

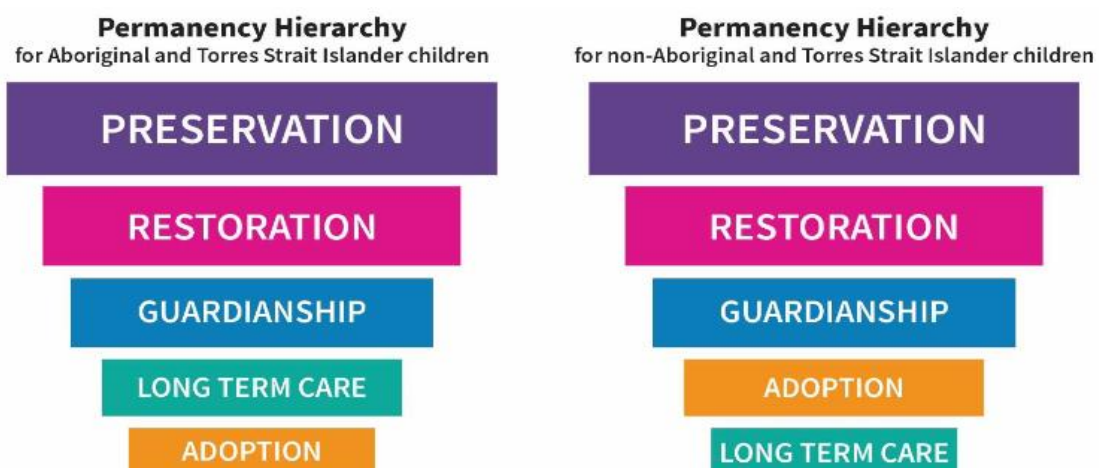
Guardianship or Open OOHC Adoption

The Permanency Support Program (PSP) seeks to support more children to stay at home safely with their families (preservation). When this is not possible, the mandate of the PSP is to have every child who enters care in a permanent home for life within two years.

For children who enter or are at risk of entering out-of-home care (OOHC), the legislation outlines that a permanent home can be achieved through:

- restoration
- guardianship
- open adoption
- and for some children living in a stable placement in long-term parental responsibility to the Minister ('long-term care').

In planning for a permanent home, the Department of Communities and Justice (DCJ) and PSP service providers must adhere to the Permanent Placement Principles defined in section 10A of [the Children and Young Persons \(Care and Protection\) Act 1998](#) (Care Act). For more information see [Permanency Planning Overview](#).



The Care Act sets out different permanency hierarchies for Aboriginal and Torres Strait Islander (Aboriginal) children and non-Aboriginal children, in recognition of

the views of Aboriginal communities and the devastating impact of forced adoptions and the Stolen Generations on Aboriginal people.

The permanency hierarchy promotes returning children safely back to their parents care as being the best permanency option (see the [Restoration Practice Area](#) for more information). If restoration is not possible, then guardianship is the next preferred option for all children. After guardianship, adoption is the next preferred option for non-Aboriginal children, then long-term care (parental responsibility to the Minister).

For Aboriginal children, after guardianship, long-term care is the next preferred option. Adoption is the last option you should consider for Aboriginal children.

To know what the best permanency option is for a child, every permanent placement option must be considered, in the order set out in the permanency hierarchy. For example, even though guardianship comes before adoption in the hierarchy for non-Aboriginal children, you and DCJ may consider open adoption will better meet a child's needs. In this situation, you should pursue adoption.

How is a Guardianship Order Different from an Open OOHC Adoption Order?



- Adoption orders can only be made by the Supreme Court. Guardianship orders are made in the NSW Children's Court.
- Birth parents can file a section 90 (s90) application to request to vary or rescind a guardianship order for their child, although the Court will only allow these applications if there has been a significant change in relevant circumstances since the guardianship order was made. They have no such legal avenue with adoption orders.
- A guardianship order expires when the child turns 18 years of age. An adoption order is permanent.
- Guardianship orders do not affect a child's birth certificate, with adoption orders a new birth certificate is issued. The Adoption Act 2000 has recently been amended to allow for adopted people to receive an integrated birth certificate. It is a new form of birth certificate which includes information about the child's birth family as well as their adoptive family. A post adoptive birth certificate is also provided which only includes information about the child's adoptive family. Both types of birth certificates can be used for legal identification purposes.
- An adoption changes the child's legal relationship with the birth family. The child's legal ties with their parents remain in place when they are the subject of a guardianship order.
- Children who are adopted have the same legal rights to their adoptive parents' estates as biological children.
- Parents' endorsement of a guardianship order (evidenced by signing the Care Plan) is desired, but not required. Parental consent is required for an adoption order for a child under 12; or the Court can dispense with parental consent if there are grounds to do so.
- Children must consent to their own adoption from the age of 12 years, if they have been cared for by the adoptive parents for at least two years and are able to understand what they are consenting to.
- Children over the age of 12 must consent to a guardianship order, when they are capable of understanding what they are doing.
- Adoptive parents and guardians are responsible for managing birth family time (contact) and helping the child develop a positive cultural identity.
- For guardianship, a contact order can be made alongside a guardianship order when the Court sees there is a need to support family time.

- For adoption, an adoption plan is lodged with the Court. The plan outlines how a child's adoptive and birth families will support family time and cultural identity. An adoption plan can be registered with the Court, this makes the plan part of the adoption order. Adoption Plans are always registered for Aboriginal children and by request for all other children.
- A guardianship order can include the payment of contingencies if this is included in the Financial Plan at the time the order was made. There are currently no financial contingencies available for adoption orders unless there are exceptional circumstances.
- A financial allowance is different for guardians and adoptive parents. Both are only provided until the child turns 18. Guardians will automatically receive an ongoing guardianship allowance (which will be paid at the same rate as their foster care allowance). Adoptive parents will receive a financial allowance if they are eligible for Family Tax Benefit A. If they are not entitled, they will receive a one-off payment of \$3000 and then a \$1,500 yearly payment.

For more information see: [How do I know whether adoption or guardianship is right for a child?](#)