

Steps to step-parent adoptions

Obtaining leave under the *Family Law Act*



The need to obtain leave from the Family Court and other factors means it can take an extended period for a step-parent to adopt a child. Amy Honan suggests practitioners keep this in mind when advising clients.

Unlike the majority of children matters determined under the *Family Law Act 1975* (Cth) (FLA), matters involving adoption are legislated by states and territories.

In Queensland, this is under the *Adoption Act 2009* (Qld).

The *Adoption Act* commenced on 1 February 2010 and made a number of major changes to adoption practices in Queensland. The major change in step-parent adoptions is the requirement that a step-parent must obtain leave from the Family Court before commencing an application for a step-parent adoption. This amendment has brought Queensland in line with the other states and territories.

Who may apply to adopt a step-child?

A child's step-parent, that is the married or de facto spouse of a parent of the child, will be able to apply to adopt the child if:

- The person is an adult who is resident in Queensland and an Australian citizen (or spouse of a Australian citizen).
- The person lives with the child and spouse and has done so for at least three years.
- The person has been granted leave by the Family Court to commence adoption proceedings.
- The child is at least five years old and not more than 17 years old.¹

An application may be accepted in relation to a child who has turned 17 but is not yet 18 in some circumstances only if Adoption Services Queensland (ASQ) is satisfied that 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.²

The legislation requires that a person's spouse is not the same gender. Same sex de facto spouses therefore are prohibited from applying.

The court process

An application for leave under s60G must be commenced in the Family Court as the Family Court has exclusive jurisdiction for adoption matters.³

When the court is determining whether it should grant leave, it must consider whether granting leave would be in the child's 'best interests', taking into consideration the factors under s60CC of the FLA. In addition, the court must consider the effect of the adoption on the biological parent's parental responsibility⁴ or any current parenting order.⁵

There has been judicial discussion about whether there is a requirement for the biological parent who is the step-parent's spouse or partner to also be an applicant.⁶ S61E provides "that a person's parental responsibility for the child ends on the adoption of the child".

On the literal meaning of the section, if a biological parent who is the step-parent's spouse or partner is not a co-applicant to the adoption process, then on the step-parent being successful in the application, the biological parent's parental responsibility for the child would end. As a precaution, judges are ordering that both the step-parent and biological parent who is the step-parent's spouse have leave pursuant to s60G.

Therefore, until s61E is amended to specifically exclude the biological parent who is the step-parent's spouse or partner, as a matter of course the biological parent who is the step-parent's spouse or partner should become a second applicant to the application.

Conclusion

Once leave has been obtained from the Family Court, an application will need to be made to Adoption Services Queensland. Under the *Adoption Act*, ASQ has an extensive list of criteria to consider prior to issuing a suitability report which is then presented to the Children's Court for a final adoption order.⁷

The indication from ASQ has been that, despite the requirement to first obtain leave from the Family Court before filing an application, it is still receiving a significant number of applications. As such, applicants are advised that the estimated timeframe to complete an application is one to two years.

Given the significant delay in processing a step-parent adoption, solicitors should consider giving advice to step-parents regarding other 'rights' a step-parent may have under the FLA.

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Notes

- ¹ Section 92(1) of the *Adoption Act 2009* (Qld).
- ² Section 92(2) of the *Adoption Act 2009* (Qld).
- ³ familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Protocol.
- ⁴ Section 61E of the FLA.
- ⁵ Section 65J of the FLA.
- ⁶ *Brock & Brock* [2007] FamCA 1594 (1 November 2007).
- ⁷ Part 6, division 5 of the *Adoption Act 2009* (Qld).