



## Applying the Legislation

*Right to Information Act 2009 and Information Privacy Act 2009*

### Eligible family members

The *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) recognise the 'eligible family member'<sup>1</sup> of a deceased person. This phrase appears in relation to information that would, if a person were alive, be their personal information as eligible family members may have a greater public interest in accessing this information than other people.

This guideline provides an outline of what an 'eligible family member' means.

#### Eligible family member

The following relationships to the deceased person constitute eligible family members – but only in the order of priority they are listed and then only if they are reasonably available:

1. **A spouse** (includes both married and de facto partners, regardless of gender)<sup>2</sup>
2. **An adult child** (who is aged 18 years or more)<sup>3</sup>
3. **A parent**
4. **An adult sibling**
5. **If none of the above persons are reasonably available –**

*If the deceased person was not an Aboriginal person or Torres Strait Islander, then the next nearest adult relative who is reasonably available.*

*If the deceased person was an Aboriginal person or Torres Strait Islander, then a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged and who is reasonably available.*

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<sup>1</sup> Defined in schedule 5 of the RTI Act and schedule 5 of the IP Act.

<sup>2</sup> See section 32DA and section 36 of the *Acts Interpretation Act 1954* (Qld).

<sup>3</sup> Defined in schedule 5 of the RTI Act and schedule 5 of the IP Act.



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## Step-parents

While the RTI Act recognises a step-parent as a parent for the purposes of making an application on behalf of a minor child<sup>4</sup>, it does not do so for the purposes of defining an *eligible family member*.

To determine if a step-parent is a parent under the *eligible family member* definition it will be necessary to consider the relationship between step-parent and adult child, in particular, the extent of their familial connection and involvement.

### TFN20S and Gold Coast HHS

The applicant was the deceased's sister, who needed to establish that she was the eligible family member with priority over the deceased's step-father. The evidence showed that the deceased was an adult child of the step-father, that there had been little to no familial connection or involvement between them, including for many years prior to her death, and that the deceased had not been financially dependent on him.

Given this, it was decided that the step-father was not a parent within the eligible family member definition.

## What does 'not reasonably available' mean?

A person who is described as *not reasonably available* can mean:

- (a) That the person described does not exist or is deceased – it may be that the deceased person did not have any relationships of that kind or that the people with whom they had that relationship have died.
- (b) A person of that description cannot reasonably be contacted.
- (c) A person of that description is unable or unwilling to act as an eligible family member of the deceased person for the purpose under the RTI Act or IP Act.

### Note

When deciding who the eligible family member is, you must start at the beginning of the list. If that person is not reasonably available you move to the next person on the list and continue down the list in order until you identify a person who is reasonably available.

<sup>4</sup> Section 25 of the RTI Act and section 45 of the IP Act.



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*Changes to legislation after the update date are not included in this document*