

# Adopting a child in out-of-home care

## Information for carers

November 2011

Adoption is a legal process that transfers all the parental rights and responsibilities for a child from the child's birth parents to the adoptive parents. For children who are in the parental responsibility of the Minister for Community Services, parental rights and responsibilities are transferred from the Minister to the adoptive parents.

Adoption is a permanent order and is made by the Supreme Court of NSW.

The *Adoption Act 2000* and *Adoption Regulation 2003* sets out how an adoption arrangement is to be made.

Some of the key points contained in the adoption legislation include:

- the best interests of a child, both in childhood and later life must be the main consideration
- the child should know about and have access to their birth family and cultural background
- the child's given name or names, identity, language and cultural and religious ties should, when possible, be identified and preserved
- openness in adoption should be encouraged.

After an Adoption Order is made:

- the adoptive parents have full parental responsibility for the child, as if the child was born to them
- the child has full legal membership of the adoptive family
- the child has a new birth certificate to show the new legal relationship
- the child's inheritance rights change so that they have the same rights as other children of the adoptive parents
- the child's access to certain services and allowances may be affected, as the assessment of their entitlement relies on the financial circumstances of their adoptive family.

### Why might carers want to adopt?

Carers often see adoption as a way of making a lifelong emotional and practical commitment to a child. Carers who become adoptive parents have said that they feel more free to love the child completely, and that they are not so concerned about the possibility of having to 'let go' of the child.

Carers who adopt have also been glad that they are entitled to make all parental decisions about the child, until the child reaches adulthood. Where a child has special medical or educational needs, having full parental authority gives the adoptive parents the exclusive “say” in planning and making decisions for the child, without the need to consult Community Services every time there is a significant medical or educational decision to be made.

Adoption confers all the rights and responsibilities of parenthood, and carers are aware that if they become the child’s adoptive parent, they will be in every way responsible for the child throughout their childhood. They understand the child will have the same status in the family as any of their other children, and will be entitled to the benefits of full family membership throughout their life.

Financial assistance will be provided to carers who adopt the child in their care through an annual lump sum payment of \$1500. This payment can only be paid for families living in NSW.

For carers considering adoption of a child with a disability, Community Services will work closely with families, carers and Ageing, Disability and Home Care (ADHC) to provide priority support. In addition, parents may be eligible for a range of Commonwealth services and financial supports available to assist with raising a family where a child has a disability.

### **Who can initiate the adoption process?**

The possibility of adoption can be raised by carers, a child, birth family or the child’s caseworker. Adoption will have an impact on your existing family relationships. It is recommended that you talk with family members to see whether they are supportive of the child becoming a permanent member of your family.

If you have direct contact with birth family members, be aware that adoption may not have been discussed with them yet. Adoption is a major decision, and it is important to be sensitive to the feelings of the birth parents. Discussions with birth parents about adoption are usually initiated by the child’s caseworker.

### **What does the legislation say about who can adopt?**

To apply for adoption you must be:

- resident or domiciled in NSW, and
- of good repute and fit and proper to fulfil the responsibilities of parenting, and
- over 21 years of age, and
- at least 18 years older than the child to be adopted.

One person solely or a couple jointly may adopt a child. The *Adoption Act 2000* defines a ‘couple’ as two persons who:

- are married to each other, or
- are de facto partners of each other (whether of the same sex or of a different sex).

### **What is ‘openness’ in adoption?**

Openness in adoption refers to two main areas:

1. the building of a relationship between the birth and adoptive families through contact with each other, and
2. the degree of openness with which adoption is discussed within the adoptive family.

Whilst not all adoptions involve contact between the birth and adoptive families, it is essential that there is openness within the adoptive family to discuss adoption issues.

Openness occurs when the adoptive family:

- sees the value in building a relationship with their child's birth family
- are able to help their child develop a respectful and non judgemental understanding of why their birth parents cannot look after them.

It is important that contact in adoption is mutually agreed to by all involved, and a significant part of Community Services role is to offer support to all parties in working out how to develop positive relationships where possible.

A major benefit of openness in adoption for the child is that it provides them with opportunities to

- understand their background
- develop relationships with their birth parents, siblings and other people who are important to the child
- assist them in their understanding of their identity i.e. who they are and where they came from
- remove the 'unknown' about who their birth parents and siblings are and why they have some of the physical characteristics, interests and talents they have.

This can give the child a sense of wholeness and help the child grow up with added security about themselves and their background.

## **The process of adoption**

The possibility of adoption for a child in the Parental Responsibility of the Minister is explored through the following steps:

### ***Preparation to adoption seminar***

Carers are strongly encouraged to attend a one day preparation to adoption seminar before proceeding to an assessment. This seminar provides an understanding of the differences in parenting a child who is under the parental responsibility of the minister to parenting an adopted child.

### ***Assessment***

An assessment about whether adoption is the best long term plan for the child is undertaken. This assessment involves:

- talking with the child (at an age appropriate level), the carers and the birth parents of the child about what adoption means and the alternatives to adoption
- weighing up the advantages and disadvantages of adoption
- identifying how the child's cultural identity will be preserved, and how they will know about their origins through their growing years, before
- a recommendation is made about whether adoption is in the best interest of the child.

### ***Case meeting***

Once the assessment has been completed, a case meeting will be held to discuss the next steps. All parties will be invited to attend the case meeting, where possible.

There may be recommendations made in the assessment report that some specific tasks need to be completed before adoption can be considered. These will be discussed during the case meeting.

When all tasks have been completed, Community Services will seek internal approval to formally proceed with a case plan of adoption.

If the report does not recommend adoption, or recommends an alternative course of action like an application for a sole parental responsibility order, the reasons for this decision will be discussed with all parties.

## **Preparing for court**

### ***Negotiating an adoption plan***

An adoption plan is an agreement about post adoption contact between the birth parents and the child, the carers, and about how the child's knowledge of their culture and identity will be supported. Adoption plans are negotiated to suit the needs and best interests of the child, and take into account the history of contact between the child and birth parents. There are various types of adoption contact, for example the exchange of photographs, letters, videos, emails, telephone contact, and ongoing face to face meetings.

The terms of the adoption plan should be realistic, and when signing the adoption plan the carers should be willing and able to follow through with the agreement made.

When the application for adoption is being prepared the adoption plan is signed by all the parties to the adoption. Adoption plans are filed at the court as part of the Application for an Adoption Order.

Later on, if there is disagreement between the parties about whether the agreements in the plan are being followed, or if the terms of the adoption plan are not effective, any of the parties can ask Community Services to help review the adoption plan. If one party is still unhappy, an application may be made to the Supreme Court to review the Adoption Plan.

### ***Application forms***

Carers are requested to complete and provide

- a form which asks for personal details and names of people willing to be referees,
- a Statement as to Health
- a "draft" applicants affidavit
- certified copies of each applicants birth and marriage certificates, decree nisi or change of name certificate (if applicable).

### ***Consents to adoption***

A child's individual family circumstances will determine whose consent is required. For children under the Parental Responsibility of the Minister these rules generally apply:

The consent of the birth parents and the Minister is required when:

- the child is under 12 years of age, or

- the child (age 12-18) has been in the care of the prospective adoptive parents for less than two years, or
- the child (age 12-18) is deemed to not have sufficient maturity to give consent.

The consent of the child is required if:

- the child is aged 12 years or over and is deemed to have sufficient maturity to give consent.

If the child is between 12 and 16 years their ability to give an “informed” consent must be assessed. The child must read written information about adoption and how it affects them, and see a specially trained adoption counsellor. The child can give consent 72 hours after receiving the counselling. However, if the child does not consent in the following 30 days, they must be counselled again, before they can consent to the adoption proceeding.

It is important that a child thinking about adoption is not subjected to any pressure to give consent, or to not give consent.

### **What if the birth parents do not wish to consent?**

The Supreme Court can make orders dispensing with the consent of the parents in certain circumstances.

These circumstances are when:

- the birth parent cannot be found or identified, or
- the birth parent is physically or mentally incapable of consenting, or
- the best interests of the child should override the wishes of the birth parent, or
- an application is made by carers of the child, when the child has established a stable relationship with the carers, and the adoption of the child by the carers will promote the child’s welfare.

### ***Preparing the adoption application***

Adoption Applications in respect of a child under the Parental Responsibility of the Minister are prepared by Community Services or a NGO adoption service on behalf of the adoptive applicants (the authorised carers of the child).

The Adoption Application consists of:

- a Summons - informing the court of what orders are requested be made
- Referee Affidavits from people nominated by the carers
- an Affidavit signed by the carers providing information to the court about their circumstances
- an Affidavit by Community Services providing information about the suitability of adoption for the child and evidence to the Court about why an adoption order is being sought . Annexed to this Affidavit are the required consents given by the birth parents and/or, the child (over 12) and/or the guardian. It also includes a Court Report prepared for or by Community Services or the NGO service, the Adoption Plan about post adoption contact, and any other relevant information.

When the Adoption Application is ready, it is filed at Court and all the parties are advised.

### ***Non-consented adoption applications***

Birth parents who have decided that they will not give consent to their child's adoption must be given formal written notice of the adoption application being lodged with the Supreme Court, and they have a right to seek legal representation, appear at Court and oppose the making of an adoption order.

If Community Services believe the application may be contested by the parents, legal advice will be sought prior to the application being filed at court.

If the adoption application is contested in this way, Community Services will arrange for legal representation at court. Many carers decide they are content to have Community Services legally represent them, and in some other cases carers have arranged their own legal representation. This is costly, and carers would need to ensure they have the financial resources to pay for separate representation.

When an adoption application is contested there may be a number of court dates (called "mentions") and adjournments, to allow all the parties to file extra evidence considered helpful to the court. All parties are kept up to date with proceedings and must follow any orders made by the court about what should happen with the child during the adjournments. For example, the court may consider, and make orders for contact visits that are different to the existing contact arrangements, or make orders requiring a further assessment of the child, the carers, or the birth parents. When the court is satisfied there has been sufficient opportunity for the parties to provide information a date for a full hearing is set.

After hearing all the evidence in an application, the court will consider how adoption (or an alternative order) will best meet the needs of the child. The parties may be invited to attend court to hear what decision the Judge has made. The Judge will usually provide a written judgement.

### **After an adoption order is made**

#### ***Support after an adoption order is made***

Post adoption supports may be provided by the Community Service Centre closest to where the carers (now adoptive parents) and the child reside, or by the non government foster care service involved or by Community Services Adoption Information Unit ("AIU").

Post adoption support is designed to meet the needs of the child and can include services for any of the parties to an adoption, including:

- an annual lump sum payment of \$1500
- assisting with post adoption contact arrangements as agreed in the adoption plan (a place to have the contact visit and supervision if needed)
- negotiating changes to the adoption plan if necessary
- referrals to specialist counsellors or support groups.

#### ***Access to adoption and personal information after adoption when the adopted child is under 18 years***

'Adoption information' includes:

- Adoption Orders issued by the Supreme Court
- the child's original and amended birth certificates, and birth parents' marriage and/or death certificates
- hospital medical and social work records

- social and medical information about the adopted person, birth and adoptive families, which is called 'prescribed information'.

Adoption information can be "identifying", which means that it includes names, and other information that allows the identity of a person to be known, or "non-identifying" which means that it removes names and other details that could help identify a person.

Amendments made to the *Adoption Act 2000* in 2008 make provision for openness and sharing of information between the parties to an adoption. These provisions apply to all adoptions that occur on or after 1 January 2010:

At any time:

- the child and the adoptive parents are entitled to apply for identifying information about the birth parents (the adoptive parents are required to give permission whilst the child is under 18 years of age).

While the child is under 18 years of age:

- birth parents are entitled to apply for identifying or non-identifying information about the child and the adoptive parents.
- birth siblings can apply for identifying and non-identifying information about the adopted person (the birth parent is required to give permission whilst the sibling is under 18 years)
- If identifying information is requested by a birth parent or sibling, Community Services will undertake an assessment of any risk to an adoptee and their adoptive parents. If there is sufficient evidence of a risk, identifying information will not be provided. The adoptive parents will be encouraged to provide non-identifying information that will assist the birth parents and siblings to know about the child.

When the child is over 18 years of age:

- birth parents and siblings over 18 years of age have an automatic right to gain identifying information about an adoptee and their adoptive parents.

Further detail about the provision of information after an adoption is available from Community Services' Adoption Information Unit (AIU)

Phone: 1300 799 023

Email: [adoption.information@facs.nsw.gov.au](mailto:adoption.information@facs.nsw.gov.au)

For further details about adopting a child in out-of-home care, please contact one of the following people:

- your out-of-home care caseworker, or
- a Community Services out-of-home care duty officer at the Community Services Centre closest to where you live, or
- call the Out-of-Home Care Adoption Team on (02) 9716 3006.