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| Our Ref: | Phone:  Fax: |

Dear and *(where advice is to the biological parent and their partner who wants to adopt)*

**YOUR MATTER**

We confirm our attendance on you both at .

We note that you sought advice regarding adoption of child, born .

We confirm that the child’s biological father passed away in .

**What is step-parent adoption?**

Adoption is the process which permanently transfers all legal rights and responsibilities for a child from birth parents to adoptive parents. The Supreme Court of NSW is responsible for making adoption orders in NSW. If the Supreme Court were to make an order for the adoption of Samuel and Jesse by you both, it would mean that the law will see you both as the children’s legal parents.

Among other things, the Court must be satisfied of the following matters when considering an Application for a step-parent to adopt their step-children:

1. The child/ren to be adopted is/are at least five (5) years of age;
2. The step-parent has lived with the child/ren and the birth parent of the child/ren, for a continuous period of at least two (2) years immediately before the application for the order;
3. Each person whose consent is required has given specific consent to the adoption of the child by that step-parent, or dispensation of consent has been sought and approved.

The Court must be satisfied that adoption is in the children’s best interests, and that the making of an adoption order is “clearly preferable” than any other legal option for the children.

It is important to note that in the case of step-parent adoption, an adoption order will not displace the existing parental responsibility for a child unless leave was granted to commence adoption proceedings pursuant to s.65G of the *Family Law Act 1975 (Cth)*.

We **enclose** a brochure produced by Family and Community Services for your information regarding these types of adoptions.

**Consent to adoption**

**Child under 12**

The consent of parents and those adults with parental responsibility for a child under 12 years of age is required for an adoption order to proceed. In your matter, would have to provide written evidence of informed consent to adopting her youngest child as has not attained the age of 12 years.

Child Over 12

A child over the age of 12 years, such as in your case, and who is of sufficient maturity to understand the effect of giving consent, may give sole consent to his or her adoption, provided they have been cared for by the proposed adoptive parent for at least two (2) years. The consent of a parent in this instance is not required, however a child must be provided with a document titled “Mandatory Written Information”, a copy of which we **enclose** for your information. Further, a child over the age of 12 giving consent must obtain counselling from a registered counsellor who must certify they are of the opinion that the child understands the effect of consenting to the adoption. The consent must then be witnessed by an independent person.

The Court can dispense with consent of a birth parent for a number of reasons, including if the child has an established relationship with their adoptive parents, and adoption will promote the child’s welfare. In your case the dispensation of consent of the birth father will fall under section 67(1)(a) of the *Adoption Act 2000 (NSW);* being “that the person cannot, after reasonable inquiry be found or identified’. You will need to supply a copy of the birth father’s death certificate to establish that this is the case.

**Adoption process**

To apply for Adoption you need to make an Application to the Supreme Court of NSW. You would need to pay filing fees for the application to be accepted by the Court. You would have to either engage a lawyer experienced with Adoption matters to handle your matter or attempt to represent yourself. There are many technical requirements which must be met before the Court can make an adoption order. Given the complexities and issues that surround step-parent adoption, our advice would be to engage a lawyer to assist you in the proceedings.

Some of the things the Court will look at when deciding whether to make an Adoption Order are:

* The children have been in the long term care of the carers;
* The children have established a stable relationship with the carers;
* The interest and welfare of the children would be promoted by the carers.

**The effect of an Adoption Order being made**

The effect of an Adoption Order being made includes the following:

* having parental responsibility for the child/Ren. This may include:
  + Joint decision making with regarding health and education decisions regarding the children;
  + Signatory on any passport or name change application forms as the parent;
  + Should you separate, would have a right to apply to the Family Court for equal time or substantial and significant time with the children;
  + ] would be liable to pay child support for upon separation.
* The children will have the same rights to adoptive parents as their biological children would have. This may include access to finances and inheritances and an equal say with children as to care later in life.
* The birth will no longer be regarded in law as a parent of the children;
* The children will be issued with a new birth certificate with the adoptive parent/s named as parents;

**Other alternatives to Adoption**

You may wish to consider filing proceedings in the Federal Circuit Court seeking an order that you both have equal shared parental responsibility for the children. This would mean that you both have the legal responsibility for the children and are able to make decisions together about their future. However, an order from the Federal Circuit Court would only have effect until the children turn 18. Any such application could take a long time to be determined.

We have **enclosed** some information regarding the Adoption process for your consideration.

Should you have any queries or should you require a further appointment please contact our office in on (02)

Yours sincerely

**Solicitor**

Encl.