adoption agency for the preparation of an assessment report on the prospective adoptive parents. The report is submitted with the application to the County or Supreme Court.

An adoption order in favour of a relative or step-parent can only be made if exceptional circumstances exist, and an order from the Family Court would not make adequate provision for the welfare and interests of the child.

Approved non-government adoption agencies operating in Victoria include Copelen Child and Family Services, Anglicare Western, Anglicare Gippsland, Centacare Catholic Family Services, Westate Permanent Care, Child and Family Services Ballarat.

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when an order from the Family Court will not adequately provide for the interests and welfare of the child.

Non-relative adoptions

Eligibility requirements:

- married/de facto couple of more than 2 years;
- single person in certain circumstances.

Adoptions are arranged by DHS or an approved non-government organisation (see step-parent adoptions).

Adoption of Indigenous children

The Adoption Act recognises the principles of Aboriginal self-management and self-determination, and that adoption is not available in Aboriginal child care arrangements. Restrictive eligibility criteria are in place for selection of adoptive parents for Indigenous children. The birth parent(s) of an Indigenous child can place the condition on adoption that the child go to Indigenous adoptive parents, or that a right of access be granted to the natural parents, other relatives and members of the Aboriginal community.

Queensland

Adoption of Children Act 1964 Reprint No. 1

Adoption of Children Regulation 1988

Level of court

The Director-General of the Department of Families, Youth and Community Care (DFYCC) is solely responsible for adoption administration. The Children's Court or Supreme Court may be involved with the dispensation of consent. The Supreme Court also has the power to recognise adoption orders made under the law of a country outside the Commonwealth and the Territories of the Commonwealth as well as the power to discharge an adoption order for the adoption of a child made under the *Adoption of Children Act 1964*.

Step-parent adoptions

Adoption by step-parents can be arranged only through DFYCC.

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Adoption by relatives can be arranged only through DFYCC.

Non-relative adoptions

Eligibility requirements:

Initial/first applicants:

- General adoption—married for at least 2 years, in good health, both applicants must be under 36 years of age, infertile and childless, one must be an Australian citizen, resident or domiciled in Queensland.
- Intercountry adoption—married for at least 2 years, in good health, youngest of couple must be under 41 years of age, oldest of couple under 47 years of age, and one must be an Australian citizen, resident or domiciled in Queensland.
- Special needs adoption—all interested applicants considered depending on the child's needs.

Second and subsequent applicants:

- General adoption (maximum of one child)—married for at least 2 years, in good health, both applicants must be under 40 years of age, infertile with no more than one child in their custody, one must be an Australian citizen, resident or domiciled in Queensland.
- Intercountry adoption (maximum of 4 children)—married for at least 2 years, in good health, youngest of couple must be under 43 years of age, oldest of couple under 47 years of age, one must be an Australian citizen, resident or domiciled in Queensland.
- Special needs adoption—all interested applicants considered depending on the child's needs.

Adoptions must be arranged through DFYCC.

Adoption of Indigenous children

According to the Child Placement Principle in Queensland, Indigenous children are always placed with parents of a similar Indigenous background. Consideration is given to the wishes of the consenting parent; however, the best interests of the child are paramount.

Western Australia

Adoption Act 1994

Adoption Regulation 1995

Level of court

Family Court of Western Australia

Step-parent adoptions

Step-parents wishing to adopt their step-child must serve 60 days notice on Family and Children's Services (FCS) of their intention to apply for an order of adoption. It may be necessary to engage the services of a solicitor for this purpose, as well as to make the application to the Family Court of Western Australia for an adoption order.

The consent of the non-custodial birth parent, or an order from the Family Court of Western Australia to dispense with such consent, will be required. An adoption plan will need to be negotiated between the non-custodial birth parent and the adoptive parent, or dispensed with by the Court, before the adoption can be finalised. FCS is required to provide a complete assessment report to the Court.

Other-relative adoptions

Adoptions by relatives other than step-parents are known as carer adoptions. Carer adoptions can occur only when the child has been in the full-time care of the carers for at least 3 years. All carer adoptions are attended to by FCS. Carer adoptions include the relatives of the child, foster carers, and adults who are not related but have a parenting order from the Family Court.

The consent of the birth parents, or an order from the Family Court of Western Australia to dispense with such consent, will be required. An adoption plan will need to be negotiated between the **birth parents** and the adoptive parent, or dispensed with by the Court, before the adoption can be finalised. FCS is required to provide a complete assessment report to the Court.

Non-relative adoptions

Birth parents are involved in the selection process of adoptive parents by choosing a family from non-identifying profiles.

All non-relative adoptions are arranged through FCS.

Applicants must meet specific eligibility criteria before being considered for assessment.

An adoption plan is required to be made between birth parents and adopting parents, or an application to the Family Court made to dispense with the adoption plan, before the adoption order is granted in the Family Court of Western Australia.

All known birth parents must be asked to give consent.

Adoption of Indigenous children

The Family Information and Adoption Service (**now known as Adoption Services**) adheres to the Department's Aboriginal Child Placement Policy. Aboriginal children are placed with Aboriginal adoptive parents **unless the child's birth parents specifically request otherwise**.

South Australia

Adoption Act 1988

Adoption (Miscellaneous) Amendment Act 1996

Level of court

Youth Court of South Australia

Step-parent adoptions

'Leave to proceed' granted in the Family Court is required before step-parents can adopt where the child is the child of a dissolved marriage.

Adoption by relatives can be arranged only through the South Australian Department of Human Services (DHS) in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Other relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Adoption by relatives can be arranged only through DHS.

Non-relative adoptions

Eligibility requirements:

- married couples and de facto couples of more than 5 years;
- single people in particular circumstances.

Adoptions can be arranged only through DHS.

Adoption of Indigenous children

Restrictive eligibility criteria for adoptive parents in accordance with Indigenous placement principle.

Tasmania

Adoption Act 1988

Adoption Regulations 1992

Level of court

Magistrate sitting alone

Step-parent adoptions

Adoption by step-parents is possible in some circumstances. If the child's father has not legally established his paternity, and does not do so within 30 days of the mother signing the consent to adoption, an application may be made through the Department of Health and Human Services (DHSS). If the child's paternity has been legally established, adoption is possible only in special circumstances which justify adoption and when other available orders will not provide adequately for the welfare and interest of the child. All applications for an adoption order in favour of a step-parent adoption must be made through DHHS.

Other-relative adoptions

The court's power to make an adoption order in favour of a relative is limited to special circumstances which justify adoption and when other available orders will not provide adequately for the welfare and interests of the child. All applications for an adoption order in favour of a relative must be made through DHHS.

Non-relative adoptions

Eligibility requirements:

- married couples of more than 3 years with any period of time spent in de facto relationship before marriage included in time assessment;
- single people only in special circumstances relating to the welfare and interest of the child.

Adoptions by non-relatives can be arranged by DHHS or a non-government organisation approved by the Minister for Health and Human Services.

Adoption of Indigenous children

Not included in legislation although birth parents may express wishes about race of adoptive parents. The cultural differences of Indigenous people are recognised; placement within the Aboriginal community is the preferred option.

Australian Capital Territory

Adoption Act 1993

Level of court

Supreme Court

Step-parent adoptions

Adoption by relatives can be arranged only through Children's, Youth and Family Services Bureau (CYFSB).

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Adoption by step-parents can be arranged only through CYFSB.

Non-relative adoptions

Eligibility requirements:

- married couples of more than 3 years;
- de facto couples of more than 3 years;
- single people in particular circumstances.

Adoptions by non-relatives must be arranged through CYFSB.

Adoption of Indigenous children

Restrictive eligibility criteria apply for adoptive parents in accordance with the Indigenous placement principle.

Northern Territory

Adoption of Children Act 1994

Level of court

Local Court

Step-parent adoptions

Other arrangements are sought before an adoption order is considered.

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Placement adoptions

Eligibility requirements:

- married couples;
- single person in exceptional circumstances.

All local adoptions must be arranged through Territory Health Services. Intercountry placement adoptions must be arranged through Australians Aiding Children Adoption Agency, which is accredited by the Northern Territory Government under the Hague Convention on Intercountry Adoption for this purpose.

Adoption of Indigenous children

Adoptions of Indigenous children can only occur if alternative custody with the child's extended family cannot be arranged. If an order is made it must comply with the Indigenous placement principle.