

INTRAFAMILY ADOPTION

GENERAL INFORMATION ABOUT INTRAFAMILY ADOPTION

Intrafamily adoption refers to the adoption of a person by either a step parent or a relative. The NSW Adoption Act 2000 ("the Act") defines a relative as a grandparent, aunt, uncle, brother or sister.

CS has provided this Factsheet and attached information to assist you in understanding how you can progress an intrafamily adoption. We hope you find this information helpful.

WHAT DOES THE LAW SAY?

GENERALLY

The overriding principle of the Act, which applies to all adoptions, is that the making of the adoption order should promote the child's best interests better than any other alternative for the child's care.

The Act and the *NSW Adoption Regulation 2003* ("the Regulations") set out requirements for adoption applications made in respect of children by their aunts, uncles, grandparents or step-parents. The Act and Regulations can be accessed on www.legislation.nsw.gov.au. Adoption applications are heard and determined by the NSW Supreme Court.

This fact sheet only relates to the adoption of a child **who is currently in NSW** as the Act in section 23(2) states:

"The Court must not make an adoption order unless, when the application for the order is filed:

- (a) the child is present in the State, and
- (b) the applicant, or if the application is a joint application, each of the applicants resides, or is domiciled in the State.

And section 107(3) states: "The Court must not make the order if the child is not in Australia".

FOR RELATIVE ADOPTIONS

Section 29 of the Act states that “The Court must not make an adoption order in favour of a relative of a child unless:

- (a) specific **consent** to the adoption of the child by the relative **has been given** in accordance with this Act by the appropriate person or persons specified in section 53 (b), and
- (b) the child has established a relationship of at least **2 years**’ duration with the relative, and
- (c) the Court is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the child.”

FOR STEP PARENT ADOPTIONS

Section 30 of the Act states that where the child is under the age of 18 years: “The Court must not make an adoption order in favour of a step parent of a child unless:

- (a) the child is at least **5** years old, and
- (b) 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, and
- (c) specific **consent** to the adoption of the child by the step parent **has been given** in accordance with this Act by the appropriate persons, and
- (d) the Court is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the child.”

Please note: Where there is a matter currently in the Family Law Court, the Supreme Court is reluctant to make an adoption order unless leave from the Family Court has been obtained.

PREPARING AN ADOPTION APPLICATION

1. Prepare and lodge an adoption application

People considering adopting a relative child or step-child can lodge an adoption application directly at the NSW Supreme Court in accordance with the requirements set out in the Act and Regulations. The Supreme Court provides information on their website to assist in the preparation of your application or you may choose to seek the services of a private solicitor. You may wish to contact the Law Society of NSW who can provide names of lawyers in your region. Their website address is: www.lawsociety.com.au or phone is 02 9926 0333. The Supreme Court's website is:

http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/sco_index

Click on 'Adoptions Procedures Booklet'.

See additional contact details for the Supreme Court on the last page of this fact sheet.

2. The Court Report

Section 91 of the Act refers to the requirement for a written report to the Court concerning the proposed adoption of the child where the child is under 18 years of age.

Should you require a report pursuant to this section, this must be provided by an 'approved assessor'. A list of approved assessors is attached to this Factsheet.

See below for associated fees payable directly to the 'approved assessor'.

Once the Court report is complete, the consent of the required persons can be obtained.

3. Giving of consent to a child's adoption- what is required

An adoption application must include the consent of the required persons. Division 1 entitled 'Who must consent to an adoption?' of Part 5 of the Act outlines who must consent. Generally consent is required from all parents and anyone with parental responsibility, with some exceptions. Also, children over the age of 12 years must ordinarily consent to their adoption. Section 60 outlines at what time consents are to be given.

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 included in this Information Package.

Registered Counselling

A person or child consenting to a child's adoption must have had Registered Counselling. A list of Registered Counsellors is attached to this Factsheet.

Clause 39 of the Regulations refers to the prescribed period in which the person giving consent must have received Registered Counselling.

See below for associated fees payable directly to the Registered Counsellor.

4. Witnessing the Consent

Clause 35 of the Regulations refers to the 'Classes and descriptions of persons who may witness consents'.

Clause 38 of the Regulations states that 'No fees are payable to a person for witnessing a consent to adoption'.

Consent documents are included in the Information Package but they should not be signed unless in front of an independent witness and until other pre-requisites of the Act and Regulations have been met.

RESPONSIBILITIES OF CS IN INTRAFAMILY ADOPTION

Giving Notice

Where a child over 12 years is required to consent to their own adoption, section 54(3)(a) of the Act requires CS to give reasonable notice or use their best endeavours to give reasonable notice of the application for the adoption order to the parent or person who has parental responsibility whose consent would otherwise be required (eg. the non custodial parent/s).

You will need to provide CS Adoption and Permanent Care Services with the name and contact details of the parent to whom notice must be given. A template of the information to send is attached to this Factsheet. This information can be forwarded once the child has given consent by email to: adoption.permanentcare@community.nsw.gov.au

Adoption of an Aboriginal or Torres Strait Islander child

Sections 64 and 65 of the Act requires that the person giving consent to the adoption of an Aboriginal or Torres Strait Islander child receives adoption counselling from a person approved by CS in accordance with sections 195 and 196.

If the person giving consent refuses such counselling, CS is required to provide the person with written information on Aboriginal or Torres Strait Islander customs and culture regarding adoption issues.

Please contact CS Adoption & Permanent Care Services on 02 9716 3003 to arrange for consultation with an approved counsellor.

COSTS FOR COURT REPORT AND REGISTERED COUNSELLING

The applicants are responsible for paying to obtain a Court Report and Registered Counselling.

Current fees as at date of this Factsheet (subject to yearly indexation changes at 1 July) are at an hourly rate of \$124.76:

- Court Report: for up to 10 hours work - the total cost is \$1247.60. Additional hours at \$124.76 per hour as required.
- Registered Counselling session: for up to 2 hours work per person – Recommended total is \$249.52. Additional hours recommended at \$124.76 per hour as required.

Note: Travel costs may also be incurred by remote or rural applicants if the Contracted Adoption Assessor or Registered Counsellor has to travel a long distance to undertake the work.

Please contact the Local Adoption and Permanent Care Program on 02 9716 3003 if you cannot identify an approved assessor or Registered Counsellor within a reasonable distance from the applicants.

SUPREME COURT CONTACT DETAILS

Supreme Court of New South Wales

Queen's Square

GPO Box 3

SYDNEY 2001

(or DX 829 SYDNEY)

Phone: (02) 9230 8733

Website: www.lawlink.nsw.gov.au/sc

Please note: CS Adoption and Permanent Care 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. CS' role is restricted to the functions outlined above.

List of information attached:

1. List of Contracted Adoption Assessors and Registered Counsellors.
2. 'Mandatory Written Information on Intrafamily Adoption. Information for Parents and Adoptive Parents'.
3. 'Mandatory Written Information on Intrafamily Adoption. Additional Information for Parents of an Aboriginal Child'.
4. 'Mandatory Written Information on Intrafamily Adoption. Additional Information for Parents of a Torres Strait Islander Child'.
5. 'Mandatory Written Information on Intrafamily Adoption. Information for Children and Young People'.
6. 'Statement of Counsellor' form.
7. 'Specific Consent to Adoption of a Child' form.
8. 'Consent by a Child who has Attained the Age of Twelve Years to His or Her Adoption' form.
9. 'Revocation of Adoption Consent' form.
10. 'Revocation of Adoption Consent – Child Over Twelve Years' form.
11. Request form to 'give notice' to the non custodial parent where a child over twelve years is consenting to their own adoption.
12. 'Adoption Act 2000 – how it affects you. Post adoption for adoptions made AFTER 1 January 2010'