

## STEP-PARENT ADOPTION

October, 2010

Unlike the majority of child matters which are determined under the Family Law Act, matters involving adoption are legislated by States and Territories. In Queensland, this is the *Adoption Act 2009*. Previously, adoption had been regulated under the *Adoption of Children Act (Qld) 1964*.

The *Adoption Act 2009* commenced on 1 February 2010 and makes a number of major changes to adoption practices in Queensland. The major change in relation to 'step-parent' adoptions is that there is now a requirement that parties must obtain "leave" from the Family Court (under the *Family Law Act*) to commence step-parent adoption proceedings.

### WHO MAY APPLY TO ADOPT A STEP-CHILD?

- A child's step-parent is the married or de facto spouse of a child's biological parent and they are able to apply to adopt the child, if:
- They are an adult who is resident in Queensland and is an Australian citizen (or the spouse of a Australian citizen);
- They live with the child and spouse and have done so for at least (3) years;
- They have been granted 'leave' by the Family Court to commence adoption proceedings; and
- the child is at least (5) years old and not more than 17 years old.
- An application may be accepted in relation to a child who has turned 17 but is not yet 18 in some circumstances, that is if Adoption Services Queensland decides:
- there is enough time to complete the adoption process before the child turns 18; and
- the grounds for making an adoption order are likely to exist. The legislation also requires that a person's spouse is not the same gender. This therefore prohibits same gender de facto spouses from adopting their partner's child.

### WHAT A COURT MUST CONSIDER BEFORE GRANTING LEAVE TO COMMENCE ADOPTION PROCEEDINGS

When the Court is determining whether it should grant leave it must consider whether granting leave would be in the child's "*best interests*" and the effect of an adoption on parental responsibility or any current parenting order.

The *Family Law Act* provides an extensive list of factors ((13) in number) that are considered when determining what is in a "child's best interests". Some of these include:

- (a) The benefit to the child of having a meaningful relationship with both of the child's parents;
- (b) The need to protect the child from physical or psychological harm;
- (c) Any views expressed by the child;
- (d) The child's relationship with both parents and any other person (such as grandparents or other relatives)...etc

## **THE PROCESS ONCE 'LEAVE' HAS BEEN GRANTED BY THE FAMILY COURT**

Once 'leave' has been obtained from the Family Court an Application will need to be made to Adoption Services Queensland (ASQ). This department is then required to take steps to obtain the consent of each parent for a child to be adopted by a step- parent. If all the necessary consents are obtained and the applicant pays the assessment **fee**, the department must proceed with the adoption process by assessing whether the step-parent is suitable to adopt the step-child.

The assessment of whether a person is suitable to be an adoptive parent of the step-child must take into account information regarding a range of matters, including information about:

- the step-parent's capacity, and that of other people in the household, to protect the child from the risk of harm;
- the step-parent's capacity to be an adoptive parent;
- whether the step-parent is of good character;
- the step-parent's understanding of adoptive parenting;
- quality of the step-parent's relationship with his or her spouse;
- nature, closeness and quality of the child's relationship with the step-parent and other members of the household;
- ability and willingness to help a child maintain contact with the child's community or language group, if applicable;
- the circumstances in which the child came to be living with the person; and
- the likely effect on the child, both through childhood and the rest of his or her life, of permanently ending the parent-child relationship between the child's biological parents and the child (even if the biological parents are no longer living).
- If the step-parent is assessed favourably, the department must prepare a suitability report for the Childrens Court. The report will state that the person has been assessed as suitable to be the child's adoptive parent and whether the chief executive considers:
  - an order for the child's adoption by the person would better serve the child's interests than an Order under the Family Law Act, any other court order or no court order; and
  - there are exceptional circumstances that warrant the making of the Order.

If the assessment of a step-parent's suitability is completed and the step-parent is suitable to be an adoptive parent, Adoption Services Queensland will prepare a suitability report for the Childrens Court and give a copy to the step-parent. Once this report is received the step-parent is then able to apply jointly with the step- parents spouse to make an application to the court for a final adoption order.