

Changes to child protection and what it means

Important changes to the child protection system came into effect on 4 February 2019. These changes aim to keep children safe at home, and if this isn't possible, to work with urgency to find a safe, permanent home.

Shorter term court orders

Before

Long term court orders gave parental responsibility to the Minister for extended periods (often until the child or young person turned 18).

Now

Where the Children's Court has approved a 'permanency plan' involving restoration, guardianship or adoption, the maximum period of an order giving parental responsibility to the Minister is 24 months (except in special circumstances).

What this means

Children and young people will be more likely to be restored to their parents or placed into safe, permanent homes within 24 months of a court order.

Guardianship with parental consent

Before

If parents wanted to assign guardianship to a friend or family member to parent their children because they recognised they were unable to, they were still required to go through a lengthy court process.

Now

Parents are able to decide who can best parent their children where the Department of Communities and Justice has assessed that the children need care and protection and the parents recognise they are unable to parent their child.

What this means

Children and families will spend less time in court and there is a greater focus on the child or young person's best interests.



Open adoption

Before

The Supreme Court had the power to approve a child's adoption by authorised carers, without the consent of parents in certain circumstances.

Now

This authorisation now extends to a child's guardian. Adoption orders are only made without consent if the court finds that the child has developed a stable relationship with their guardian or carer, the adoption will promote the child's welfare, and adoption of the child by the guardian or carer is clearly preferable in the best interests of the child than any other order the court could make for the care of the child. Adoption remains the last resort for Aboriginal children.

What this means

The Supreme Court can now approve a child's adoption by authorised carers and guardians, without the consent of parents in certain circumstances.



'Within a reasonable period' test

Before

The Children's Court had to decide whether restoration of a child or young person to their family was possible on the date of the hearing. The court could not take into account what the parents might do in the future to make restoration possible.

Now

The Children's Court will now consider whether restoration is possible within 24 months of the hearing.

What this means

The Children's Court will now consider whether restoration can be possible if the steps in a restoration plan are achieved successfully. This means parents who have made some progress in working towards creating a safe home environment for their children will have the opportunity to have them return home. In addition, we can now restore children to the care of their parents within twelve months of the date for restoration decided by the court.

Greater involvement of families in early decision-making

Before

The Department of Communities and Justice only had to consider the appropriateness of using alternative dispute resolution (ADR) processes such as a family group conferencing before intervening.

Now

We must offer families ADR before seeking care orders (except in exceptional circumstances). This gives families the chance to decide for themselves how to respond to their children's safety.

What this means

Families will be empowered to create a family-led plan to keep their children safe.



WANT TO KNOW MORE?

Check out the [factsheets](https://www.facs.nsw.gov.au/child-protection-system) on the website at <https://www.facs.nsw.gov.au/child-protection-system> to learn more about the legislative changes.