

## Information for authorised carers on Out-of-home care adoption

This factsheet is for authorised carers wishing to adopt a child or young person in their care who is under the parental responsibility of the Minister.

### 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 family time
- 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 Communities and Justice (“DCJ”)
- will be issued with the following two legal birth certificates:
  1. The **integrated birth certificate** that includes information about an adopted person’s parents and older brothers and sisters at birth, as well as their parents and older brothers and sisters after adoption.

2. The **post adoptive birth certificate** that includes information about their parents and older brothers and sisters after adoption.

An integrated birth certificate and post-adoptive birth certificate are both valid identity documents, allowing an adopted person to use whichever birth certificate they prefer for legal purposes. For more information see [Factsheet – Introducing Integrated Birth Certificates](#)

Children who are adopted will always have a biological and emotional connection with their birth family, 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 ongoing connection with their parents, siblings, and extended family members. 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 connection 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 interactions 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, relationships may already be existing between the child, their birth parents, siblings and possibly other family members, and you. Relationships may be supported by face to face family time visits, letter or email exchange, online interactions, telephone or any other way that you all agree on. The form and frequency of maintaining these relationships are determined on an individual basis, with what is best for the child being the main focus.

It is important that how relationships will be maintained and supported 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 and maintain relationships with their birth parents, brothers, sisters, grandparents 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 brothers and sisters 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 with added security about themselves and their background.

Adoption Service Providers are committed to open adoption and make all efforts to ensure that the adoptive parents have the same level of commitment. Carers who are wishing to seek adoption for the child in their care 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 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 Child and Young Persons (Care and Protection) Act 1998.

**Note:** Guardianship to a child's authorised carer may be considered concurrently with adoption to determine which option is most appropriate for the child or young person.

## Reason 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 also appreciate 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 and legally connected to the child throughout their childhood and into adulthood. 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, the 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 or capacity to give consent.

The sole 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.

A birth parent wishing to provide their consent OR a child aged between 12-18 years consenting to their own adoption must undertake 'Registered Adoption Counselling'. This registered adoption counselling is to ensure that each person giving consent is making an informed decision and they understand the legal and emotional effects of adoption.

The Mandatory Written Information on Adoption is a booklet prepared to advise those considering adoption about 'Open' Adoption Practice in NSW, how it compares to other permanency options and the long term and short term effects of an order. It is important

that the Mandatory Written Information (MWI) is read prior to undertaking the registered adoption counselling.

The birth parent or child can give their consent 72 hours after receiving the counselling. However, if consent is not provided in the following 30 days, they must be counselled again before they can give their consent.

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

The Supreme Court can make orders dispensing with the consent of the parents in certain circumstances if they are satisfied that it is in the best interest of the child.

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 or guardians 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:

### Pre 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. Your caseworker will then arrange a consultation with a DCJ Adoption Caseworker (AC) and/or a Permanency Coordinator to discuss the suitability of adoption for your child. During this consultation, if it is agreed that adoption may be suitable to explore for your child, a list of tasks will be identified and allocated to be explored prior to formally changing the case plan goal to adoption.

Carers are required to attend a one day preparation to adoption seminar. 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 [Participation in Preparation for OOHC Adoption Seminars](#)

Your caseworker will be talking to you, your child and their birth family, sharing information about "Open Adoption" practice in NSW and seeking everyone's views. If Adoption is considered appropriate, your caseworker will request a change in case plan goal.

## Enquiry

The adoption process formally starts when it has been agreed to change the child's case plan goal to adoption. Carers are then invited to formally apply to adopt. There are a few tasks to complete which include:

- an application form which asks for personal details and names of people willing to be referees
- a health check and a medical report provided by each applicant's General Practitioner.
- Gathering copies of Identity documents and completing suitability checks.
- Obtaining certified copies of each applicant's birth and marriage certificates, decree nisi, or change of name certificate (if applicable).

When all suitability and background checks have been reviewed a caseworker will be in contact to confirm the application has been received and discuss if there are any concerns regarding these checks.

**NOTE:** Suitability checks are required on all adults living in the home for a period of 3 or more weeks at any time after an application to adopt has been submitted.

## Assessment

An assessment about whether adoption is the best long term plan for the child is undertaken. This may be completed by the child's caseworker or an adoption assessor. This assessment involves:

- a review of all relevant files in relation to the child and you, including DCJ and/or Agency files, as well as your authorised carer file.
- 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
- talking with you and your immediate family members (e.g. other children in your home, adult children residing elsewhere, other persons who live permanently in your home) about the suitability and legal implications of an adoption order for the family, weighing up the advantages and disadvantages of adoption
- identifying how the child's cultural identity and family relationships will be preserved, and how they will know about their origins through their growing years
- the scheduling of a family meeting for you, the child (where appropriate) their birth parents and significant family members to explore any issues or questions that arise throughout the assessment. This meeting will also provide an opportunity for everyone to provide their views regarding the adoption plan.
- 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, the assessor will discuss with all parties the contents of the report (in particular the sections written about each of them) and the report recommendations.

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.

## Adoption Plan(s)

During the assessment process a draft adoption plan is developed. An Adoption Plan is an agreement about how relationships will be supported post adoption 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 the relationships between the child and birth family.

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 DJC's Adoption Information Unit to help review the Adoption Plan.

If one party is still unhappy, an application may be made to the Supreme Court to review an Adoption Plan that has been registered. For more information please refer to the Fact Sheet [Registration of adoption plans](#).

## Decision to commence adoption action

The completed adoption assessment and draft adoption plan(s) will be prepared with a submission to the DCJ delegate to seek approval to commence adoption action. This is when formal approval is given of your suitability to adopt and to commence preparing an adoption court application.

Additional information such as genograms, cultural plans, medical or specialist reports may be included with this submission to support the decision-maker in determining whether adoption is the most appropriate permanency option for the child.

The delegated decision maker for a non-Aboriginal child is the Director of Community Services. The delegated decision maker for an Aboriginal or Torres Strait Islander Child is the Secretary.

Once a decision has been made a case conference with the assessor, Caseworker and Manager, Adoption Caseworker, child, carers, parents and any significant persons will be held to discuss the decision to commence legal action and the next steps.

## When it is not possible to progress an adoption as expected

For a range of reasons, it may not be possible or suitable to progress an adoption as expected. There is no advantage in keeping an adoption application open unless a clear path to progress through the stages has been established.

An application may be placed **on hold** when circumstances arise which prevent adoption tasks from being undertaken. For example; there is a change in circumstances in the household, changes in child/carers health, a new child enters or a child leaves the placement, an allegation relating to the carers becomes known, a birth parent or significant family member is located and time is needed to build relationships.

An application may be placed **on hold** where it is likely that adoption tasks will be able to resume within six months of a matter going on hold. Where an on-hold period exceeds 9 months or adoption is no longer considered appropriate for the child an adoption application will be required to be **filed down**. A file down requires the child's case plan goal to change from adoption to the most appropriate permanency goal such as long term care or guardianship.

A **filed down** application does not automatically mean the carer/s are ineligible to adopt, or that important work to enable adoption to proceed in the future should not continue. It does however, mean that at this time key requirements are not able to be met to progress the adoption. Adoption can be reconsidered in the future should the circumstances preventing adoption change.

## Preparation of an adoption court application

During this stage, a report will be prepared for the Court about the adoption proposal. A caseworker or independent assessor (usually the same person who completed the assessment) will meet with you, the child and birth parents again to prepare this report.. 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.

All parties required to give consent will be consulted again in regards to their wishes to do so. The Adoption Caseworker will make arrangements for registered counselling and a qualified person to witness consent for each party wishing to provide consent.

Adoption Applications in respect of a child under the Parental Responsibility of the Minister are prepared by DCJ 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 DCJ or the non-government adoption service providing information about the suitability of adoption for the child by their carers, and evidence as to 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 and Minister; the Adoption Plan about post adoption family time and information exchange; 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 do not agree to the proposed 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 DCJ believes the application may be contested by the parents, legal advice will be sought prior to the application being filed at Court.

Where possible, early mediation between the birth parents and carers may result in contested adoptions being resolved quickly.

If the Adoption Application is contested, DCJ 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 for the child during the adjournments. For example, the Court may make orders to maintain family connections that are different to the existing arrangements outlined in the adoption plan, 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?

DCJ Adoption Information Unit ("AIU") may assist adopted children and their families to build connection, 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 arrangements in the adoption plan and

negotiate changes

- liaising with people involved to ensure opportunities for the child to engage with their family are positive experiences.
- coordinating the exchange of letters, photographs, cards, DVDs or USBs where they are not able to be sent to the birth or adoptive parents directly
- assisting family members to reconnect with the child
- providing short-term counselling to those affected by adoption and making 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’](#).

## Financial Support

Carers adopting a child who is under the care of the Minister are able to receive the following payments after an adoption order has been made:

- OOHC 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 and need until the child turns 18 years of age; or
- if families are not eligible for Family Tax Benefit A they will receive a Transition Support Payment, a one-off \$3,000 payment at the time the adoption order has been made and an annual Adoption Payment of \$1500 until the child turns 18 years of age.

These payments will be provided by the DCJ 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 birth certificate, integrated birth certificate and post adoptive 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<sup>st</sup> 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 of age).
- If identifying information is requested by a birth parent or sibling, DCJ will undertake an assessment of any risk to an adopted person and their adoptive parents. If there is sufficient evidence of risk, identifying information will not be provided. The adoptive parents will be encouraged to provide non-identifying information that will assist the birth parent 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 adopted person and their adoptive parents.

Further detail about the provision of information is available from Community Services Adoption Information Unit, or speak with your Adoption Caseworker.

AIU Contact Number: 1300 799 023

AIU Email: [adoption.information@dcj.nsw.gov.au](mailto:adoption.information@dcj.nsw.gov.au)

## Where can I find more information?

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
- DCJ, Adoption Caseworker
- The Open Adoption Hotline on 1800 003 227

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

- [Participation in Preparation for OOHC Adoption Seminars](#)



- [Reviewable decisions following an application to adopt](#)
- [Registration of adoption plans](#)
- [Out-of-home care adoption allowance](#)
- [Services for adopted children under 18 years and their families](#)
- [Factsheet: Introducing Integrated Birth Certificates](#)