

# Foundations of Open Adoption

## What is Open Adoption?

For a child or young person (child) in out-of-home care (OOHC), open adoption offers a secure, permanent placement and the opportunity to receive lifelong love, sense of belonging, safety, and stability.

An open adoption order results in a child becoming a legal member of their adoptive family. This order is lifelong and is not designed to be changed or revoked once it is made.

Open adoption in NSW is different to past adoption practices. Adopted children are now supported to remain connected to the family, culture, and religion they were born in to. Adoptive parents follow an agreed adoption plan, which sets out the ways they will support these lifelong connections for the child.

Openness is an attitude that goes beyond family time and phone calls. Meaningful openness recognises and values the relationship between the child, their family, and their adoptive family. Children who experience open adoption will know and are able to ask questions about who they are and where they come from. They are supported to participate and learn about their family's culture and traditions and can see that their adoptive family embraces their family and life story.

### Practice example of openness in adoption: Amy, Trevor & Grace, Frankie & Michael

Amy is 18 months old, bubbly, inquisitive, and fascinated by birds. She was born while her mother Frankie was incarcerated and removed from her care at 1 day old.

Frankie suffers from episodes of acute schizophrenia, which has not been well managed by medication or inpatient treatment. She experiences episodes of psychosis, during which her thinking and behaviour can become disordered. Feelings of anger and suspiciousness also increase. When she is not experiencing an episode, Frankie has the capacity to engage meaningfully in conversations about Amy's long-term care. Frankie's mental health issue prevents her providing consistent and safe care for Amy, but she loves her daughter and wants to be involved in her life.

Frankie helped caseworkers locate Amy's father Michael. Frankie and Michael are not in a relationship. Michael has problematic alcohol use and experiences periods of homelessness. He has found it difficult to engage in case planning for Amy. He has no face-to-face family time with her at the moment but hopes to get more involved in the future.

He has asked to be kept up-to-date on Amy's well-being and development via text messages.

Amy had a permanency goal of adoption. A short-term care order for 2 years was made when she was 6 months old, to allow time for an adoption application to be made and considered by the Court. An adoption order for Amy was made by the Supreme Court today.

Amy's adoptive parents, Trevor and Grace have a good relationship with Frankie and Michael. They understand that it is important for Amy to know and have a connection with her parents. They take Amy to see Frankie at the jail every two months. They update Michael regularly via text.

Trevor, Grace, and Frankie are all Catholic, and all agree that they'd like Amy to be baptised in the Catholic faith. Michael is not religious and doesn't mind if Amy is baptised. Trevor and Grace have chosen to postpone Amy's baptism until Frankie is released from jail. They will work with Frankie to understand how the baptism can be planned in a way that Frankie feels comfortable attending.

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[Watch this 8-minute video](#) to hear the voices of adoptees and their families.

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## Legislative Framework

- Open adoption is governed by various legislation and policies. The [Adoption Act 2000](#) and [Adoption Regulation 2015](#) 'Adoption Act' governs all adoptions in NSW.

Other governance that should be considered in open adoption include:

- [Child and Young Person \(Care and Protection\) Act 1998](#)
- [NSW Child Safe Standards for Permanent Care](#)
- [Permanency Case Management Policy](#)
- [Aboriginal Case Management Policy](#).

## Australia's Adoption Legacy

It is essential to understand and acknowledge how Australia's history of Stolen Generations, as well as forced and closed adoptions has contributed to multigenerational separation, trauma, grief and loss. It is these past policies and practices that contribute to

mixed and strong feelings and views about open adoption as a permanency option for children in care.

## The Stolen Generations

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 children and grandchildren.

The past practices of the Department of Communities and Justice (DCJ), its predecessor organisations and the NSW and Commonwealth government, of perpetrating the Stolen Generations, and the trauma inflicted on Aboriginal communities through colonisation, dispossession, and genocide, continue to hurt Aboriginal families to this day.

Aboriginal and Torres Strait Islander (Aboriginal) peak bodies unequivocally oppose the adoption of Aboriginal children.

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*... permanence for Aboriginal and Torres Strait Islander children is developed from a communal sense of belonging; experiences of cultural connection; and a stable sense of identity including knowing where they are from, and their place in relation to family, mob, community, land and culture.*

*...Implications of adoption are life-long and sever a child's legal ties to his or her birth family. Adopted Aboriginal and Torres Strait Islander children may ever know about, or experience, their cultural rights and heritage if an adoptive parent determines this is not important*

*The permanent removal of Aboriginal and Torres Strait Islander children from their families presents harrowing echoes of the Stolen Generations for our communities.*

[Media Release 12 November 2018 – Joint Statement on proposed legislative reforms to the NSW statutory child protection system](#)

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The communal sense of belonging, that is offered when a child is physically, relationally and legal connected to their country, family and kin, is referred to as ‘cultural permanency’. A significant concern expressed by Aboriginal and Torres Strait Islander children is that adoption does not offer them cultural permanency.

For more information see: [Open Adoption and Aboriginal Children, Trauma in Aboriginal Communities, Bringing them Home Report \(1997\)](#) and [Family is Culture Review](#).

## Forced Adoptions

During the mid-twentieth century in Australia, the forced adoptions and removal of children was widespread. The [Senate Community Affairs References Committee report on Former Forced Adoption Policies and Practices](#), released in 2012, estimates there were there were 140,000 to 150,000 total adoptions in the period between 1951 and 1975, and as many as 250,000 total adoptions from 1940 to 2012. The report concluded it was impossible to know the exact number of people impacted by forced adoption.

But it is believed that many tens of thousands of young unmarried women were forced or coerced into adoptions. Forced adoptions took place through hospitals, maternity homes, and adoption agencies, both secular and religious, government funded and private. Forced adoption practices created a lifelong legacy of pain and suffering for many people, particularly mothers, fathers, and adoptees.

Many affected by forced adoptions find it impossible to support a placement option where a child’s legal relationship to their family is forever changed, and secrets may still be kept from children, families and adoptive parents.

As a result of the 2012 senate enquiry, both the [NSW state](#) and [federal](#) government have formally apologised to those who have suffered trauma as a result of the forced adoption policies and practices of the past.

**Watch:** The Four Corners story [Given or Taken?](#) a 45-minute exploration of the experiences of some of these women.

## Closed Adoptions

Even where a parent may have voluntarily consented to their child’s adoption, much of NSW’s adoption practice, until the 1980’s, was focused on the concept of closed adoption.

Adoption was considered a ‘fresh start’ for an adopted child. Adoptive parents were discouraged from speaking with the child about their adoption or trying to seek out the child’s parents. The child’s parents were encouraged to ‘get on with their lives’ and forget about the child they brought into the world.

Adult adoptees tell us now that the lies, secrecy and ‘not knowing’ caused permanent harm to their identity, self-worth, and ability to trust others and form relationships. Parents tell us that not knowing what happened to their child has been a painful and life-altering legacy.

## Contemporary Adoption Legislation and Practice

Following formal inquiries into past policy and practices, significant changes have been made to care and protection, as well as adoption legislation, policy and practice, to ensure many of our previous mistakes are not repeated. The Adoption Act sets out that:

- the best interests of the child must be the paramount consideration
- the child must be assisted to know their family and cultural heritage
- the child’s views about their adoption must be expressed freely and given due weight
- the views of the child’s family, and the proposed adoptive parents’ suitability to adopt, must be factored into deciding what is in the best interests of the child
- the Court may not make an adoption order unless it decides the making of the order would be clearly preferable in the best interests of the child to any other action that could be taken by law
- extra legislative steps must be taken to ensure adoption is preferable for an Aboriginal or Torres Strait Islander child to any other order that could be made in relation to their care.

As you explore permanent placement options for children, it's important that you:

- Explore and acknowledge with children, families and communities their experiences of past Stolen Generations, forced and closed adoption practice. Empathise with their experience.
- Understand how current open adoption legislation, policy and practice reflects how we want to prevent the mistakes of the past.

## Open Adoption in the Permanency Support Program

Achieving permanency for all children is a priority of the NSW Government through the Permanency Support Program (PSP). Open Adoption is one permanency option for a child who cannot live safely or be restored home, along with guardianship or long-term out-of-home care.

Open adoption may be the best permanent placement option, particularly for non-Aboriginal and Torres Strait Islander children living with unrelated carers, because of the life-long security and permanency it provides. Open adoption means a child has less chance of being uprooted or to 'drift' between placements, schools, and social networks. This allows them to 'lay down roots' in their community, feel belonging and have the chance to thrive.

Open adoption may be the preferred choice of children, their carers, and families.

Open adoption must be considered in line with the [Care and Protection Act's Permanent Placement Principles](#).

If you'd like to learn more about what needs to be done before a child's case plan goal can change to adoption, go to the fact sheet [Considering Open Adoption \(non-Aboriginal Children Only\)](#).

For other information see: [Open Adoption and the Court](#).

## Open Adoption and Aboriginal Children

Despite worries, the adoption of Aboriginal children remains legally possible in NSW. A very small number of Aboriginal children have become subject to adoption orders in recent years.

The Care and Protection Act's Permanent Placement Principles state that for an Aboriginal child, adoption should be considered as the last permanent placement option after long term OOHC.

The Adoption Act sets out the additional steps needed for the Court to consider whether adoption is the preferable option for an Aboriginal child. Central to these steps is a focus on the participation and self-determination of Aboriginal people in making permanent decisions about the care of Aboriginal children.

The Secretary of DCJ is directly responsible for consenting to the adoption of an Aboriginal child in OOHC, approving their carers as proposed adoptive parents, and approving adoption action.

For more information see: [Considering Open Adoption \(non-Aboriginal Children Only\), Guardianship or Open OOHC Adoption](#), and [Open Adoption and Aboriginal Children](#).

## Adoption Plans

Every child where an open adoption order is sought must have an adoption plan developed. An adoption plan details how the child will stay connected to their family, culture and religion after they are adopted. It will include who will spend time with the child, how they will stay connected and how often. An adoption plan should take into account the child and family's unique circumstances.

Adoption plans are developed collaboratively between families, proposed adoptive parents and the child. They are lodged with the Supreme Court in the adoption court order application. An adoption plan can be 'registered' with the court, which gives it the effect of being part of the legal adoption order, and enforceable.

For more detailed information on adoption plans see: [Family Time and Open Adoption, Open Adoption Process \(non-Aboriginal children\)](#), and the DCJ fact sheets [What is an Adoption Plan](#), [Guide to drafting an adoption plan](#), [Registration of adoption plans](#) and [Guide to drafting a registered adoption plan](#).

## Culture and Open Adoption

All children have the right to know and practice their own culture, as highlighted by [Article 30 of the Convention on the Rights of the Child](#). Although adoption changes a child's legal parents, it should not sever the connections a child shares with their family, culture and religion.

Cultural support planning should already be a part of a child's case plan if they are Aboriginal, Torres Strait Islander or from a culturally and linguistically diverse (CALD) background. Planning to support a child's culture should not stop when a child's case plan goal changes to adoption.

A cultural support plan should be created, or further developed, in consultation with the child, their family, proposed adoptive parents, and other relevant people and agencies. The cultural plan will be lodged with the Supreme Court in the adoption court order application. Parts of the cultural plan can also be included in the child's adoption plan.

Essential to your cultural planning is exploring how adoption might impact on a child's cultural permanency.

For more information see [Open Adoption and Cultural Consultation and Planning](#) and [Open Adoption and Aboriginal Children](#).

## Post Adoption Birth Certificates

Once an adoption order is made for a child, the Supreme Court will notify the NSW Registry of Births Deaths and Marriages, who will issue the child with new post-adoption birth certificates. The child will then have three birth certificates:

- Original birth certificate, with details of the child's birth parents and siblings. Once an adoption order is made, it can no longer be used for legal purposes
- A post-adoption birth certificate, which details the child's adoptive parents as if the child were born to them. This is the child's legal birth certificate.
- An integrated birth certificate (IBC), which includes information about an adopted person's parents and siblings at birth, as well as their parents and siblings after adoption. This is also a legal birth certificate.

IBCs are a recent introduction to adoption legislation and practice in NSW. They reflect contemporary open adoption practice, which promotes an adopted person's connection to family and culture, wherever possible.



For more information, see [DCJ Integrated Birth Certificates Fact Sheet](#).

## Accredited Adoption Service Providers (AASPs)

Unlike restoration, guardianship or allocating parental responsibility to the Minister (PRM), adoption orders are made in the NSW Supreme Court. AASP's are organisations that can lodge their own adoption order applications with the Court. PSP service providers that are not AASPs cannot lodge an adoption order application. They need the assistance of an AASP or DCJ.

As well as DCJ, the AASPs in NSW are:

- [Anglicare](#)
- [Barnardos Australia](#)
- [Family Spirit](#)
- [Key Assets Australia](#)
- [Life Without Barriers](#)

For more information about how you will work with DCJ or an AASP during the adoption process for a child, see: [Open Adoption Process \(non-Aboriginal children only\)](#).

## Adoption Caseworkers

If you work for a PSP service provider that is not an AASP and are considering adoption as a permanency option for a child, you should contact your district's adoption caseworker. Adoption caseworkers support service providers to identify children for whom adoption may be an appropriate permanency option. Adoption caseworkers provide support throughout the adoption process and are available to help you with complex adoption decision making.

## Other types of Adoption

See these DCJ fact sheets for information on other types of open adoption orders that can be made in NSW:

[Intercountry Adoption](#)

[Local \(voluntary\) Adoption and Permanent Care](#)

[Special Needs Adoption](#)

[Intrafamily \(step-parent and relative\) Adoption.](#)

## For More Information

Research about open adoption and permanency in NSW can be found on the [Research Centre for Children and Families, University of Sydney](#) website.

## References

Gair, S., (2012). Re-writing Australia's history of forced adoption. Available:  
<https://theconversation.com/re-writing-australias-history-of-forced-adoption-5142>

Office of the Children's Guardian Accredited adoption agencies.  
<https://ocg.nsw.gov.au/statutory-out-of-home-care>