

# Restoration: Legal Process from Long-Term Care (PRM-18)

## *The Process to Obtain a Decision from the Children's Court*

This factsheet will explain the process of restoration from long term care. The process is different to restorations for children entering care. This is because if a child or young person (child) is in long-term care, the Children's Court (the Court) has previously decided that there is not a realistic possibility of restoration. Restoring the child therefore requires the Court's approval to change that decision.

The Permanency Support Program (PSP) requires service providers to change the way they work with the families of children in long-term care. PSP service providers need to consider what the best permanency option for children in long term care is.

Where a child has lived in a stable placement with their carers for a significant period of time, has strong attachments and their needs (including culture and identity) are being met, changing the child's goal to restoration would not usually be in their best interests. Our focus during this time is enhancing permanency for the child by exploring the possibility of guardianship or open adoption in these circumstances.

---

**REMEMBER** - only the Children's Court can revoke, re-allocate and restore parental responsibility for a child. PSP service providers and DCJ endorsement of a permanency goal of restoration are important steps in the journey home, but **restoration cannot proceed without an order of the Children's Court.**

---

## What is the Difference between 'Considering' and 'Assessing' Restoration for PSP Service Providers?

PSP casework staff are required to consider restoration before they assess restoration. They are similar but different processes.

To **consider** restoration means to take views and facts into account, and to weigh these up to decide if restoration is the best permanency option for a child. There needs to be current information to consider restoration in an informed, professional and ethical way.

To **assess** a permanency option is a more vigorous and formal process. Only carry out an assessment once a permanency option is realistic and a decision has been made by DCJ to change the child's case plan goal.

It's important to note the term 'restoration assessment' can be used to describe different processes carried out at different stages and by different parties. This section relates to the role of PSP service providers to inform DCJ prior to their lodging a s90 application.

For more information see [Formal Restoration Assessments](#)

## Restoration and the Children's Court

The Court must find there is a realistic possibility of restoration before DCJ or a PSP service provider can actively work towards restoring or transitioning the child home. Prior to filing the section 90 application, casework to establish the viability of restoration and gain evidence can be undertaken. However, casework to transition a child back to their parents is in breach of the Court order until the Care plan is accepted by the Court.

Examples of casework that could breach a court order includes:

- telling the child, their family or carers that the child will be going to live with their parents, when they are in long term care
- significantly increasing family time with parents, in preparation for the child to live with their parents full time
- placing the child with their parents prior to a Court outcome.

PSP Casework staff should work with the child's parents to encourage a positive relationship with their child. This is part of everyday casework and does not mean you are working towards restoration.

## Restoration from Long-term Care Stages:

### 1: Consider Restoration

Restoration should only be considered for a child in long-term care when:

- there are significant issues in the relationship between the child and their long-term carers **and**
  - these issues cannot be resolved through casework or other support **and**
  - there has been a significant change in the circumstances of the child's parents
- OR
- when the child has consistently indicated they want to return to their parents **and**
  - there has been a significant change in the circumstances of the child's parents.

Thinking about what the right case plan goal is for a child is part of OOHC case plans. You should regularly be establishing the child's views, informally assess how they feel about permanency, their relationship with their carer, their community and their birth family. Approach any discussion about restoration with sensitivity and care. Use your informal assessments to guide you in whether you should be having restoration discussions.

Considering whether restoration is in the best interests of a child is a complex and reflective practice. Supporting restoration will not always be the outcome.

### Casework staff Should First Consider:

- the views of the child
- reasons why the child entered care
- the length of time the child has been in care, with the carer and the stability of the care
- the least intrusive option if the current care is stable and it is in the child's best interest to stay with their carers.
- The placement is unstable and there are significant changes in the parent's circumstances and they have addressed the reasons their child came in to care.

**Further Points to Consider are:**

- the age of the child
- the child's circumstances, including their strength of attachments, health and development, risk of psychological harm if orders are varied, and views on their family and carer/s circumstances and relationship with the child and the birth family
- parent's current circumstances, including their capacity, health, financial, living arrangements and motivation to care for the child
- the child's relationship with their parents and the parents' wishes for the child
- informal and formal support the parent/s have around them
- whether the application has an arguable case (with supporting evidence)
- issues identified in reports such as Section 82 reports.

**2: Consult with Your Permanency Coordinator**

A consultation with a Permanency Coordinator (PC) must occur before DCJ will change the child's case plan goal to restoration. A consultation can help caseworkers identify whether restoration should be explored. It can also identify what information or evidence the caseworker needs to gather and what assessments are required before a section 90 is lodged with the Children's Court.

A service provider can propose that DCJ change a child's case plan goal to restoration after a consultation with their PC.

For more information see [Who are Permanency Coordinators](#)

**3. DCJ Approval**

DCJ must approve all permanency goal changes for children in the care of the Minister. This is because:

- DCJ retains parental responsibility for the child.
- DCJ is responsible for leading the legal work involved in achieving restoration

Different regions/districts use different methods to consider and approve permanency goal changes. Most districts include a formal consultation with a PC, an application form with some supporting evidence and final approval from the local Child and Family District Unit (CFDU). PSP Service Providers should always discuss

the permanency goal changes they are considering with their PC prior to requesting approval from DCJ.

DCJ may request more information or further work to take place before they endorse a restoration goal, or they may decide that restoration is not in the child's best interests.

If there is disagreement about the best permanency goal for a child, you could request a group supervision involving DCJ and PSP casework staff to discuss the child's situation.

#### **4: Case Planning**

Prior to changing a case plan goal, the caseworker should have sought the views of the child, carer and parents to help establish whether restoration should be pursued. After DCJ has approved a child's restoration permanency goal, the PSP service provider must hold a case plan meeting as soon as practicable. This will include all the important people in the child's life to discuss the (often long) legal process of seeking restoration. This meeting will focus on the needs of the child during the period of assessment.

PSP casework staff need to develop two Case Plans:

- an OOHC case plan for the child with the new goal of restoration
- a Family Action Plan for Change (FAP) developed with the parents

For more information see [Case Planning in Out-Of-Home Care](#) and [Case Planning in Preservation and Restoration](#)

#### **5: Formal Restoration Assessment**

The purpose of a restoration assessment is to bring together information about a child and family in a concise format and critically analyse the suitability of restoration. Restoration assessments provide objective information to inform quality analysis. The Court needs thorough and objective information to be able to make a decision for the child. DCJ's preferred restoration assessment is the Structured Decision Making (SDM) Restoration Assessment Tool (RAT).

It can take a long time to fully assess whether restoration is in the child's best interests. Intensive casework needs to occur at the same time as any formal assessment.

Casework tasks will include:

- organising, supporting, observing and documenting quality family time between the child and their parents
- developing, monitoring and reviewing a FAP with the child's parents
- supporting parents to achieve the goals of the FAP
- working with the child and the parents to prepare them for restoration
- referring the parents to appropriate support services.

For more information see the fact-sheet [Formal Restoration Assessments](#)

## 7: 'Bundle' of Evidence

### Who Initiated the Application?

The evidence that PSP casework staff need to prepare will depend on who initiated the section 90 application. An application is usually initiated by:

- DCJ, in collaboration with the PSP service provider **or**
- the parents.

When DCJ initiates the application or supports the parent's application, it is the responsibility of DCJ and the PSP service provider to demonstrate why restoration is in the child's best interests.

When:

- an application has been initiated by a parent and
- leave has been granted by the Court and
- DCJ **does not** support the parent's application.

The PSP service provider and DCJ still need to provide evidence to the Children's Court. The evidence will need to demonstrate all the casework that has occurred with the child, their family and their carers.

### Required Evidence

DCJ must review all supporting evidence for restoration prior to lodging a s90. PSP casework staff are responsible for collating a 'bundle' of evidence. This will usually include writing an affidavit. The exact documents within the bundle will be determined by the circumstances of the child and family.

Lawyers from DCJ review the bundle of evidence. DCJ's legal team will provide legal advice to PSP Service Providers about the evidence they have prepared. It is

common for PSP Service Providers to make changes to the way their documents are expressed (e.g. an affidavit) after DCJ legal has reviewed it.

For more information on the documentation required see [s90 Evidence Checklist: Restoration](#)

## **7: Lodge a Section 90 with the Children's Court**

In most cases, a s90 application for restoration of a child who has been in long-term care will be overseen by the Child and Family District Unit (CFDU).

After DCJ's legal team has reviewed the documents, the CFDU lodge a s90 application for restoration with the NSW Children's Court. DCJ, the parents and the child's legal representative will be parties to the proceedings (as well as any people who were parties during the original Care application). In general, if the child's carers want to join proceedings, they will need to ask the Court for permission. The CFDU caseworker will oversee the court process and work collaboratively with the FSP throughout the process.

The Magistrate will decide if the Court supports restoration. Only the Children's Court can decide if a child should be restored.

## **8: What happens during Court?**

The legal process for restoration can take a long time. Casework needs to occur whilst the Court process is ongoing.

The restoration care plan will detail minimum standards for DCJ and PSP service providers to achieve restoration.

These plans will consider the specific circumstances of the child and family. For example:

- the changes the parents have made, and how these need to be sustained before the child can come home. Parents need to have addressed the reasons the child entered care.
- any programs or courses that the parents have completed or will need to complete.

- the support the family needs to be able to meet the child's needs. This could include medical specialists and other support services.
- how the child's relationships with important people will be maintained.

The OOHC Case Plan and the Family Action Plan for Change will reflect the restoration care plan. These plans will be the basis for the day-to-day casework with the family to achieve the successful restoration.

In addition to the restoration care plan, DCJ can request that the Magistrate make orders specific to each child when approving restoration. This could include:

- the immediate restoration of a child and an order either rescinding the previous care order or returning PR to the parent
- a period of parental responsibility to the Minister (PRM) before parental responsibility returns to the parents (a Shorter-Term Care Order)
- a period of supervision at the conclusion of PRM or
- any undertakings or orders which require specific things to happen for restoration to occur. This could include the parents undertaking urinalysis or parenting programs, ensuring their child attends school or working with a particular service. Undertakings will relate to any issue that might prevent restoration from being successful. DCJ and PSP casework staff need to document their casework in pursuing these undertakings or orders.

If the Court orders a supervision period, DCJ may ask the PSP service provider to work with the family until the supervision period expires. Casework staff will continue to visit the child at home, provide support to the child and parent and ensure they are linked with all necessary services. They may also be responsible for writing reports that keep the court updated on the family's situation (such as section 76 or section 82 reports).

If PSP service providers are unsure how to interpret court orders, speak with the CFDU caseworker.

Please see: [Foundations of Restoration](#) and [Legal and Policy Framework for Restoration](#) for more information.