

# Shaping a Better Child Protection System: Open Adoption

The NSW Government is committed to the principle of open adoption. Open adoption recognises that there is a benefit for children when they can maintain a relationship with their birth families and when both families (birth and adoptive) remain in contact with each other after an adoption order has been made.

## What will change?

Only one amendment will be made in order to streamline adoption orders. The Supreme Court already has the power to dispense with parental consent to an adoption where the application has been made by an authorised carer. The amendment to the *Adoption Act 2000* extends this power to applications by guardians.

The Supreme Court can only dispense with the consent of a birth parent if the child has established a stable relationship with their guardians or authorised carers, the adoption will promote the child's welfare, and in the case of an Aboriginal child, all other alternatives to adoption have been considered.

Birth parents still have the right to join the adoption proceedings and oppose their child's adoption.

## Adoption of Aboriginal children

For Aboriginal children, adoption remains the last resort for permanent placement after all other options have been thoroughly considered. The existing safeguards in relation to the adoption of Aboriginal and Torres Strait Islander children and young people under the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* remain unchanged, including:

- Independent evidence-based assessments to determine that the carer holds attitudes, cultural understanding and capacity to support connection to family, community and culture.
- Consultation with family and kin, community and/or Aboriginal practitioners regarding cultural needs of the child.
- The Secretary of the Department of Family and Community Services must be satisfied that an adoption order for an Aboriginal child is clearly preferable and in the best interests of the child to any other action that could be taken.
- The Supreme Court cannot make an adoption order unless it is satisfied that the Aboriginal child placement principles have been properly applied and the best interests of the child will be promoted by the adoption.
- An adoption application for an Aboriginal child requires:
  - the Aboriginal child placement principles to be applied
  - Aboriginal participation in decision-making

- consideration of all alternatives to placement for adoption
- the opportunity for birth parents to participate in the development of an adoption plan
- consultation with a local community based and relevant Aboriginal organisation
- mandatory written information to be provided to birth parents and the child – this includes information about alternatives to adoption, financial and support services, possible emotional effects, the legal process and rights and responsibilities of parties, including FACS
- counselling by an Aboriginal counsellor or, if the person refuses counselling, the provision of written information on Aboriginal customs and culture before a person gives consent or refuses to consent to the adoption
- a preliminary Supreme Court hearing before the placement for adoption of an Aboriginal child with a prospective adoptive parent who is not Aboriginal.

Additional information on the impact of the legislative amendments on Aboriginal children, young people and families is provided in Factsheet 2.