

How to satisfy permanency planning to achieve short term care orders: adoption

The 2019 amendments to the *Children and Young Persons (Care and Protection) Act 1998* allow for short term care orders (STCOs) to be made that allocate parental responsibility to the Minister for a maximum of 24 months¹ when the child or young person's permanency goal is restoration, guardianship or adoption.

Permanency plan involving adoption

Section 79(9) of the Care Act allows the Children's Court to make a STCO allocating parental responsibility solely to the Minister for up to 24 months² where the permanency plan involves adoption.

The permanency plan should be consistent with the Permanent Placement Principles in s.10A of the Act. It must also adhere to the principle that the younger the child, the greater the need for early decision making s.83(5).

Section 78A(2A) states that a permanency plan does not need to provide details of the specific long-term placement for the child or young person. However, it must be clear and provide the court with a reasonably clear picture about how the child's safety, welfare and well-being will be met in the future.

Care plan involving adoption

A stated intention to do something in the future, such as a proposed adoption assessment, will not be enough to persuade the court that permanency planning has been appropriately and adequately addressed. The court needs to be provided with detailed evidence that the proposed orders are real and viable and not merely aspirational.

All care plans need to:

- Provide for a timely permanent placement for the child or young person
- Avoid the instability and uncertainty that can occur through a number of different placement changes or temporary care arrangements
- Be implemented in a timely manner to provide a safe, nurturing, stable and secure placement

¹ In special circumstances the court can make a STCO for a period exceeding 24 months under s.79(10).

² As above.

- Adhere to the principle that the younger the child, the greater the need for early decisions to be made in relation to a permanent placement.

What should be included in the care plan?

The following information must be included in the care plan for a STCO involving adoption:

1. Allocate all aspects of parental responsibility to the Minister pending an application for an adoption order being made in the Supreme Court of NSW.
2. Clearly state that the child or young person's permanency plan is adoption with the prospective adoptive parents (PAPs). The plan must be real and achievable and not be aspirational or a mere possibility.
3. Explain why adoption is the preferred permanency plan for the child or young person ahead of a guardianship order³.
4. Provide a clear picture of how the permanency plan will meet the child or young person's needs, welfare and well-being in the foreseeable future.
5. State who will be responsible for the filing of the adoption application in the Supreme Court. That is, the department or an accredited adoption service provider (AASP). If an AASP is filing the application, include information about the experience of that AASP in preparing and filling adoption applications.
6. If the child or young person is not already placed with the PAPs, include details of when the child or young person will be placed with the PAPs.
7. Include details of any services and supports for the PAPs that the department or other agencies are able to provide or arrange the provision during the period of the STCO.
8. Contain information about the steps required to progress and complete the adoption application and the timeframes within which these steps will be completed.

Note: If the department or an AASP needs additional time beyond the period of the STCO, an application can be made to the Supreme Court for a parental responsibility order under s.84(2) of the *Adoption Act 2000*, pending completion of the adoption application.

9. Include statistical data on:

³ Section 83(4) requires the Secretary to consider whether adoption is the preferred permanency option for the child or young person where the Secretary has assessed there is no realistic possibility of the child or young person being restored to their parents within a reasonable period.

- a. the number of adoption applications filed within 2 years, and
 - b. the average timeframe for obtaining an adoption order after filing in non-contested cases.
10. Explain how the department will monitor progress of the implementation of the plan.
 11. Provide details of what will happen if the plan is unable to be implemented or adoption cannot progress. This includes information about any triggers that would indicate that the permanency plan for adoption is no longer viable and details of any alternative plan for the child or young person.
 12. Explain what processes will be put in place to ensure the matter will be brought back to court before the expiration of the STCO should the permanency plan for adoption no longer be viable. There should be sufficient information provided so that the court can be confident that the matter will be brought back before the STCO expires.
 13. Include an explicit commitment to bring the matter back to court before the STCO expires should the permanency plan for adoption no longer be viable.
 14. If the adoption plan changes, set out the date when the department will bring the matter back to the court in a s.90 application. This should also be outlined in the s.82 court report.

An adoption application does not need to be completed within the 2 years of an STCO – it just needs to be filed within those 2 years. As noted above, the department can bring an application to the Supreme Court to seek an interim parental responsibility order prior to an STCO expiring.

What evidence is needed to support a permanency plan of adoption

You will need to file detailed evidence to demonstrate that a future application for an adoption order is likely to be successful and that this plan is realistic and achievable. This could include:

- Evidence of the progress the PAPs have made in caring for the child or young person and providing them with a safe, nurturing, stable and secure home
- Evidence of the PAPs commitment to caring for the child the subject of the application for a STCO.
- Evidence of the PAPs relationship with the child's family and their ability to manage family time or their capacity to gain that ability.

- Evidence that the PAPs have already been authorised to adopt a child or young person from OOHC
- Evidence that the PAPs have already successfully adopted another child from OOHC
- If not already authorised to adopt, evidence of the progress the PAPs have made in relation to the assessment process
- Evidence of the PAPs experience caring for other foster children.

Supporting evidence may also include expert evidence and social science research that supports the legislative preference for adoption over long term orders allocating parental responsibility to the Minister.

Monitoring of the Permanency Plan

The Court should be provided with s.82 progress reports on the implementation of the care plan over the course of the STCO. This should include an update on when the adoption application will be filed.