

Written information on OOHC open adoption

Additional written information on Aboriginal and Torres Strait Islander customs and cultures for children in out-of-home care and their parents.



Acknowledgement

Between 1905 and 1969, at least 100,000 Aboriginal and Torres Strait Islander children were forcibly removed from their parents. The children were put in institutions or adopted by white families. They are known as the Stolen Generations.

The impact of being part of the Stolen Generations has been devastating and lifelong. The effects have unintentionally been passed onto the children and grandchildren.

The past practices of the Department of Communities and Justice (DCJ), its predecessor organisations and the NSW and Commonwealth government, perpetrated the Stolen Generations.

The impact of the Stolen Generations as well as the trauma inflicted on Aboriginal and Torres Strait Islander communities through colonisation, dispossession, and genocide, continue to hurt Aboriginal and Torres Strait Islander families to this day. In recent decades, the Australian government has recognised the devastating impacts of the Stolen Generations.

The 1997 *Bringing Them Home Report* detailed the abuses and trauma experienced by Aboriginal people such as the removal and institutionalisation of children, the denial and denigration of Aboriginality, and the impacts of being governed by racist policy.

The 2019 *Family Is Culture (FIC) Report* investigated the circumstance of 1144 Aboriginal and Torres Strait Islander children who were removed from their parents in NSW between mid-2015 and mid-2016.

Contents

| | |
|--|----|
| Introduction | 4 |
| Aboriginal and Torres Strait Islander Peoples..... | 5 |
| Open adoption..... | 8 |
| The legal effects of open adoption in NSW..... | 10 |
| The open adoption assessment process..... | 14 |
| Open adoption consent and counselling | 16 |
| Adoption Plans..... | 19 |

Accessing this booklet

We are committed to providing accessible services to Aboriginal and Torres Strait Islander people.

If you have difficulty in understanding this booklet you can:



Contact Translating and Interpreting Service (TIS national) 131 450.



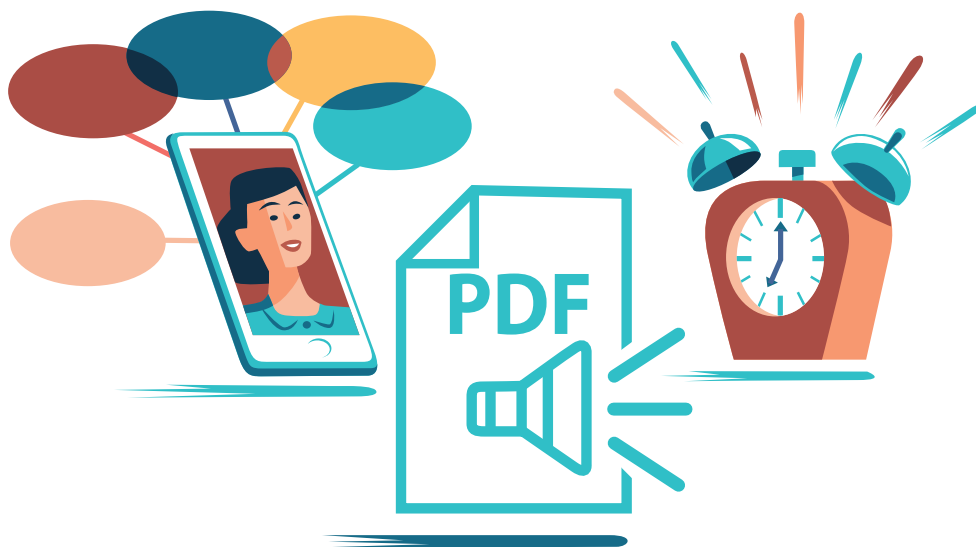
Download this booklet in PDF (websearch: additional written information) and listen using Adobe Acrobat's Read Out Loud function.



Ask your caseworker if the Department has an Aboriginal and Torres Strait Islander support worker who can go through this booklet with you.



Take a break. You don't have to read this whole booklet at once. You can go to the section you want to know more about at anytime, write down anything you don't understand or ask your caseworker to explain.



Introduction

This booklet provides important information for Aboriginal and/or Torres Strait Islander children and their parents when open adoption is being considered.

For parents, this booklet is to be read in addition to the “Mandatory Written Information on open adoption for parents of an Aboriginal or Torres Strait Islander child in out-of-home care.”

For Aboriginal and Torres Strait Islander children and young people, this booklet is to be read in addition to the booklet titled “Mandatory Written Information on open adoption for young people in out-of-home care”.

The law governing adoption, the *NSW Adoption Act 2000*, requires that a person who is considering giving consent to the open adoption of an Aboriginal or Torres Strait Islander child, must have the opportunity to read the information in this booklet and talk with an approved Aboriginal or Torres Strait Islander person to ensure they understand the contents before they give their consent.

Even if the birth parent is not Aboriginal or Torres Strait Islander, the information contained in this booklet applies to them if their child is Aboriginal or Torres Strait Islander.



Remember

Open adoption is a major life decision and support is always available to help parents and children make important decisions and help them through the open adoption process. If you have any questions about the information in this booklet or any other questions about open adoption please don't hesitate to ask your adoption caseworker or your legal support. They are there to help.

Some important contacts are:

Aboriginal Legal Service (ALS) NSW/ACT

Provides a range of legal support in children's Care and Protection law, Family law and Criminal law. ALS assist Aboriginal and Torres Strait Islander families through representation in Court, advice and information, and referral to further support services.

Phone: 1800 733 233

Websearch: Aboriginal legal service

Legal Aid NSW

Provides a free legal advice service at all Legal Aid offices. Legal representation is available in most areas of the law subject to a means and merit test. Appointments must be made for advice. If your adoption matter is in Court, contact the adoptions clerk at the Supreme Court to find out whether a lawyer will be at court to help you.

Phone: 1300 679 272

Websearch: legal aid nsw

The Department of Communities and Justice, Open Adoption and Permanency Services

The NSW Government's open adoption service, including services for local, special needs, intercountry, intrafamily and out-of-home care open adoptions.

Email: adoption.permanentcare@facns.nsw.gov.au

Websearch: adoption nsw

The Department of Communities and Justice, The Adoption Information Unit

The Adoption Information Unit (AIU) provides information and support to adopted people, birth parents, adoptive parents, siblings and extended family members including both intercountry and local adoptions.

Phone: 1300 799 023 (within NSW and ACT) or (02) 9716 3005 (from other states)

Email: adoption.information@facns.nsw.gov.au

Aboriginal and Torres Strait Islander peoples



In Australia, there are different First Nations people: Aboriginal and Torres Strait Islander peoples. Both groups have their own unique customs and cultures. NSW is made up of around 70 different Aboriginal nations, each with their own language group.

Many Aboriginal and Torres Strait Islander people recognise the importance of connections to family, communities, cultures and Country. Often, Aboriginal and Torres Strait Islander people choose to identify by their language group or traditional Country they're connected to, for example as Koori or Murri. This is similar to saying you're from NSW (Koori) or Queensland (Murri).

Identifying as Aboriginal and Torres Strait Islander is a personal choice. It means different things for different people. Some Aboriginal and Torres Strait Islander people choose to identify as Aboriginal and Torres Strait Islander because they:

- grew up learning about Aboriginal and Torres Strait Islander cultures through family, kin or communities
- practice their language and Aboriginal and Torres Strait Islander customs
- maintain strong connections to family, communities, cultures and Country
- are accepted by their Aboriginal and Torres Strait Islander communities and are proud of their cultures.

Remember

If you want to know more about your family's Aboriginal and Torres Strait Islander history, you can find information online through Link-Up NSW (websearch: link-up nsw) or ask your caseworker to speak with an Aboriginal or Torres Strait Islander caseworker.

Others may choose not to identify as Aboriginal and Torres Strait Islander because they:

- experience discrimination or racism and may feel a sense of shame when this happens
- have only recently learned about their Aboriginal and Torres Strait Islander ancestry and have no connections to Aboriginal and Torres Strait Islander family, communities or cultures
- feel afraid, shame or trauma because past government policies oppressed Aboriginal and Torres Strait Islander people and forcibly took their children away.

Aboriginal people and open adoption

Aboriginal people are diverse and often have mixed backgrounds. Being Aboriginal is not about the way you look; the colour of your skin, hair or eyes.

In the *Adoption Act 2000* an Aboriginal child means “a child descended from an Aboriginal person”.

The legal definition of an “Aboriginal person” is drawn from the Aboriginal Land Rights Act 1983. The law says an Aboriginal person is someone who:

- a) Is a member of the Aboriginal race of Australia
“I am a Wiradjuri woman/man. My family is from Dubbo NSW, which is located on Wiradjuri Country.”
- b) Identifies as an Aboriginal person
“I am an Aboriginal person and am a proud Dharug woman/man.”
- c) Is accepted by the Aboriginal community as an Aboriginal person
“I am a Biripi woman/ man from Taree, which is my mother’s Country. I grew up in Kurranulla on Gweagal Country, a clan of the Dharawal people. I currently live in Kedumba, which is on Gundungurra Country.”

It’s not always possible for all three requirements to be met because past government policies and practices forcibly separated Aboriginal families. When this happens, the Court may consider a child to be Aboriginal if the child has an Aboriginal descendant e.g. great grandfather/grandmother.

In Aboriginal communities, the responsibility of raising children is often seen as the responsibility of the entire family rather than the biological parents alone. If parents could not raise their child for any number of reasons, family, extended family and/or community stepped in and did so. This still remains the case in many Aboriginal families and communities today.

Within the Aboriginal community, relative or kinship care placements are the preferred care arrangements for Aboriginal children who are unable to live with their parents. These are placements with carers from within the child’s family, extended family or Aboriginal community and assist the child to maintain their connection and sense of belonging to their family, community and Aboriginal culture.

However in some circumstances a child’s best interests may best be met by stability and permanency within their carer family, and to achieve this open adoption

may be considered. The *Adoption Act 2000* does allow for Aboriginal children to be adopted. Additional requirements must be met under the *Adoption Act 2000*, before an adoption order can be made for an Aboriginal child.

Torres Strait Islander people and open adoption

In the *Adoption Act 2000* a Torres Strait Islander child means “a child descended from a Torres Strait Islander person”. The law says a Torres Strait Islander person is someone who:

- a) is descended from a Torres Strait Islander, and
- b) identifies as a Torres Strait Islander, and
- c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

It is not always possible for all three requirements to be met because past government policies and practices forcibly separated Torres Strait Islander families. When this happens, the Court may consider a child to be Torres Strait Islander if the child has a Torres Strait Islander descendant e.g. great grandfather/grandmother.

Customary adoption is a part of Torres Strait Islander culture and involves the permanent transfer of care responsibilities. It is considered to be a “social arrangement”.

Traditionally, the chosen adoptive family was related to the Torres Strait Islander birth family. However, with inter-racial marriage now more frequent, adoptive parents may be related only by marriage. There is also a growing practice of giving a child to Torres Strait Islander family friends rather than relatives.

Customary Torres Strait Islander adoption makes the child a full member of the adoptive family. These customary adoptions are not legally recognised under Australian law unless an adoption order is made in the NSW Supreme Court.

Within the Torres Strait Islander community, relative or kinship care placements are the preferred care arrangements for Torres Strait Islander children who are unable to live with their parents. These are placements with carers from within the child’s family, extended family or Torres Strait Islander community and assist the child to maintain their connection and sense of belonging to their family, community and Torres Strait Islander culture.

However in some circumstances a child's best interests may best be met by stability and permanency within their carer family, and to achieve this open adoption may be considered.

The *Adoption Act 2000* does allow for Torres Strait Islander children to be adopted. Additional requirements must be met under the *Adoption Act 2000*, before an adoption order can be made for a Torres Strait Islander child.

The Stolen Generations

The Stolen Generations refers to the generations of Aboriginal and Torres Strait Islander children who were forcibly removed from their families and communities between 1910-1970s. The government's aim was to remove Aboriginal and Torres Strait Islander children from their cultural and kinship connections and force them to assimilate into white Australian society.

These children were made to feel ashamed for being Aboriginal and Torres Strait Islander and were punished for speaking their language or practicing their culture. Some children were adopted by non-Aboriginal or Torres Strait Islander families and many were placed in institutions where they were neglected or abused.

Many were told that their parents had passed away when they hadn't, in the hope that the child would forget about their family and culture.

The forced removal of Aboriginal and Torres Strait Islander children broke important cultural, spiritual and family ties which affected thousands of Aboriginal and Torres Strait Islander people, families and whole communities. This has resulted in long lasting trauma that has persisted through generations. This trauma continues to affect Aboriginal and Torres Strait Islander families and communities today.

Today, the Law, through the Aboriginal and Torres Strait Islander Child Placement Principles and consultation requirements, seek to protect future generations of Aboriginal and Torres Strait Islander children from the devastating effects of the past that separated children from their families, communities, and culture.

Because of past government policies that separated children from their families, Aboriginal and Torres Strait Islander families and communities continue to experience grief and loss. Many Aboriginal and Torres Strait Islander people do not support the adoption of their children because:

- adoption is not a cultural practice within Aboriginal cultures
- raising children is often seen as the responsibility of the entire family
- if parents can't bring up their child, extended family and/or the community may often help
- it legally breaks Aboriginal and Torres Strait Islander connections to family, communities, cultures, identity and Country
- it's a reminder of the generational trauma experienced by families and communities of The Stolen Generations
- once an open adoption happens, the child will not have a caseworker who will check to see if the child's needs are still being met and they are still connected to their cultures.

Some Aboriginal and Torres Strait Islander people support the adoption of their children because:

- they want to respect their child's wish to be adopted
- they want the legal security that their child will not be moved from their current carer family
- they want their child to have a legal home after they turn 18
- they believe their child's carers will continue having family time and encourage the child to learn about their culture and community.

Many Aboriginal and Torres Strait Islander people have the support of an extended family structure which is based on:

- birth family - mum, dad, brother, sister, grandmother/ father, cousin, aunty, uncle
- marriage - aunty, uncle, Cousin
- community - Elder, neighbour, friend, organisation
- kinship system - aunty, uncles, cousins or Elder
- non-related family - Elder, friend, community member
- mutual respect
- a sense of belonging
- acceptance and knowledge of Aboriginal and Torres Strait Islander kinship ties.

Open adoption



What is open adoption?

- Open adoption provides an opportunity for children to have long term stability. It is a legal order that lasts for all of the child’s life.
- ‘Open’ means the child has the right to stay connected to their family, Aboriginal and Torres Strait Islander communities, cultures and Country.
- Being ‘open’ helps children when both families (birth and adoptive) stay in contact after an adoption order has been made.
- Openness lets children feel free to talk about their families and about all of the things that make them who they are.

Open adoption is the legal process that permanently transfers all the legal rights and responsibilities of being a parent from the child’s birth parents to their adoptive parents.

NSW Legislation, the *Adoption Act 2000*, allows for the adoption of Aboriginal and Torres Strait Islander children, but only when the making of an adoption order is in the best interests of the child and clearly preferable to any other care arrangement.

What are the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles?

When a child first comes into care, the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13 of *The Children and Young Persons (Care and Protection) Act 1998* (the Care Act) is applied. Consultation with Aboriginal and Torres Strait Islander family and community takes place to ensure the placement is appropriate for the child’s needs including their cultural needs.

The placement principles ensure that, where practicable or in the child’s best interests, children are placed within their family, communities or other Aboriginal and Torres Strait Islander community to stay connected with their Aboriginal and Torres Strait Islander cultures. This reflects the NSW Government’s determination to avoid a repetition of past practices which had a devastating impact on so many Aboriginal and Torres Strait Islander families.

OPEN ADOPTION

The general order of placement for an Aboriginal or Torres Strait Islander child under the *Care Act* is:

- a) With a member of the child or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs. If this is not practicable or in the child or young person's best interests then;
- b) With a member of the Aboriginal or Torres Strait Islander community to which the child or young person belongs. If this is not practicable or in the child or young person's best interests then;
- c) With a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child or young person's usual place of residence. If this is not practicable or in the child or young person's best interests then;
- d) With a suitable person approved by the Secretary after consultation with:
 - i. members of the child or young person's extended family or kinship group
 - ii. appropriate Aboriginal and Torres Strait Islander organisations.

All efforts are made to place Aboriginal and Torres Strait Islander children in accordance with the placement principles. However in some circumstances where a child was not known to be Aboriginal or Torres Strait Islander when they came into care, the placement principles may not have been applied.

In these cases where the placement principles weren't applied when the child came into care and consideration is now being given to the carer adopting the child, consultation with Aboriginal and Torres Strait Islander people and organisations will take place to ensure the cultural needs of the child can be met by the child's carers.

Before placing an Aboriginal or Torres Strait Islander child for open adoption, the placement principles under sections 35 and 39 of the *NSW Adoption Act 2000* must be applied.

These sections of the *Adoption Act* outline the Aboriginal and Torres Strait Islander child placement principles for children who are being placed for open adoption. They explain the general order of placement and the requirements for prospective adoptive parents.

Staying connected to family, community, culture and Country

Aboriginal and Torres Strait Islander children have the right to grow up connected to their family, communities, cultures and Country.

NSW Adoption legislation includes safeguards to uphold this right. For this reason, adoption agencies are committed to working with Aboriginal and Torres Strait Islander families and communities to:

- protect Aboriginal and Torres Strait Islander children's identity and rights to grow up strong in family, communities, cultures and Country
- maintain and support connections to family, communities, cultures and Country
- give Aboriginal and Torres Strait Islander children, parents, and family members the opportunity to participate with as much self-determination as possible relating to important decisions about their children's future
- consult with Aboriginal and Torres Strait Islander community representatives in decisions regarding care options for Aboriginal and Torres Strait Islander children.

The child's written cultural plan will set out the ways in which the child will learn about their Aboriginal and Torres Strait Islander family, cultures and community and how they will be encouraged to maintain a strong and positive cultural identity.



The legal effects of open adoption in NSW

The child becomes a legal member of their adoptive family.

The adoptive parents make all the parental decisions about the child's upbringing.

The child has the right to inherit from their adoptive parents.



The child gets updated birth certificates. They can take their adoptive family's last name if they wish, unless Court orders were made about names.

Their agency and caseworker no longer play a role in making decisions about the child.

What are the different pathways to open adoption?

There are a number of ways open adoption can be raised and considered as a placement option:

1. When a birth parent requests adoption for their child

At any time before or after a child's birth, a parent may approach the Department of Communities and Justice or a non-government adoption agency about an adoption service for their child.

2. When a child is in need of a permanent placement

The Children's Court care plan may include a statement that open adoption will be pursued for a child. This may occur in situations where:

- open adoption has been discussed with the family during case planning and after applying the placement principles, it has been agreed that open adoption is appropriate for the child, or
- after applying the placement principles, open adoption is deemed to be in the child's long term interests, with or without the agreement of their parents.

3. Out-of-Home Care open adoption

Open adoption of a child in a permanent placement can be requested by the child, their authorised (foster) carer, parent, the Department or agency that looks after your child while they are in out-of-home care. Open adoption can be raised at any time after the child has been placed with their permanent carers.

What happens when an adoption order is made?

An adoption order made by the Supreme Court of NSW transfers all parental rights and responsibilities, guardianship and custody of the child to their carers. It is permanent. Their carers become their legal adoptive parents for the rest of their life.

What changes as a result of an adoption order?

New birth certificates

Once an adoption order is made, the Registrar of Births, Deaths and Marriages issues two new birth certificates for the child:

1. An amended birth certificate that will say the child's adoptive parents and any siblings have been the child's family since birth.
2. An Integrated Birth Certificate (IBC) that will include information about the birth parents and any birth siblings (like the information on their original birth certificate), as well as the child's adoptive parents and any adoptive siblings.

Both birth certificates can be used for legal purposes, allowing the child to use whichever one they prefer. The original birth certificate can no longer be used for legal purposes.

Family time (contact)

Open adoption means that when a child is adopted, they are supported to know as much information about who they are and stay connected to family and cultures. After an adoption order is made, the Adoption Plan takes effect.

Inheritance

When an adoption order is made, the child:

- has the right to receive an inheritance from their adoptive parents after they pass away
- does not have the right to receive money or property after their birth parents pass away.

If birth parents wish to provide for their child after their death, they will have to mention their child specifically in their will. Inheritance matters should be discussed with a lawyer.



Why is open adoption being considered?

The Department or the agency looking after the child, aims to provide a safe and loving home for life to every child in out-of-home care. For this reason, caseworkers do 'permanency planning' with the goal of achieving a safe and permanent home that meets each child's needs.

Where children cannot be returned to their family, or live safely with relatives or kin, or it is not in their interests to be in the parental responsibility of the Minister (remaining as a child in out-of-home care), open adoption is considered as a last option.

In your case, open adoption is the goal. That's why you have been given this booklet.

Keep in mind that the goal can be changed and it doesn't mean that the child is 'locked in' to open adoption. Before taking any legal steps to move to open adoption, the Department or the agency looking after the child must arrange an assessment that considers whether open adoption would best meet the child's needs. This assessment is done by a trained person who has had no part in setting the child's case plan goal, and is explained in the next chapter of this booklet.

Open adoption provides an opportunity for the child to live and be cared for by adoptive parents, allowing birth parents and family to remain connected and involved with their child through their childhood and adult life. The main consideration is the best interests of the child both now and in later life - open adoption is not provided to fulfil the wishes and hopes of any other person.

Does the Department consider alternatives to open adoption?

Yes. Before open adoption is planned for an Aboriginal or Torres Strait Islander child in out-of-home care, all options regarding the care of the child must be explored, and open adoption must be found to be clearly preferable and in the best interests of the child to any other option.

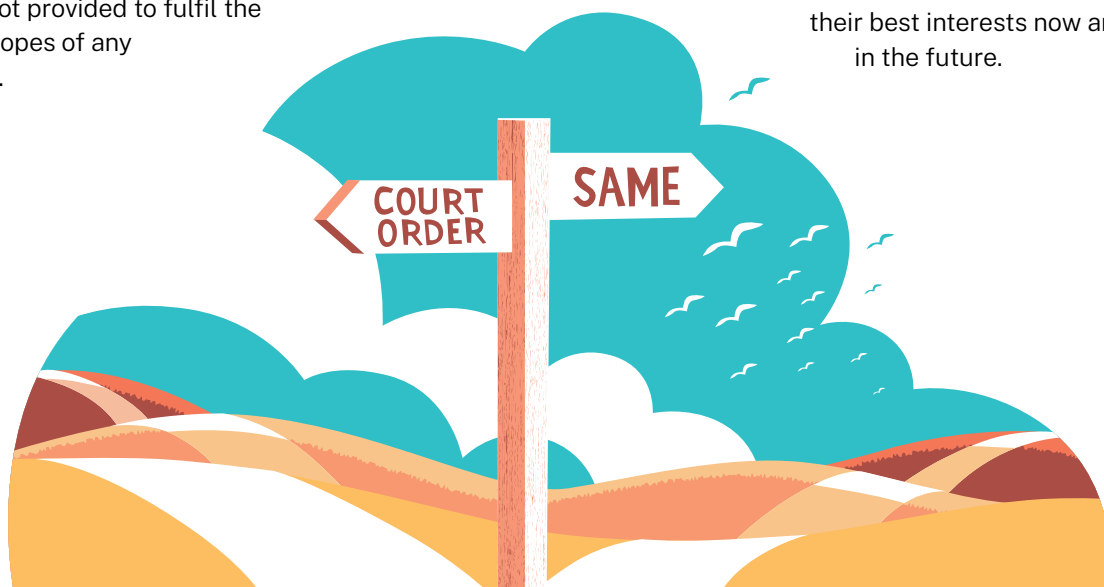
The Supreme Court can only make an adoption order if the placement principles in the *Adoption Act* have been properly applied, and it is clearly preferable to any other legal action regarding the care of the child.

The Department only supports open adoption when the child is unable to be returned to the care of their birth parents or family and the alternative forms of care have been considered and ruled out:

- A Court order that gives parental responsibility to the child's carers until the child is 18, such as a guardianship order.
- Deciding to leave things as they are, which generally means the child remains in long term out-of-home care under the parental responsibility of the Minister for the Department.

These arrangements end when the child turns 18. For some children, these arrangements may not provide lifelong permanency, a sense of belonging, or legal security in the way that open adoption does.

Open adoption will be progressed for children where it is decided that this is in their best interests now and in the future.





Who can adopt the child?

To help Aboriginal and Torres Strait Islander children grow up strong in their own cultures, the law says Aboriginal and Torres Strait Islander children can be adopted in the following order:

- a) With carers that belong to the same Aboriginal or Torres Strait Islander communities as their birth parents. If this is not practicable or in the child’s best interests, then;
- b) With carers from another Aboriginal or Torres Strait Islander community. If this is not practicable then;
- c) With non-Aboriginal and Torres Strait Islander carers as long as the Court is satisfied that certain requirements have been met first.


Carers who are interested in adopting a child must be assessed. An assessor must make sure that open adoption is the best plan for the child and if the carer is not Aboriginal or Torres Strait Islander, that they can:

- help the child develop a healthy and positive Aboriginal and Torres Strait Islander identity
- learn about and teach the child about their Aboriginal and Torres Strait Islander cultures through encouraging strong connections with family, communities and cultures
- help the child if they experience racism or discrimination at school or in the community.

Can family or kin adopt the child?

Generally, open adoptions within family or kin (who are relatives) are not supported because it changes the child’s legal relationships to the rest of their birth family, however it is permitted by law in special circumstances.

For example, if the child is adopted by their grandparents, then their birth parents legally become the child’s sister/brother after open adoption which changes their place within the family. Guardianship orders to relatives is usually in the best interests of a child because it does not change their family tree.

 **Remember**

You have a right for your information to be private and confidential. If you are concerned about your family or people in your community knowing you are considering open adoption, please let your caseworker know your concerns as soon as possible.

For birth parents who do not want to have their child adopted or would like advice and support with the open adoption process, they can contact the Aboriginal Legal Service NSW/ACT on 1800 733 233.

The open adoption assessment process

An open adoption assessment is required by law under the *Adoption Act 2000*. Its aim is to decide whether:

- the carers are suitable people to adopt the child, and
- open adoption is in the child's best interests –better than any other action that could be taken, including leaving things the way they are.

The agency that is looking after the child selects a person to complete the open adoption assessment who:

- is trained to assess whether open adoption is in the child's best interests, and
- has not been involved in making other decisions about the child's care.

What happens in an open adoption assessment?

- The assessor reads information that helps them understand the child's life story –who they are and what has happened in their life.
- The assessor spends time in the carer's household, talking with the child, the child's carers and their own children (including those still living at home and older children who now live independently), and any other people who live in the home.
- The assessor spends time with the birth parents and family, listening to their views and questions about the proposed open adoption and how connections will be maintained with their family and cultures, understanding their concerns and what things matter the most to them.
- The assessor will explain what happens to the information given to them, and how it will be shared, so the child and their birth parents can feel free to be honest about what they think and how they feel.
- The assessor spends time with any other person who is important to the child, e.g. the other parent, brothers, sisters, other family members and people who are important in the child's life.

- The assessor looks at ways the child will stay connected to their family, communities, cultures and Country.
- If open adoption is recommended, an Adoption Plan which includes a Cultural plan are drafted.
- The assessor writes a report about the information they have collected and gives their opinion about open adoption. The most important thing the assessor will think about is whether open adoption is in the child's best interests and if the Adoption Plan meets the child's needs –not just now, but for their whole life.

What do assessors consider?

- The child's wishes.
- The wishes of the birth parents.
- The child's age, level of understanding, background and family relationships.
- The child's physical, emotional and educational needs.
- The child's sense of personal, family and cultural identity.
- Any disability or special needs that the child has.
- The relationship and family time that the child has with their birth parents, their brothers and sisters, other family members and other significant people.
- The relationship of the child with each carer.
- The attitude of the child's carers to the idea of being the child's adoptive parents and how they feel towards the child.

How are the carers' ability to support the child's connection to their Aboriginal and Torres Strait Islander cultures assessed?

It is expected that the adoptive parents of an Aboriginal or Torres Strait Islander child are committed to supporting the child to learn about their Aboriginal and Torres Strait Islander cultures and heritage.

The adoption assessment will carefully look at whether the carers:

- can assist the child to develop a healthy and positive cultural identity
- have knowledge or are willing to learn about the child's heritage
- can teach and foster links with the child's heritage in their upbringing
- can help the child if the child is faced with racism or discrimination.

If the assessor recommends open adoption, a decision-maker in the Department decides whether approval should be given to continue towards open adoption. Approval means the Department will take action to get an adoption application ready for the Supreme Court.

The assessor may not recommend open adoption, or the decision-maker may not give approval to proceed. In these cases, no action will be taken towards open adoption. This does not necessarily mean that open adoption will never be considered again. It is possible that the matter will be placed on hold and reviewed at a later date. It is also possible that another permanency option is considered to be better for the child.

No matter what is decided, the Department or the agency will contact you about the outcome of the assessment and involve you in the next steps.



Open adoption consent and counselling



The Law seeks to protect future generations of Aboriginal and Torres Strait Islander children from past practices that separated children from their families, communities and culture.

Therefore an open adoption of an Aboriginal or Torres Strait Islander child cannot go ahead unless the Supreme Court is satisfied that an adoption order is clearly preferable, and in the best interests of the child, to any other order which could be taken by law.

One of the objectives of the *Adoption Act 2000* is to make sure that a child who is adopted is assisted to know and have access to their birth family and cultural heritage. Identifying and preserving a child's name or given names, identity, language and cultural ties must be taken into consideration when making a decision about the open adoption of an Aboriginal or Torres Strait Islander child.

Aboriginal and Torres Strait Islander people must be given the opportunity to participate with as much self-determination as possible in decisions relating to the placement of Aboriginal and Torres Strait Islander children for open adoption.

Why am I being asked to consent?

It's the law. Each child's parent and any person who has parental responsibility must be asked whether they want to give their consent to the open adoption of their child.

Even if the birth parents no longer have parental responsibility for their child, the law requires that they are asked if they want to consent. Parents do not have to discuss their views about consent with each other, or agree with one another. Choosing whether or not to consent is a personal choice. Their decisions will be based on many factors.

When will birth parents be asked to consent?

The consent of the parents and the Minister for the Department are requested when the child:

- is under 12, or
- is over 12 but has been living with their carers for less than 2 years, or
- is over 12 but does not have the sufficient maturity to give consent.

The child's consent is the only consent needed if he or she is aged 12-18, has been with their carers for longer than 2 years, and has the capacity to give consent.

Children giving their 'sole' consent will be given the same opportunity for 'adoption counselling' as parents would if they were giving consent. Every effort is made to let parents know if their child is considering or has given 'sole' consent to their adoption.

Can the child still be adopted if their birth parents don't consent?

Yes. The Supreme Court can make a 'consent dispense order'. This means the Court can decide the consent of the birth parents is not needed. The Court may do this if it is satisfied that it is in the best interests of the child.

When can a Court dispense with consent?

The Court may decide to dispense with a parent's consent where it is in the best interests of the child, in any of the following situations:

- The parent cannot be found, or identified.
- The parent is unable to consent for reasons such as a mental health or physical condition.
- There is serious concern for the welfare of the child if an adoption order is not made.
- The child is in foster care and has a stable relationship with their carers, open adoption by those carers will promote the child's welfare, and alternatives to open adoption have been considered.

What is the process for giving consent and receiving counselling?

If the birth parents decide to give consent to their child's open adoption, they will be guided through the following steps which are required by the *Adoption Act 2000*:

- First they will receive a copy of the Mandatory Written Information booklet at least 14 days before giving consent.

- The birth parents are then provided with 'registered adoption counselling'. The counsellor makes sure they understand what it means to give their consent. They discuss the emotional and legal effects of open adoption and the alternatives to open adoption that have been considered.
- Birth parents can give consent 72 hours after receiving 'registered adoption counselling' but no more than 30 days after. If 30 days has passed since they received 'registered adoption counselling', they will need to attend this counselling again before giving consent.
- Birth parents will then be provided with 'adoption counselling' by an Aboriginal or Torres Strait Islander person approved by the Department with relevant experience in working with Aboriginal and Torres Strait Islander children. They will talk about their child being cared for in accordance with Aboriginal or Torres Strait Islander customs and cultures.

If birth parents do not want to attend the 'adoption counselling' by an approved person, they will still be able to consent to their child's adoption but only after at least 7 days have passed since they are given this booklet.
- Birth parents will be asked to sign a document that confirms they have:
 1. participated in 'adoption counselling' with an Aboriginal or Torres Strait Islander person approved by the Department with experience in working with children, and have read and understood the information in this booklet, or
 2. declined to receive 'adoption counselling' but have read and understood the information in this booklet on Aboriginal and Torres Strait Islander customs and culture. If they do not attend 'adoption counselling', they cannot consent until at least 7 days after receiving this booklet.
- Consent is given when a document called an 'Instrument of Consent' is signed.
- A qualified person – not the counsellor and not the child's caseworker – witnesses the consent.
- Birth parents will receive a copy of the Instrument of Consent that they signed, and a 'revocation notice' which is a document that lets them take back their consent if they change their mind.



What if I change my mind?

Birth parents have a right to revoke (take back) their consent to open adoption during the 30 days after they give their consent. This period starts on the day they sign their consent.

If the child meets the criteria to be able to give their own consent for their open adoption, they can revoke their consent any time up until the adoption order is made.

If you are worried about how to revoke your consent, ask for help from:

- your caseworker
- your local Department office
- the adoption agency
- your Aboriginal Legal Service representative
- a Legal Aid lawyer
- the adoptions clerk at the Supreme Court.

If you would like advice and support with the process, you can contact Aboriginal Legal Service (ALS) NSW/ACT on 1800 733 233. They can help you understand or challenge the open adoption.

Adoption Plans

What is an Adoption Plan?

An Adoption Plan is a written agreement about how the child will remain connected to their family and cultures if an adoption order is made.

It outlines the following:

- How the child is going to learn about who they are and where they came from – things like their family history and Aboriginal and Torres Strait Islander identity and cultures.
- Ways the child will be assisted to develop a healthy and positive cultural identity, and for links with that heritage to be fostered.
- The family time the child will have with their birth parents, their brothers and sisters and other important family members:
 - The Adoption Plan will say when they will meet, where, how often, and who will be there if face-to-face family time is best for the child.
 - It will also mention other ways of keeping in touch.
- The kind of information birth parents will receive about their child – things like important life events, how things are going for them, including their health.
- The names the child will be known by if an adoption order is made.
- The kind of financial support or other help needed to make sure the Adoption Plan can be carried out.

Who is involved in an Adoption Plan?

An Adoption Plan is agreed to by two or more of the following people:

- The child
- Each parent
- Where possible, an Aboriginal or Torres Strait Islander person who is significant to the child and/or family should be identified in the registered Adoption Plan if the Court permits. This person could be a support person, a friend, community member or kin. They will support the child and will remain involved in the child's life to help them stay connected to their cultures, communities and family if an adoption order is made.

This person or any family member can raise any concerns about the child and their cultural connections with the Department, and request a review of the arrangements (if the Court permitted them to be a party).

- The child's carers
- The Secretary of the Department
- The Principal Officer of an adoption agency.

The *Adoption Act 2000* requires that Aboriginal and Torres Strait Islander people and organisations are consulted when important decisions such as the Adoption Plan, placement or consent to open adoption are being made about Aboriginal and Torres Strait Islander children. This includes:

- an approved Aboriginal or Torres Strait Islander person with experience in working with Aboriginal and Torres Strait Islander children, who can give the family advice and assistance about care options for the child (in relation to placement and consent); or
- a person nominated by the birth parents, extended family or kinship group, who is recognised by the Aboriginal and Torres Strait Islander communities which the child belongs to, with expertise in out-of-home care or open adoption of Aboriginal and Torres Strait Islander children (in relation to placement), and
- a local community-based and relevant Aboriginal and Torres Strait Islander organisation (in relation to placement and the Adoption Plan).

Consultation with a local community based and Aboriginal and Torres Strait Islander organisation may help to:

- have discussions about what should be in the Adoption Plan that will help the child to develop a healthy and positive cultural identity
- develop a plan that will help the child to learn about their cultures and maintain links to their Aboriginal and Torres Strait Islander family, communities, cultures and Country throughout their growing years.

Remember

Even if birth parents don't consent to open adoption, they will still have every chance to be involved in adoption planning.

How will birth parents be involved in the Adoption Plan?

An important purpose of the adoption assessment is to understand the birth parents' wishes for future family time with their child, and the things that are important to them in keeping their child's identity, language and cultural ties strong. These can include significant life events such as cultural events and traditions, religious sacraments, and funeral/burial arrangements should their child pass away.

If the assessor supports open adoption, an Adoption Plan is drafted. If open adoption is approved, the Department or the adoption agency will come back to the birth parents to talk about the Adoption Plan in more detail.

The birth parents, the child's brothers, sisters, other important family members and people in the child's life and their carers will be asked to contribute to the draft Adoption Plan. There will be time to discuss different opinions and make the plan better. It's important to have an Adoption Plan that everyone can stick to, because there won't be a caseworker to help out after an adoption order is made.

Each parent will be asked to read and sign the finished Adoption Plan. It is important that they talk openly with the assessor, the caseworker and the child's carers about what they want and how they feel.

What does registering an Adoption Plan mean?

Adoption Plans are filed with the adoption application at the NSW Supreme Court. All Adoption Plans for Aboriginal and Torres Strait Islander children are registered at Court. This means the Adoption Plan has the effect, on the making of the adoption order, of being part of the adoption order. It therefore becomes enforceable as an order of the Court.

Is agreeing to the Adoption Plan the same as giving consent?

No. Agreeing to the Adoption Plan does not mean birth parents agree to the open adoption of their child. It means they agree to the arrangements that have been made to keep them and their child connected if an adoption order is made.

Agreeing to the arrangements in the Adoption Plan is shown by signing the plan. If birth parents sign the Adoption Plan, they become a 'party' to the plan. That means that if the open adoption goes ahead, they can apply to the Court for a review of the Adoption Plan at any time after the order.

How do birth parents know their child's carers will stick to the plan?

Adoption Plans often include other people apart from birth parents and carers. Other parties mentioned in the plan such as grandparents, brothers and sisters, aunts and uncles also play a role in making sure the plan is followed and family time continues. As the plan is registered, it has effect as if it were a Court order and therefore should be able to be enforced.

However, Adoption Plans cannot predict all of the changes that may happen in the future. Any party mentioned in the Adoption Plan may experience a change in circumstances. For example, one of the parties might:

- move to another location
- experience an accident or illness
- find some family time visits too difficult because of the emotional affects.

For a plan to work effectively, every party in the plan will need to show continuing commitment and flexibility based on the child's best interests.

If the open adoption goes ahead, and the birth parents think their child's adoptive family is not committed to the Adoption Plan or they feel the arrangements in the Adoption Plan are no longer meeting their child's needs, birth parents should seek the support of a post-adoption service such as the Department's Adoption Information Unit at adoption.information@facns.nsw.gov.au or by phone on 1300 799 023 (within NSW and ACT) or 02 9716 3005 (from other states).

It may also be possible for the Court to review the plan.

Remember

If birth parents are unsure of their rights and obligations, or they are concerned that the Adoption Plan is not being followed, they should speak to their lawyer from Aboriginal Legal Service or Legal Aid.

Cultural planning and the Adoption Plan

How a child is supported to develop a healthy and positive cultural identity is an important part of the Adoption Plan. Parents, brothers, sisters and significant family members have a say in how they would like to remain connected with the child and how they will help the child's connection with their family, communities and cultures.

Cultural planning starts as soon as a child enters care. Cultural planning:

- ensures that children who cannot grow up in their family of birth continue to learn about their cultures, belong to their cultural communities and develop a positive cultural identity now and into their future
- identifies the cultural needs of the child and outlines how a child is going to be supported to maintain their cultural identity, language, spirituality and religion, connection and sense of belonging to family, communities, cultures and Country
- helps ensure that important cultural and family information is maintained for any child who is too young to contribute to their own cultural plan
- focuses on building the capacity of carers to be able to support children to be positively connected to their cultures. This includes building the skills of carers to independently manage relationships and family time (contact) with birth family
- ensures that carers know how to access education and build networks of support to meet the changing cultural needs of children over time.

How will birth parents be involved in the cultural plan?

The cultural plan is an important part of the Adoption Plan which birth parents will help to develop for their child. Birth parents will be asked to provide information such as:

- Where they come from and their areas of belonging:
 - The traditional communities/ Country/ nation of one or both parents.
 - The communities where the birth parents or their child were born.
 - The communities where birth parents were raised or lived most of their life.
 - The community where birth parents currently reside.
 - Language groups.

- Family, kinship and community ties:
 - Blood related (mum, dad, siblings, grandparents, cousins, aunty).
 - Marriage (aunty, uncle, cousin).
 - Community or non-related family (Elder, neighbour, friend).
 - Kinship relationship (Elder, aunty, uncle, community).
 - People within the community who birth parents feel a sense of belonging.
- How birth parents engage in culture in their family.
- What birth parents want their child to know about their culture.
- Who else holds cultural knowledge in their family (if known).
- Community and cultural activities and events their child could participate in.

This information will be used to develop a cultural plan for the child to make sure they develop a healthy and positive cultural identity and maintain a sense of belonging to their Aboriginal and Torres Strait Islander communities and cultures.





All cultural arrangements for the child including planned activities, will be included in the Adoption Plan. It is important that the arrangements for the child are specific and detailed and promote future connections to cultures.

Family members play a key role in supporting the child's identity and cultural needs, even after open adoption.

Who else is involved in cultural planning for the child?

Where possible, a person of significance to the child and family should be identified in the Adoption Plan. This person may be a support person, friend, community member or kin who can assist the child to remain connected to family, communities, cultures and Country after open adoption.

Consultation during the development of the Adoption Plan will occur with the family, extended family, kin and community (where possible) and with a local community-based and relevant Aboriginal and Torres Strait Islander organisations. Consultation is important to provide the child with specific cultural information that connects them to their family, communities, cultures and Country.

Can birth parents change the Adoption Plan after the adoption order is made?

If circumstances change and the Adoption Plan no longer meets the best interests of the child, get the help of a post-adoption service such as the Department's Adoption Information Unit. They can help everyone to reach an agreement to prevent going to Court.

If an agreement can't be reached, legal options are available. Anyone who is a party to the Adoption Plan (has signed it) can apply for a formal review of that plan by the Supreme Court.

If birth parents are part of a registered Adoption Plan, they have the right to ensure the plan is followed. If they believe that the registered Adoption Plan isn't being followed, they may apply to the Supreme Court to have the plan enforced. If birth parents are unsure of their rights and obligations, they can get independent legal advice as soon as possible.

Do birth parents have to go to Court to ask for a review of the Adoption plan?

No. If arrangements have changed and the birth parents are not able to reach an agreement with their child's adoptive parents, they can ask the Department's Adoption Information Unit for help.

An open adoption needs to meet the changing needs of children as they grow up. Being flexible and considering the changing needs of the child and of each family will make it easier for everyone to remain connected and enjoy time spent together. Ideally, it is hoped that both families understand these changes and are willing to reach an agreement that suits everyone.

What happens after a review of an Adoption Plan by the Court?

The Court makes an order that they consider is in the best interests of the child and proper in the circumstances. The Court may:

- order changes to the plan, or
- confirm the existing plan without changes, or
- revoke (cancel) the plan (however this only happens in very rare circumstances).

If the Court makes changes to the Adoption Plan, the new plan replaces any previous Adoption Plan.





We acknowledge Aboriginal and Torres Strait Islander people as the First Nations Peoples of Australia and pay our respects to Elders past, present and future. We acknowledge the ongoing connection Aboriginal and Torres Strait Islander people have to this land and recognise Aboriginal and Torres Strait Islander people as the original custodians of this land.