

Legal and Policy Framework for Restoration

There are a number of key legal and policy documents that guide restoration casework.

The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children globally. [Article 9](#) of the Convention outlines that children and young people (child) should not be separated from their parents unless it is in the child's best interests. Children have the right to maintain a relationship with their parents, unless this would not be in their best interests.

The NSW Child Safe Standards for Permanent Care

The [NSW Child Safe Standards for Permanent Care](#) were developed by the NSW Children's Guardian, the out-of-home care sector and key peak organisations.

The Standards establish the minimum requirements of agencies delivering out-of-home care services. They ensure that the rights of children are upheld and that children receive quality services.

Standard 2 – Providing a positive care environment

“Children and young people are cared for in safe, nurturing environments that are suited to their specific needs.”

Standard 2 further requires that the permanent placement principles and Aboriginal and Torres Strait Islander placement principles must guide placement decisions.

The Permanency Case Management Policy and the Aboriginal Permanency Case Management Policy.

These two policies and the associated rules and practice guidance are designed to explain the way we achieve safety, permanency and well-being for vulnerable children. The [Permanency Case Management Policy](#) clarifies the different roles and responsibilities of

Department of Communities and Justice (DCJ) and Permanency Support Program (PSP) Service Providers.

The [Aboriginal Case Management Policy](#) supports casework staff to engage early with Aboriginal families to shape case planning and identity tailored solutions to keep children safe with their family and community.

Away from Placement Policy

The [Away from Placement Policy](#) provides rules and practice guidance to PSP service providers and DCJ. It should be referred to when a child is not living in the house that has been approved by DCJ and the Children's Court. (e.g. when a child has 'self-placed').

Permanent Placement Principles

Permanency planning for children who cannot live with their parents must be considered according to the permanency hierarchy set out in the [Children and Young Persons \(Care and Protection\) Act 1998](#):

- Section 10A contains the permanent placement principles for Aboriginal and Torres Strait Islander and non-Aboriginal children.
- Section 13 contains the placement principles for Aboriginal and Torres Strait Islander children who are in out-of-home care.

The Court, DCJ and PSP service providers are all required to make decisions taking account of these principles.

A table outlining the permanency hierarchy for all children entering care in NSW is below:

Permanency Hierarchy	Aboriginal children and young people	Non-Aboriginal children and young people
Most preferred	Restoration to parents	Restoration to parents
Second most preferred	Guardianship to a relative / kin or other suitable person	Guardianship to a relative / kin or other suitable person
Third most preferred	Parental Responsibility to the Minister (PRM)	Adoption
Least preferred	Adoption	Parental Responsibility to the Minister (PRM)

Permanency Hierarchy
for Aboriginal and Torres Strait Islander children



Permanency Hierarchy
for non-Aboriginal and Torres Strait Islander children



Child Protection Legislation

The [Children and Young Persons \(Care and Protection\) Act 1998](#) provides a legislative basis for restoration casework. Some significant sections that relate to restoration are in the table below.

Section	Overview
Sections 8-13	Outlines the purpose of the Act. This includes providing appropriate services to parents to care for their children, and that any intervention must be the least intrusive to the child and their family.
Section 9	Outlines the principles for the administration of the Act. These include: listening and giving weight to the views of the child preserving the child's relationships with their family and other important people.

Section 10A	The permanency placement principles. Restoration is the preferred option for all children who come in to care.
Section 11(1)	Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible.
Section 13	The Aboriginal and Torres Strait Islander placement principles.
Section 38	DCJ can enter into a Parental Responsibility Contract with the child's parents. This voluntary agreement aims to improve parenting skills and is registered with the Children's Court.
Section 73	The Children's Court can make an order requiring the child's parents to do certain things. Examples of undertakings include that the parents will work with a particular service, attend urinalysis or will take a child to medical appointments. Undertakings will require parents to address any issues that might prevent restoration being successful.
Section 76	The Children's Court can make an order for supervision. This empowers the secretary to provide supervision to a child after they have been restored.
Section 78A	Details what to consider when planning for a permanent home for a child or young person
Section 82	Report on suitability of arrangements about parenting. This section can help the Children's Court understand if the child's placement is meeting their needs.
Section 83	<p>Preparation of a permanency plan. This includes the requirement that a decision about whether restoration is a realistic possibility must be made within:</p> <ul style="list-style-type: none"> • 6 months for a child under 2 years old • 12 months for a child older than 2. <p>The court must decide if restoration is realistic within a reasonable period, which must be within 24 months.</p>

Section 86	The Children's Court can make an order that specifies the contact (family time) that a child has with their parents, relatives and significant people. This order can set the minimum amount of family time the child is to have, whether the family time is to be supervised, or if certain people will not be allowed to spend time with the child.
Section 86A	The Children's Court can change a contact order that it made under section 86.
Section 90	An application is required to change or cancel a previous order of the Children's Court. A section 90 must be lodged to restore a child from long-term care to the care of their parents.
Section 91	The Children's Court can make a Parental Capacity Order. A Parent Capacity Order requires a parent to attend or participate in a program, service, course or treatment that is aimed at building capacity to address identified risks to a child.
Section 150 review of placements effected by order of the children's court	Details the frequency at which a child's placement and wellbeing (as detailed in their OOHc case plan) must be reviewed.

A key factor that determines the pathway for restoration and the role of PSP Service Providers in restoration casework:

Whether the restoration being considered is for:

- a child who has recently entered care or
- a child who is in long-term care.

The documents that a PSP service provider need to prepare for DCJ are different depending on who initiated the restoration application.

For more information please read the factsheets [Restoration Pathway for Children Entering the Care System](#), [Restoration Legal Process from Long-Term Care \(PRM-18\)](#) and [s90 Evidence Checklist Restoration](#).

A General Guide to Roles

The restoration process will always require PSP service providers to collaborate with DCJ. Understanding who is the appropriate DCJ 'unit' or 'team' to work with can be confusing. In most districts:

- if the child has interim orders PSP service providers will work alongside the DCJ child protection team from the local Community Service Centres (CSC).
- if the child has final orders allocating parental responsibility to the Minister PSP service providers will work alongside a Child and Family District Unit (CFDU) who has secondary case responsibility.

DCJ Permanency Coordinators provide advice and support in both situations.

For a detailed checklist of the evidence that PSP service providers need to provide see [Guidance for Section 90 Evidence: Restoration](#).

Legal status of the child	Who initiated consideration of restoration?	Which department of DCJ oversees legal process?	Which application or part of the Act	Role of Service Provider
Interim orders – Parental Responsibility to the Minister (PRM)	DCJ	Child Protection team	S61 – Application initiating care proceedings	Provide written updates to DCJ on the child and progress towards restoration including assessments, reports and case plans. Provide updating affidavits.
Long-term PRM	Parents Child	Child and Family District Unit (CFDU)	S90 – Application to vary or rescind a care order	Prepare an affidavit and provide evidence that demonstrates all the casework that has occurred with

				the child, parents and carers
Long-term PRM	DCJ / PSP service provider	Child and Family District Unit (CFDU)	S90 – Application to vary or rescind a care order	Conduct an assessment, prepare an affidavit and provide all case notes as part of evidence to DCJ prior to DCJ filing a s90
Guardianship orders or Parent Responsibility to a Relative (PRR)	Parents	Per local district arrangement (CSC or CFDU)	S90 – Application to vary or rescind a care order	Respond to requests from DCJ for information or respond to subpoenas.

Please see the range of document in our restoration section for more information.