

STEP PARENT ADOPTIONS IN QUEENSLAND

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Parents with a blended family sometimes seek advice about a step-parent adopting a child of the other parent. We are fortunate in that one of our directors, Amy Honan, has done many of these applications over the years. Amy, therefore, is often sought out by clients because of that expertise. Here, Amy provides some practical tips...



The main reasons a person might seek advice about a step-parent adoption is where:

- The child's other birth parent has died;
- The child's other birth parent has been absent for many years and the parents want to ensure the child can remain with the step parent should the birth parent die;
- The parents (or the child) wish to change the child's surname to the step parent's name; or
- The child has expressed a wish for the adoption.

From February 2010, the *Adoption Act 2009* (Qld) requires that a step-parent must first obtain permission ("leave") from the Family Court before commencing a step-parent adoption application with the relevant government agency. This amendment brought Queensland into line with the other States and Territories that already had this requirement.

Who may apply to adopt a step child in Queensland?

A child's step-parent (the married or de facto spouse of one of the child's parents) can apply to adopt the child if:

- The person has lived with the child and their birth parent for at least three years continuously;
- The person is an adult who is resident in Queensland, and is an Australia citizen (or the spouse or partner of an Australian citizen);
- The person has been granted leave by the Family Court to commence adoption proceedings; and
- The child is old than 5 years and younger than 17 years

An application in relation to a child who has turned 17 but is not yet 18 may be accepted in some circumstances, *only if* Adoption Services Queensland (ASQ) are satisfied that there is enough time to complete the process. It needs to be complete before the child turns 18, and the grounds for making an adoption order are likely to exist.

The Queensland legislation was recently amended so that same-sex couples can now apply for a step-parent adoption, as long as they meet the eligibility requirements.

The court process

An application for leave must first be filed in the Family Court. The Family Court has exclusive jurisdiction for adoption matters. Both the step-parent and birth parent (who is the partner or spouse of the step parent) should be applicants in this application.

When the court is determining whether it should grant leave, it must consider whether granting leave would be in the child's "best interests". These factors are set out in the Family Law Act. In addition, the court must consider the effect of the adoption on the other birth parent's parental responsibility, and any current parenting order.

Once the Family Court grants leave, an application is made to Adoption Services Queensland (ASQ). Under that *Adoption Act*, ASQ has an extensive list of criteria to consider before issuing a suitability report. The suitability report is then presented to the Children's Court for a final adoption order to be made. Usually, the consent of both birth parents (if living) to the adoption is required.

The step parent adoption process is a lengthy process, therefore to discuss other 'rights' a step-parent has under the *Family Law Act* it is important to obtain specialised advice.