



Shaping a Better Child Protection System: Impact on Aboriginal families

The NSW Government remains committed to working with Aboriginal communities and Aboriginal organisations across NSW to increase Aboriginal self-determination and Aboriginal participation in child protection decision-making.

The legislative amendments contained in the *Children and Young Persons (Care and Protection) Amendment Act 2018* will help ensure that more Aboriginal children and young people are supported in culturally safe environments. Aboriginal families will have greater opportunities to be involved in decisions about the care of their children to reduce the number of Aboriginal children entering out-of-home care (OOHC).

The NSW Government condemns the past practices of the forced removal of Aboriginal children from their families, kinship groups and communities. It is unfortunate that the media attention on these amendments has reminded many Aboriginal people and communities of the trauma, grief and loss of past practices.

The amendments do not change the existing safeguards to ensure that Aboriginal children and young people remain with family, kinship groups or community wherever possible. This includes the Permanent Placement Principles and the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in the *Children and Young Persons (Care and Protection) Act 1998* (Care Act) relating to self-determination, participation in decision-making, and placement of children in OOHC.

Adoption remains the last resort for permanent placement for Aboriginal children and young people. Claims to the contrary are false.

Keeping families together

Our first goal is to keep Aboriginal children and young people at home with their families and in their communities. Several of the amendments will help this happen. Families and kin will be supported to work together to address issues affecting the safety of their children.

The Department of Family and Community Services (FACS) will now have to offer Alternative Dispute Resolution to families (except in exceptional circumstances) before applying to the Children's Court for a court order. Alternative Dispute Resolution will mostly be in the form of Family Group Conferencing or similar forms of family led decision making. A Family Group Conference is a non-legal process, led by an independent facilitator who encourages the family and whoever they invite to develop a plan to keep their children safe and kept away from OOHC wherever possible.

For Aboriginal families, the Family Group Conference process supports self-determination through increased family participation in decision making. The process can be supported by an Aboriginal caseworker and facilitator or the facilitator and the family can talk about other cultural support needed. This may be from a family or community member or additional support that can be arranged by FACS.



Timeframes for permanency

Shorter term court orders will mean that the Children's Court will only make court orders allocating parental responsibility to the Minister until a child is 18 years of age where restoration or guardianship for an Aboriginal child or young person is not possible. The maximum length of a court order allocating all aspects of parental responsibility to the Minister will now be 24 months where the Court approves a permanency plan for restoration, guardianship or open adoption (unless the Children's Court is satisfied that special circumstances exist). Adoption is the last option for the permanent placement of Aboriginal children and young people.

This means that FACS needs to focus on achieving the permanency goal sooner to reduce the time that children and young people spend in OOHC. This will lead to better outcomes for Aboriginal children and young people. Once the 24 month court order expires, parental responsibility will go back to the birth parent unless FACS applies for more time to successfully restore the child to their family or achieve other permanency outcomes approved by the Court, such as a guardianship order in favour of relatives or kin.

The period for which the Children's Court is able to decide whether there is a realistic possibility of restoration has been extended to 24 months, allowing greater flexibility to consider whether restoration will be possible with the right supports for the family. Previously the Children's Court had to make the decision about the realistic possibility of restoration on the date of the hearing. It can now look at the real possibility of whether a child or young person will be able to live safely at home if the steps in the restoration plan are achieved successfully.

Children and young people will also be able to return to their families up to 12 months before the restoration date specified in the care plan (the timeframe is currently six months).

Changes to guardianship

Parents will be able to make a decision that someone else will be a guardian for their child without going through a lengthy court process. The Children's Court will be able to make a guardianship order by consent. To make sure people understand the impacts of this decision, there has been a change to ensure people receive independent legal advice. The Court can also appoint a legal representative for a child or young person.

When parents' consent to a guardianship order, the Children's Court will no longer need to make a finding that there is no realistic possibility of restoration of the child or young person to their parents. This empowers parents to agree to orders that will keep their child safe and that are in the child's best interests. The Court will need to be satisfied that the making of the guardianship order by consent will not contravene the principles of the Care Act.

All existing safeguards for Aboriginal children and young people remain in place. Where a guardianship order is being considered for an Aboriginal child with a non-related, non-Aboriginal carer, a comprehensive Cultural Care Plan must be completed and FACS Executive District Director approval is required to proceed with the guardianship application. A Cultural Care Plan must also be presented to the Children's Court.



Changes to adoption

There have been claims that the legislative amendments could lead to forced adoptions of Aboriginal children and young people. These statements are incorrect. Forced adoptions are not possible under existing law and will not be possible under the amendments.

In the past five years around 12,000 Aboriginal kids have spent some time in OOHC in NSW. Of these, 13 have been adopted. There have been so few adoptions because adoption is last resort for permanent placement of Aboriginal children and young people in NSW. This has not changed.

The change to the legislation means that the Supreme Court will now be able to dispense with the requirement for the consent of parents or persons with parental responsibility to applications for adoption made by a child's guardians like the Court can currently do for authorised carers. The Supreme Court can only dispense consent if the child has established a stable relationship with their guardian, the adoption will promote the child's welfare, and all other alternatives to adoption have been considered for Aboriginal children and young people. The Supreme Court cannot make an adoption order unless it is sure that the Aboriginal child placement principles under the Adoption Act have been properly applied and the best interests of the child will be promoted by the adoption.

The safeguards associated with guardianship or adoption of Aboriginal children and young people in the Care Act and *Adoption Act 2000* (Adoption Act) have not been changed. The Adoption Act makes specific provisions that address the needs of Aboriginal children, families and communities and sets out additional requirements specific to adoption applications for Aboriginal children. The Secretary of FACS must agree to the adoption of any Aboriginal child from OOHC.

FACS is strengthening its cultural capability and practice

FACS is strengthening the cultural competency and practice of its workforce and building the capacity of the non-government sector to deliver better outcomes for Aboriginal families and communities.

The [FACS Aboriginal Outcomes Strategy 2017-2021](#) sets out our approach to delivering better outcomes for Aboriginal children, young people and communities. This includes more access to early intervention services for Aboriginal families and a focus on reducing the overrepresentation of Aboriginal children in OOHC.

The [NSW Practice Framework](#) launched in 2017 places children, young people and their families at the centre of our child protection practice and our decision making. It is driven by evidence informed approaches including Family Finding and promotes the importance of working with family and culture.

FACS has also developed an [Aboriginal Case Management Policy](#) in partnership with the Aboriginal Child, Family and Community Care State Secretariat (AbSec). It promotes a culturally-embedded case management approach that is child focused, encourages Aboriginal family-led decision making, values community involvement and is designed to preserve families.



[Family is Culture](#), the Independent Review of Aboriginal Children and Young People in OOHC (the Review) is investigating the reasons for the high numbers of Aboriginal children and young people in OOHC in NSW and developing strategies to improve their outcomes. It is expected that the final report and recommendations of the Review will inform further changes to practice, policy and systems. The final report is due to be delivered to the Minister for Family and Community Services by 31 July 2019.