

Information for authorised carers on out-of-home care adoption

This fact sheet is for authorised carers wishing to adopt a child or young person in their care who is under the parental responsibility of the Minister until the age of 18 years.

What is adoption?

The word *adopt* means “to choose and accept as one’s own”. Adoption is a legal process where the legal rights and responsibilities for a child are transferred from the child’s parents to the adoptive parent(s). In New South Wales, adoption orders are made by the Supreme Court.

Some of the key objects and principles of the *Adoption Act 2000* include:

- the best interests of the child, both in childhood and later life, must be the main consideration
- adoption is a service for the child rather than the right of an adult hoping to adopt them
- the child or young person is to be assisted to know and have access to their birth family and culture
- the child’s given name or names, identity, language and cultural and religious ties should, when possible, be identified and preserved
- openness is to be encouraged in adoption, including the applicants’ attitudes towards birth family members and contact
- the making of an adoption order must be clearly preferable to any other action that can be taken by law.

Following an adoption order the child will become a legal member of the adoptive family and:

- have the same rights and responsibilities as any other child in the adoptive family
- can take, and legally use, the adoptive family’s last name
- will have an automatic right to inherit the property of the adoptive parents, just like any other children in the adoptive family
- their adoptive parents will be able to make all the parental decisions about the child’s upbringing
- will no longer be under the parental responsibility of the Minister for Family and Community Services (FACS).

Birth parents will always have a biological and emotional connection with their child, but after adoption, they stop being legally related to them. Although their legal status changes, it does not need to stop them from having a relationship or an ongoing connection with their child. Adoption that occurs today is called ‘open’ adoption.

What is 'openness' in adoption?

Openness refers to attitude as well as actions and is an integral part of adoption legislation and practice in NSW.

Open adoption recognises there is often a benefit for children when both their families (birth and adoptive) remain in contact with each other after an adoption order has been made. An open attitude refers to the acceptance of the child having more than one set of parents and family; and the willingness of adoptive and birth families to know about each other, exchange information and, where possible, build relationships through direct contact with each other. An open attitude offers the child, through their growing years, the opportunity and comfort to talk about their life story and birth family, and to value and accept their history and experience.

When adoption is being considered for a child in your care, contact may already be occurring between the child, their birth parents, their siblings and possibly other family members, and you. Contact can happen by letter or email exchange, face-to-face meetings, online interactions, telephone or any other way that you all agree on. The form and frequency of contact is determined on an individual basis, with what is best for the child being the main focus.

It is important that contact in adoption is mutually agreed to by all involved, and a significant part of the role of the child's caseworker is to offer support to all parties in working out how to develop positive relationships.

Major benefits of openness in adoption for the child are that it provides them with opportunities to:

- understand their background
- develop relationships with their birth parents, siblings and other people who are important to them
- assist them in their understanding of their identity, i.e. who they are and where they came from
- remove the 'unknown' about who their birth parents and siblings are, and why they have some of the physical characteristics, interests and talents they have.

This can give the child a sense of wholeness and help the child grow up with added security about themselves and their background.

Adoption service providers are committed to open adoption and make all efforts to ensure that adoptive parents have the same level of commitment. Adoptive parents are educated and assessed to ensure they have the capacity to support open adoption.

Who can adopt?

An adoption order for a child can be made for a single person or a couple. A couple includes two persons who are married to one another or are de facto partners (whether of the same sex or of different sexes).

Adoptive applicants must be:

- resident or domiciled in NSW
- of good repute and fit and proper to fulfil the responsibilities of parenting
- over 21 years of age
- at least 18 years older than the child to be adopted.

When can adoption be considered for a child in out-of-home-care?

Adoption of a child in out-of-home-care can be considered where:

- restoration to either or both parents is not practicable or in the best interests of the child or young person, and
- guardianship to a relative, kin or other suitable person is not practicable or in the best interests of the child or young person, and
- in the case of an Aboriginal or Torres Strait Islander child or young person, continuing placement under the parental responsibility of the Minister is not practicable or in the best interests of the child or young person. Placement should be in accordance with Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in the *Children and Young Persons (Care and Protection) Act 1998*.

Reasons carers might want to adopt a child in their care

Carers often see adoption as a way of making a lifelong emotional and practical commitment to a child. Carers who become adoptive parents have said that they feel more free to love the child completely, and that they are not so concerned about the possibility of having to 'let go' of the child.

Carers who adopt have also been glad that they are entitled to make all parental decisions about the child, until the child reaches adulthood. Where a child has special medical or educational needs, having full parental authority gives the adoptive parents the exclusive "say" in planning and making decisions for the child, without the need to consult with their agency every time there is a significant medical or educational decision to be made.

Adoption grants all the rights and responsibilities of parenthood to the adoptive parents, who will then be in every way responsible for the child throughout their childhood. They understand the child will have the same status in the family as any of their other children, and will be entitled to the benefits of full family membership throughout their life.

Who can initiate the adoption process?

The possibility of adoption can be raised by you, the child, the birth family or the child's caseworker. Adoption will have an impact on existing family relationships. It is recommended that you talk with your family members to see whether they are supportive of the child becoming a permanent member of your family.

You can raise adoption during an annual case plan meeting, home visit or by phone/email to the child's caseworker.

If you have direct contact with birth family members, be aware that adoption may not have been discussed with them yet. Adoption is a major decision, and it is important to be sensitive to the feelings of the birth parents. Discussions with birth parents about adoption are usually initiated by the child's caseworker.

Who is required to give consent to adoption?

For children under the Parental Responsibility of the Minister, their individual family circumstances will determine whose consent is required.

The consent of the birth parents and the Minister is required when:

- the child is under 12 years of age, or
- the child (age 12-18) has been in the care of the prospective adoptive parents for less than two years, or
- the child (age 12-18) is deemed to not have sufficient maturity to give consent.

The consent of the child is required if the child is aged 12 years or over and is deemed to have sufficient maturity to give consent.

If the child is between 12 and 16 years their ability to give an "informed" consent must be assessed. The child must read written information about adoption and how it affects them, and see a specially trained adoption counsellor. The child can give consent 72 hours after receiving the counselling. However, if the child does not consent in the following 30 days, they must be counselled again, before they can consent to their adoption.

It is important that a child thinking about adoption is not subjected to any pressure to give consent, or to not give consent.

The Supreme Court can make orders dispensing with the consent of the parents in certain circumstances.

These circumstances are when:

- the birth parent cannot be found or identified, or
- the birth parent is physically or mentally incapable of consenting, or
- the best interests of the child should override the wishes of the birth parent, or
- an application is made by carers of the child, when the child has established a stable relationship with the carers, and the adoption of the child by the carers will promote the child's welfare.

What is the process of adopting a child in care?

The possibility of an authorised carer adopting a child in the Parental Responsibility of the Minister is explored through the following steps:

Enquiry

This is the stage where adoption is raised as a possibility for the child. This may be raised by the child, the child's carer(s), birth parents, another member of the birth family, or the child's caseworker. The child (where age appropriate) will be given the child and young person's version of 'Mandatory Written Information on Adoption' so that they can learn about adoption and decide whether it is something they think is right for them. Discussions happen with the child's caseworker about whether adoption should be explored.

Where it has been agreed to explore adoption, the child's birth parents are provided with the parent version of the 'Mandatory Written Information on Adoption'. The birth parents will also be asked about how they feel about adoption and will be encouraged to participate in the process.

Carers are required to attend a one day preparation to adoption seminar before proceeding to an assessment. This seminar provides an understanding of the differences between parenting a child who is under the Parental Responsibility of the Minister and parenting an adopted child. For more information please refer to Fact Sheet [Participation in Preparation for OOHC Adoption Seminars](#).

Carers are requested to formally apply to adopt. This includes completing and providing:

- a form which asks for personal details and names of people willing to be referees
- a Statement as to Health
- identity documents and completing suitability checks
- certified copies of each applicant's birth and marriage certificates, decree nisi or change of name certificate (if applicable).

Assessment

An assessment about whether adoption is the best long term plan for the child is undertaken. This assessment involves:

- talking with the child at an age appropriate level, the carers, the birth parents of the child, and other significant family members (e.g. siblings) about what adoption means and the alternatives to adoption
- weighing up the advantages and disadvantages of adoption
- identifying how the child's cultural identity will be preserved, and how they will know about their origins through their growing years
- making a recommendation about whether adoption is in the best interest of the child and whether you meet the legal requirements of being a suitable person to adopt.

Once the assessment has been completed, a case meeting will be held to discuss the next steps. All parties will be invited to attend the case meeting, where possible.

There may be recommendations made in the assessment report that some specific tasks need to be completed before adoption action can be considered. These will be discussed during the case meeting.

When all tasks have been completed, FACS will seek internal approval to formally proceed with a case plan of adoption. This is when formal approval is given of your suitability to adopt and to commence adoption action.

If the assessment report does not recommend adoption, or recommends an alternative course of action like an application for a guardianship order, the reasons for this decision will be discussed with all parties. For more information please refer to the Fact Sheet, [Reviewable decisions following an application to adopt](#).

Negotiating an Adoption Plan

During the assessment process a draft adoption plan is developed. An Adoption Plan is an agreement about post adoption contact between the birth family, the child and the adoptive family, and about how the child's knowledge of their culture and identity will be supported. Adoption Plans are negotiated to suit the needs and best interests of the child, and take into account the history of contact between the child and birth parents.

The terms of the Adoption Plan should be realistic, and when signing the Adoption Plan the carers should be willing and able to follow through with the agreement made.

When the application for adoption is being prepared, the Adoption Plan is signed by all the parties to the adoption. Adoption Plans are filed at the Court as part of the Application for an Adoption Order.

Later on, if there is disagreement between the parties about whether the agreements in the plan are being followed, or if the terms of the Adoption Plan are not effective, any of the parties can ask FACS to help review the Adoption Plan. If one party is still unhappy, an application may be made to the Supreme Court to review the Adoption Plan. For more information please refer to the Fact Sheet [Registration of adoption plans](#).

Approval to commence adoption action & preparation of an adoption court application

Anyone who is required to give consent to the child's adoption will be asked to do this. Before being asked to give consent, the person will be provided with the appropriate 'Mandatory Written Information' as well as given counselling, to ensure they understand adoption and the adoption process.

During this stage, you, the child and birth parents will meet again with a worker (this is usually the same person who completed the assessment). The worker prepares a report to the court about the adoption proposal. The worker will finalise the adoption plan which you, the child (where age appropriate), the birth parents and the adoption service provider will also be asked to sign.

Adoption Applications in respect of the child under the Parental Responsibility of the Minister are prepared by FACS or a non-government adoption service on behalf of the adoptive applicants (the authorised carers of the child).

The Adoption Application consists of:

- a Summons – informing the court of what orders are requested be made
- Referee Affidavits from people nominated by the carers
- Affidavits signed by each carer providing information to the court about their circumstances
- an Affidavit by FACS or the non-government adoption service providing information about the suitability of adoption for the child and evidence to the Court about why an adoption order is being sought . Annexed to this Affidavit are the required consents given by the birth parents and/or the child (over 12) and/or the guardian; the Adoption Plan about post adoption contact; and any other relevant information
- an Affidavit by the person who prepared the Court Report.

The adoption application is filed at the Supreme Court in Sydney, asking a Judge to make an adoption order.

What happens if the birth parents don't give consent to adoption?

Birth parents who have decided that they will not give consent to their child's adoption must be given formal written notice of the Adoption Application being lodged with the Supreme Court, and they have a right to seek legal representation, appear at Court, and oppose the making of an adoption order.

If FACS believes the Application may be contested by the parents, legal advice will be sought prior to the Application being filed at Court.

If the Adoption Application is contested, FACS will arrange for legal representation at Court. Carers may choose to seek independent legal advice and representation. This is costly, and carers would need to ensure they have the financial resources to pay for separate representation.

When an Adoption Application is contested there may be a number of court dates (called "mentions") and adjournments, to allow all the parties to file extra evidence considered helpful to the Court. All parties are kept up to date with proceedings and must follow any orders made by the Court about what should happen with the child during the adjournments. For example, the Court may make orders for contact visits that are different to the existing contact arrangements, or make orders requiring a further assessment of the child, the carers, or the birth parents. When the court is satisfied there has been sufficient opportunity for the parties to provide information, a date for a full hearing is set.

After hearing all the evidence in an Application, the Court will consider how adoption (or an alternative order) will best meet the needs of the child. The parties may be invited to attend Court to hear what decision the Judge has made. The Judge will usually provide a written judgement.

What supports are available after an adoption order is made?

FACS' Adoption Information Unit (AIU) assists adopted children and their families to build connections, communicate with each other and gain information where they have not been able to do this on their own. This can include:

- providing support to families to review contact arrangements in the adoption plan and negotiate changes
- liaising with people involved in contact arrangements to ensure meetings are a positive experience for the child
- coordinating the exchange of letters, photographs, cards, DVDs or USBs where they are not able to be sent to the birth parent directly
- assisting family members to reconnect with the child
- providing short-term counselling and referrals to relevant services for ongoing support.

For more information please refer to the Fact Sheet '*Services for adopted children under 18 years and their families*'.

Carers adopting a child under the age of 18 are able to receive the following payments after an adoption order has been made:

- OOHCA Adoption Allowance, which is subject to the adoptive family's eligibility for Family Tax Benefit Part A and is a fortnightly payment based on the child's age; or
- Transition Support Payment, a one-off \$3,000 payment, and
- Annual Adoption Payment, a yearly payment of \$1,500.

These payments will be provided by the Community Service Centre closest to where the adoptive family resides.

For more information please refer to the Fact Sheet '*Out-of-home care adoption allowance*'.

What access is there to adoption information after adoption when the adopted child is under 18 years?

'Adoption information' includes:

- Adoption Orders issued by the Supreme Court
- the child's original and amended birth certificates, and birth parents' marriage and/or death certificates
- hospital medical and social work records
- social and medical information about the adopted person, birth and adoptive families, which is called 'prescribed information'.

Adoption information can be "identifying" – which means that it includes names, and other information that allows the identity of a person to be known – or "non-identifying", which means that any details that could help identify a person are absent or removed.

Amendments made to the *Adoption Act 2000* in 2008 make provision for openness and sharing of information between the parties to an adoption. These provisions apply to all adoptions that occur on or *after* 1 January 2010.

At any time:

- the child and the adoptive parents are entitled to apply for identifying information about the birth parents (the adoptive parents are required to give permission whilst the child is under 18 years of age).

While the child is under 18 years of age:

- birth parents are entitled to apply for identifying or non-identifying information about the child and the adoptive parents
- birth siblings can apply for identifying and non-identifying information about the adopted person (the birth parent is required to give permission whilst the sibling is under 18 years)
- if identifying information is requested by a birth parent or sibling, FACS will undertake an assessment of any risk to an adoptee and their adoptive parents. If there is sufficient evidence of a risk, identifying information will not be provided. The adoptive parents will be encouraged to provide non-identifying information that will assist the birth parents and siblings to know about the child.

When the child is over 18 years of age:

- birth parents and siblings over 18 years of age have an automatic right to gain identifying information about an adoptee and their adoptive parents.

Further detail about the provision of information after an adoption is available from Community Services' Adoption Information Unit (AIU):

- Phone: 1300 799 023
- Email: adoption.information@facs.nsw.gov.au

For further details about adopting a child in out-of-home care, please contact one of the following people:

- your out-of-home care caseworker, or
- a FACS Out-of-Home Care Duty Officer at the Community Services Centre closest to where you live, or
- the Open Adoption Hotline on 1800 003 227.

Where can I find more information?

For more information please refer to the following Fact Sheets that are located on the FACS website:

- [Participation in Preparation for OOHC Adoption Seminars](#)
- [Reviewable decisions following an application to adopt](#)
- [Registration of adoption plans](#)
- [Assistance for carers who adopt a child from statutory out-of-home care](#)
- [Out-of-home care adoption allowance](#)
- [Services for adopted children under 18 years and their families](#)