

Permanent placement principles

Children need stability to fulfil their potential. The safety, welfare and wellbeing of children and young people is improved by giving them a long-term, nurturing, stable and secure environment. From 29 October 2014, the *Children and Young Persons (Care and Protection) Act 1998* recognises this.

The changes to the legislation set out guiding principles for the permanent placement of a child or young person and the timeframes in which the Children's Court must make its decision about restoration.

The order of preference for the permanent placement of a child or young person is:

- family preservation or restoration
- guardianship
- open adoption (for non-Aboriginal children)
- parental responsibility to the Minister.

Preservation or restoration to family is always the preferred outcome if it can be safely achieved. When this is not viable, other placement options may be explored. Parental responsibility to the Minister is the least preferred placement arrangement for non-Aboriginal children.

The ordering of the permanent placement principles provides a guide for both casework decision making and the Children's Court. The Department of Family and Community Services (FACS) is required to demonstrate to the court that it has thoroughly examined each of the preferred placement arrangements in the order set out above.

Aboriginal children and young people

Adoption is not usually considered suitable for Aboriginal children, however legislation allows for the adoption of Aboriginal children as a final preference following parental responsibility to the Minister. Importantly, the Aboriginal and Torres Strait Islander Child Placement Principles continue to apply. Where restoration to their family is not considered possible and an Aboriginal child is unable to live with relatives or kin, a placement with a non-related person in the Aboriginal community or another suitable person may be considered in line with the child's best interests and in consultation with the Aboriginal community.

Timeframes for restorative decisions

From 29 October 2014, the Children's Court must decide if it accepts FACS assessment of whether or not there is a realistic possibility of a child or young person being restored to their family within a certain timeframe:

- for a child less than two years of age – within six months from the time an interim care order is made by the court allocating parental responsibility to a person other than a parent
- for a child or young person two years of age and older – within 12 months from the time an interim care order is made by the court allocating parental responsibility to a person other than a parent.

These timeframes guide when a decision about restoration should be made, it is not the timeframe in which restoration should occur. The court has the power to extend the timeframe when it is in the best interests of the child or young person.

Why do we need these changes?

Research demonstrates that children and young people develop their identity, values and cultural awareness when they live in a stable environment. A stable environment provides continuity of relationships in family, school and other settings and promotes attachment to caregivers. In most cases this should be with their family.

Relationships developed in infancy play a critical role in emotional and behavioural stability later in life. The changes regarding permanent placement aim to ensure at-risk infants have at least one secure relationship in this critical stage of development.

What it means in practice

Caseworkers, legal and judicial officers, and other practitioners need to think differently about permanent placement in order to apply the principles. The most significant shift in thinking will be the preference given to open adoption as a permanent placement option over placement in out-of-home care (except in the case of Aboriginal children).

The Children's Court may make a shorter order allocating parental responsibility to the Minister (or other suitable person) as a way to achieve permanent placement for a child in the long term. The court still has the power to make a range of parental responsibility orders it considers to be in the best interests of the child or young person.

The Children's Court also now needs to have all relevant evidence available (and if necessary, tested through cross examination at a hearing) before the time specified in the Act so that it can either accept or reject the FACS assessment of restoration. This has a direct impact on how long FACS has to prepare evidence and settle on a care plan to put before the court.

Further information

Visit the FACS website: www.facs.nsw.gov.au/safehomeforlife