The Step-parent adoption information guide

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INTRODUCTION

The composition of families today is far more complex than it used to be. The concept of a “blended” family has become more common. Today, many people are step-parents. In almost every step-parent situation there is a very real love and commitment to the step-child. Some families want to build on that foundation and make the relationship between the child and the child’s step-parent a legal one.

Parents and step-parents can apply to the Family Court of Western Australia (hereafter referred to as “the Family Court”) for legal orders to formalise their relationship. There are different options such as Parenting Orders, Consent Orders and Adoption Orders. Each option has its advantages—the difficulty is deciding which option best suits each family’s circumstances.

The fact that you have requested this information package suggests that you are considering adoption. It is important to understand that adoption is not simply a legal process but an action that has potential to have lifelong emotional implications for all of the parties involved in the process.

The Adoption Act 1994 (Western Australia’s adoption legislation hereafter referred to as “the Act”) contains a number of key principles to be taken into account when considering adoption.

These are:
1. The welfare and best interests of a child who is an adoptee or a prospective adoptee;
2. That adoption is a service for a child who is an adoptee or a prospective adoptee; and
3. The adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.

To ensure the rights of the child for whom adoption is being considered are protected, Section 134(1) of the Act states that the Chief Executive Officer (hereafter referred to as “the CEO”) of the Department for Child Protection (hereafter referred to as “the Department”) may appoint a suitably qualified person to represent the child (hereafter referred to as a “Child’s Representative”) at any time during an adoption application process.

Furthermore, for an adoption to occur, the Act requires that the Family Court grant two orders: (1) a determination and (2) an Adoption Order. A determination is a decision by the Family Court Judge involved with the application as to whether adoption is preferable to a Parenting Order or any other type of Family Court order. An Adoption Order is a decision by the Family Court Judge that puts an adoption into effect. Note that the Judge will not consider granting an Adoption Order if they have not first made a determination that adoption is the best option for the child.
The Step-parent adoption information guide

See the “Frequently Asked Questions” section of this document for information on:

- What is meant by “the child’s best interests”?
- Where can I get a copy of the Western Australian Adoption Act 1994?
- What is a Child’s Representative and under what circumstances is one appointed?
- Seeking legal advice and information on family law, where do I start?
- How long does the whole step-parent adoption process take?

What is this guide for?

The following information will aid legal practitioners working with a step-parent application by highlighting legislative requirements and procedural matters. Parties to the adoption application will also find this guide useful in informing them of the various stages involved in a step-parent adoption application. This guide should not be used as a substitute for legal advice.

Alternatives to Adoption

There are options other than seeking an adoption order that may better suit your family’s circumstances. Alternatives include change of name, provisions in a will, Parenting Orders and Consent Orders and all are explored below.

Change of Name

This can be done by applying to the Registry of Births, Deaths and Marriages to change the child’s name by licence. Usually the consent of the non-custodial parent is required. For information, telephone Local Free Call 1300 305 021 or calls from Overseas only +61 8 9264 1555, or access website www.dotag.wa.gov.au/bdm.

Provisions in a Will

The step-parent may choose to make provisions for the child regarding inheritance matters under the terms of his/her will. Similarly, custodial birth parents are often concerned that in the event of his/her death the child would no longer be able to live with the step-parent and any siblings from that marriage. The custodial birth parent may express their wishes about this in their will. The Family Court is likely to take this into account in the event of it being asked to intervene.

Parenting Order

A parenting order is made by the Family Court. It can make specific arrangements for certain aspects of a child’s life; so long as the arrangements being sought are in the child’s best interests. A Parenting Order covers different aspects of a child’s life. It may deal with one or more of the following matters:

- living arrangements for a child;
- time spent and communication with the child;
- parental responsibility for a child;
- financial support for a child (only if child support law does not apply or permits this);
- any other aspect of the care, welfare or development of a child; such as religion, education, medical, travel and other issues.

Inheritance matters are not dealt with by parenting orders and must be addressed separately in a “will”.

Parenting Order kits are available directly from the Family Court or the Family Court website at www.familycourt.wa.gov.au.
Consent Orders

When all parties agree on matters of parental responsibility the court encourages them to apply for Consent Orders. Consent Orders are a type of parenting order (they cover the same matters as standard parenting orders) but they are made by agreement between the parties and the Court, without the parties having to appear in court.

Consent Orders kits are available directly from the Family Court or the Family Court website on www.familycourt.wa.gov.au.

Parents can register Consent Orders directly with the Court. However, again it is always advisable to seek independent legal advice.

ADOPTION

Adoption is a permanent legal arrangement which severs all legal ties with the birth family and gives full parental rights and responsibilities to the adoptive family.

What is a Step-Parent Adoption?

A step-parent adoption is the adoption of a child by a person married to or living in a long term de facto relationship of at least three years with the birth parent with whom the child lives.

In a step-parent adoption, an Adoption Order has the following effects.

For the birth parent the child lives with:
- it maintains this birth parent’s legal powers, parental duty and responsibility for the child. This birth parent continues to be a legal parent.

For the other birth parent (the relinquishing birth parent):
- it deprives that parent of his/her legal powers, parental duty and responsibility for the child. That birth parent will no longer be a legal parent.
- it also severs the legal relationship that existed before the adoption between the child and that birth parent and his or her extended family.

For the step-parent:
- establishes a legal relationship between the child and the step-parent as that of child and parent. The step-parent becomes the child’s legal parent.

For the child:
- it removes the legal relationship that existed with the relinquishing birth parent and his or her extended family and removes previous inheritance rights
- it provides for a new legal relationship with the step-parent and the step-parent’s extended family and establishes new inheritance rights.
- May change child’s last name. The child’s first name is an important symbol of their past and therefore is a very significant part of their identity. This is recognised in the United Nations Convention on The Rights of the Child. For these reasons, the Act has a principle of retaining the child’s first name. If an Adoption Order is granted, the Family Court will declare the name under which the child will be known after the adoption (as part of the Adoption Order).

In summary, in a step-parent adoption the relinquishing birth parent no longer has legal rights over the child and they cannot claim back the child. The child becomes a full legal member of the ‘new’ family arrangement and may take the family surname. The child assumes the same rights and privileges as if born to the custodial birthparent and the step-parent, including the right of inheritance.

Whilst adoption means that all legal parental rights and responsibilities of the relinquishing birth parent will be terminated, it does not mean that the relinquishing birth parent can no longer have a relationship with their child. The relationship can be protected through the provisions of an Adoption Plan. An Adoption Plan is a legal agreement between the birth parents and the adoptive step-parent that sets out any arrangements for information exchange about the child and/or contact between the parties. An Adoption Plan remains in force until the child attains the age of 18 years.
Step-parent Adoptions are Open Adoptions

All adoptions granted in Western Australia are open adoptions. An ‘open adoption’ is one that is not secretive. In the past it was thought that secrecy was in the best interest of all parties to adoption. However over the years, these secrecy provisions have caused a lot of distress to those affected by adoption. Extensive research found that many adopted people want to know about their original family heritage without necessarily affecting the close relationship with their adoptive family. Adoptive families, it has been found, often lived under the strain caused by the pretence and secrecy they felt compelled to maintain. The adoption legislation recognises the need for people affected by adoption to have access to adoption information. In a step-parent adoption this means that:

The relinquishing birth parent will have
• an opportunity to be actively involved in the adoption process
• will be consulted by the Department and given an opportunity to be involved in the adoption process during the information provision stage, the drafting of an adoption plan and most likely during the preparation of the report for the Family Court

The birth parent with the day to day care of the child and adoptive step-parent has
• a right to raise the child without interference from the relinquishing birth parent
• a responsibility to assist the child understand their birth family background
• a responsibility to inform the child of the adoption in a sensitive way
• a responsibility to encourage the maintenance of a positive relationship between the child and the relinquishing birth parent and their extended family if possible.

The child has the right
• to know about the adoption well before the application proceeds
• have, and continue to have, information about the relinquishing birth parent
• be able to maintain a relationship, free of pressure, with the relinquishing birth parent and their extended family if possible.

Note that even if a child is under 12 years of age and is therefore not required by law to consent to their own adoption, Schedule 2 of the Act stipulates that a child has the right to know about the adoption in a manner appropriate to the child and the child’s stage of development.

See the “Frequently Asked Questions” section of this document for information on:
• What is parental responsibility under the Adoption Act 1994?
• How and when do I talk to my child about adoption?

CRITERIA FOR STEP-PARENT ADOPTION

A step-parent adoption of a child under 18 years may be considered by the Family Court if:

The proposed adoption
• is preferable to any other Family Court Order
• is in the child’s best interests
• complies with the principle of open adoption

The birth parent the child lives with
• has parental responsibility for the child.

The step-parent, at the time of applying to adopt a person, must
• be 18 or more years of age
• be resident and domiciled in Western Australia
• provide evidence to show that they have been in a stable relationship (married, de facto or a combination of both) for at least 3 years.
• be physically and mentally fit to care for and support a child to the age of 18. You will be asked to provide medical reports and if there is, or has been, a specific medical problem, specialist reports will be called for
• be “of good repute”. Fostering and Adoption Services will obtain references from people you nominate who know you well and are able to comment on your suitability to be an adoptive parent.
• consent to a Departmental check to determine if previous contact with the Department has occurred. This information will assist the Department to assess the significance of previous contact in relation to the adoption of a child.
not have been convicted of a serious criminal offence, particularly offences involving children
• show a desire and ability to provide a suitable family environment

The child
• was born in Western Australia and is present in Western Australia; or is permitted under a law of the Commonwealth to remain permanently in Australia and is present in Western Australia
• consents to his or her adoption in writing (if 12 years old and over)
• is not and has not been married (if under 18 years old).

It is also important to note that if you were previously married and then divorced, you may have applied to the Family Court under the Family Law Act 1975 to formalise any arrangements you made for your children. These orders may still be in force. To make sure that previously granted orders about guardianship or maintenance no longer apply you may have to seek permission of the court to commence adoption proceedings. This is called to seek “leave of the court” under Section 60 of the Family Law Act 1975. If “leave of the court” is not sought, the relinquishing birth parent may still have entitlements and obligations towards the child to be adopted. This could create difficulties later.

Step 2 - Contact the parties whose consent to adoption is required
The step-parent or the step-parent’s legal representative must contact each person whose consent to adoption is required to inform them of the proposed adoption and ask for their initial views.

The following persons’ effective consent to a child’s adoption is required, under Section 17 of the Act (although applications for an order to dispense with the requirement for a person’s consent to adoption may be considered by the Family Court under certain circumstances – see Frequently Asked Questions under Step 5):

a. where the child has not been adopted before -
   i. the child’s mother
   ii. the child’s father or parent under section 6A of the Artificial Conception Act 1985 OR

b. where the child has been adopted before –
   i. in this State; or
   ii. elsewhere if under Section 136 or 138 the adoption has the same effect as an adoption order, each adoptive parent of the child; and

c. in every case –
   i. each person with parental responsibility for the child.
   ii. where the child will be 12 or more years of age at the time when the application for an adoption order is filed in the Court of the child.

If the child to be adopted is 12 years old and over, the child must also give consent to a change of name if a change of name is needed. Therefore, the child’s views on their name being changed should also be sought.

If a particular party is willing to consider adoption as an option, the step-parent or step-parent’s legal representative is to inform them that the first step requiring their participation is Schedule 1 (see Step 4 for explanation of Schedule 1) and that FAS will contact them directly to arrange for it to be provided to them.

Step 3 - Submit “Registration to receive Schedule 1” form
The step-parent or step-parent’s legal representative is to complete the “Registration to Receive Schedule 1” form and send it to FAS (addressed to “Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or...
PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au. Before submitting it, please ensure that you meet the eligibility criteria outlined on the form.

**Step 3 - Submit “Registration to receive Schedule 1” form**

The step-parent or step-parent’s legal representative is to complete the “Registration to Receive Schedule 1” form and send it to FAS (addressed to “Team Leader, Step-Parent Adoption”) PO Box 641, Belmont WA 6984 or PO Box 644, Cottesloe WA 6941, or email to adoptions@dcp.wa.gov.au. Before submitting it, please ensure that you meet the eligibility criteria outlined on the form.

**Step 4 - Provision of Schedule 1**

It is a requirement of the Act that a person whose consent is required for a child’s adoption must not sign a form of consent to the adoption unless the person has received the information and, if requested, the counselling mentioned in clause 1 of Schedule 1 of the Act. The information must be given orally and in a written form and covers the following matters:

- the alternatives to adoption such as Parenting or Consent orders
- community supports available whether or not the child is relinquished for adoption
- the social implications of adoption for the parties to adoption
- the legal process of adoption
- the rights and responsibilities of the parties to an adoption, including access to information about, or contact with, the other parties to the adoption
- an offer to receive counselling on the matters referred to above
- a list of independent counsellors from whom the person may seek counselling if the person so wishes

In Western Australia, the CEO of the Department is to provide Schedule 1 information and an officer of FAS who is trained in adoption matters does this on behalf of the CEO. Counselling may be provided by an officer of the Department on behalf of the CEO or a counsellor could be selected from a list of independent counsellors approved by the CEO. Private agencies and independent counsellors may charge a fee for their counselling services but the Department does not. The person to whom Schedule 1 is delivered is not obligated to accept the offer to receive counselling but the Department recommends that they do so before deciding whether or not to consent to the adoption. Counselling on adoption issues is often very beneficial for assisting people to work through issues such as grief and loss, and to consider the long term emotional impact of an adoption.

FAS will issue a letter to each party noted as willing to receive Schedule 1 on the “Registration to receive Schedule 1” form. The letter is to acknowledge the request to receive Schedule 1 information, provide the documents which comprise the written component of Schedule 1, and indicate when a Departmental officer will be able to commence the oral component. Note that there may be a waiting time to receive the oral component depending on officer availability. If the Department agrees that it is necessary, arrangements may be made for the oral information to be provided by telephone rather than in person.

Once a person has completed Schedule 1, the officer who provided Schedule 1 information then writes an affidavit stating that the Schedule 1 requirements have been met (i.e. that Schedule 1 information was provided, that counselling was offered and whether counselling was requested. If counselling was requested, the commencing and completion dates will be included in the affidavit). The officer sends the original affidavits to the step-parent or step-parent’s legal representative. A person cannot go on to give their consent to adoption for at least 28 days after they have received Schedule 1 information, and if requested, counselling. Before deciding whether or not to give their consent, each party should seriously consider:

- Whether they believe adoption is the most appropriate option to pursue or whether they wish to pursue an alternative to adoption.
- The paramount considerations to be taken into account in the administration of the Act, as outlined under Section 3 of the Act:
  - the welfare and best interests of a child who is an adoptee or a prospective adoptee
  - the principle that adoption is a service for a child who is an adoptee or a prospective adoptee; and
  - the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.
Step 5 - Progress application with the Department; Fulfil legal requirements regarding an adoption plan, consents to adoption, and notices

Step 5 is comprised of seven parts (A – G). Please read Step 5 and the associated Frequently Asked Questions referred to at the end of this section carefully, before commencing Step 5 as some parts may be carried out simultaneously but others must be completed in a fixed order and within certain timeframes.

5A. Obtain Step-Parent Adoption Application Package

- Form 218: Information for Section 61 Assessment and Report
- Form 368: Database Consent
- Form 413: Letter to Medical Practitioner and Medical Certificate to be completed by medical practitioner
- Form 395: Criminal Record Check consent
- Notice: “Have you resided in the United Kingdom…”
- Form 251: Consent by the birth parent with whom the child resides who has the responsibility for the long term and day to day care, welfare, and development of the child to the adoption of the child by the step-parent
- Form 381: Consent by the relinquishing birth parent to the adoption of the child by the step-parent
- Form 367: Consent by the Child to her or his adoption by the step-parent
- Form 366: Certificate of Witness to consent to adoption
- Form 363: Revocation of consent to the adoption of the child by the step-parent
- Form 359: Revocation of consent by the child to her or his adoption by the step-parent
- Form 399: Guidelines for persons involved in assisting parties to negotiate an adoption plan
- Information: Schedule 2 of Adoption Act 1994 (Rights and responsibilities to be balanced in adoption plans)

5B. Send specified Documents and Forms to the Department

The following forms and documents are to be sent by the step-parent or step-parent’s legal representative to FAS (addressed to “Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au.

- Forms to be completed and documents provided:
  ◦ Form 218
  ◦ Form 368
  ◦ Form 413
  ◦ Form 395
  ◦ Certified copy of full birth certificate(s) of the child(ren) for whom adoption is being proposed
  ◦ Proof that the step-parent and birth parent the child lives with have been in a defacto and/or married relationship of three or more years duration. This proof includes:
    » A certified copy of full marriage certificate issued by Registrar General’s Department (not the certificate given on the wedding day) and/or
    » A copy of a statutory declaration stating the length of the couple’s de-facto relationship.

Upon receipt of these forms and documents, FAS will:

- Conduct the step-parent’s Criminal Record Check and Database check
- Send forms to those referees nominated by the step-parent on the Form 218 to be completed and returned

Please note the following about the Form 395:

- A criminal record check is a required part of the assessment process for adoptive parenthood. The police records check is conducted by the Department for the step-parent and any of the step-parent’s child(ren) aged 18 years or older who regularly live with the step-parent. It includes a check of each Australian state and territory police records for criminal/traffic charges, conviction or fines (pecuniary penalties). The Department has partial statutory exclusion regarding charges or conviction due to violence and/or assault against children. Under the
Spent Convictions Scheme an individual whose conviction is protected by Part VIIC of the *Crimes Act 1914* must give consent to a disclosure of a spent conviction.

- You must give your consent by completing and signing the reverse side of the 395 Criminal Record Check form so that the Department can obtain information for categories where part exclusion has been granted from the Spent Convictions Scheme.

- If the step-parent has lived overseas for more than 12 consecutive months since reaching 16 years of age, the step-parent must obtain a police clearance or certificate of character from each relevant country. You must apply directly to the embassy or consulate of the country concerned and request a police record or character check be undertaken. You may be required to complete a form, pay a fee and may also need to provide fingerprints. The embassy or consulate will then make the appropriate request and the reply will be forwarded direct to you. The original response (a photocopy is not sufficient) should then be sent direct to FAS (addressed to “Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au.

5C. Negotiate an Adoption Plan and Send the draft copy to the Department for comment

The Act requires that an application for an order for a child to be adopted by a step-parent is not to be filed in the Family Court unless an adoption plan has been agreed upon (between the birth parents of the child who have signed a form of consent to the child’s adoption; the person or persons specified in the forms of consent to the child’s adoption as a prospective adoptive parent of the child; and if the CEO thinks it is appropriate, a child’s representative) and a written document of the provisions of the adoption plan has been signed by or on behalf of the parties to the plan. An Adoption Plan should set out agreements, should an Adoption Order be granted, for on-going information exchange and/or contact between the parties. An Adoption Plan remains in force until the child attains the age of 18 years.

Before an Adoption Plan is finalised, a draft Adoption Plan is to be negotiated. The birth parents, the step-parent, the child (if the child is aged 12 years or over) and the child’s representative (if appointed) should all actively be involved in negotiations. The negotiations can take place directly between the parties, with the assistance of legal representatives or with the help of the Department. Requests for assistance or mediation must be made in writing to FAS (addressed to “The Chief Executive Officer, C/O Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au. If the Department’s involvement is considered necessary by the Team Leader, a Departmental officer will participate in the negotiation of the Adoption Plan. Form 399, included in the Step-Parent Adoption Application package, provides guidelines for negotiating a plan (including an example plan that may be amended to fit your circumstances). The plan can set out arrangements for how often information will be exchanged, what sort of information will be exchanged (e.g. letters, photos, video), by whom and how this will be done. It can also set out how and how often contact between the child, the adoptive family and the birth family will occur, where and how meetings will be arranged. The provisions of an Adoption Plan can vary from infrequent exchange of information and no contact, to frequent contact and exchange of information. In step-parent adoptions the plan is usually implemented directly between the people involved.

An Adoption Plan must:
• consider the rights and responsibilities of all parties as specified in Schedule 2 of the Act (a copy of Schedule 2 is included in the Step-Parent Adoption Application package and must be available to all parties before negotiating and signing an Adoption Plan).

• promote the child’s long term welfare

• take into account the child’s best interests

• be reasonable

An Adoption Plan cannot:

• purposely restrict, or make conditional, movement throughout Australia or overseas of people involved in the adoption.

The Department does not consider it appropriate that:

• issues of child’s maintenance be part of the Adoption Plan

• the Adoption Plan be used to reduce or ‘bargain’ away the child’s right to have knowledge, on-going information exchange and/or contact with the relinquishing birth parent

• the sole responsibility for seeking information or contact with the relinquishing birth parent be placed on a young child. It is the birth parent with the day to day care of the child and the step-parent who have the primary responsibility to set up a positive dynamic and provide the child the opportunity to be knowledgeable and reassured about their biological heritage and comfortable to maintain, or perhaps pursue, a relationship with the relinquishing birth parent if the parties so wish.

Once the draft Adoption Plan has been completed, the step-parent or step-parent’s legal representative must send a copy to FAS (addressed to “The Chief Executive Officer, C/O Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au. The Team Leader will then send a letter of comment to each party to the plan. The comments may include some recommendations about the draft plan and the parties will be asked to negotiate whether or not to make adjustments to the plan accordingly before finalising it.

Note that the Department must receive a copy of the draft plan, under Section 18(1)(da) of the Act, a consent to a child’s adoption is not considered effective unless the CEO of the Department has had at least 30 days to comment on the provisions of a proposed plan. Keep in mind that since an Adoption Plan must be finalised within 28 days after the last consent to adoption has been signed, it is advisable to negotiate a draft plan and send it to FAS for comment as early as is practicable.

5D. Giving of consents to the adoption

A person whose consent to the adoption is required cannot give their consent until at least 28 days after they completed Schedule 1 requirements (received the information and, if requested, the counselling).

The step-parent or step-parent’s legal representative must provide each person whose consent to the adoption is required with:

• the original affidavit completed by the Department stating that the person has received Schedule 1 information and, if requested, counselling

• a consent form:
  ◦ Form 251 for the birth parent with whom the child lives
  ◦ Form 381 for the relinquishing birth parent
  ◦ Form 367 for a child who must consent to their own adoption

• Form 366: Certificate of witness

• Form 359: Revocation of consent

Consent to adoption is required under Sections 17 and 18 of the Act to be:

• given in writing on the consent form issued by the Department

• signed

• witnessed by an eligible witness

The eligible witness is not to witness the signing of consent form unless they certify, in a form approved by the CEO (Form 366), that he or she has seen the original affidavit completed by the Department stating that the person has received Schedule 1 information and, if requested, counselling.

Once a person has signed consent to adoption, for the consent to be considered effective, they must return the consent form, completed Certificate of Witness, and original Schedule 1 affidavit to the step-parent or step-parent’s legal representative.

At the time the required consent forms are received by the step-parent or step-parent’s legal representative, the birth parent the child lives with and the step-parent become joint legal guardians of the child. The step-parent or their legal representative must then:
• file an application for an Adoption Order with the Family Court within 12 months of becoming joint guardians, or
• apply to the Family Court for an Order to make further provision for the child’s guardianship and send a copy of an Order obtained to FAS, (addressed to “Team Leader, Step Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email adoptions@dcp.wa.gov.au.

While the joint guardianship is effective, it is against the law for any person to remove the child to be adopted from Western Australia without written consent of each guardian.

A person may revoke their consent to adoption within a set “revocation period” as specified under Section 22 of the Act:

• If only one person is required to consent to a child’s adoption, the person may not revoke her or his consent after 28 days from the day on which the form of consent was delivered to the step-parent or step-parent’s legal representative.
• If two or more persons are required to consent to a child’s adoption, the persons who have consented may not revoke their consents after 28 days from the day on which all required forms of consent have either been delivered to the step-parent or step-parent’s legal representative, or have been dispensed with.

For a person to revoke their consent, they must complete the form approved by the CEO (Form 359). This form must be completed in writing, signed, witnessed by an eligible witness, and delivered to the step-parent or step-parent’s legal representative before the revocation period expires. The CEO may also accept service of the notice if the person is unable to serve the notice to the step-parent or step-parent’s legal representative before the revocation period expires.

The step-parent or legal representative must forward a copy of any completed consents, certificates of witness, or revocations of consent to FAS (addressed to “Team Leader, Step-Parent Adoption”), PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email adoptions@dcp.wa.gov.au.

5E. Send notice of the proposed adoption to a man who is or may be a prospective adoptee’s father

Under Section 21(2)(a) of the Act, within seven days of the first consent to adoption being received by the step-parent or step-parent’s legal representative, the step-parent or legal representative must send a notice of the proposed adoption to the child’s birth father or any known person thought to be the child’s birth father. The notice is to be in writing and served on the man personally or by registered post at the man’s last known address.

The purpose of the notice is to inform the person identified as a possible birth parent that an effective consent to the adoption of the child has been given and that in response they may choose to:

• consent to the adoption of the child by the step-parent
• pursue their legal rights with the court (e.g. apply for a parenting order) within 21 days of receiving the notice if they do not agree with the adoption of the child or do not want their legal parental rights terminated or
• if the person notified does not accept that they are the parent of the child then they can apply to the Court to have the parentage of the child determined. The application to the Court must be done within 21 days of receiving the notice.

The person should be reminded that consenting to the adoption means that all legal parental rights and responsibilities will be terminated but does not mean that the relinquishing birth parent can no longer have a relationship with their child. The relationship can be protected through the provisions of the Adoption Plan.

The step-parent or step-parent’s legal representative must send a copy of the notice that was sent to FAS (addressed to “Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email adoptions@dcp.wa.gov.au.

5F. Signing of the final Adoption Plan

Before the revocation period expires, adoption plan negotiations need to be completed and the Adoption Plan must be finalised. Finalising the plan in this time period gives parties the opportunity to revoke their consent to the adoption if they are not satisfied with the provisions of the proposed plan.
When notifying the relative under Section 59, the Department recommends that you also notify the person(s) that they are able to become part of the Adoption Plan under Section 70. If an adoption plan has already been approved by the court an application may be made for a variation to the plan. If the requirement for an adoption plan has previously been dispensed with please seek legal advice or contact the Family Court for advice on creating an adoption plan.

See the “Frequently Asked Questions” section of this document for information on:

- Where do I obtain the documents required for Step 5B (birth certificate, marriage certificate, statutory declaration)?
- Can the requirement for a person to consent to the adoption be dispensed with?
- Can the requirement for an adoption plan or for a particular person to be party to the plan be dispensed with?
- Can the requirement to serve notice as required under Section 21 be dispensed with/the period in which to serve the notice be extended?
- Who is eligible to witness the signing of: consent to adoption; revocation of consent to adoption; an adoption plan?
- Can an Adoption Plan be varied after it has been finalised?
- What happens if an Adoption Plan is breached?
- Which relative do I send the notice as required under Section 59 notice to, if applicable?
- Can the requirement to serve notice as required under Section 59 be dispensed with/the time for giving the notice be varied?

To finalise the adoption plan, all required parties (the birth parents of the child, the step-parent, and if applicable, the child’s representative) must sign the final adoption plan. The Department requires that each party have their signature witnessed but this does not need to be an eligible witness as defined under Schedule 1.

The step-parent or step-parent’s legal representative must then send a copy of the finalised plan to FAS (addressed to “Team Leader, Step-Parent Adoption”) PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au.

5G. Send notice(s) required before filing an application for an Adoption Order with the Family Court

You may be required to send one or two notices before filing an application for an Adoption Order in Court. Firstly, under Section 58 of the Act, the step-parent or step-parent’s legal representative must notify the CEO of the Department in writing of their intention to apply for an Adoption Order. This must be done at least 60 days before the application is filed in Court. This is so that the Department can then prepare a report for the court known as the “Section 61 report”. The written notice must be delivered to FAS (addressed to “The Chief Executive Officer”), C/O Team Leader, Step-Parent Adoption” PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au.

Secondly, under Section 59 of the Act, if required, the step-parent or step-parent’s legal representative must notify appropriate relatives in writing of their intention to apply for an Adoption Order. This notice is only required if a child’s birth parent is deceased or the requirement for a birth parent’s consent to adoption has been dispensed with on the grounds that the birth parent cannot be found or located. This must be done at least 30 days before the application is filed in Court and the written notice must be delivered personally or by registered post to the relative’s last known address. The step-parent or step-parent’s legal representative must send confirmation that the notice was sent to FAS (addressed to “Team Leader, Step-Parent Adoption”), PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au.
Step 6 - Section 61 assessment and report for Family Court proceedings

The Section 61 Report is a report prepared by the Department and filed with the Family Court for the adoption proceedings. The report contains specific information to assist the Family Court to make a decision about whether to grant an Adoption Order. Much of the information contained in the report is gathered by an assessor allocated to conduct an assessment with the step-parent, birth parent and child of the adoption. The allocated assessor will contact the applicant to arrange meetings for the assessment. Usually the assessment involves two meetings in the family home of about 90 minutes duration or three shorter meetings but this may vary.

The birth parent the child lives with, the step-parent and the child are interviewed together and individually to seek their personal views on the proposed adoption. Any other person affected by the proposed adoption may also be consulted, including any other children in the family and the relinquishing birth parent. The assessor will need to report to the Family Court as to whether:

- there is a parent and child relationship between the step-parent and the child
- there is willingness and ability by the step-parent to maintain this relationship until the child attains adulthood
- the child to be adopted is treated as a member of the new family
- the marriage or relationship is stable
- the step-parent is a fit and proper person to adopt the child
- the Adoption Plan is in the child’s best interests and satisfies the requirement of Schedule 2

If the step-parent’s Criminal Record Check and Medical Certificate are more than 12 months old at time of the assessment, the assessor will get a statutory declaration from the step-parent stating whether there have been any changes to their criminal record or medical condition since the last record check and medical were conducted. The assessor must make note of any changes in the report and may decide that the Criminal Record Check and Medical check be renewed. Otherwise, Criminal Record Check and Medical Certificate are only required to be renewed every three years.

Before this step can begin, the step-parent or step-parent’s legal representative must provide FAS, if they have not done so already, with copies of the following:

- consents to adoption
- If the prospective adoptee is a child 12 years of age and over, the child’s consent to change of name if applicable
- Certificates of Witness
- the final signed Adoption Plan
- the Section 21 notice
- If applicable:
  - any Dispensation Order made by the Court
  - any Order made by the Court for further provision for a child’s guardianship
  - confirmation that the Section 59 notice has been sent

Additionally, any last forms/documents not yet sent to the Department to complete Step 5B must be forwarded to FAS PO Box 641, Belmont 6984 or PO Box 644, Cottesloe 6941, or email to adoptions@dcp.wa.gov.au.

Once all of this information and the Section 58 notice have been received, FAS will check that all steps thus far have been completed according to the requirements of the Act. The Department then sends a letter to the step-parent or step-parent’s legal representative to acknowledge that the Section 58 notice was received and a request to the step-parent for a $450 fee to be paid for the assessment and preparation of the Section 61 report. After payment has been received, FAS will allocate an assessor to conduct the assessment and prepare the report.

Timelines are subject to FAS engaging a suitably qualified Assessor and/or Child’s Representative (if required) when available to complete the required work. The Department has at least 60 days to complete the report however if a child’s representative is appointed it will take longer.

The Section 61 Report is filed with the Family Court by the Department once completed. If a Child’s Representative was appointed, then that person’s report on contact with family and recommendations will also be provided to the Family Court.

Note that the Section 61 Report is a court document and copies cannot be distributed to the parties by the Department. Should you wish a copy of the Section 61 Report you must apply directly to the Family Court.
Step 7 - File applications for a Determination and an Adoption Order with the Family Court

At least 60 days after you send the Section 58 notice to the Department, the step-parent, step-parent’s legal representative, or the birth parent with whom the child lives must file their applications for a Determination and an Adoption Order with the Court. Remember that the Court will not consider granting an Adoption Order if it has not first made a determination that adoption is the best option for the child. If you have any queries about what either of these applications entails, please contact the Family Court.

Step 8 - Family Court consideration of applications for Determination and Adoption Orders

Your applications for a Determination and an Adoption Order will be heard by a Judge generally within three weeks after the applications and Section 61 report have been received by the Family Court. The Judge will hear the matter in Chambers which means you do not have to attend the court for a hearing, unless the Judge specifically requests it.

In order to make a decision, the Judge considers:

- the written memorandum of the provisions of the Adoption Plan,
- the information contained Section 61 report filed by Department,
- the Child Representative report, if applicable, and
- all supporting evidence filed by the step-parent or step-parent’s legal representative.

If the Judge determines that adoption is preferable and grants an Adoption Order, the Family Court will:

- forward an original Adoption Order to the step-parent or step-parent’s legal representative and to FAS
- advise the Registrar of the Registry of Births, Deaths and Marriages of the adoption.

It is once the Adoption Order is granted that the Adoption Plan becomes active as a legally binding agreement.

Once FAS has received notification of the orders from the Family Court, FAS will send letters to the step-parent or step-parent’s legal representative and (unless special circumstances apply) the other birth parent to:

- acknowledge the orders made by the Family Court
- notify the parties that the process has been concluded and that the case is to be closed.

Note that an application can be made to the Registry of Births, Deaths and Marriages for a copy of the new birth certificate that will include details of the adoptive parent. The Registrar keeps information regarding the relinquishing birth parent so it can be accessed in the future - this is in accordance with Part 4 of the Adoption Act 1994 that regulates access to adoption information.

See the “Frequently Asked Questions” section of this document for information on:

- What happens if an adoption plan is breached?
- Can an Adoption Plan be varied after it has been finalised?
- Can I appeal if I am not happy with a decision made by the Department
FREQUENTLY ASKED QUESTIONS (FAQs)

What is meant by “the child’s best interests”?
When taking into account a child’s long term and day to day care, welfare and development the Family Court of Western Australia always considers what is in the child’s best interests. In addressing the child’s best interests the Court may consider a number of factors including the following, as stated in the *Family Law Series No 2* by the Attorney General’s Department:

- any wishes expressed by the child
- the nature of the child’s relationship with the birth parents
- the likely effect on the child of any change(s) in circumstances
- the practical difficulty and financial costs of a child having contact with a parent
- the parent’s capacity to care for the child
- the child’s maturity, sex and background
- the attitude of parents towards their child and their parenting responsibilities
- any other factors the court considers relevant.

Where can I get a copy of the Western Australian Adoption Act 1994?
Copies of the Western Australian Adoption Act 1994, and copies of the Adoption Regulations 1995 and the Adoption Rules 1995 can be obtained from:

The State Law Publisher  
10 William Street  
Perth WA 6000  
Telephone (08) 9321 7688  
Website: [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

The website of the State Law Publisher has the full text of the Act, the Regulations and Rules on-line.

What is a Child’s Representative and under what circumstances is one appointed?
A Child’s Representative is a suitably qualified person appointed by the Chief Executive Officer of Department for Child Protection to represent a prospective adoptee where the Chief Executive Officer thinks it is necessary. That person usually is a social worker, psychologist or other professional with relevant experience.

When a Child’s Representative is appointed the Department for Child Protection will pay the cost of the services provided by the child’s representative unless the court directs otherwise.

The Child’s Representative’s role is to help decision-makers understand the child’s needs. The Child’s Representative acts independently as the child’s advocate and can instruct a solicitor on behalf of the child if required. Examples of circumstances where the Chief Executive Officer may recommend a child’s representative be appointed are:

- when the adoption is being contested by one or more of the parties to the adoption
- there is reason to believe the adoption may not be in the child’s best interests
- Schedule 2 of the Act has not been adhered to
- one of the birth parents is unwilling to give consent to the child’s adoption by another party or is withholding his or her consent beyond a reasonable time
- when the relinquishing birth parent is under 18 years old
- when the adoptee has a disability that may impact upon the adoption placement

The appointment may be done at any stage of the adoption process to help the parties:

- focus on the child’s best interests and/or
- negotiate an appropriate adoption plan.

Seeking legal advice and information on family law, where do I start?
A list of lawyers experienced in family law is available from:

- the Law Society on telephone (08) 9322 7877.
- Family Law and Practitioner Association on email info@flpawa.com.au

Fees charged by legal practitioners differ greatly so you may wish to obtain quotes from at least two practitioners.

Information on family law may be obtained from:

- the Family Court of Western Australia on telephone (08) 9224 8222
- the Family Court of Western Australia website: [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au)
- Community Legal Centres—for addresses contact the Community Legal Services Association on telephone (08) 9221 9322.
• Citizens Advice Bureau on telephone (08) 9221 5711.

The Legal Aid Commission of Western Australia has published a booklet You and Family Law that is available by telephoning 1300 650 579. Brochures on family law can be found at local libraries.

How long does the whole step-parent adoption process take?
The whole adoption process is likely to take a minimum of six months from the time information under Schedule 1 is provided to the time the Family Court of Western Australia may grant the Adoption Order. This timeline does not account for delays which are often unavoidable.

Delays may arise because of difficulties in locating parties or in the transmission of documents. They may also arise when applying to the court to obtain orders for Dispensation of Consent to adoption and/or Adoption Plan. Such delays may also affect the validity of your police clearance and medical report. If the validity period has expired you must gather new documents.

What is parental responsibility under the Adoption Act 1994?
The following definition is found in Section 68 of the Western Australian Family Court Act 1997 and Section 4 of the Adoption Act 1994:

“Parental responsibility, means, in relation to a child, all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.”

How and when do I talk to my child about adoption?
Even if a child is under 12 years of age, Schedule 2 of the Act stipulates that the child has the right to know about adoption in a manner appropriate to the child and the child’s stage of development.

Children who live with a step-parent need to know that their step-parent cares for them, takes responsibility for them, makes decisions for them, and is committed to bringing them up and protecting them. Their step-parent however did not give them half of their biological heritage and a person has a right to know about this part of their history as well, regardless of whether or not an adoption is being considered. The importance of having answers to questions about ones’ own identity like “Where do I get my physical characteristics?” should not be underestimated. It is also important for children to have the opportunity to make sense of their separation/loss of one birth parent, even if they have never met this parent.

Parents sometimes delay telling their child about their biological history because they believe it will spare the child from pain or confusion. Evidence reveals however that the child can handle the truth much more easily than lies and secrecy. People who were not told that a loved parent is not, after all, a blood relation and have discovered the truth from someone else by accident later in life have said things like “I don’t know who I am anymore”, “I can’t believe everyone knew except me”, and “I feel as if I have been betrayed”. It is extremely difficult to keep a secret like this over many years without it being revealed.

For children to have relationships built on honesty and trust with the key people in their life, they should know the truth about their biology and social relationships and be given the opportunity to ask questions, even if they are too young to fully understand it.

The thought of openly discussing these issues with a child can be overwhelming or confusing for the child’s parents. The step-parent may feel threatened by the idea of telling the child that he or she is not their birth parent. The birth parent the child lives with may feel helpless when asked questions about the other birth parent if they do not know the answer or how to answer. Discussions can be further complicated if, for example, one birth parent deserted the other; the circumstances of the child’s conception was distressing; or the birth parents separated under difficult circumstances.

Given the sensitive issues involved, you may wish to speak with a professional counsellor before talking to your child. This may help you manage your own feelings: know when and how to first broach the subject; learn about what children understand at different ages; consider when to share potentially disturbing information about the child’s other birth parent or the circumstances of the breakdown of the family of origin; and/or prepare for how your child might react to information and learn how best to support them.
Professional counsellors experienced in adoption matters can be accessed through Adoption Research and Counselling Service. Adoption Research and Counselling Service’s contact information is as follows:

Adoption Research and Counselling Service
Location: 301 Railway Parade Maylands W.A.
Postal: PO Box 593 Maylands W.A. 6931
Tel: (08) 8370 4914
Website: www.adoptionwa.org.au
Email: arcs@adoptionwa.org.au

Other services specifically for families after separation and step-parent families can be accessed through Relationships Australia, Centrecare, Anglicare WA, and Family Relationships Online.

Where do I obtain the documents required for Step 5B (birth certificate, marriage certificate, statutory declaration)?

Birth Certificate
This is a copy of the full birth certificate of the child(ren) to be adopted. The extract form is not sufficient. Copies can be obtained from:

The Registry of Births, Deaths and Marriages
Level 10, 141 St George’s Terrace
Perth 6000,
Telephone 1300 305 021

Marriage Certificate
This is a certified copy of the full marriage certificate. Copies can be obtained from the Registry of Births, Deaths and Marriages. Please note that the copy given at the time of marriage is not a certified copy and does not provide sufficient detail for the purpose of adoption.

Statutory Declaration as to the length of the couple’s relationship
For couples who are not married or who have not been married for three or more years, a statutory declaration as to the length of the couple’s de facto relationship must be provided. A statutory declaration is a written statement which is sworn or affirmed by you before a Justice of the Peace, public notary or lawyer. It should give the facts of your relationship such as when you met, when you commenced a de facto relationship, when the step-parent commenced caring for the step-child(ren) and in what capacity the step-parent cared for them etc.

Can the requirement for a person to consent to the adoption be dispensed with?
Before an application for an adoption order in relation to a child is filed in the Family Court, an application may be made to the Family Court by a prospective adoptive parent for an order to dispense with the requirement under Section 17(1) of the Act for a person’s consent to the child’s adoption. It should be noted that the Family Court does not readily dispense with this requirement. For information about the circumstances under which the Family Court may grant such a dispensation, see Section 24 of the Act. For information about the process for making such an application, please contact the Family Court on www.familycourt.wa.gov.au.

Can the requirement for an adoption plan or for a particular person to be party to the plan be dispensed with?
The Family Court may dispense with the requirement for an adoption plan or that a particular birth parent be a party to the plan. For information about the circumstances under which the Family Court may grant such a dispensation, see Section 73 of the Act. For information about the process for making such an application, please contact the Family Court on www.familycourt.wa.gov.au.

Can the requirement to serve notice as required under Section 21 be dispensed with/the period in which to serve the notice be extended?
Before an application for an adoption order in relation to a child is filed, an application may be made to the Family Court by a prospective adoptive parent for an order dispensing with a requirement to serve notice under Section 21(2a) or extending the period referred to in Section 21(2b) for service of notice. For information about the circumstances under which the Family Court may grant such a dispensation or extension, see Section 25 of the Act. For information about the process for making such an application, please contact the Family Court on www.familycourt.wa.gov.au.
Who is eligible to witness the signing of: consent to adoption; revocation of consent to adoption; an adoption plan?

For the signing of consent to adoption or a revocation of consent to adoption to be considered effective, it must be witnessed by an eligible witness. Schedule 1 of the Act gives a complete list of eligible witnesses, including Justices of the Peace, Public Servants and Police Officers. If you have engaged a solicitor or lawyer to assist you with the adoption process your solicitor or lawyer cannot be the witness. Neither can a person providing Schedule 1 information or Schedule 1 counselling as in both cases there would be a conflict of interest.

For the signing of an adoption plan, the Department requires that each party also have their signature witnessed (this does not need to be an eligible witness as defined under Schedule 1).

Can an Adoption Plan be varied after it has been finalised?

At any time before the child turns 18 years of age anyone who was involved in the negotiations of an Adoption Plan can apply to the court to seek a variation to the Adoption Plan. A person who may not have been involved in the negotiation of the Adoption Plan at the time but who is a party to the adoption may also seek a variation.

The Family Court will consider whether there has been a change of circumstances since the plan was approved before approving the changes. The Family Court also considers whether the proposed changes adequately balance the rights and responsibilities of the parties.

In step-parent adoption it is not necessary for the Department to provide a mediation service before a variation to an Adoption Plan can be heard by the Family Court.

If the Department was a party and signatory to the previous plan and that plan is varied then a copy of the new plan must be forwarded to Fostering and Adoption Services. This must be done before it is submitted to the Family Court.

If the Department was not involved in the previous plan but the new plan may involve the Department then the Department must be invited to participate in the negotiations of the new plan before it is signed by the parties.

What happens if an adoption plan is breached?

An Adoption Plan has the same effect as a Family Court Order and it must be adhered to by the parties. The terms of the Adoption Plan become enforceable from the date of the Adoption Order. The Family Court of Western Australia can enforce the provisions of the Adoption Plan under the Family Court Act 1997.

Which relative do I send the notice as required under Section 59 to, if applicable?

As stipulated in Section 59(2) of the Act, written notice of the intention to file an application for an adoption order:

a. is to be given to as many close relatives of the birth parents who have attained the age of 18 years as is practicable; or
b. if no close relative of a birth parent can reasonably be located, is to be given to an aunt or uncle of the birth parent who have attained the age of 18 years and is reasonably available at the relevant time.

Note that if required, a person intending to file an application for an adoption order in relation to a child may apply to the Family Court for an order to determine the person or persons to whom it is sufficient for the notice to be given for the purposes of Section 59(2). For information about the process for making such an application, please contact the Family Court on www.familycourt.wa.gov.au.

Can the requirement to serve notice as required under Section 59 be dispensed with/the time for giving the notice be varied?

A person intending to file an application for an adoption order in relation to a child may apply to the Family Court for an order in relation to a requirement to serve notice under Section 59, to either dispense with the requirement to give the notice or to vary the time for giving the notice. For information, see Section 60 of the Act. For information about the process for making such an application, please contact the Family Court on www.familycourt.wa.gov.au.
Can I appeal if I am not happy with a decision made by the Department?
The Act makes provision for review procedures. Under Section 110, applicants may apply to the Chief Executive Officer of the Department for Child Protection for a review of a decision made by the Department.

A person who is aggrieved by the decision of the Chief Executive Officer on review may apply to the State Administrative Tribunal for a review of the CEO’s decision (this is under Section 113 of the Act.)

CONTACT DETAILS

Fostering and Adoption Services
Location: 161 Great Eastern Highway, Belmont
Postal address: PO Box 641, Belmont WA 6984
Tel: 1800 182 178
Email: adoptions@dcp.wa.gov.au
Website: www.childprotection.wa.gov.au

Family Court of Western Australia
Location: 150 Terrace Rd, Perth
Postal address: GPO Box 9991
Tel: (08) 9224 8222
Website: www.familycourt.wa.gov.au

Adoption Research and Counselling Service
Location: 301 Railway Parade, Maylands
Postal address: PO Box 593, Maylands WA 6931
Tel: (08) 8370 4914
Website: www.adoptionwa.org.au
Email: arcs@adoptionwa.org.au

Registry of Births Deaths and Marriages
Location: Level 10, 141 St Georges Terrace, Perth WA 6000
Tel: 1300 305 021 within Australia

State Law Publisher
Location: 10 William St, Perth WA 6000
Tel: (08) 9321 7688
Website: www.slp.wa.gov.au
Figure 1. Step-Parent Adoption Process Flow Chart

1. Obtain information guide and registration form
2. Contact the parties whose consent to adoption is required
3. Submit “Registration to receive Schedule 1” form
4. Provision of Schedule 1

Pursue alternative to adoption

Step 5A. Obtain Step-Parent Adoption Application Package
Step 5B. Send specified documents and forms to the Department
Step 5C. Negotiate an Adoption Plan and send the draft copy to the Department for comment
Step 5D. Giving of consents to adoption
Step 5E. Send notice of the proposed adoption to a man who is or may be a prospective adoptee’s father
Step 5F. Signing the Final Adoption Plan
Step 5G. Send notice(s) required before filing an application for an Adoption Order with the Family Court

Step 6 Section 61 assessment and report for Family Court Proceedings
Step 7 File applications for a Determination and an Adoption Order with the Family Court
Step 8 Family Court consideration of applications for Determination and Adoption Orders