



Transition Program Office Policy Paper 3: Caring for children and young people in NSW

This paper provides an overview of how children and young people are cared for in NSW, with a particular focus on Out-Of-Home Care (OOHC) as defined under s135 of the Children and Young Persons (Care and Protection) Act 1998 (the Act).

The focus of the NSW OOHC Transition Plan is the transfer of children and young people who enter statutory OOHC or who are in existing statutory Community Services placements to Non-Government Organisations (NGO). This aims to achieve the best possible outcomes for children, young people and their families by delivering a quality, sustainable NGO service system for NSW.

This paper informs the work of the Ministerial Advisory Group (MAG) and the OOHC Transition Program Office (TPO) in realising these aims.

The transfer of OOHC services is guided by the following principles, as outlined in the current NSW OOHC Transition Plan¹:

- services and placements built around the child or young person's and their family's needs
- placement stability and cultural support.
- early intervention for children and families
- informed choice for children, young people and carers
- all Aboriginal children and young people in OOHC will be cared for by Aboriginal carers, supported by Aboriginal caseworkers employed by local Aboriginal managed agencies
- all children and young people have appropriate cultural plans and supports in line with the Placement Principle
- partnerships between the non-government sector and Community Services
- case management responsibility transferred to the non-government agency²
- transition will occur in a timely manner.

Underpinning this paper is acknowledgement of:

- the safety, welfare and well being of the child or young person is paramount

¹ The plan can be accessed via http://www.acwa.asn.au/Downloads/KTS/OOHC_Transition_Plan_Stage_1.pdf

² Case management responsibilities for non-government agencies are currently under review. Responsibilities will be outlined in an updated Case Management Policy being prepared by Community Services.

- the importance of continuity of relationships, connections to community, stability and permanence.

How are children cared for in NSW?

Ideally all children and young people are able to live safely at home without the need for support services. However when the safety of a child or young person is at risk and they require services to support them and their family, decisions about supports and placement may be made.

Children and young people in NSW

Most children and young people in NSW are safe at home with their parents or in informal arrangements with relatives or kin. These children and young people do not intersect with the statutory child protection system and do not require referral to support services or interventions. The families are able to access universal or mainstream services such as child care, early intervention and family support services, health and education services and access to income support.

The OOHC Transition will result in stronger links between the child protection and OOHC sector and other sectors such as health and education. These improved linkages may encourage families to access support services on a voluntary basis if required.

Children and young people needing support and services

These children and young people living at home with their parents, or in informal arrangements with relatives or kin, receive support and services from government and non-government services to ensure their safety. These services may improve the family's social, emotional and/ or economic circumstances so that they can provide the care their child or young person needs.

While the OOHC Transition does not impact on these support services directly, it will facilitate closer collaboration between agencies to provide more effective and co-ordinated services to address the needs of the child or young person and their family. This may help prevent the child or young person being at risk of significant harm or entering OOHC.

The OOHC Transition plan signals new ways of working together with families to reduce the number of children in the statutory care system by increasing restorative practices that support families and retain children within their family and kin network.

The priority is to ensure children and young people remain at home as long as they are safe.

Placement of children and young people in OOHC

Where the child or young person is at risk of significant harm or their families are unable to care for them because of issues including disability, drug and alcohol abuse, domestic violence or mental illness they may be unable to remain at home. These children may enter supported or statutory OOHC.

Supported OOHC is where a child is placed with relative or kin and parental responsibility remains with the parent. A child or young person in statutory OOHC is subject to a care order of the Children's Court that places the child under the parental responsibility of the Minister or is a Protected Person under S135A of the Act.

Placement decisions should be based on the child or young person's assessed needs, consultation with parents and consideration given to placement with relative or kin. Where placement with relatives or kin is not possible the child or young person is placed with authorised carers, in residential care or independent living arrangements. The cultural and social needs of children and young people are emphasised in all placement decisions.

Priority is given to placements where ties with family and community are maintained. This can be via contact arrangements with family and significant others where it is safe to do so and which account for the age, developmental needs and wishes of the child or young person.

Where children and young people are not able to be restored to their family, and a permanent and stable home is sought, an alternative long-term placement must occur as soon as possible. In line with S78A of the Act, the younger the age of the child, the greater the need for early decisions to be made.

Permanency may be achieved through:

- restoration to parent(s)
- long-term placement with a relative or kinship carer
- long-term placement with a foster carer
- placement under parental responsibility, sole parental responsibility or guardianship orders
- adoption.

In NSW adoption is generally recognised as inappropriate for Aboriginal children and young people.

For some children, an adoption order provides a different form of permanence from that provided through Children's Court orders. Adoption may only be considered when:

- it has been discussed with family during case planning and it has been agreed that adoption is appropriate for the child
- it has been deemed to be in the child's long term best interests.

Additional considerations for the placement of Aboriginal children in OOHC

When an Aboriginal child comes into OOHC, options for placement align closely with those listed above; in particular, that in any action or decision about the care of an Aboriginal child or young person, the safety, welfare and wellbeing of the child or young person are paramount.

In addition, the Aboriginal and Torres Strait Islander Children and Young Person Placement Principles (the Principles) in s13 of the Act are also applied. The

Principles describe the following sequence to be followed for locating safe and suitable placements for Aboriginal children and young people entering OOHC:

- within their own family or extended family
- within their own community, or if that is not possible
- in other Aboriginal families or communities
- with “a suitable person approved by the Director-General after consultation” (using the consultation process proscribed in the Act). The “suitable person” may be a non-Aboriginal carer.

The principles support the right of Aboriginal children and young people to stay connected with their family, community, country and culture, as long as they are safe. The principles also recognise the impact of past Aboriginal child welfare policies and practices of removal as a source of great harm and trauma. These include well-documented, serious and widespread effects on Aboriginal children, their families and communities over multiple generations.

Permanency planning undertaken for an Aboriginal child or young person must take these extraordinary circumstances into account and address how the plan has complied with the principles in s13.

Additionally, where a permanency plan for an Aboriginal child or young person includes sole parental responsibility or adoption by a non-Aboriginal person, s78A (4) states this must be approved by both the Minister for Community Services and the Minister for Aboriginal Affairs.

Adoption of Aboriginal children

Adoption as a concept is absent in customary Aboriginal child care arrangements, as documented in s35 of the *Adoption Act 2000*. It is viewed as unsuitable for Aboriginal children and young people. Adoption may not be considered as a long term placement option, unless clearly defined steps outlined in the NSW Adoption Act 2000 take place first.

Conclusion

The MAG’s vision is to build a vibrant, responsive, sustainable non-government OOHC sector with a greater emphasis on stability and permanency options for children and young people. To support the MAG’s vision, there will be a need for the sector to develop policies and procedures, and implement programs or practice in line with the overview presented in this paper.