

Open Adoption and Aboriginal Children

Despite the views of Aboriginal and Torres Strait Islander people, communities, and organisations, the open adoption of Aboriginal children is legally possible in NSW and a small number of Aboriginal children have been adopted.

The purpose of this factsheet is to help you understand:

- why the open adoption of Aboriginal children is complex, contentious, and deeply hurtful for many Aboriginal people
- how to apply child placement principles to determine the best permanency case plan goal for an Aboriginal child
- the more rigorous processes you must follow if your agency is considering the open adoption of an Aboriginal child.

Aboriginal peak bodies unequivocally oppose the open adoption of Aboriginal children and young people (children). In 2018, AbSec (Aboriginal Child, Family and Community Care State Secretariat), SNAICC (Secretariat for National Aboriginal and Islander Child Care), Aboriginal Legal Services and Grandmothers Against Removal released a [joint statement](#) in response to proposed legislative reforms which could pave the way for more adoptions of Aboriginal children in NSW.

“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.”

- [Amy Coopes](#), (2016)

For more information on the views of Aboriginal peak bodies about adoption, see [AbSec’s position](#) about Aboriginal adoption and a [2018 media statement](#) from SNAICC.

Who are the Stolen Generations?

Between the mid-1800s to the 1970s at least 100,000 Aboriginal and Torres Strait Islander children were forcibly removed from their parents (Healing Foundation, n.d.). The children were put in institutions or adopted by white families. They are known as the Stolen Generations. The impacts 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, 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.

In recent decades, the Australian government has recognised the devastating impacts of the Stolen Generations. The 1997 Bringing Them Home Report detailed the abuse 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 1,144 Aboriginal and Torres Strait Islander children who were removed from their parents in NSW between mid-2015 and mid-2016.

The FIC report “concludes that it is time for the NSW Government to formally acknowledge to Aboriginal communities, as well as the broader Australian community that, as an ostensible ‘parent’, it can and does cause harm to children for whom it has parental responsibility.”

- FIC Report, 2019

For more information see: [NSW government’s response to the Family is Culture Report](#).

Cultural Permanency and Open Adoption

The permanency we want to create for children extends beyond legal permanency through a court order. It also incorporates physical, relational and cultural

permanency. Cultural permanency is about children developing, strengthening and maintaining an evolving connection to their culture. This happens through their lived experiences of engaging in cultural practices, connection to family, remaining in community, and learning and understanding the beliefs, values, and stories.

Many Aboriginal people and bodies worry about how an Aboriginal child's cultural permanency needs can be met through open adoption. Adoption is not a cultural practice of Aboriginal families and communities. Despite the safeguards in place, after a child is adopted, their connection to culture and time with their family/kin and community is guided by their adoptive parents. Aboriginal communities are worried that open adoption could create a complete disconnection between a child and their Aboriginality.

When you are considering if open adoption is the right choice for an Aboriginal child, you need to consider the risks to the child's cultural permanency and the effects this can have on their right to be immersed in their culture and their overall wellbeing. If you are working with a child and their carer who want open adoption, it's important you share with them all the Aboriginal families and communities' have worries about open adoption. You can ask an Aboriginal caseworker to help you share these worries. You can share YouTube videos, movies, articles and stories with the child and their carer, so they can hear about the worries from Aboriginal people directly.

The risks and worries may be considered, and open adoption still deemed to be the best permanent placement for an Aboriginal child (above long-term foster care). If so, it's essential the child's carer can already, or are upskilled to demonstrate their ability to help the child grow, connect with their family, culture and community and develop a positive Aboriginal cultural identity throughout the child's life. The child's cultural support plan must be up-to-date, comprehensive, informed by the child's family and community, and developed in a way that captures long-term strategies to connect the child to their family, community and culture. For more information, see: [and Foundations of Open Adoption](#), [Foundations of Culture](#), [Permanency Support Program: An Overview](#) and [Raising them Strong](#) resource.

What does the Adoption Act say about Defining a Child as Aboriginal?

The NSW [Adoption Act 2000](#) (Adoption Act) states that DCJ or Principal Officer of an Accredited Adoption Service Provider (AASP) is to make “reasonable enquiries” as to whether a child being placed for open adoption is Aboriginal. If the child is identified as Aboriginal, all the specific legislative and policy safeguards detailed in this factsheet apply to them. On behalf of DCJ or Principal Officer, you need to feel confident the work of establishing whether a child is Aboriginal has been done.

The Adoption Act defines someone as being Aboriginal in accordance with the definition of Aboriginality in the [Aboriginal Land Rights Act 1983](#), which is a person who:

- a) is a member of the Aboriginal race of Australia, and
- b) identifies as an Aboriginal person, and
- c) is accepted by the Aboriginal community as an Aboriginal person.

This definition focusses on identifying a child as Aboriginal by their self-identification and acknowledgment by others. However, the Adoption Act also states the Court has discretion to determine a child is Aboriginal if the Court is satisfied the child is of Aboriginal descent. This means the Court can determine a child is Aboriginal either/or by self-identification, acknowledgement, or descent.

The evidence provided to the Court about the Aboriginality of a child must be as thorough as possible. The child’s family, community and kin are key to developing an understanding of the child’s Aboriginal cultural identity. The de-identification of a child identified as an Aboriginal child is a serious matter. This decision fundamentally impacts on the cultural rights of Aboriginal children. A PSP service provider does not have delegation to de-identify a child as Aboriginal.

If there are important reasons to consider de-identification, you must always discuss this with the child’s Aboriginal community (for example, an Aboriginal Community Controlled Organisation or local governance group), clearly setting out the evidence supporting the view that the child is not an Aboriginal child. Decisions about whether the child is an Aboriginal child are determined by the child’s Aboriginal community. Approval to de-identify a child as an Aboriginal child sits with a Director within DCJ. You will need to inform the representatives from the child’s Aboriginal community about the approval process.

What does NSW legislation say about Permanency for Aboriginal children?

Due to the ongoing effects of the Stolen Generations on Aboriginal people, there is specific legislation in NSW to support Aboriginal children remaining with family and community.

The Aboriginal and Torres Strait Islander Child and Young Persons Principle

Section 12A of the *Child and Young Person (Care and Protection) Act 1998* ('Care Act') refers to the Aboriginal and Torres Strait Islander Child and Young Persons Principle. The principle aims to:

- ensure an understanding that culture underpins and is integral to safety and well-being for Aboriginal children,
- recognise and protect the rights of Aboriginal children in child welfare matters,
- increase the level of self-determination of Aboriginal people in child welfare matters, and
- reduce the over-representation of Aboriginal children in child protection and OOHC systems.

The Aboriginal and Torres Strait Islander Children and Young Persons Principle consists of five elements: prevention, partnership, placement, participation, and connection. For more information, see: [Enacting the Aboriginal and Torres Strait Islander Child Placement Principle](#) and the graphic below.

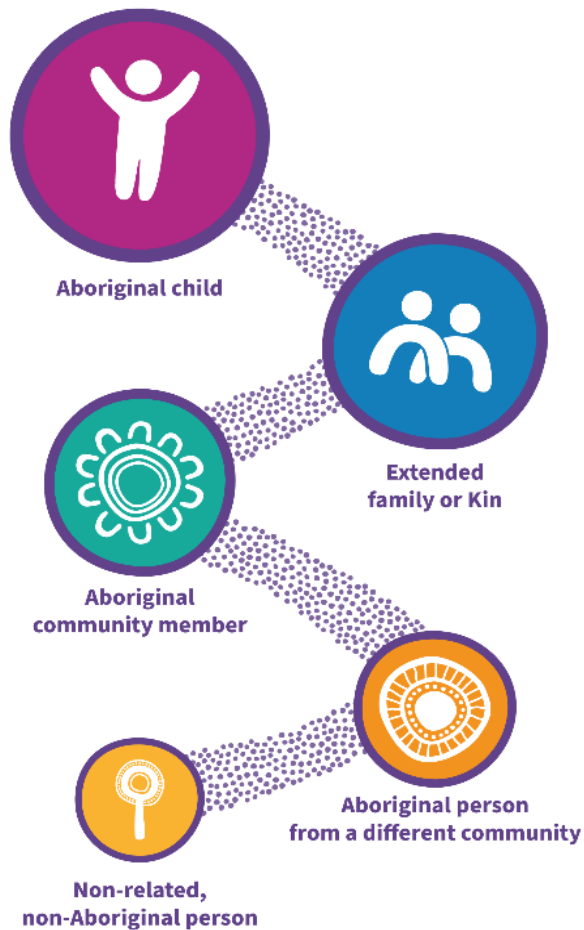


The five core elements of the Aboriginal and Torres Strait Islander Child Placement Principle. From SNAICC (2017) [Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle](#)

Aboriginal and Torres Strait Islander Child and Young Person Placement Principles

Additionally, [section 10A](#) of the Care Act's Permanent Placement Principles direct you to consider, in order, the permanent care and living options that are available

for children in NSW. The principles prioritise family preservation and restoration as the preferable and least intrusive options for any child.



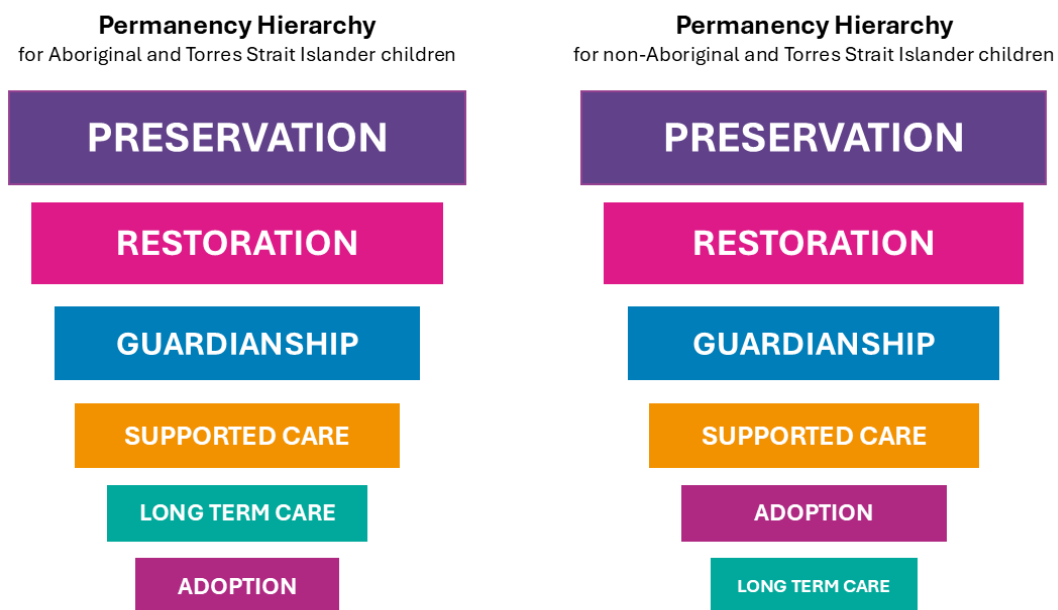
The permanent placement principles are different for Aboriginal and non-Aboriginal children. For Aboriginal children, open adoption is the least preferred permanency option. This means open adoption can only be considered for an Aboriginal child when preservation, restoration, guardianship, and long-term OOHC have all been considered, and determined to not be in the best interests of the child.

If you have applied both sets of principles and believe open adoption is the best permanency option for an Aboriginal child, you must then also apply [section 34](#) of the *Adoption Act 2000*. These principles direct you to prioritise placing an Aboriginal child for

Aboriginal Placement Principles Adapted from the Care Act

open adoption with proposed adoptive parents that belong to the community of the child or the child's parents, followed by proposed adoptive parents from another Aboriginal community.

The graphic below compares the permanency hierarchy for Aboriginal and non - Aboriginal children.



Embedded in the Care and Adoption Acts is direction to invite Aboriginal people, families, kinship groups, organisations and communities to self-determine the best way to care, protect and permanently place their children. SNAICC have developed a [resource](#) to help you understand and apply the Aboriginal and Torres Strait Islander Child Placement Principles.

What Safeguards are there to Protect Aboriginal Children?

Safeguards in the Adoption Act and DCJ policies and procedures, make sure a case plan goal of open adoption is in the best interests of an Aboriginal child, and that every available step is taken to keep an adopted Aboriginal child connected to family, community and culture.

Aboriginal Participation in Decision Making

The Adoption Act directs you to include Aboriginal people, families and organisations in making permanent decisions for Aboriginal children:

- [Section 33](#) - placement for open adoption - the Secretary for DCJ ('the Secretary') or a Principal Officer of an AASP must make sure the decision to place an Aboriginal child for open adoption is made in consultation with:
 - a person approved by the Secretary, who can provide advice and assistance to Aboriginal families and kinship groups about care options for Aboriginal children, or
 - a person nominated by the child's parents, extended family or kinship group, with expertise in open adoption or alternative care for Aboriginal children, and
 - a local, community-based and relevant Aboriginal organisation.
- [Section 64](#) - consent to adoption - anyone thinking about consenting to the open adoption of an Aboriginal child (including a child 12 years or over who wants to consent to their own open adoption, or a parent or guardian, whether they are Aboriginal or non-Aboriginal) must be:
 - offered open adoption counselling by a person approved by the Secretary, who can provide advice and assistance to Aboriginal families and kinship groups about care options for Aboriginal children, or
 - given [information about Aboriginal customs and culture, and the impact of open adoption on an Aboriginal child, family and communities](#).
- [Section 46](#) - adoption plans – adoption plans for an Aboriginal child can only be made after consultation with a local, community-based and relevant Aboriginal organisations.

Even though adoption legislation only directs you to consult with one Aboriginal organisation, it's important you consult with as many organisations as are involved and relevant to the child, family and carer.

What is a 'local, community-based and relevant Aboriginal organisation'?

This could be an organisation, based and supporting Aboriginal communities where:

- the child's parents and/or grandparents belong or live
- the child was raised before entering OOHC

- the child lives with their carers
- the organisation is already involved in the life of the child, family and/or carers

Considering Alternatives to Open Adoption

Section 36 of the Adoption Act states that “an Aboriginal child is not to be placed for adoption unless the Secretary is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the care of the child.” DCJ’s approved policies and practices, which make sure open adoption decisions are in the best interests of children, apply to a child, you and your agency. If you are working for a PSP service provider who is not an AASP, you will need DCJ or an AASP’s assistance to progress an OOHC open adoption:

- Decisions about open adoption for an Aboriginal child are made at a higher delegated level than for non-Aboriginal children:
 - a Director, Community Services in DCJ is the delegate who can approve an Aboriginal child’s case plan goal changing to adoption.
 - the Secretary is directly responsible for:
 - consenting to the open adoption of an Aboriginal child
 - approving their carers as proposed adoptive parents
 - approving open adoption action.
- The DCJ Office of the Senior Practitioner (OSP) is responsible for supporting decision making about the suitability of adoption for an Aboriginal child. This involves the OSP consulting in group supervision sessions, as well as providing an expert and independent opinion and recommendations when the Secretary is requested to approve open adoption decisions.
- DCJ Transforming Aboriginal Outcomes team endorse and/or make recommendations about open adoption for an Aboriginal child by reviewing all the documentation sent to the Secretary for the approval of open adoption.

For more information, see [Open Adoption Process \(non-Aboriginal Children Only\)](#).

Registering Adoption Plans

All adoptions in NSW are now ‘open’. This means that an adopted child will have the opportunity to know and stay connected to their family and culture. To recommend a change of case plan goal to open adoption for an Aboriginal child, you’ll need to make sure their carers understand the benefit of an open adoption for the child, demonstrate their ability to help the child have ongoing relationships with their family and follow the child’s cultural plan, independent of agency or DCJ support.

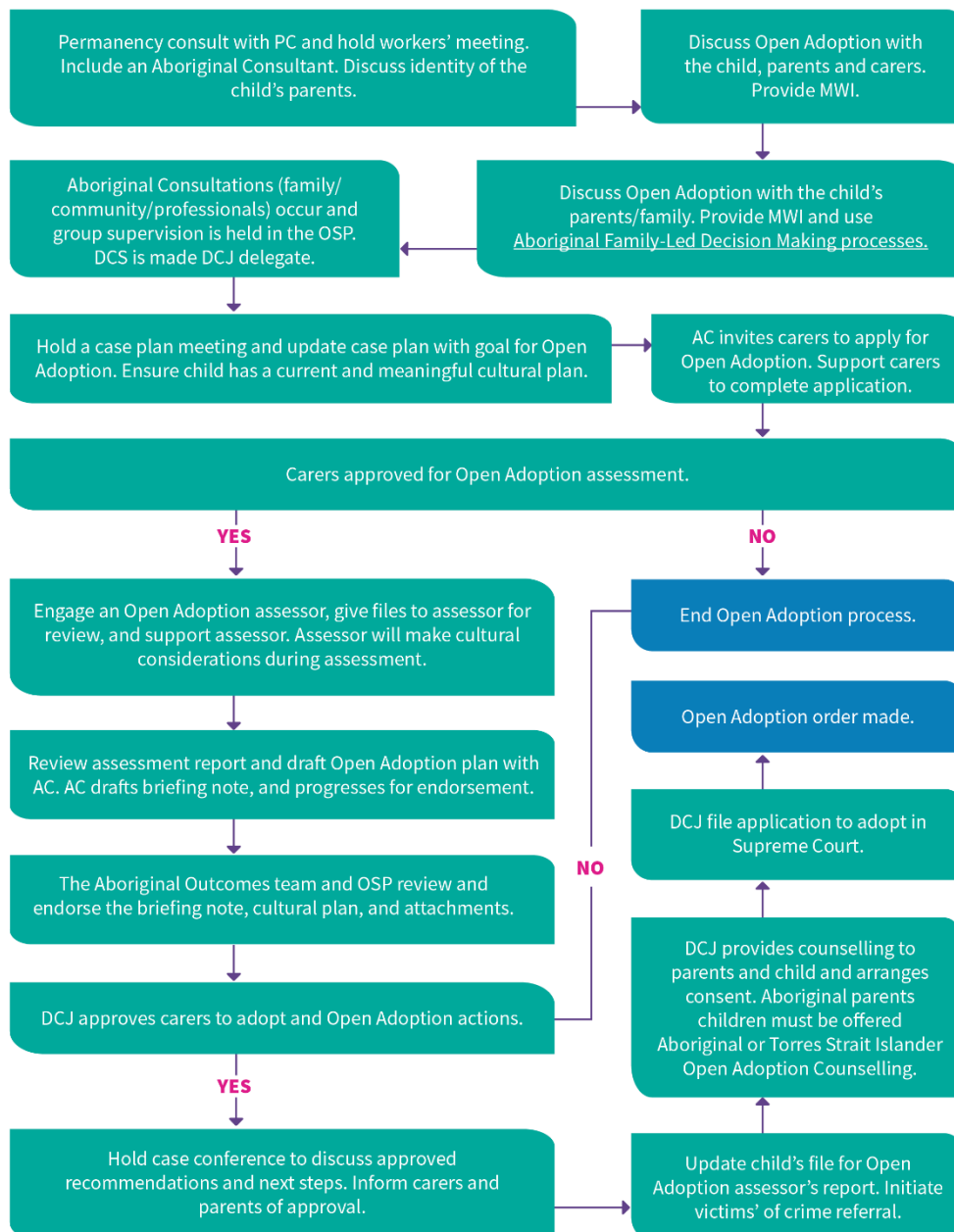
If the carers demonstrate this ability, and the Aboriginal child’s case plan goal changes to open adoption, the practical steps for how family time and cultural connection will continue after the adoption order is made, are set out in a document called a ‘registered Adoption Plan’. The plan will be developed by the carers, the child, the child’s family, a relevant Aboriginal organisation, and any other significant people in the child’s life, with the help of the child’s adoption assessor.

It’s DCJ policy that wherever possible, a person of significance to the Aboriginal child and/or family must be identified in the registered Adoption Plan. This person may be a support person, friend, community member or kin who can assist the child to remain connected to family, culture and community after open adoption. This person or any family member may raise any concerns about the child and their cultural plan with the DCJ Post Adoption Information Unit and request a review of the arrangements in the adoption plan at any time.

The registered adoption plan is lodged with the Supreme Court along with the child’s adoption order application. When an adoption plan is ‘registered’, it means the arrangements in the adoption plan become legally part of the child’s open adoption order and are enforceable as a legal order. It is DCJ policy to request the Supreme Court register all Adoption Plans for Aboriginal children. For more information see DCJ factsheets: [Registration of Adoption Plans](#) and [Guide to Drafting a Registered Adoption Plan](#) and the Learning Hub factsheet [Family Time and Open Adoption](#).

Below is a flowchart of the process of open adoption for an Aboriginal child.

Open Adoption Process for Aboriginal and Torres Strait Islander Children



AC = Adoption Caseworker CFDU = Child and Family District Unit DCJ = Department of Communities and Justice DCS = Director of Community Services
MCW = Manager Caseworker MWI = Mandatory Written Information OSP = Office of the Senior Practitioner PC = Permanency Coordinator

What can I do to Ensure the Best Permanency Decision is Made for an Aboriginal child?

The quality of the casework you do, from the beginning of your involvement with an Aboriginal child, their family and community, will strongly influence the permanency outcome for that child.

Establishing a Child's Aboriginal Identity

One of your first steps, when working with a child and family, is to gain an understanding of their cultural identity. Learning and understanding a child and their family's cultural identity will influence your consultation and decision-making moving forwards. Importantly, learning and understanding a child and their family's cultural identity will enable you to correctly apply the legislated placement principles and case management policies. One of the first steps in establishing a child's cultural identity is identifying the members that belong to the child's immediate and extended family, and their cultural identity and connections.

“It is inappropriate to identify a family as not Aboriginal as a default position. Rather, caseworkers actively seek to identify the cultural background of all families. It is not unusual for Aboriginal families to be reluctant to self-identify to statutory child protection systems, given justified mistrust of these systems and their treatment of Aboriginal peoples (see the [Apology to the Aboriginal people of NSW](#)). Caseworkers are encouraged to take a curious stance to proactively identify every family's cultural background, engaging them in a robust, iterative process to unpack each family's unique history and heritage.”

- [Aboriginal Case Management Policy Rules and Practice Guidance](#)

In addition to the worries a family may have about self-identifying as Aboriginal, are the challenges the family may have experienced in developing their own

understanding of their cultural background. This may have been affected by reasons including inaccurate and missing information on records due to past government legislation and policies, missing paternal information on birth certificates or family relationship breakdowns.

Family Group Conferencing and building family connections and networks are important ways of bringing important people together, for the child, and helping to understand a child's cultural identity. Your ability to form meaningful connections with an Aboriginal child, their family and community, will also pave the way for you to ask curious questions which can illicit rich and detailed family history.

If you are considering open adoption for a child, now is the time to explore whether enough work has been done to explore and identify the child's cultural background. A case plan goal for a child must not move to open adoption unless this has been done and the child has a comprehensive and practical cultural support plan, which the carers are following. For more information see: Family Connections and Networks – Practice Tips, Aboriginal Family Connections, The Bridge & 'Building Bridges' films: A viewing guide for caseworkers and social work students.

Aboriginal Case Management Policy

The Aboriginal Case Management Policy (ACMP) exists to support you to connect early with Aboriginal families to shape case planning, and identify tailored solutions to keep children safe with their family and community. Where Aboriginal children are in care, the ACMP supports you to make decisions that maintain their connection to family, community and culture. One of the core elements of the ACMP is Aboriginal family-led decision making.

Aboriginal Self-Determination & Family-led Decision Making

Aboriginal self-determination must underpin all your work with Aboriginal families. Aboriginal self-determination is a key principle in both the Care and Protection and Adoption Acts.

Aboriginal family-led decision making is a way of working with families that you will use to support Aboriginal self-determination. It will help you bring together the

widest possible family and kin group, to make culturally informed decisions about a child, ensuring the needs of the child are at the centre of decision making, and give the family's voice authority.

Aboriginal family-led decision making:

- occurs across the support service continuum and not as a one off,
- is guided by the Aboriginal cultural values and traditions relevant to each family,
- seeks to involve the wider family and community networks, and Elders, in a collective decision-making process,
- ensures families choose how they are supported, including the type and level of support they receive during the process,
- seeks the views of children or young people, which is central to the process; encourages their active involvement in decision-making processes (where appropriate)
- provides transparency, respect, inclusiveness and trust in relationships to guide processes for decision making.

Aboriginal family-led decision is used to develop family plans which address challenges for the child and family, considering their current circumstances and the child's case plan goals. Aboriginal family-led decision making should be used at all parts of the open adoption process for an Aboriginal child. For more information, see: [Aboriginal Case Management Policy statement](#) and [Aboriginal Case Management Policy – Rules and Practice Guidance](#)

Aboriginal Cultural Support Planning and Consultation

A Cultural Plan is a critical piece of work for you to help develop for an Aboriginal child in care. Every Aboriginal child in OOHC must have a robust cultural support plan that provides specific details about how their cultural identity and sense of belonging will be maintained and preserved - how they will continue to be connected with their family, culture and the community they were born into and community where they live.

Every child has a unique relationship with their culture and have a human right for it to be understood. Children deserve support cultural plans that are individualised and tailored to their specific cultural needs.

If you are considering a case plan of open adoption for an Aboriginal child, you will need to review their cultural support plan. Consider:

- How old is the cultural support plan and is it still meeting the child's needs?
- Was it developed in consultation with the child, family, kin or community?
Was it developed in collaboration with Aboriginal practitioners?
- Is the carer following it?
- Are the child's parents, siblings, family, kin and their communities able to participate in it?
- Is the cultural plan being followed without the assistance of your agency? If not, could it?

An Aboriginal child's cultural support plan is lodged with the Supreme Court at the time of the adoption order application. Important aspects of this plan can be added to their adoption plan. The adoption plans of all Aboriginal children are registered therefore these aspects of cultural care will form part of the adoption order and will be enforceable by law. For more information, see: [Open Adoption and Cultural Consultation and Planning](#) and [Foundations of Culture](#).

References

Healing Foundation (n.d.). *Who are the Stolen Generations?* Available: <https://healingfoundation.org.au/who-are-the-stolen-generations/#:~:text=The%20Stolen%20Generations%20refers%20to,mid%2D1800s%20to%20the%201970s>.