



## Step Parents' Post Separation Rights

*Many Step Parents establish strong bonds with their step children during their relationship with the biological parent of the children. But do they have rights and obligations regarding the step children when the relationship ends?*

### Are you a Step Parent?

Section 4 Family Law Act defines a Step Parent as a person who:

- Is not a biological or adoptive parent of the child;
- Is, or has been, married to or a de facto partner (including same sex partner) of, a parent of the child; and
- Treats, or while married to or a de facto partner of the parent, treated the child as a member of the family.

### Do Step Parents have automatic Parental Rights?

The Family Law Act provides that there is a presumption of 'equal shared parental responsibility' which means that parents are jointly responsible for making all major and long-term decisions for their children, such as in respect to education, medical decisions and religion etc.

However, while Step Parents can and do carry out parenting roles, they do not as a matter of right assume the legal parental responsibility of a child. As a result Step Parents are not legally able to authorise medical care, sign school forms, apply for passports and/or obtain birth certificates. Importantly, in the event of the death of a parent, parental responsibility for a child passes to the surviving biological parent and not automatically to a surviving Step Parent. Without making an application to the Court for a Parenting Order, Step Parents don't have any legal rights with respect to parental responsibility.

### Applying for a Parenting Order

Step Parents are able to apply to the Family Law Courts for a Parenting Order as 'other people significant to the care, welfare and development of a child'. These Orders can deal with a wide range of issues, from major and long-term issues to day- to-day issues, such as:

- Who the child lives with;
- How much time the child spends and/or communicates with each parent and other significant people, such as grandparents and Step Parents;
- Allocation of parental responsibility;



- Change of name to Step Parent's surname;
- Any other aspect of the care, welfare and development of the child.

Ideally these Orders would be made with the agreement of the biological parents (Consent Orders) but failing this, by an Order of the Court. In either circumstance, as the paramount consideration of the Court is always what is in the best interests of the child, the Court will take into account the wishes of the child and this may require the parties to attend counselling and consider a report in order to ensure that the proposed arrangements are in the best interests of the child. In the event that an Order is made giving a Step Parent parental responsibility of a child, the Step Parent effectively has all the responsibilities of the biological parents.

Alternatively, an Order of the Court can deal with specific issues such as the Step Parent:

- obtaining all school notices, reports and any correspondence usually provided to parents;
- being at liberty to attend all school events that a parent is ordinarily invited to attend;
- being authorised to obtain information available in relation to the child's education/ schooling and health/medical issues, and listing the child on their Medicare Card;

## What about Step Child Support?

The Child Support Agency cannot order a Step Parent to pay child support. A Court is the only body that can make an order for a Step Parent to make child support payments however, a Step Parent's duty is always secondary to the duty of biological parent to maintain the child. In determining whether it is proper for a Step Parent to maintain a child, the Court will generally consider the following:

- Whether the child receives a proper level of financial support from the biological parents;
- The length and circumstances of the marriage or relationship between the Step Parent and biological parent;
- The relationship of the Step Parent and child;
- The arrangements that have existed for the maintenance of the child during the relationship between the Step Parent and the biological parent;
- Any special circumstances which, if not taken into consideration, would result in injustice or undue hardship to any person.

In determining an appropriate amount, the Court has discretion based on the circumstances and the extent to which the primary duty of the biological parents to maintain the child is being, and can be fulfilled.

***If you want more information about the rights and responsibilities of Step Parents in relation to their Step Children or about any Family Law issue please contact our family law specialists, [Oliver Hagen](#) or [Ken Gray](#) on 02 4731 5899 or email [familylaw@batemanbattersby.com.au](mailto:familylaw@batemanbattersby.com.au).***