

# When kids in care are adopted

Information for birth parents



## This fact sheet provides information about the laws affecting:

- Birth parents of a child in out-of-home care for whom adoption is being considered as an option; or
- Birth parents of a child in out-of-home care who have received a notice saying that court action has started for the adoption of their child.

## Legal Aid NSW can help you. Call the Early Intervention Unit on 1800 551 589

### What is adoption?

Adoption is the legal process that permanently hands over all parental rights and responsibilities from the parents who gave birth to the child to someone else—the adoptive parents. Once a child is adopted, the law regards the child as if they were born to the adoptive parents.

If kids in foster care are adopted by their carer or carers, this means that the carer or carers will become their legal parent.

The child's carer will then be able to make all the decisions about the child—for example, about their education, medical treatment, and religion—as well as all the other decisions parents get to make for their children.

All of the decisions made about adoption have to be in your **child's best interests**. This means that the Court has to decide that adoption is the best option for your child. Your feelings and interests are important, and so are the feelings and interests of your child's carers, but the focus is on what is best for the child.

### What will change if my child is adopted?

Adoption permanently transfers all parental rights to the adoptive parents—so the law won't see you as the child's parent any more.

Some of the things that could change are:

- Once an adoption order is made, you won't be able to ask the Court to order that your children come back to your care. You will sometimes hear this called 'restoration', or a 'section 90'.
- The adoptive parents will be responsible for organising your contact with your child.
- Your child will be given a new birth certificate, which will say that the adoptive parents are their parents. It will say the adoptive parents have been their parent since their date of birth. Your child can still keep their other birth certificate that says you are their parent – but it won't be the one that the law recognises.
- Your child's surname might be changed so they have the same name as their adoptive parents. You should ask your caseworker whether that is the plan for your child.
- Family and Community Services (FACS, which used to be called 'DoCS') or another agency that organises the foster care for your child (like Barnardos, Anglicare, Life Without Barriers, Wesley Mission or CatholicCare) won't be involved in your child's care anymore.



## **FACS have told the Children’s Court that adoption is the plan for my child —what does this mean?**

The Supreme Court is the only court that can make an adoption order in NSW.

The Children’s Court can’t make an adoption order. So if your child has recently been removed from your care and you are going through the Children’s Court, an adoption order won’t be made in the Children’s Court.

However, FACS might tell the Children’s Court that adoption is the plan for your child in the future—this might be written in the Care Plan for your child. This means that FACS think that adoption would be a good idea for your child in the future, and your child might be placed with carers who would be willing to adopt your child in the future.

If your child has recently been removed from your care, the proceedings in the Children’s Court need to be finished on a final basis before plans for the adoption of your child can start to be put in place. This can take quite a while.

However, if you plan to make changes to your life so that your child can be returned to you, it is really important that you do this as quickly as possible. Once an adoption order is made, it will not be possible for your child to be returned to your care.

## **Do they need my consent?**

This will depend on your child’s age. Usually, if a child is under 12 years of age, a parent must be asked if they consent (that means agree) to the adoption of their child.

You should talk to your caseworker or your lawyer about whether you want to consent to the adoption or not. Your caseworker will be able to discuss your options with you, and can give you some information to help you make the decision. If you have other support people in your life (like family members, social workers, doctors, your lawyer or a counsellor), you might want to talk to them about the decision too.

FACS will give you a document called *Mandatory Written Information on Adoption*. This contains some more information about the legal process, and also has information about the emotional effects of adoption.

If your child is 12 years of age or over and can understand what adoption is and what consenting to adoption means, they can consent to their own adoption. This means that you won’t be asked to consent.



## **What if I don't consent, or if I want to oppose the adoption in court?**

Even if you don't want to consent to the adoption, the Supreme Court might still decide that your child should be adopted if the judge thinks that adoption is in the best interests of the child.

You have a right to oppose the adoption in court. More information about how you can oppose the order in court is set out below.

Even if you're not asked to consent (because your child is over 12), you can still be a party to the Court case, and you can still tell your caseworker or the Court (or both) if you don't think adoption is a good idea for your child.

## **Will I still be able to have contact with my child?**

Yes – because it is generally considered very important that a child continues to see their birth parents after they are adopted.

When your caseworker starts making plans for your child's adoption, they should talk to you about the plans for your contact with your child if they are adopted.

Your child's foster carer will probably start organising and supervising your contact with your child, if that isn't already happening.

The plans for your contact with the child are written down in a document called an "Adoption Plan". More information about Adoption Plans is set out below.

It might be possible for the Supreme Court or even the Family Court to make an order about your contact with your child after adoption. You should talk to a lawyer if you want to know more about this.

## **What is an Adoption Plan?**

An Adoption Plan is the document which sets out all the information about how you will keep a connection with your child, and how your child will learn about who they are and where they came from. It might also include other things—like how your child will stay connected to their culture or background.

The Adoption Plan will usually set out how many times you will have contact with your child each year.

The caseworker will talk to you about the Adoption Plan. If you disagree with anything in the plan, like contact, you should talk to your caseworker and tell them about how often you would like to see your child. If the plan is that you will see your child less after adoption, you should ask the caseworker why they are making that recommendation.



## **What does registering an Adoption Plan mean?**

If you agree to the plan for your contact with your child, but you are worried that you might not get the contact you've been promised, you can ask your caseworker for the Adoption Plan to be 'registered'. If you have questions about how an adoption plan can be registered, you should talk to a lawyer.

Before the Adoption Plan can be registered, you will need to agree to the plan and sign it. Signing the Adoption Plan does not mean that you consent to your child's adoption.

If the Adoption Plan is registered, it becomes like an order of the Court. This means that everyone has to follow it, just like a court order. If a registered Adoption Plan is not being followed, you should speak to a lawyer about whether you can go back to court to enforce it.

If you do not agree with the plan for your contact, you should speak to a lawyer about your options before you sign the Adoption Plan. It may be possible to go to a mediation about your contact, or you could oppose the adoption order in court.

## **I've been told that Court action has started for the adoption of my child—now what?**

If you've received a letter (or 'notice') saying that court action has started for the adoption of your child, you need to decide whether you want to oppose the adoption order in court. You should talk to a lawyer about what to do.

Remember—the Court has to make a decision about what is best for the child. The Court will listen to your views and opinions, but its focus will be on the child's best interests.

## Is there a time limit if I want to oppose the adoption order?

If you do want to oppose the order in court, you have **14 days** from the day you get the notice to file (that means lodge with the Court) a form called an Appearance in the Supreme Court. Legal Aid NSW can help you to fill out the Appearance form.

If you don't file the Appearance form in 14 days, the Court might make the adoption order without hearing from you.

## How do I formally oppose the adoption order?

You will need to file the Appearance form with the Supreme Court within 14 days of receiving the notice.

The address of the Supreme Court is:

### Street Address

Supreme Court of New South Wales  
Law Courts Building  
184 Phillip Street  
SYDNEY NSW AUSTRALIA 2000

### Postal Address

The Registrar, Equity Division  
Supreme Court of NSW  
GPO Box 3  
SYDNEY NSW AUSTRALIA 2001

You should give the Court two copies, and ask the Court to give a 'sealed' (this means stamped) copy back to you.

Once you file the Appearance, the Court will let you know the date when the case will be in court.

It's really important you go to court on that date, or the Court might make orders without hearing from you.

The case won't be decided on the first date. You'll get to see the evidence, and you'll get a chance to file your own evidence to tell the Court what you think about the adoption.

## How can Legal Aid NSW help me?

We can:

- give you more information about what will happen in court,
- help you to understand the way the law works,
- talk to you about your rights and options, and
- help you to fill out the Appearance form.

Depending on your case, we might be able to represent you in court.

Call the Legal Aid NSW Early Intervention Unit on **1800 551 589**

## Where can I get more information?

Legal Aid NSW Early Intervention Unit  
**1800 551 589**

Family and Community Services (FACS) Adoption Information Unit  
**1300 799 023**

Supreme Court of NSW  
**1300 679 272**

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### Do you need an interpreter?



If you need help to talk to us in your language, call the **Translating and Interpreting Service (TIS)** on **131 450** (9am – 5pm).

### Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the **National Relay Service** on **133 677** or **www.relayservice.gov.au**

*This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.*

*The information is correct at the time of printing. However it may change.*

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