

ADOPTION BY A STEP-PARENT

DISCLAIMER

This information is provided by the Adoption Service, Department for Child Protection as information only and is not intended as legal advice.

The information in this guide is effective as of May 2009

Family Information and Adoption Services (FIAS)
Level 2, 161 Great Eastern Hwy, Belmont WA 6104
PO Box 641, Belmont WA 6984
Telephone (08) 9259 3414 or Freecall 1800 182 178



DEPARTMENT FOR CHILD PROTECTION

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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 step-parents want to build on that foundation and make the relationship between them and their step-child a more formal one.

Parents and step-parents can apply to the Family Court of Western Australia (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.

For an adoption to take place, the *Adoption Act 1994* (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. The Judge will generally not make that decision until they have all of the information included in an adoption order application available for them to consider. An Adoption Order is a decision by the Family Court Judge about whether they will grant an adoption. 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 Act also 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

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. Adoption of a child should only be considered in circumstances where there is no other appropriate alternative for the child.

Before you proceed with an adoption application it is recommended that you seek legal advice about the best option for your family and assistance to pursue the application. The Adoption process is highly administrative and has a number of important legal stages that need to be completed at a particular time and in accordance with the requirements of the adoption legislation.

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 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. Family Information and Adoption Services (FIAS) officers are trained in all aspects of adoption work and can provide information or counselling on adoption issues to birth parents, prospective adoptive step-parents and their families. FIAS officers are not legal practitioners and cannot give procedural or legal advice in relation to your application. It is therefore strongly recommended that any party intending to proceed with a step-parent adoption application seek legal advice, information or representation from a family law specialist who has experience in adoption work.

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

- Seeking legal advice and information on family law, where do I start?

ALTERNATIVES TO ADOPTION

As mentioned, 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 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 is made up of different orders. It may deal with one or more of the following matters:

- the person or persons with whom a child is to live (Residence Order)
- contact between a child and another person, or other persons (Contact Order)
- maintenance of a child (Maintenance Order)
- any other aspect of parental responsibility for a child (Specific Issues Order).

The "Specific Issues Order" of a Parenting Order may grant parental responsibility for the long term and/or day to day care, welfare and development of the child. It may also deal with issues such as schooling, health, medical and religious affiliation, and the name of the child. For example, a specific issues order could give a step-parent authority to sign consent for the child to receive an anaesthetic.

Parenting Order kits are available directly from the Family Court or the Family Court website.

Consent Orders

When all parties agree on matters of parental responsibility the court encourages them to apply for Consent Orders. Consent Orders deal with the same matters as Parenting Orders but are made by 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. 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 (granted by an Adoption Order) which severs all legal ties with the birth family and gives full parental rights and responsibilities to the adoptive family. 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 takes 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.

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

- What is parental responsibility under the Act?
- How long does the whole step-parent adoption process take?

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.

What is the effect of a step-parent adoption order?

In a step-parent adoption the 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:

- it 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.
- Changes child's last name. Child's first name remains the same. The naming of a child is very personal, with parents' feelings, fashion, tradition and family values affecting that choice. 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 Adoption Act 1994 has a principle of retaining the child's first name. If an Adoption Order is granted, the court will declare the name under which the child will be known after the adoption (as part of the Adoption Order).

What is open adoption?

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 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.

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

the 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 have;

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

The arrangements for open adoption are formalised into an Adoption Plan, which is agreed and signed by the birth parent(s) and adoptive step-parent.

What is an Adoption Plan?

An Adoption Plan is a legal agreement between the birth parents and the adoptive step- parent and sets out any arrangements for information exchange about the child. The Adoption Plan may also set out arrangements for contact between the parties.

Since the establishment of the *Adoption Act 1994*, all parties to an adoption are required to sign an Adoption Plan unless the Family Court has dispensed with this requirement. The Family Court will only dispense with the Adoption Plan under very limited circumstances.

The Adoption Plan should be child focused and should not be used in any way to reduce or 'bargain' away the child's right to have knowledge, on-going information and/or contact with the relinquishing birth parent. The Department does not see that it is appropriate to place the sole responsibility for seeking information or contact with the relinquishing birth parent 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. The Department does not see it as appropriate to address issues of child maintenance in the Adoption Plan.

Ensuring the child's rights are protected

Under section 134 (1) of the *Adoption Act 1994* the Chief Executive Officer may at any time appoint a suitably qualified person to represent a child who is a prospective adoptee or an adoptee.

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

- What is a child's representative?
- When is a child's representative appointed?
- If a child's representative is appointed, who pays?

CRITERIA FOR STEP-PARENT ADOPTION

A step-parent adoption of a child under 18 years may be considered by the 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 responsibility for the long term and day to day care, welfare and development of 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". Family Information 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 parents
- consent to a Departmental data base check to determine if previous contact with The Department has occurred. This information will assist The Department 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 of Western Australia 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.

THE STEP-PARENT ADOPTION PROCESS

There are **15** key steps to a step-parent adoption process. Each step must be done in the right order and completed within certain timelines. The information below outlines these steps in the order they must happen. Under the heading for each step is a table. The left column of the table indicates who is required to carry out the step. Wherever the 'step-parent' is mentioned here, it may also refer to the step-parent's legal representative if one has been engaged. The colour of the table also helps to indicate who must conduct each step – the table is shaded grey if the step-parent must conduct the step and is white if The Department conducts the step. The right column of the table provides a short summary of the step. The 15 key steps can be grouped as follows:

Steps 1 to 11

These steps form the early stage of the adoption process. They allow you:

- to decide whether the proposed adoption is what you want and then
- give you the opportunity to negotiate an Adoption Plan.

See Figure 1 “Step-parent adoption process flow chart: Steps 1 to 11” at the end of this booklet for a graphic representation of steps 1 to 11.

Steps 12 to 15

These steps complete the adoption process. This is the formalisation stage where the Family Court Judge considers all supporting evidence and decides whether to grant the Adoption Order. They include:

- notifying the Chief Executive Officer of Department for Child Protection (Family Information and Adoption Services) and
- filing the application for an Adoption Order.

See Figure 2 “Step-parent adoption process flow chart: Steps 12 to 15” at the end of this booklet for a graphic representation of steps 12 to 15.

Step 1 Information Package

<p>Who does Step 1? Step-Parent or Step-Parent's legal representative</p>	<p>Summary of Step 1 Step-parent requests and receives a Step-Parent Adoption information package from The Department.</p>
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Step-parent makes initial contact with The Department to request that a Step-Parent Adoption package be sent to them. To make a request, call the Local Adoption Duty Officer on (08) 9259 3414 or Freecall 1800 182 178. If the step-parent is engaging a legal representative, the package can be sent directly to the solicitor.

The step-parent's Step-Parent Adoption package contains:

- Letter to Applicant
- Information Booklet: “Adoption by a Step-Parent”
- Form 218: Step-Parent Adoption Application
- Form 368: Database Consent form
- Form 413: Letter to Medical Practitioner and Medical Certificate to be completed by medical practitioner
- Form 395: Criminal Record Check Consent form
- Notice: “Have you resided in the United Kingdom...”

Step 2 Contacting all the parties who must give consent

Who does Step 2? Step-Parent or Step-Parent's legal representative	Summary of Step 2 Step-parent contacts all parties who must give consent to seek their position on the proposed adoption.
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The step-parent or the step-parent's legal representative must contact each person listed below to inform them of the proposed adoption and ask for their initial views and position in relation to the proposed adoption:

- the birth parent the child lives with
- the other birth parent (the relinquishing birth parent)
- the child, if the child to be adopted is 12 years old and over.

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 when seeking the child's view on the adoption.

Step 3 Gathering application documents, forms and fee and sending them to The Department with a request for Schedule 1 information to be provided.

Who does Step 3? Step-Parent or Step-Parent's legal representative and the birth parent the child lives with	Summary of Step 3 Step-parent makes initial application to The Department by: <ul style="list-style-type: none">• Gathering legal documents and completing application forms• Sending documents, forms and fee to The Department• Sending request for Schedule 1 to The Department
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The following documents, forms and fee need to be gathered by the step-parent and the parent the child lives with. They are:

Legal documents

- Certified copy of full birth certificate(s) of the child(ren) to be adopted
- 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:
 - certified copy of full marriage certificate issued by Registrar General's Department (not the certificate given on the wedding day) and/or
 - copy of affidavit stating the length of the couple's stable de-facto relationship.

Information about where to obtain these legal documents is available at the end of this guide (Appendix 2).

Department for Child Protection forms

- Form 218: the step-parent adoption application form
- Form 368: the step-parent's authority for Department for Child Protection to do a record check and authority for release of information
- Form 413: the medical report on the step-parent's health to be completed by the step-parent's doctor.
- Form 395: Criminal Record Check form

Fee

- \$30 fee made payable to Department for Child Protection to conduct the Criminal Record Check.

Request for Schedule 1 information and counselling

In Western Australia, the Department for Child Protection through Family Information and Adoption Service is the only agency permitted to provide Schedule 1 information and counselling to any party requiring that information for the purposes of adoption. Schedule 1 information is the information that must be received before an effective consent to an adoption is given. The step-parent must send a written request to The Department for each party to receive Schedule 1 information.

Once gathered, the documents, forms, fee and request for Schedule 1 information and counselling must be sent to:

Team Leader Local Adoption
Family Information and Adoption Services
Department for Child Protection
PO Box 641
Belmont WA 6984.

Step 4 The Department receives documents, forms, fee and schedule 1 request

<p>Who does Step 4? The Department</p>	<p>Summary of Step 4 The Department receives documents, forms and fee from step-parent. The Department then:</p> <ul style="list-style-type: none">• Checks application meets criteria and that child is eligible to be adopted.• Runs Criminal Record Check• Sends referee report forms to referees listed in step-parent's application form. <p>Once Criminal Record Check is complete, The Department will contact parties who must give their consent to arrange appointments for Schedule 1 information and counselling.</p>
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Upon receipt, The Department checks that:

- the application meets all the criteria for step-parent adoption
- the child is eligible to be adopted under the Western Australian adoption legislation.

The Department will then:

- conduct the step-parent's Criminal Record Check
- send referee report forms to those referees listed in the step-parent's application form.

Once the Criminal Record Check is complete, The Department will contact each party directly to arrange appointments for Schedule 1 information and counselling.

Step 5 Schedule 1 information and counselling received from The Department before giving consent

<p>Who does Step 5? All persons required to sign their consent and a case worker from The Department</p>	<p>Summary of Step 5 A case worker from The Department delivers written and oral Schedule 1 information to the parties who must give their consent to the adoption.</p>
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In Western Australia, the Department for Child Protection through Family Information and Adoption Services is the only agency permitted to provide Schedule 1 information and counselling to any party requiring that information for the purposes of adoption.

Schedule 1 information is the information that must be received under Schedule 1, (1) (a) of the Act before an effective consent to an adoption is given. 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
- the social implications of adoption (how the adoption affects all parties)
- the legal process of adoption
- the rights and responsibilities of the parties to an adoption
- an offer to receive Schedule 1 counselling
- a list of independent counsellors from whom the person may seek Schedule 1 counselling
- Schedule 2 – Rights and responsibilities to be balanced in adoption plans

Schedule 1 Counselling is the counselling that must be offered when information is given. Counselling on adoption issues such as grief, loss and long term emotional impact of an adoption must be offered to the birth parent the child lives with, the relinquishing birth parent and the prospective adoptee if 12 years old and over. These people decide whether or not they want to receive counselling on these issues from The Department and/or from the list of independent counsellors. Private agencies and independent counsellors may charge a fee for their counselling services. The Department for Child Protection does not charge a fee for counselling services. The oral and written Schedule 1 information must be provided even if counselling is declined.

Information and counselling must be received at least 28 days before a consent to adoption is signed.

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

- What is Schedule 1 information?
- What is Schedule 1 counselling?
- Who provides Schedule 1 information and counselling?

Step 6 The Department provides Schedule 1 affidavits

<p>Who does Step 6? The Department</p>	<p>Summary of Step 6 The case worker who delivered Schedule 1 will write an affidavit for each party to the adoption. The Department will send original affidavits to the step-parent.</p>
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The case worker who provides Schedule 1 information must write an affidavit for each person who has received Schedule 1 information. The affidavit must state that Schedule 1 information was provided, that counselling was offered and whether counselling was requested. If counselling was requested, the commencing and completion dates of counselling will be included in the affidavit.

The case worker sends the original affidavits to the step-parent or step-parent's legal representative.

Step 7 Negotiating an Adoption Plan, and sending a draft copy of the Plan to The Department for comment prior to signing.

<p>Who does Step 7? All parties to the adoption directly or with the assistance of legal representatives or The Department</p>	<p>Summary of Step 7 At least 30 days before signing of consents, all parties to the adoption (directly or with the assistance of legal representatives or the Department) must negotiate an adoption plan. Once a draft Adoption Plan has been written, step-parent must send a draft copy to The Department for comment.</p>
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The amount of information exchange and contact there will be between the child, the newly formed family and the relinquishing birth parent is formulated in a negotiated agreement called the Adoption Plan. The Adoption Plan is a written document, signed by the birth parent(s) and the adoptive parents and is a legally binding Family Court Order, which carries penalties for any breach. Every adoption must have an Adoption Plan unless the Family Court has dispensed with the requirement for one.

All the parties to the adoption should be actively involved in drawing up the draft agreement. Negotiating an Adoption Plan is a matter for the birth parents, the step-parent, the child (if the child is aged 12 years or over) and the child's representative (if appointed). In order to avoid unnecessary delays and expense it is advisable to consider what provisions will form part of the Adoption Plan in the early stages. The negotiations can take place directly between the parties, with the assistance of legal representatives or with the help of the Department for Child Protection. Requests for assistance or mediation must be made in writing to:

The Chief Executive Officer
C/o the Team Leader Local Adoption
Family Information and Adoption Services
Department for Child Protection
PO Box 641
Belmont WA 6984.

If The Department's involvement is considered necessary by the Team Leader, a Departmental officer will participate in the negotiations of the Adoption Plan.

The overriding consideration when negotiating the Adoption Plan must be the best interests of the child. The plan can set out how often information will be exchanged, what sort of information will be exchanged (eg. letters, photos, videos etc), 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 of the Act must be available to all parties before negotiating and signing an Adoption Plan).
- be reasonable
- promote the child's long term welfare
- take into account the child's best interests

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:

- the issue of a child's maintenance is part of the Adoption Plan
- the Adoption Plan is used to limit contact between the child and the relinquishing birth parent or limit the exchange of information about the child between the parties.

A sample Adoption Plan is available from the Department for Child Protection Adoption Service as part of the Step-Parent Adoption information package. It may be amended to fit your circumstances.

Once the draft Adoption Plan has been written, the step-parent must send a draft copy to The Department for comment under Section 18(1)(da). A consent to a child's adoption is not considered effective unless the Department has had an opportunity to view and comment on a draft copy of the Adoption Plan. Send draft adoption plan to:

Team Leader Local Adoption
Family Information and Adoption Services
PO Box 641
BELMONT W.A. 6984

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

- What happens if one of the parties is unable or unwilling to participate in the negotiations of an adoption plan?

Step 8 The Department provides comment on the draft Adoption Plan

Who does Step 8? The Department	Summary of Step 8 The Department will review draft adoption plan and write an official letter of comment on the provisions of the draft plan. Parties to the adoption are asked to consider the comments and make adjustments to the plan where appropriate.
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The Department will review the draft adoption plan and send the step-parent an official letter of comment on the provisions of the draft plan. Under Section 18(1)(da) the Chief Executive Officer of The Department has at least 30 days to comment. This comment may include some recommendations about the draft plan.

The parties to the adoption are asked to consider the recommendations and make adjustments to the plan where they feel appropriate.

If The Department does not have the opportunity to comment, then consent to a child's adoption is not effective.

Step 9 Signing the consent to adoption, completing the certificate of witness and returning both to the step-parent or step-parent's legal representative

<p>Who does Step 9? Each person who is required to sign and adoption consent and each person's witness</p>	<p>Summary of Step 9 At least 28 days after receiving Schedule 1 information and counselling, each person who is required to sign consent can sign their consent to the adoption. Each individual who signs consent must:</p> <ul style="list-style-type: none"> • Complete and sign the consent form • Have the consent form signed by an eligible witness • Get the witness to view the Schedule 1 affidavit and then complete the Certificate of Witness form. • Send the completed consent form, certificate of witness and original affidavit back to the step-parent. <p>NB:</p> <ul style="list-style-type: none"> • Where one person is required to consent to the adoption, that person is able to revoke their consent within a period of 28 days after the date the consent form was signed. Where two or more people are required to consent to the adoption, those people are able to revoke their consents within 28 days from the time all consents have been received by the step-parent. These 28 day periods are known as the "revocation period". To revoke consent the person must complete "revocation of consent form" and send it to the step-parent. • If the step-parent believes there are grounds to dispense with the requirement for a party to give their consent to the adoption, an application must be made to Family Court for a Dispensation of that person's consent. If the Court does not approve the dispensation, the adoption application can go no further unless the consent is signed. <p>Once the consent forms (signed and witnessed) are received by the step-parent, the step-parent must forward a copy of these documents to the Department with a notice of the date the revocation period began.</p>
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When it is time to sign consents, the step-parent must provide each person required to sign consent with:

- Original affidavit stating that the person has received Schedule 1
- 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

The consent, certificate of witness and revocation of consent forms are provided to the step-parent or the step-parent's legal representative as part of the Step-Parent Adoption information package. By this stage, the original Schedule 1 affidavits would have been sent to the step-parent or the step-parent's legal representative by The Department.

Under Sections 17,18 of The Act, each consent to an adoption must be:

- given in writing on the approved consent form issued by the Department for Child Protection
- signed
- witnessed by an eligible witness (see FAQ for list of eligible witnesses)
- **and must have** a separate certificate of witness document signed by the witness on the same day the consent is signed and witnessed. The witness must sight the affidavit(s) indicating when Schedule 1 information and counselling was received by the parties before signing the certificate of witness.

Once a consent is signed and witnessed it must be returned to the step-parent or step-parent's legal representative with the certificate of witness and original affidavit.

The Adoption Act allows for a "cooling off" period. This is to make sure that any party who signed a consent is satisfied that adoption is really what they want. Where one person is required to consent to the adoption, that person is able to revoke their consent within a period of 28 days after the date the consent form was signed. Where two or more people are required to consent to the adoption, those people are able to revoke their consents within 28 days from the time all consents have been received by the step-parent or step-parent's legal representative. These 28 day periods are known as the "revocation period". During the "revocation period" a consent previously given may be withdrawn or revoked by completing the approved Revocation of Consent Form 359. This form must be completed in writing, signed, witnessed and sent to the step-parent or step-parent's legal representative.

Once all of the consent forms (signed and witnessed) are received by the step-parent or step-parent's legal representative, the step-parent or legal representative must forward a copy of these documents to The Department with a notice of the date the revocation period began.

At the time the consent forms (signed and witnessed) 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 the Department for Child Protection.

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.

Special circumstances may exist where under Section 24 of the Act an application may be made to the Family Court to dispense with the consent of the birth parent and need for an Adoption Plan. It should be noted though, that the Family Court does not readily dispense with these requirements.

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

- Who can witness a Consent to Adoption?
- Can my Solicitor or the person who provided Schedule 1 counselling witness my consent and sign the Certificate of Witness?
- Can a consent to adoption be dispensed with?

Step 10 Sending the notice of a proposed adoption to a man who is or may be a prospective adoptee's father

<p>Who does Step 10? Step-Parent or Step-Parent’s legal representative</p>	<p>Summary of Step 10 Within 7 days after receiving the first consent to adoption signed and witnessed, the step-parent must send the notice of a proposed adoption to the child’s birth father or any known person thought to be the child’s birth father. This notice must be dated and delivered personally or by registered post to the person’s last known address. The step-parent must send a copy of this notice to The Department.</p>
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A notice of a proposed adoption must be sent to the child’s birth father or any known person thought to be the child’s birth father. This must be done by the step-parent or step-parent’s legal representative within seven days of the first consent to adoption being received. Under Section 21(2)(a) of the Act, this notice must be dated and delivered personally or by registered post to the person’s last known address. The step-parent or solicitor must send a copy of this notice to The Department.

The purpose of the notice is to make sure that the person identified as a possible birth parent knows that an effective consent to the adoption of the child has been given. If the person provided notice of the proposed adoption accepts that they are the parent of the prospective adoptee then that person can 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.

Consenting to the adoption means that all legal parental rights and responsibilities 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 the Adoption Plan.

There are situations described in the *Adoption Act 1994* where the notice may not have to be sent. In this case the step-parent must seek authorisation from the court

not to send the notice. The Family Court will decide whether the notice must be sent. If you do not have to send the notice the Court will make an order dispensing with the requirement to serve the notice. A copy of the order must be sent to the Department for Child Protection.

Step 11 Signing the final Adoption Plan

<p>Who does Step 11? All parties to the adoption must sign the final adoption plan and a witness for each person</p>	<p>Summary of Step 11 All parties to the adoption must sign the final adoption plan within the revocation period. Each signature must be witnessed by an eligible witness.</p> <p>NB:</p> <ul style="list-style-type: none"> • Under special circumstances, an application can be made to the Family Court to dispense with requirement for an adoption plan. • If any party is dissatisfied with final adoption plan, they can fill out a revocation of consent form and send it to the step-parent.
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The final negotiations of the Adoption Plan must be completed within the revocation period (i.e. Where one person is required to consent to the adoption, the revocation period is within 28 days from the date the consent form was signed. Where two or more people are required to consent to the adoption, the revocation period is within 28 days from the time all consents have been received by the step-parent. This is to make sure that if a party is not satisfied with the negotiations of the Adoption Plan he or she can still legally withdraw his or her consent to the proposed adoption by filling out a revocation of consent form and sending it to the step-parent or step-parent's legal representative.

Under Section 55, to finalise the adoption plan, all parties to the adoption must sign the final adoption. Each signature must be witnessed by an eligible witness (e.g. justice of the peace, public servant or police officer). The step-parent or solicitor must then send a copy of the finalised plan to The Department.

Section 50 or 73 of the *Adoption Act 1994* allows for the Adoption Plan to be dispensed with if special circumstances exist. If court does not agree to dispense with adoption plan, no further action can be taken unless the adoption plan is agreed on and signed.

Step 12 Sending the Notice of Intention to apply for an Adoption Order to the Chief Executive Officer of the Department for Child Protection

<p>Who does Step 12? Step-Parent or Step-Parent's legal representative</p>	<p>Summary of Step 12 Once the Final Adoption Plan has been finalised, signed and witnessed, the step-parent must send a notice of intention to apply for an adoption order to the CEO of The Department.</p> <p>NB: If the child's birth parent is deceased or consent dispensed with under Section 24(2)(a), the step-parent must also notify appropriate relatives at least 60 days before the application for the adoption order is lodged in court. The notice must be served personally or by registered post to the person's last known address. The step-parent must send a copy to The Department.</p>
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Under Section 58 of the Act, the step-parent or step-parent's legal representative must notify the Chief Executive Officer of the Department for Child Protection of the intention to apply for an Adoption Order. This must be done at least 60 days before the application for the Adoption Order is filed with the Family Court. This is so that the Department for Child Protection can prepare a report for the court. This report is generally known as the "Section 61 Report" or "Honourable Judge Report." The notice must be sent by registered mail or delivered to:

The Chief Executive Officer
Department for Child Protection
Family Information and Adoption Services
PO Box 641
Belmont WA 6984

Together with the notice the step-parent or step-parent's legal representative must provide information needed for preparing a report Under Section 58(2) of the Act, the following information requested is as follows:

- Copy of each Consent to Adoption
- For a child 12 years of age and over Consent to Adoption and to change of name is also needed
- copy of Certificate of Witness to each Consent to Adoption
- copy of the final Adoption Plan
- copy of any Dispensation Order made by the Family Court, if applicable
- copy of the order making further provision for a child's guardianship, if applicable

These are the only documents to be sent with the notice to the Chief Executive Officer. This is on the condition that all other Department for Child Protection forms and legal documents listed in Step 1 have already been sent to the Adoption Service. If for any reason the forms and documents were not sent they must be attached to the notice.

If the child's birth parent is deceased or their consent dispensed because the person could not be found or contacted under Section 24(2)(a), the step-parent or step-parent's legal representative must also notify appropriate relatives under Section 59. This must be done at least 30 days before the application for an adoption order is lodged in court. The dated notice must be given personally or by registered post to the person's last known address. The step-parent or step-parent's legal representative must send a copy of the notice to The Department. The Department must be notified in writing if the notice has not been sent and why.

A relative who receives the notice is able to become part of the Adoption Plan under Section 70(1)(2).

Step 13 Assessment and completing of the Section 61 Report for adoption proceedings and filing the report with the Family Court of Western Australia

<p>Who does Step 13? The Department and a suitable qualified person appointed by The Department</p>	<p>Summary of Step 13 The Department will send a request to step-parent for \$450 fee for the preparation of the Section 61 Report. Once fee has been received, The Department will allocate an assessor to conduct an assessment with the step-parent, birth mother and child of the adoption. The assessor will contact step-parent to arrange meetings for the assessment. Once the assessment is complete the assessor will complete the Section 61 Report for the adoption proceedings. The Department has at least 60 days to complete the report and file the report with the Family Court.</p>
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Upon receipt of the notice the Adoption Service:

checks

- the adoption forms submitted are signed and witnessed
- the different steps have been completed within the legally set timelines

re-checks that the signed Adoption Plan

- is in the child's best interests and satisfies the requirement of Schedule 2

writes to the step-parent or the step-parent's legal representative

- to acknowledge the notice was received
- prepares the Section 61 Report.

The Section 61 Report is required to assist the Family Court to decide whether to grant an Adoption Order (Section 61). An assessor will be allocated by the Department to prepare this report on the applicant. The Act allows a fee to be charged for this service.

The Department will send a request to step-parent for \$450 fee for the preparation of the Section 61 Report. Once fee has been received, The Department will allocate an assessor to conduct an assessment with the step-parent, birth mother and child of the adoption. The allocated assessor will contact the applicant to arrange meetings for the assessment.

The assessor will need to report to the Court confirming:

- 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

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. Such persons may be:

- other children in the family
- the relinquishing birth parent.

If a Child's Representative was appointed, then that person's report on contact with family and recommendations will also be provided to the Court. The Child's Representative undertakes further interviews.

Note that 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 make the judgement that the Criminal Record Check and Medical check should be done again.

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

The Section 61 Report is filed with the Family Court of Western Australia by the Department when completed. The Section 61 Report is a Family 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 14 Filing an application for a Determination Order and an Adoption Order with the Family Court of Western Australia

<p>Who does Step 14? Step-Parent, Step-Parent's legal representative or the birth parent on behalf of the step-parent or the solicitor.</p>	<p>Summary of Step 14 At least 60 days after the step-parent has sent notification of their intention to apply for an adoption order to the Chief Executive Officer of The Department, the step-parent or birth parent whom the child lives must file their application for an adoption order with the Family Court of WA. At the same time, an application for a Determination Order must be filed with the Family Court of WA.</p>
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At least 60 days after you send your Notice of Intention to apply for an Adoption Order to the Chief Executive Officer of the Department, the step-parent, step-parent's legal representative, or the birth parent with whom the child lives must file their application with the Family Court of Western Australia (Sections 62, 58).

At the same time, step-parent, step-parent's legal representative, or the birth parent with whom the child lives should file their application for a Determination Order with the Family Court of Western Australia.

By the time you lodge your application, the Department's Honourable Judge Report is likely to be with the Family Court. Your application will be heard in chambers, this means you do not have to attend the court for a hearing.

Step 15 Granting of the Adoption Order by the Family Court of Western Australia

Who does Step 15? The Honourable Judge of the Family Court of Western Australia	Summary of Step 15 The Honourable Judge of the Family Court of WA will consider the adoption application and the Section 61 Report. If the Judge grants an Adoption Order, the adoption is formalised, order is issued, the child is issued with a new birth certificate extract, and the adoption plan becomes active.
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For an adoption to take place, The Act requires that the Family Court grant two orders: (1) a determination and (2) an Adoption Order. The 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 the decision by the Family Court Judge about whether they will grant an adoption. 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 judge will hear your application in chambers generally within three weeks after the application and Section 61 report have been received by the court.

In making the Determination and Adoption Order the Judge assesses whether adoption is preferable and in the child's best interests considering:

- the written memorandum of the provisions of the Adoption Plan
- the information contained Section 61 report filed by Department for Child Protection and
- all supporting evidence filed by the step-parent or step-parent's legal representative.

Once the Adoption Order is granted the Family Court:

- forwards the original Adoption Order to the step-parent and
- advises the Registrar of the Registry of Births, Deaths and Marriages of the adoption.

The Registrar issues the child's new birth certificate extract. This includes details of the adoptive parent. There is no charge to the family. 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. If you need a certified full birth certificate of the child you must apply to the Registry of Births, Deaths and Marriages and pay the set fee.

Once the Adoption Order is granted, the Adoption Plan also becomes active as a legally binding agreement.

Once the Determination and Adoption Order is received the step-parent **must** send a copy to Department for Child Protection's Adoption Service. This concludes the step-parent adoption procedure and administrative requirements.

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?
- If I am not happy with a decision made by the Adoption Service can I appeal?

FREQUENTLY ASKED QUESTIONS (FAQs)

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 should 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
- 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.

What is parental responsibility under the *Act*?

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."

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

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

The Department for Child Protection is the state government agency that administers the Act, the Regulations and the Rules.

The Department for Child Protection deals with all unrelated local and intercountry adoptions, step-parent and carer adoptions. For information on any of these, please contact the Information Officer on 9259 3414 or Freecall 1800 182 178 and request the relevant information package.

What is a child's representative?

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.

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.

When is a child's representative appointed?

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.

If a child's representative is appointed who pays?

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.

What is Schedule 1 information?

This is the information that must be received before consent to an adoption is given. The information must be given orally and in a written form and must cover the following matters:

- the legal process of adoption
- how the adoption affects all parties
- the rights and responsibilities of the parties to an adoption
- alternatives to adoption such as Parenting or Consent Orders
- community supports

Who provides Schedule 1 information and counselling?

Schedule 1 information is provided to the relevant parties by a social worker or an officer of the Department for Child Protection trained in adoption matters.

Schedule 1 counselling can be provided by an officer of the Department for Child Protection who has been approved by the Chief Executive Officer to give adoption counselling. Schedule 1 counselling can also be provided by a private agency of the client's choice.

What is Schedule 1 counselling?

This is the counselling that must be offered when information is given. Counselling on adoption issues such as grief, loss and long term emotional impact of an adoption must be offered to the birth parent the child lives with, the relinquishing birth parent and the prospective adoptee if 12 years old and over. These people decide whether or not they want to receive counselling on these issues.

Who can witness a Consent to Adoption?

Eligible witnesses include Justices of the Peace, Public Servants and Police Officers. Schedule 1 of the Act gives a complete list of eligible witnesses.

Can my solicitor or the person who provided Schedule 1 counselling witness my consent and sign the Certificate of Witness?

If you have engaged a solicitor or lawyer to assist you with the adoption process your solicitor or lawyer cannot witness your consent nor sign the certificate of witness. Neither can a person providing Schedule 1 information or Schedule 1 counselling as in both cases there would be a conflict of interest

Can a consent to adoption be dispensed with?

The court may decide that a consent to adoption may be dispensed with where the relinquishing birth parent:

- has neither the responsibility for the day to day care of the child nor a “parent-child” relationship with the child and
- is unreasonably withholding his or her consent to the child's adoption.
- after enquiries which the court thinks are sufficient, the person cannot be found or contacted

The court may also decide that other exceptional or special circumstances may exist and it is proper to dispense with consent. In those cases the court will issue an Order for Dispensation of Consent.

If the birth mother is unable to name the child's birth father, the birth mother must provide a statement in the form of an affidavit to the Family Court of Western Australia. This affidavit must give details of her relationship to the child's birth father and the reasons she is unable to identify him.

If such an affidavit is needed it will also be necessary to apply to the court to dispense with:

- the birth father's consent
- the Adoption Plan
- the notice to the birth father.

Copies of the Orders for Dispensation issued by the Court must be sent to the Chief Executive Officer of the Department for Child Protection with the Notice of Intention to apply for an Adoption Order.

What happens if one of the parties is unable or unwilling to participate in the negotiations of an adoption plan?

If a birth parent is unable, unwilling or incapable of participating in the negotiations of an adoption plan the court may dispense with the requirement for an Adoption Plan. This may also be the case when the birth parent cannot be found or contacted after sufficient enquiries. However only the court can decide whether sufficient enquiries to find or contact that person have been made. The Court may request that further enquiries are made before granting an Order for Dispensation.

When an Order for Dispensation has been issued by the court, a copy of the order must be sent to the Chief Executive Officer of the Department for Child Protection with the Notice of Intention to apply for an Adoption Order.

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*.

Can an adoption plan be varied?

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 Court will consider whether there has been a change of circumstances since the plan was approved before approving the changes. The 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 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 the Adoption Service. This must be done before it is submitted to the 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.

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. Further delays can occur at the court report stage as demand for assessor services often outweighs the numbers of approved adoption assessors. Adoption Service is working towards increasing the pool of approved adoption assessors

If I am not happy with a decision made by the Adoption Service can I appeal?

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 for Child Protection.

A person who is aggrieved by the decision of the Chief Executive Officer on review may appeal to the Family Court of Western Australia. (This is under Section 114 of the Act.)

Figure 1.
Step-Parent Adoption Process Flow Chart: Steps 1 to 11

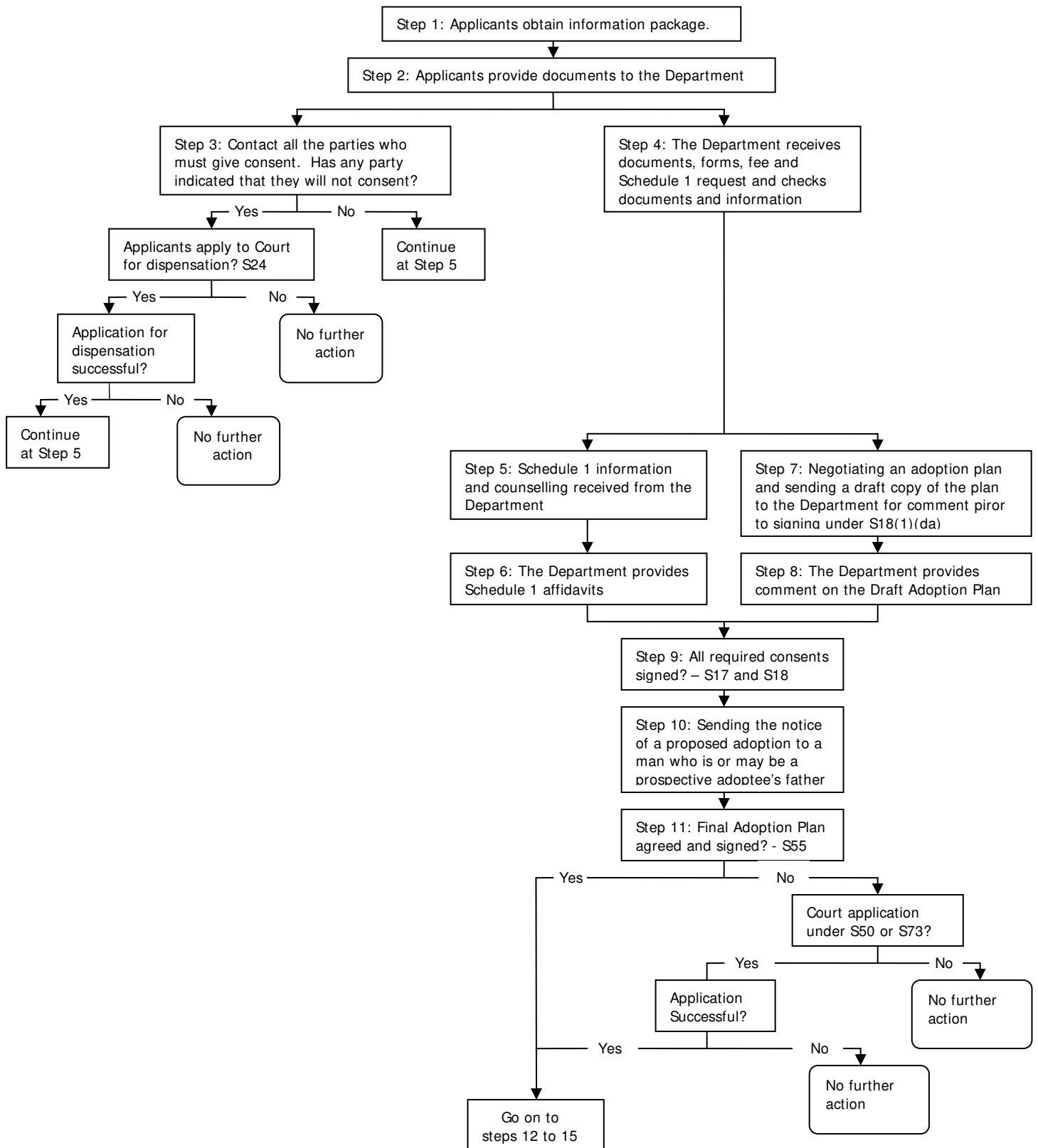
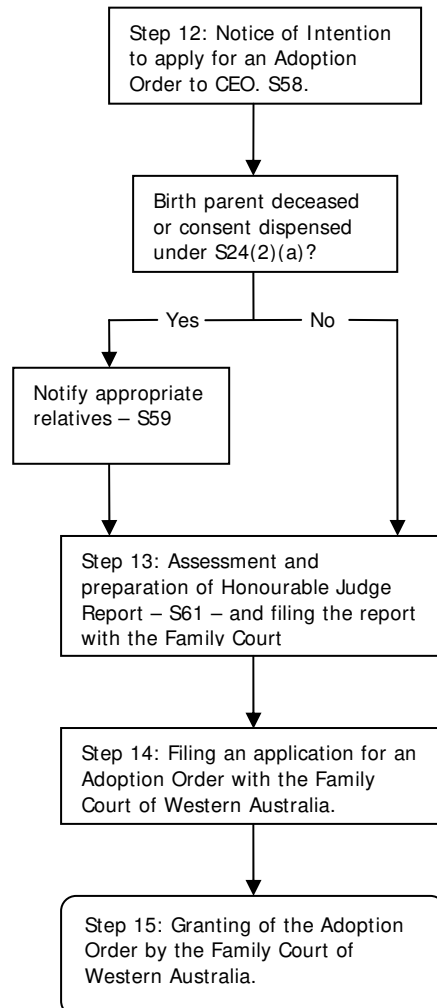


Figure 2.
Step-Parent Adoption Process Flow Chart: Steps 12 to 15



Appendix 1 - Department for Child Protection forms used in a step-parent adoption

Forms to be completed under Step 2 of the Step-Parent Adoption Process

The forms are included in the Step-Parent Adoption Information Package.

- **Form 218 Step-parent adoption application form.** The application form is to be filled out by the step-parent and the Statutory Declaration signed by the step-parent before an eligible witness. Eligible witnesses are listed on page 5 of the form.
- **Form 446 Departmental Client and Child Protection Record Check Consent form.** The Department for Child Protection requires the prospective adoptive parent(s)' authority to run a database check for any party to an adoption. The form must be signed by the step-parent.
- **Form 413 Certificate by a legally qualified medical practitioner.** A medical clearance is required for the step-parent. The step-parent's medical practitioner or the family doctor is the best person to complete this certificate.
- **Form 395 Proof of Identity and Consent for Criminal Record Check.** 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 for Child Protection 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 for Child Protection can obtain information for categories where part exclusion has been granted from the Spent Convictions Scheme. Please note that a police records check is only valid for 12 months.

Also, 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:

Team Leader Local Adoption
Department for Child Protection
Adoption Service
PO Box 641
Belmont WA 6984.

There may be some difficulties in obtaining a police records check or certificate of character from some countries. If you have emigrated from such a country you may approach the Australian Immigration Department. Please check with the Australian

Immigration Department whether you may apply for a certified copy of the police records check which was issued by the country you emigrated from.

This is only an intermediary measure while you go through the process of obtaining a more recent document with the country involved. Please be aware that a police records check is only valid for 12 months from the date of issue. When this document is on hand please forward it direct to:

Team Leader Local Adoption
Department for Child Protection
Family Information and Adoption Services
PO Box 641
Belmont WA 6984.

Forms to be completed under Step 9 of the Step-Parent Adoption Process

These forms are available from Family Information and Adoption Services. These forms must be requested by the Step-Parent if they are doing the application themselves. If a Solicitor is acting for the step-parent, the Solicitor receives these forms as part of the Step-Parent Information Package.

- **Consent Forms:**
 - **Form 251.** Consent by the birth parent with whom the child resides, and 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 and consent to change of name (if child is 12 year old and over).
- **Form 366 Certificate of Witness.** Certificate of Witness to consent to adoption
- **Revocation of Consent:**
 - **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

Forms to be used under Step 9 of the Step-Parent Adoption Process

- **Form 399 Sample Adoption Plan.** Sample Adoption Plan and guidelines for persons involved in assisting parties to negotiate an adoption plan (step-parent adoption)

Appendix 2 - List of legal documents to be provided by the prospective adoptive step-parent

All the documents listed below must be gathered by the step-parent and the parent the child lives with under step 2 of a step-parent adoption process.

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 within Australia (Local Free Call)
+ 61 8 9264 1555 calls from Overseas only

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.

Affidavit 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, an affidavit as to the length of the couple's de facto relationship must be provided. An affidavit 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 defacto relationship, when the step-parent commenced caring for the step-child(ren) and in what capacity the step-parent cared for them etc.