Director General’s Message

Greetings

The Department for Child Protection and Family Support (the Department) is committed to achieving the best possible life outcomes for children and young people in out-of-home care. The Department is undertaking a reform of the way out-of-home care is provided, funded and regulated in Western Australia.

Our vision for the future of the out-of-home care system is one that:

- **is driven by the needs of the child** – a system that identifies the needs of all children, and moves structures and resources to support the child.
- **delivers permanency and certainty for children** – a system that values and promotes early decision-making and permanent outcomes for children.
- **is responsive, sustainable and has capacity** – a flexible system that is able to responsively move resources to where these are most needed.
- **is accountable** – a system that is accountable to its efficacy, efficiency and equity, with the goal of continuous improvement.

As part of the out-of-home care reform process, the Department is exploring whether legislative reforms should be implemented to support the certainty, belonging and safety for children in out-of-home care. The *Out-of-Home Care Legislative Amendments Consultation Paper* seeks community feedback on these legislative proposals.

I hope that you take this opportunity to comment on this significant aspect of our out-of-home care reforms. It is vital that we hear from interested members of our sector and community as we shape the future for our most vulnerable children and young people in Western Australia.

Submissions or queries can be directed to [OOHCRiform@cpfs.wa.gov.au](mailto:OOHCRiform@cpfs.wa.gov.au), or via post to the following address:

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Director General  

November 2015
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1. BACKGROUND

1.1. Introduction

At its broadest, the out-of-home care (OOHC) system in Australia links children who require safe, alternative care arrangements with people who are willing and able to provide them. The legislative framework under which these care arrangements are made in Western Australia (WA) is the Children and Community Services Act 2004 (the Act) and the Adoption Act 1994 (Adoption Act).

In 2014, the Department for Child Protection and Family Support (the Department) embarked on significant reform of the OOHC system. A Discussion Paper released for over two months’ public consultation in December resulted in 46 written submissions to the Department. The Discussion Paper, and an overview of the findings and strategic directions arising from the consultation, is available on the Department’s website. As a next step in this process, an Out-of-Home Care Reform Plan will be released in February 2016 and will outline a range of strategies to be implemented with a view to strengthening the OOHC system in WA.

All OOHC reforms, strategies and realignments are being guided by the aim of affirming and reinforcing the Department’s permanency planning policy for all children in care and reducing the over-representation of Aboriginal children and families in the child protection system. Permanency planning policy is underpinned by evidence that early permanent decision-making for children is associated with better life outcomes (Attachment one). The Department’s current policy sets out that decisions about whether reunification is in the child’s best interests and should proceed must be made within:

- 12 months for children who enter provisional protection and care at less than three years of age; and
- two years for all other children.

In the current reform environment, it is timely to consider how the legislative framework in WA might better support the proposed OOHC reforms, in particular permanency planning, while maintaining sufficient flexibility in the statutory child protection system to enable the best outcome to be achieved for every child.

1.2. Aligning legislation with permanency planning policy and other OOHC reforms

This paper seeks feedback on directions for legislative reform. Options mooted for aligning legislation with the Department’s permanency planning policy more directly include:

- amending or introducing legislative principles underpinning the Act to provide a greater focus on permanency planning
- re-focusing the purpose, timeframes and use of some orders
- re-naming of some orders to better reflect their purpose.

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1 Out-of-Home Care Strategic Directions in Western Australia 2015-202 Discussion Paper
2 www.dcp.wa.gov.au/ChildrenInCare/Pages/OOHCReform.aspx
3 The Permanency Planning Policy is available at www.dcp.wa.gov.au/Resources/Pages/PoliciesandFrameworks.aspx
In addition to gauging support for permanency planning amendments, the paper looks at other possible amendments related to OOHC reform including:

- provisions regarding Rapid Response\(^4\)
- requirements for the approval of foster carers
- payments to carers made under special guardianship orders.

It is envisaged that some amendments may proceed from this consultation under a high-priority OOHC amendment Bill, while other legislative options may require more detailed consideration in the upcoming statutory reviews of the Act and Adoption Act which are required to commence in 2017 and 2018 respectively.

Finally, it is recognised that successful implementation of some of the legislative options presented in this paper would require a significant shift in practice and resourcing. This shift has already begun in practice, and will be further embedded through the range of out-of-home care reforms to be implemented from 2016.

### 1.3. Developments in other Australian jurisdictions

Recent changes to child protection laws in NSW in 2014 and Victoria (due to commence in 2016) have focussed, among other things, on strengthening permanency planning for children in OOHC. Significantly, the changes in these two jurisdictions, briefly summarised below, introduce timeframes and a hierarchy of permanency options.

#### New South Wales – Children and Young Persons (Care and Protection) Act 1998

A suite of legislative reforms in NSW came into effect in March 2014 including the following:

- **Permanent placement principles,**\(^5\) which state the preferred hierarchy for a child’s permanent placement: if practicable and in the best interests of the child, the first preference is restoring the child into the care of parents; if not practicable or in the child’s best interests, the second is for guardianship by a relative, kin or other suitable person; adoption for non-Aboriginal children is third; with the least preferred options being placement in State care until 18 years, followed by adoption for an Aboriginal child (Attachment two).

- A requirement that the Court decide, within set timeframes, whether to accept the Department of Family and Community Services’ assessment of whether or not there is a realistic possibility of restoring a child to the care of his or her parents unless, because of the circumstances of the case, the Court decides it is appropriate and in the best interests of the child to defer this decision: the decision must be made within six months of an interim order being made for a child under two; and within 12 months for a child over two.\(^6\)

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\(^5\) Section 10A, Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)

\(^6\) Section 83, Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)
Victoria – Children, Youth and Families Act 2005

Amendments in Victoria are due to come into effect by March 2016 and include:

- a requirement that case plans include a permanency objective for the child following an order of preference which places family preservation as the first priority followed by family reunification, adoption, permanent care with a carer and finally long term OOHC care (Attachment three);
- a preference for placement with suitable family members in respect of adoption, permanent care and long-term OOHC;
- the introduction of time frames to achieve reunification:
  - a family reunification objective would be appropriate if a child has been in OOHC for under 12 months and reunification is likely
  - adoption, permanent or long-term OOHC objectives would be appropriate if a child has been in OOHC for 12 months and there is no real likelihood of safe reunification within the next 12 months or, except in exceptional circumstances, a child has been in OOHC for a total of 24 months.
- a new range of orders which are named to more accurately reflect their intention, and which align with the objectives in the permanency objective.

2. CURRENT WA LEGISLATION

By way of background information, this section outlines key features of the Act which provide the framework for permanency planning – the underpinning principles which must be applied in decision-making under the Act, and the orders available to the Children’s Court (the Court).

2.1. Underpinning principles

Sections 7 to 14 of the Act set-out the principles which are the foundation on which the entire Act is based; they underpin all the functions and powers carried out under the Act by any person, the Court or the State Administrative Tribunal.

Principles in the Act which are of particular relevance to permanency planning are:

Section 7  **Best interests of child are paramount consideration**  Colloquially referred to as ‘the best interests principle’, this principle requires the best interests of the child to be the paramount consideration of any person (or Court or Tribunal) performing functions or exercising powers under the Act.

Section 8  **Determining the best interests of a child**  When determining what is in the best interests of a child some of the matters that must be taken into account are:

(f) any wishes or views expressed by the child, having regard to the child’s age and level of understanding in determining the weight to be given to those wishes or views;

(g) the importance of continuity and stability in the child’s living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from –

(i) the child’s parents; or

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Made by the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)*
(ii) a sibling or other relative of the child; or
(iii) a carer or any other person (including a child) with whom the child is, or has recently been, living; or
(iv) any other person who is significant in the child’s life;

(h) the need for the child to maintain contact with the child’s parents, siblings and other relatives and with any other people who are significant in the child’s life;

(j) the child’s cultural, ethnic or religious identity (including the need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);

Section 9  Principles to be observed  This section requires certain principles to be observed in the administration of the Act. Of particular relevance to permanency planning are the following:

(b) the principle that the preferred way of safeguarding and promoting a child’s wellbeing is to support the child’s parents, family and community in the care of the child;

(e) the principle that every child should have stable, secure and safe relationship and living arrangements;

(g) the principle that if a child is removed from the child’s family then, so far as is consistent with the child’s best interests, the child should be given encouragement and support in maintaining contact with the child’s parents, siblings and other relatives and with any other people who are significant in the child’s life;

(ha) the principle that if a child is removed from the child’s family then, so far as is consistent with the child’s best interests, planning for the child’s care should occur as soon as possible in order to ensure long-term stability for the child;

(h) the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child;

Section 10  Principle of child participation  The principle of child participation is designed to ensure that the Department provides the child with the opportunity to be involved in the decision-making process wherever a decision is made under the Act that is likely to have a significant impact on the child’s life.

Section 12  Aboriginal and Torres Strait Islander child placement principle  This principle requires that any decision about the placement of an Aboriginal child must, so far as is consistent with the child’s best interests and is otherwise practicable, be in accordance with the following order of priority –

(a) placement with a member of the child’s family;
(b) placement with a person who is an Aboriginal person or a Torres Strait Islander in the child’s community in accordance with local customary practice;
(c) placement with a person who is an Aboriginal person or a Torres Strait Islander;
(d) placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the Chief Executive Officer, is sensitive to the needs of the child and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, the child’s family.

Section 80  Guidelines for placement of certain children  This section refers to
the guidelines that must be adhered to when making placement arrangements for children from culturally and linguistically diverse (CaLD) backgrounds.

**Principles in the Adoption Act**

Section 3 Paramount considerations when administering Act etc. The paramount considerations to be taken into account under the Adoption Act are:

1. (a) the welfare and best interests of a child who is an adoptee or prospective adoptee;
   
   and

   (a) the principle that adoption is a service for a child who is an adoptee or prospective adoptee; and

   (b) the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.

2. It is acknowledged that adoption is not part of Aboriginal or Torres Strait Islander culture and that therefore the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for the child.

**2.2. Protection orders**

Before a child is placed on a protection order, he/she is likely to have been in the provisional protection and care of the CEO, which means the child has been placed away from family but a court is yet to determine if the child is in need of protection and a protection order therefore required.

A protection order is an order made by the Court following a finding that a child is in need of protection (the criteria for which are set-out in section 28 of the Act). A range of protection orders are available to provide flexibility to the Court in making an order that best suits the needs of the child:

**protection order (supervision) (sections 47-53)**

This type of order provides for the supervision of the wellbeing of a child by the Department for the period specified by the order, up to a maximum of two years:

- parental responsibility remains with the parent under a ‘supervision order’ and the child usually lives with the parent/s
- the Department may apply for an extension of the order and, if in the best interests of the child, the Court may extend the order for up to two years
- a supervision order can only be extended once
- supervision orders may include conditions.

**protection order (time-limited) (sections 54-56)**

A ‘time-limited order’ gives the Chief Executive Officer of the Department (CEO) parental responsibility for a child for the period specified in the order to the exclusion of anyone else, up to a maximum of two years:

- the Department may apply for an order to be extended and, if in the best interests of the child, the Court may extend an order for a further

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8 Under sections 35 or 37 of the Act, or an interim order made by the Court under section 133(2)(b)
period of up to two years
  o a time-limited order may be extended more than once
  o if all parties are in agreement, the Court can extend the order in their absence.

**protection order (until 18)** (sections 57-59)
An 'until-18 order' transfers parental responsibility for a child to the CEO, to the exclusion of anyone else, until the child reaches 18 years:
  o the Court must not make an until-18 order unless satisfied that long-term arrangements should be made for the wellbeing of the child.

**protection order (special guardianship)** (sections 60-66)
A special guardianship order (SGO) gives one or two individuals, jointly, parental responsibility for a child until the child reaches 18 years, to the exclusion of anyone else:
  o the Court must not make an SGO unless satisfied that long-term arrangements should be made for the child’s wellbeing and that the proposed special guardian is suitable, willing and able to provide that care
  o the Department must submit a report to the Court addressing these matters
  o in making its assessment, the Court must have regard to:
    – the Aboriginal and Torres Strait Islander child placement principle if the child is Aboriginal
    – the Culturally and Linguistically Diverse (CaLD) placement guidelines if the child is from a CaLD background
  o SGOs can include conditions about contact between the child and another person, and parties may apply for a variation of the conditions
  o the Court may order the Department to make payments to a special guardian, the amounts and frequency of which are prescribed in regulations
  o the Department may apply for an SGO regarding a child in care at any time
  o carers may apply for an SGO if they have cared for a child continuously for two years prior to applying.

Section 145 **Conduct of protection proceedings generally**
This section requires protection proceedings in the Children’s Court to be “concluded as expeditiously as possible in order to minimise the effect of the proceedings on the child and the child’s family.”

### 2.3. Adoption orders

An adoption order is an order made in the Family Court under the Adoption Act. An adoption order has the following effect:

- the relationship between the child (adoptive) and the adoptive parent is to be treated as being that of child and parent
- the relationship between the child (adoptive) and the child’s birth parents is to be treated as not being that of child and parent
- the relationships of all people to the child, the adoptive parent and the birth parent are to be determined according to the above.
In effect, for example, this means that a female adoptive parent becomes the adoptee child’s mother, the adoptive parents’ sisters become the child’s aunts, the adoptive parents other children become the siblings of the adopted child, etcetera.9

3. POSSIBLE AMENDMENTS TO SUPPORT PERMANENCY PLANNING

3.1. Underpinning principles

Decision-making under the Act is guided by a number of principles including that the best interests of the child must be regarded as the paramount consideration.10 Options for strengthening the legislation to emphasise the importance of timely permanency decisions for children include amending the underpinning principles. Ways this could be done include those set out below.

Continuity and permanency

Section 8(g) of the Act (page 3) could be amended to refer to “the importance of continuity and permanency” rather than “the importance of continuity and stability”, and section 9(ha) (page 4) could be amended to refer to the importance of “planning as soon as possible in order to ensure long-term stability and permanency for the child.” Similar amendments were made in Victoria because ‘permanency’ was seen as conveying the long term intentions more effectively than ‘stability’ which was often interpreted as being more immediate in nature.11

A permanency principle regarding a hierarchy of care

Similar to the NSW and planned Victorian legislation, WA could consider including a ‘permanency planning principle’ in the Act setting-out an order of priority to guide decision-making for children’s permanent care. As already reflected in the Act,12 the first permanency objective would be that children are restored into the care of their parents wherever possible and in the child’s best interests. Refer to section 3.2.4 of this paper for more discussion on this option.

Consultation question

1. Should the underpinning principles of the Act give more emphasis to the importance of permanency of care for a child in OOHC?

3.2. Options for refocussing orders

This section examines orders and their purpose through the lens of permanency planning. For the purposes of the permanency planning discussion in this paper, the suite of current orders in WA can be broadly grouped into ‘non-permanent’ and ‘permanent’ orders. In contrast to non-permanent orders, permanent orders remove parental responsibility from a child’s parent/s until the child turns 18 years. The non-permanent orders that may be made after the Court has determined a child is in

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9 Section 76, Adoption Act 1994
10 Refer to sections 7 to 14 in Part 2 Division 2 of the Act to see all the principles
11 Second Reading Speech, Children, Youth and Families Amendment (Permanent Care and Other matters) Bill 2014, Legislative Assembly, Thursday, 7 August 2014, Parliament of Victoria
12 Section 9(b), Children and Community Services Act 2004
need of protection are supervision orders and time-limited orders, and the permanent orders are until-18 orders, SGOs and adoption orders.  

3.2.1. Purpose and timeframes of orders

NON-PERMANENT ORDERS

**Protection order (supervision)**

Currently, a supervision order may be in place for up to two years, with one further extension of up to two years if in the best interests of the child. Reducing the maximum period of a supervision order to one year may better align with permanency planning by emphasising the importance of timely decision-making in relation to parental capacity, and therefore the need for focussed interventions. The current capacity for the Court to extend a supervision order for up to a further two years could also be reduced to one year. This would further focus the Department’s intervention with the family while continuing to provide flexibility where necessary.

**Consultation question**

2. **Should the maximum period for a supervision order be reduced from 24 months to 12 months, with the possibility of up to a further 12 month extension?**

**Protection order (time limited)**

Currently, a time-limited order can be granted for up to two years and the Court can extend a time-limited order, for up to two years each time, if considered to be in the child’s best interests. While the Department’s permanency planning policy and practice aims for a child’s permanency of care to be determined under only one time-limited order, the length of time a child may cumulatively spend on a time-limited order is currently unconstrained by the legislation.

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13 Although these orders are referred to as permanent orders in this paper, the legislation enables protection orders (until 18) and SGOs to be revoked, or revoked and replaced with a different order if a Court determines it is in the best interests of a child. With regard to adoption, in rare circumstances an adoption order may be discharged.
Example

- A two year-old child is placed under a two year protection order (time-limited), six months after being taken into provisional protection and care.
- She is effectively in the CEO’s care without a permanent order for 2½ years before a further decision is required due to the imminent expiry of the order.
- Before the expiry of the order, the Department’s options are:
  - to let the order lapse following a successful reunification with family;
  - to seek an extension of the time-limited order prior to its expiry (each extension may be granted for up to two years); or
  - to seek replacement of the order with a supervision order or a permanent order (such as an until-18 order or an SGO).
- Court proceedings to extend the order or place the child under a different order could take six months or longer, due to adjournments for a variety of reasons.
- If the Court makes a permanent order regarding this child, the child (who was 1½ years-old when she entered provisional protection and care) would have been in the care of the CEO without a permanent order for in excess of three years (by which time she is 4 years-old).
- Alternatively, if the Court grants a two year extension of the time-limited order, she could be in the CEO’s care without a permanent order for in excess of five years before a further decision is required (that is, until she is 6 years-old). There is no limit to the number times a time-limited order may be extended.

There are a number of ways the legislation could focus the Department and the Court more consistently on achieving permanency objectives. One would be to reduce the maximum allowable duration of a time-limited order from two years to 12 months, with this type of order being made only in cases where the Court considers reunification a possibility. A shortened time period, along with additional changes flagged in this paper, could better enable permanency planning and allow for permanency decisions about children and young people to be reached sooner into their care experience. Supporting amendments for this approach, while maintaining sufficient flexibility to ensure decisions can be made in a child’s best interests, could include the following:

1. also reducing the maximum period for an extended order from two years to 12 months, allowing the Department to apply for an extension, and the Court to grant the extension, if satisfied that reunification is viable and/or progressing: under the Victorian reforms coming into effect next year, the Court must not extend their equivalent of a time-limited order unless there is compelling evidence that it is likely a parent will permanently resume care of the child during the period of the extended order (and the extension will not result in a child being in OOHC for longer than 24 months);

2. requiring the extension period the Court grants to be guided by the proviso that, from the date of entering OOHC care, a child is to spend no more than 24 months in OOHC without an application for a permanent order being made; and

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14 To be called a ‘family reunification order’. See section 26, Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)
15 The date the child came into provisional protection and care (through sections 35, 37 or 133(2)(b))
3. because there may be circumstances in which a purposeful delay will be in a child’s best interests, providing the Court with discretion to make or extend a time-limited order that exceeds the cumulative 24 months limit. This could occur, upon application of the CEO, if the Court finds that special circumstances exist. (See Attachment four for a diagram of this model.)

**Consultation questions**

3. **Should the maximum allowable period of a time-limited order be changed from two years to 12 months?**

4. **Should there be a limit placed on the number of times the Department is able to apply for extension of a time-limited order?**

5. **Should criteria for an extension be linked to circumstances where the Court is satisfied that reunification is viable and progressing?**

6. **Should the total cumulative time a child can be in OOHC without a permanent order be limited to 24 months?**

7. **If so, upon an application by the Department, should the Court also have discretion to make a time-limited order that goes beyond the 24 months total cumulative time if considered to be in the best interests of child?**

**PERMANENT ORDERS**

*Until-18 orders, SGOs and adoption*

No substantive changes to the nature of these permanent orders are envisaged in this paper, although the need to align children’s contact with their birth families more closely with the permanency objectives for a child is addressed under section 3.4 of this paper.

**3.2.2. Naming of orders**

In a discussion on options for refocussing protection orders and the possibility of introducing a preferred hierarchy of permanency options, it is opportune to consider whether the names of the existing orders accurately reflect their purpose in the permanency planning continuum. Feedback is sought on whether the names of the current protection orders should be changed and, if so, what they should be changed to and why. Some of the possible options are set out below.

<table>
<thead>
<tr>
<th>Current name</th>
<th>Possible alternative name</th>
<th>Purpose, and options for change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisional protection and care</td>
<td>Temporary protection and care</td>
<td>A holding status:</td>
</tr>
<tr>
<td></td>
<td>Temporary care</td>
<td>– no substantive change</td>
</tr>
<tr>
<td>Protection order (supervision)</td>
<td>Protection order (family support)</td>
<td>Focus on at-home safe parenting:</td>
</tr>
<tr>
<td></td>
<td>Family preservation order - Victoria</td>
<td>– reduce maximum period of order to one year</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– enable one extension of up to one year</td>
</tr>
<tr>
<td>Protection order (time limited)</td>
<td>Protection order (transitional care)</td>
<td>Focus on reunification:</td>
</tr>
<tr>
<td></td>
<td>Protection order (transition)</td>
<td>– reduce maximum period to one</td>
</tr>
</tbody>
</table>
Consultation question

8. Do the names of the current protection orders adequately reflect the status and purpose of the orders?

9. Should any of the names change and, if so, what should they become and why?

3.2.3. Safeguards for Aboriginal children

Some concern exists about how permanency planning is applied in relation to Aboriginal and Torres Strait Islander children in OOHC, particularly regarding the possibility of Aboriginal children being placed permanently outside of family and community under an SGO or carer adoption.

Currently, WA’s child protection and adoption law recognises these concerns by providing safeguards specific to Aboriginal children in OOHC:

- For example, in addition to the general principles that apply to all children, section 12 of the Act sets out the Aboriginal child placement principle (see page 4) and, when assessing whether a prospective special guardian is suitable, willing and able to care for an Aboriginal child under an SGO, the Court must “have regard to the placement principles set out in section 12.” To help the Court in its assessment, the Department must provide a report\textsuperscript{16} on the prospective special guardian’s suitability and the proposed arrangements for the child’s wellbeing.

- The paramount considerations in the Adoption Act (see page 4) acknowledge that adoption is not part of Aboriginal culture and should be an option of last resort.

Options for strengthening these safeguards for Aboriginal children include requiring the Department to demonstrate to the Court its compliance in applying the Aboriginal child placement principle. This could become a requirement in the Department’s

\textsuperscript{16} Under section 61(3), Children and Community Services Act 2004
SGO report to the Court, and also in the Court report the Department is required to provide under section 143. Under section 143, the Department must provide the Court with a report about the arrangements proposed for the wellbeing of a child if the child is placed under a protection order.

Other legislative options include the use of a permanency placement principle which sets out a preferred hierarchy of permanency options (see section 3.2.4. below). NSW incorporates safeguards for Aboriginal children into its ‘permanency placement principle’ hierarchy (see Attachment two). It does this by stating that adoption is the last preference for an Aboriginal child. This is consistent with the Adoption Act, as outlined above, which sets-out that adoption is not part of Aboriginal culture and is a therefore an option of last resort. It is intended that any changes to the way in which carer adoption is prioritised in the WA context retain that principle.

Consultation questions

10. Should the Act be strengthened to ensure that, before the Court makes a permanent order, it must be satisfied that the Aboriginal placement principle has been applied in the child’s best interests?

11. Should the Department be required to demonstrate its application of the Aboriginal placement principle in the reports it provides to the Court?

12. Are there other options that should be explored?

3.2.4. A hierarchy of permanent care

One strategy for guiding permanency planning decision-making is to require the Department and the Court to follow a hierarchy of preferred permanent care options when assessing and determining what order should be made in the best interests of a child.

As outlined at section 1.3 of this paper, NSW introduced such a hierarchy under ‘permanent placement principles’ (Attachment two). In 2016, Victoria will also have a hierarchy of permanency options to consider within the case planning provisions of the legislation; every child’s case plan must include a ‘permanency objective’ in accordance with an order of preference (Attachment three). The Table below contains the permanency of care hierarchies in these States. Included in the Table are the current WA orders which give similar effect to these objectives.

<table>
<thead>
<tr>
<th>NSW</th>
<th>WA</th>
<th>Victoria</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reunification with family</td>
<td>Time-limited order</td>
<td>1. Family preservation in parents’ care</td>
<td>Supervision order</td>
</tr>
<tr>
<td>2. Guardianship with relative, kin or other</td>
<td>SGO</td>
<td>2. Reunification with family</td>
<td>Time-limited order</td>
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<tr>
<td>3. Adoption (non-Aboriginal child)</td>
<td>Adoption</td>
<td>3. Adoption</td>
<td>Adoption</td>
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17 Section 10A, Children and Young Persons (Care and Protection) Act 1998 (NSW)
18 This will come into effect under s.167 of the Children, Youth and Families Act 2005 (Vic), due in March 2016
4. Parental responsibility permanently with Minister
5. Adoption (Aboriginal child)

<table>
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<th>Until-18 order</th>
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<td>4. Permanent care with permanent carer/s</td>
<td>4. Permanent care with permanent carer/s</td>
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There is an opportunity to consider whether a permanency hierarchy should be introduced into the WA legislation. The information below is provided to inform consideration of this option.

For the purposes of this paper, discussion of ‘carer adoption’ refers only to the adoption of children who are in the CEO’s care under the Act, not those placed in the CEO’s care through the adoption process under the Adoption Act. (The latter are generally children relinquished into the CEO’s care for the purposes of adoption, rather than as a result of the Department’s child protection intervention.) It is important to clarify the distinction between adoption and an SGO:

- An adoption order permanently severs a child’s relationship with his/her birth family under the law (mother/father/sister/brother/aunt etc.) and transfers these family relationships to the adoptive family (see section 2.3 of this paper).
- An SGO provides a special guardian with sole parental responsibility for a child until the child turns 18, without effecting a life-long change in the legal status of the child’s relationships within his or her birth family.

In some cases, the “forever” nature of adoption is seen by carers as providing a level of security for carer and child which would not be achievable through an SGO. On the other hand, an SGO may be regarded by some carers as providing the right balance of security and permanency for supporting the child’s long term care within the SGO family while at the same time retaining the child’s connection with his or her birth family.

In contrast to Australia, carer adoption is used freely and assertively in the United Kingdom and United States. As the Table above indicates, carer adoption is being seen in NSW and Victoria as an OOHC permanency priority for children in State care. In WA, however, the Adoption Act says adoption should occur only if there is no other appropriate alternative for the child. Consistent with this:

- before approving a child’s placement with a carer for the purposes of carer adoption, the Adoption Act requires the CEO to be satisfied the child’s adoption would be preferable to an SGO; and
- Adoption Act provisions state the adoption of an Aboriginal or Torres Strait Islander child is a last resort (see section 3.2.3).

If any hierarchy of permanent care were to be introduced in WA legislation:

- safe care within the child’s family would be seen as the first permanency objective, possibly involving a supervision order with its focus on remaining in family care;
- where a child is in OOHC, reunification of the child into the care of parent/s would be the second preference, through the use of a time-limited order; and
- in determining which order would be in a child’s best interests, the Court...
would continue to take into account the Adoption Act principle that adoption of Aboriginal children is an option of last resort.

Consultation question

**13. Should the legislation set out an order of priority for orders which the Department and/or the Court must consider?**

**14. If so, what should the order of priority be?**

### 3.3. Dealing with matters in a timely manner

Another option for focussing on timely decision-making for children in OOHC care is to direct the Court to proceed expeditiously. Section 145(3) of the Act requires that protection proceedings “are to be concluded as expeditiously as possible in order to minimise the effect of the proceedings on the child and the child’s family”.

Other jurisdictions have adopted similar requirements. From March 2016, Victoria’s legislation will require the Court to consider “the desirability of making decisions as expeditiously as possible and the possible harmful effect of delay in making a decision or taking an action” [19] when determining what is in the best interests of a child.

Since 2001, section 94 of the NSW *Children and Young Persons (Care and Protection) Act 1998* has emphasised the need for timeliness in Children’s Court proceedings. The section, titled *Expedition and adjournments*, requires that:

1. All matters before the Children’s Court are to proceed as expeditiously as possible in order to minimise the effect of the proceedings on the child or young person and his or her family and to finalise decisions concerning the long-term placement of the child or young person.
2. For this purpose, the Children’s Court is to set a timetable for each matter taking into account the age and developmental needs of the child or young person.
3. The Children’s Court may give such directions as it considers appropriate to ensure that the timetable is kept.
4. The Children’s Court should avoid the granting of adjournments to the maximum extent possible and must not grant an adjournment unless it is of the opinion that:
   a. it is in the best interests of the child or young person to do so, or
   b. there is some other cogent or substantial reason to do so.

While the Court in WA is also required to consider the best interests of the child as paramount in all its decisions, including whether it is in a child’s best interests that an adjournment of protection proceedings should be made, the greater emphasis of NSW legislation could be considered.

Consultation question

**15. Should the Act be amended to strengthen provisions for expeditiously dealing with protection proceedings? If so how?**

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[19] Section 6(2), *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)* No.61 of 2014, due to come into effect by March 2016
3.4.  Contact

The legislation emphasises the importance of maintaining birth family contact for children in OOHC; the principles articulate this in a number of ways. While family contact plays a significant role in a child’s sense of belonging and identity, it is important to differentiate between contact which supports permanency through reunification and contact that is important for the child’s sense of identity but is not part of a reunification process.

For example, where an SGO has been granted, any contact conditions of the order should reflect and support the permanency objectives for the child. This means balancing, on an individual basis in the best interests of the child, the child’s need for belonging, identity and culture within his/her family of origin and his/her SGO family.

This could be promoted by placing a greater emphasis on permanency objectives as they relate to family contact. One way would be to highlight, within the guiding principle under section 9(ha), that all family contact needs to meet the objectives of permanency. Another option would be to require that any court-ordered contact under an SGO should be consistent with the permanency objective for the child.

Consultation question

16. Should the legislation be amended to indicate that the level of contact a child is to have with his or her birth family should reflect the priority of meeting permanency objectives?

17. If so, should amendments require that SGO contact conditions be demonstrably in line with the permanency objective for the child?

3.5.  Payments to special guardians

When granting an SGO, the Court may order the Department to make payments to a special guardian in accordance with the scale and intervals prescribed in regulations.\textsuperscript{20} The SGO payment amounts set in the regulations for specified age groups are paid fortnightly and amended annually to reflect CPI increases.\textsuperscript{21} The amounts paid are based on the Department’s fortnightly subsidy paid to general and relative carers and the additional clothing allowance and pocket money payments these carers receive each year.\textsuperscript{22}

In practice, orders for special guardian payments are being made in all cases and continue for the duration of the SGO. The majority of other Australian jurisdictions also make ongoing payments to SGO-equivalent carers, generally at the carer subsidy rate. The Northern Territory and New Zealand, however, provide an initial payment (or time-limited support package) when a permanent order is granted, rather than long-term ongoing payments.

\textsuperscript{20} Section 65, Children and Community Services Act 2004
\textsuperscript{21} Regulation 21, Children and Community Services Regulations 2004
\textsuperscript{22} Annual SGO carer payments range between $10,000 and $14,000 per order, with a small number receiving an additional ‘special needs loading’ payment. At 30 June 2015, 483 children were the subject of an SGO, of which 236 (49%) were Aboriginal and 311 (64%) were placed with relative carers.
As the number of SGOs increases in WA, feedback is sought on whether SGO payments should continue under the existing arrangements or whether some limitations on the payments should be applied. Options include providing an initial payment, time-limited payments and/or ceasing payments if the child who is the subject of the SGO is not residing with the carer or is in receipt of Youth Allowance or a fulltime income.

The former two of these options would not require legislative change; however, amendments would be needed to require carers to notify the Department in the event the child leaves home or transitions from school into employment. The current lack of requirement has meant some special guardians have continued to receive payments when the child under the SGO has left their daily care; for example, when older children have gone to live independently or with family members.

In contemplating possible policy changes, it is noted that some carers who wish to take on the permanent care of children may be in a position to do so within their own resources, and may see this as a way of caring for the child ‘as one of their own’ rather than receiving ongoing financial support from the government. Importantly, however, in many cases it is likely that reducing or ceasing payments could be a disincentive to obtaining an SGO: the other benefits gained in having an SGO may not outweigh a carer’s need or desire for financial support. This view has been reflected through early consultation.

**Consultation questions**

18. **Should special guardians continue to be able to receive regular carer payments for the duration of their SGO or should payments be limited in some way?**

19. **Should carer payments cease if a child under the SGO is not residing with the special guardian or receives a Commonwealth Youth Allowance or fulltime income?**

### 4. OTHER AMENDMENTS TO SUPPORT OUT OF HOME CARE REFORM

#### 4.1. Foster care reforms

One of the Department’s OOHC strategic directions is “An out of home care system that is consistent”\(^\text{23}\). In support of this direction, the Department has committed to:

- providing greater clarity about OOHC models that are considered to be foster care; and
- implementing a more consistent sector-wide method of assessing, approving and training foster carers.

Legislative reform options that may assist to achieve these outcomes are outlined below.

4.1.1. Consistent foster carer approval

To gain approval as a foster carer for the Department, applicants must meet the requirements under regulation 4(1)(a) of the Children and Community Services Regulations 2006. Commonly referred to as the ‘competencies’, the CEO may approve an individual if satisfied that the individual is:

(i) able to provide care for a child in a way that promotes the wellbeing of the child, promotes the child’s family and interpersonal relationships, and protects the child from harm;
(ii) able to provide a safe living environment for a child;
(iii) able to work cooperatively with officers, a child’s family and other people when providing care for a child;
(iv) able to take responsibility for the development of his or her competency and skills as a carer; and
(v) a person of good character and repute.

The Department applies these standards to both relative and non-relative foster carers.

Typically, the Department plays no role in the assessment or approval of community services sector (CSS) carers. Unlike Departmentally-approved foster carers, CSS foster carers are not legislatively required to meet the competencies. However, via service agreements incorporating the “Better Care, Better Services Standards”, CSS foster care providers are required to demonstrate that their carers “have skills consistent with the competencies identified.”

Some other jurisdictions legislatively require that all foster carers are approved by the CEO of the relevant government agency. In South Australia, the CEO of the Department is responsible for the approval of foster parents and the licensing of foster care agencies. Approved agencies assist with the assessment of foster parents; however, the Department retains responsibility for the final approval.

In Queensland, the chief executive of the Department issues certificates of approval to kinship carers and foster carers; and licensed care service providers. The licensees are responsible on an ongoing basis for ensuring persons engaged in providing care services are ‘suitable’. However, the chief executive may suspend or cancel a licence if not satisfied that certain persons associated with the licence are not suitable, including persons engaged to provide care services.

The Department and CSS organisations are currently working together to develop consistency in carer approval. This includes development of a sector-wide panel to consider foster carer assessments and make recommendations about approval to the relevant decision-maker. However approval of foster carer applicants remains the responsibility of individual organisations.

A legislative approach for improving consistency could include a model under which there is a single decision-maker for the approval of all foster carers (such as the

CEO of the Department). The decision-maker could be informed by assessments and recommendations from a sector-wide panel (although this aspect need not be legislated). A further benefit of this approach, also supporting consistency, would be the reciprocal power of the decision-maker to revoke the approval of any foster carer who is considered to no longer meet the competencies.

Flowing from this model is the potential for portability of carer approval. Currently, each time a carer moves to a new CSS organisation, or moves between the Department and the CSS sector, a new carer assessment is undertaken and a revised decision regarding approval follows. If all carers were approved through a consistent process by a single decision-maker, re-approval for each new position a carer pursues may no longer be considered necessary. However, this approach would not mean that an organisation has to engage a carer merely because he/she is approved; that is, an organisation would still decide on a carer’s suitability for a particular position.

Other legislative reforms that could support the maintenance of carer standards on an ongoing basis, particularly in a model involving portability of carer approval, include:
- a requirement for regular review of a carer’s performance against the competencies;
- an obligation on carers to report new, relevant information to the approval body (either via their ‘employing’ organisation or directly), and
- a power for the decision-maker to revoke a carer’s approval if adverse information comes to light.

As with the carer assessment and approval process, a cross-sector panel could have a role in supporting the review and revocation processes.

Currently, if the Department proposes to revoke a carer’s approval, the carer must be informed of the reasons for the proposal and be given the opportunity to respond before a final decision is made. CSS organisations follow a similar process. Under a sole decision-maker model, consideration could be given to whether an external review process for carer revocation decisions should be provided. Given the broader scope of carers who may be affected by these decisions, such as paid care employees who rely upon this work as their livelihood (refer section 4.1.2 below), the possibility of external review of revocation decisions before a body such as the State Administrative Tribunal may be considered desirable.

In considering the approval point for all foster carers, against the regulated competencies, it is also timely to consider the competencies themselves. For example, it has been suggested that the competencies should reflect the need for foster carers to have the ability to support the cultural needs of children in care being met. This is in acknowledgement of the high proportion of Aboriginal children in care but also relates to Culturally and Linguistically Diverse children and the broader view

25 For example, in Queensland, foster carers are required to immediately notify the chief executive of a change in “personal history”, which includes the carer’s domestic violence and traffic history. Carers engaged by a licensed care service are required to notify the licensed nominee of the service, who is then required to inform the chief executive (refer sections 141B and 141D of Child Protection Act 1999 (Qld)).
26 Regulation 4(3), Children and Community Services Regulations 2006
of culture in supporting all children to maintain links to family and community. Anecdotal concerns have also been raised regarding areas of overlap between competencies one and two in relation to child safety that could potentially be clarified through a slight rewording.

Consultation questions

20. Do you support legislative amendments which provide for a single decision-maker (such as the CEO of the Department) in respect of the approval and revocation of foster carers?

21. If yes, do you support ‘portability’ of carer approval status for a carer?

22. Should a carer be required to report relevant changes in personal circumstances or history to the decision-maker?

23. If the CEO is the decision-maker, should a person revoked as a carer be able to seek external review of the CEO’s decision?

24. Do you have any suggestions regarding possible changes to the existing regulated competencies?

4.1.2. The scope of foster care

Linked to reforms which enable the CEO to be the sole decision-maker in respect of carer approval is the opportunity to clarify the models of care which are considered to be foster care (and therefore who is required to meet the competencies). Historically, foster care has been seen as a type of OOHC that is family-based and provided on a voluntary basis in the home of the person providing the care. However, newer models of care have emerged including:

- carers looking after children in homes owned or rented by agencies;
- carers looking after children on a rotating basis (e.g. three days on, three days off); and
- carers who are engaged by the CSS as employees.

In this context, it may be desirable that the scope of ‘foster care’, for the purposes of carer approval, include care arrangements (whether paid or unpaid) where a person cares for a child in their own home or a home provided by an organisation as the carer’s primary residence.

To accommodate the evolving nature of the OOHC sector, it may also be desirable to provide flexibility in the legislation for the scope of foster care to be amended via regulations, rather than needing Parliamentary amendment each time a new category of foster care is identified.

Consultation question

25. Which carers should be subject to a legislative carer approval process?
4.2. Shared responsibility for children

Children in OOHC have experienced trauma which affects their health and development. Without appropriate and timely interventions, this can lead to poor life outcomes across the life span. To heal from this trauma, it is essential that children in OOHC receive accessible and responsive services to meet their health, education, disability and other needs.

Provision of assessment and treatment services around development, physical health and mental health of children and young people in care becomes particularly important in the context of an increased focus on permanency planning. It is imperative that the Department is able to access information that informs assessment and planning, as well as therapeutic services, in a timely manner to ensure that children have the best opportunity to return home safely in the first instance. The Department cannot provide these services in isolation.

4.2.1. Corporate parenting

Developments around the world have begun to focus on legislative articulation of the role and responsibility of government agencies to provide a ‘corporate parenting’ role for children in care. Corporate Parenting includes the concept that children are in government care, and should receive priority access to other government services as a result of the government being the child’s ‘parent’. Corporate Parenting broadens responsibility for children in care beyond the statutory child protection body and holds other service providers accountable for their actions to provide for the safety and wellbeing of children in the community.

The concept of Corporate Parenting has been legislatively implemented in a number of jurisdictions around the world. In Scotland, Corporate Parenting has been legislated via the Children and Young People (Scotland) Act 2014. The accompanying guidance sets out that it is a primary focus of all prescribed agencies to listen “to the needs, fears and wishes of children and young people, and being proactive and determined in their collective efforts to meet them”.27

In New Zealand, the concept is broadened and is conceptualised to include all vulnerable children. The Vulnerable Children’s Act 2014, provides a legislative framework by which relevant government agencies’ commitment to assessing and responding to the needs of at risk children and young people is articulated. The Vulnerable Children’s Act was informed by an understanding that the responsibility for protecting vulnerable children could not rest with one agency. The legislation holds chief executives of five different agencies jointly accountable for developing and implementing plans to protect children and work with families.

4.2.2. Current Western Australian approach

In addition to reciprocal procedures, memoranda of understanding and building co-operative working relationships on a day to day basis, a key way in which state agencies acknowledge and exercise responsibility towards children in care is via

delivery of services under the banner of the Cabinet-endorsed Rapid Response Strategy. Introduced in 2009, this strategy recognises the specific and complex needs of children in care and allows for co-ordination of strategies across government to provide for those needs as a priority. The key agencies involved in its implementation include the Western Australia Police, Department of Education, Department of Transport, Department of Health, Department of Corrective Services, Department of Housing, Department of Local Government and Communities, Disability Services Commission, Department of Education Services, Department of the Attorney General, Department of Sport and Recreation, Department of Training and Workforce Development, Drug and Alcohol Office (now part of the Mental Health Commission) and the Mental Health Commission. Important initiatives under this banner have included commitment from the Department of Housing to provide priority housing to ensure that no young person leaving the care of the Department exits into homelessness.

While the coordination afforded by the Rapid Response strategy has allowed for a number of targeted initiatives to develop, there is no statutory requirement specifically relating to the provision of government services to children in care, other than those regarding the Department’s service obligations.

Section 22 of the Act provides guidance around cooperation and assistance of other agencies in the provision of services to all children, regardless of whether they are a child in care or not. Service providers must endeavour to comply with a request promptly in the event that the functions of an agency are not unduly prejudiced. For example, with schools, extra funding needs for a child are prioritised under the Department of Education’s internal policy rather than under a legislative imperative to prioritise children in care.

A policy level strategy for prioritising the needs of children in care relies on the working relationships and goodwill of agencies. Initiatives and agreements develop in the context of the resourcing capacity of an agency for which child protection is not recognised as an integral part of their role. As such, the will and capacity to provide services to children in care can be undermined by changes to resourcing and working relationships. A legislative imperative would recognise the special needs of children in care and the need for relevant agencies to prioritise services for meeting these needs.

4.2.3. Legislative approaches to change

Two options for change have been identified for providing a clear legislative basis for service provision to children in OOHC:

1. Strengthen existing provisions in the Act.
2. Amend the Act to clearly articulate the role and responsibility of prescribed agencies.

Strengthen existing provisions

As previously stated, section 22 applies in relation to all children rather than prioritising services for children in care. Section 22 could be amended to include specific reference to the needs of children in care, and the expectation that those needs will be addressed as a priority by relevant agencies. Determination would
need to be made in relation to whether this responsibility would be viewed as a 
requirement or an overarching principle, and how concerns that children’s needs 
were not being met would be addressed.

**Amend the Act to clearly articulate the role and responsibility of prescribed 
agencies**

Another option is to incorporate provisions into the Act which require certain 
agencies to undertake specific actions. The Act could reference prescribed agencies 
and specific outcomes required. As above, consideration would need to be given to 
how these requirements were monitored and how concerns that were not being met 
could be addressed. Any such approach would require a balance between 
accountability, flexibility and prescriptiveness in order to allow for circumstantial or 
policy changes in future.

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<td>26. <em>Could and should a broader approach be taken? For instance, could the provision of services under a legislated framework be expanded to target children at risk of entering care?</em></td>
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<td>27. <em>How else could the concept of Corporate Parenting be expanded upon in the Western Australian context?</em></td>
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FREQUENTLY ASKED QUESTIONS ABOUT PERMANENCY PLANNING

What is permanency planning?

Permanency planning is a systemic, goal directed and timely approach to case planning to provide children in care with safe, continuous and stable living arrangements, quality relationships, identity and a sense of belonging. Given the knowledge that children in care who experience multiple placements are more likely to demonstrate poor outcomes in adulthood, the primary focus of permanency planning is to prevent children ‘drifting’ in care from one placement to another and experiencing feelings of instability and uncertainty about their future.

Permanency planning is not only about placement. The three aspects of permanency are: relational, physical and legal. Relational permanence refers to children having the opportunity to experience positive, caring and stable relationships with significant others – this is very important to children; physical permanence denotes stable living arrangements; and the legal dimension pertains to court endorsed arrangements that facilitates stability in the child’s best interest (Sanchez, 2004; Stott & Gustavsson, 2010 cited in Tilbury and Osmond 2012).

Why are stability, quality relationships and belonging important for children in care and what informs this?

**Attachment theory**

Brown and Ward (2013) note that “Healthy child development depends on the child’s relationships, and particularly their attachment to the primary caregiver.” and that:

“Early secure attachments contribute to the growth of a broad range of competencies, which can include: a love of learning; a comfortable sense of oneself; positive social skills; multiple successful relationships at later ages; and a sophisticated understanding of emotions, commitment, morality, and other aspects of human relationships”.

Children who have been maltreated are particularly vulnerable to developing insecure attachment which can adversely affect life outcomes. Children therefore need opportunities to develop positive and secure attachments to a caregiver and significant others. For children in care, having stable long term living arrangements with either their birth parents or carers, is a fundamental way to achieve this.

**Brain development**

The first three years of a child’s life are particularly critical to brain development and functioning. “The child’s environment of relationships – and in particular the relationship with the primary caregiver – plays a critical role in shaping the development of the overall brain architecture.”

Maltreatment can have impacts on the way a child’s brain functions with lifelong consequences for learning, mental health and wellbeing. Developing positive relationships with parents or other caregivers can assist in countering these impacts.
Stability and continuity
Continuity and stability are protective factors for children. Family stability is an important factor in enhancing outcomes for children in health, education and with interpersonal skills. Permanency planning aims to maintain positive connections and continuity with important social systems in a child’s life.

Identity formation
A child’s sense of self is closely connected to the interactions with significant others and knowledge they have about ‘who they are’. A child in care therefore needs the opportunity to belong and have contact with family and significant others.

Why should permanency planning be timely?
Timely decision making that is responsive to children’s development is very important. Age is seen as a significant factor. The timeliness of decision-making regarding a child’s permanency and stability is particularly important for younger children because the first two years of a child’s life are the most critical for the development of emotional attachments, and the first three years of life, for the establishment of competence and coping skills. Decisions should be neither delayed nor rushed but need to take into account individual assessments.

The literature notes that establishing a timeframe in which both reunification and alternative permanency options are pursued helps focus case planning on early and intensive services to enhance a parent’s ability and willingness to make necessary changes.

What are permanency planning options in Western Australia?
Reunification
Reunification of a child in provisional protection and care or on a protection order (time limited) with his/her parents, is the Department for Child Protection and Family Support’s (the Department’s) first consideration in achieving a child’s permanency, wherever appropriate. This recognises that parents and extended family play a primary role in promoting a child’s sense of belonging and identity.

Reunification is the planning process for assessing and returning a child home to his/her parents’ care after a period in out-of-home care. The Department’s practice guidance highlights clear steps on assessment, planning and follow-up support, which is supported by Biehal (2007).

Long term out of home care
The long-term out of home care options include:

- protection order (until 18) and stable placement with a relative, significant or general carer;
- protection order (special guardianship) with relative, significant other or general carer;
- parenting order, via the Family Court, with a person who has an established relationship with a child such as a relative; and
- adoption with a relative, significant other or general carer.
What is parallel planning?
The planning around a child’s permanency must be realistic, so while the Department’s best hope is for the child to return home, this may not always be possible. This means the Department will need to have a back-up plan for long term out of home care if reunification does not happen. This is referred to as ‘parallel planning’ which means having a primary permanency plan and a secondary permanency plan running alongside each other, so that options are carefully considered and a decision that is in the child’s best interests is made.

When a child is in provisional protection and care or on a protection order (time-limited) the primary permanency plan will be to return a child to live with their parents and the secondary permanency plan will be long term out of home care. When a child is on a protection order (until 18) long term out of home care is the only permanency plan.

How does permanency planning occur?
Permanency planning occurs as part of case planning using the Signs of Safety Child Protection Practice Framework and involves parents, extended family, carers and the child (where age appropriate).

What does permanency planning mean for an Aboriginal child?
Aboriginal children have a right to maintain links with their family and community. This connection enables Aboriginal children to maintain or develop a strong sense of identity, which includes their culture and belonging to their country.

The Department is guided by the Aboriginal child placement principle which states that any placement for an Aboriginal child must be, so far as consistent with the child’s best interests and otherwise practical, in the following order of priority:

1. placement with a member of the child’s family;
2. placement with a person who is an Aboriginal person in the child’s community in accordance with local customary practice;
3. placement with a person who is an Aboriginal person;
4. placement with a person who is not an Aboriginal person but who, in the opinion of the CEO of the Department, is sensitive to the child’s needs and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, the child’s family.

In the event that all options to place an Aboriginal child with family or Aboriginal carers, are inappropriate or exhausted, it may be necessary to place the child with non-Aboriginal carers. The Department must assess the potential carer’s long-term suitability, taking into account the child’s cultural background. This is necessary to promote preservation and enhancement of the child’s cultural and spiritual identity. It is important that potential carers be willing to engage with the child’s birth family and/or cultural group.

Section 81 of the Children and Community Services Act 2004 outlines the requirement for consultation with an Aboriginal officer, or Aboriginal person or agency with relevant knowledge of the child, the child’s family, or the child’s community, when making placement arrangements for Aboriginal children. It is a policy requirement that the Department’s child protection workers consult with an
Aboriginal practice leader or other senior Aboriginal officer when developing permanency plans for Aboriginal children.

**How does contact fit into permanency planning?**

Contact between a child and their parents, siblings and other family members, as well as with significant others, is an important part of planning for children in care regardless of their permanency plan. Contact helps children maintain their identity as well as their sense of belonging and culture and is critical to permanency planning.

The Department is committed to promoting contact that is purposeful, planned, safe, and supports the child’s sense of connection to their parents, relatives and any other person significant in the child’s life. Well planned contact is achieved when an open dialogue is established between the child’s family, the child’s carer/s and the Department so that the needs of the child remain the focus of the contact.

When the primary permanency plan is reunification, a child's contact with parents needs to be regular and purposeful to support and assess the likelihood of reunification.

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3. www98.griffith.edu.au/dspace/bitstream/handle/10072/49223/80425_1.pdf?sequence=1
12. * The term relative refers to a child’s: grandparent, other ancestor, step-parent, sibling, uncle or aunt, cousin, spouse or de facto partner. In the case of an Aboriginal child, a person regarded under the customary law or tradition of the child’s community may also be considered a relative. Children and Community Services Act 2004.
13. * Residential care or a specialist placement may be considered as a long term out of home care option for a child who enters the CEO’s care as an older child (such as an adolescent) under a protection order (until 18), and where he or she has complex needs and all other long term OOH options have been explored and found not suitable.
14. * Adoption is not part of Aboriginal culture, and therefore the adoption of a child in the CEO’s care who is Aboriginal must occur only in circumstances where there is no other appropriate alternative for that child (s.3(2) Adoption Act 1994).
15. * Section 12, Children and Community Services Act 2004
Children and Young Persons (Care and Protection) Act 1998 (NSW)

Section 10A Permanent placement principles

(1) In this Act:

permanent placement means a long-term placement following the removal of a child or young person from the care of a parent or parents pursuant to this Act that provides a safe, nurturing, stable and secure environment for the child or young person.

(2) Subject to the objects in section 8 and the principles in section 9, a child or young person who needs permanent placement is to be placed in accordance with the permanent placement principles.

(3) The permanent placement principles are as follows:

(a) if it is practicable and in the best interests of a child or young person, the first preference for permanent placement of the child or young person is for the child or young person to be restored to the care of his or her parent (within the meaning of section 83) or parents so as to preserve the family relationship,

(b) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), the second preference for permanent placement of the child or young person is guardianship of a relative, kin or other suitable person,

(c) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a) or (b), the next preference is (except in the case of an Aboriginal or Torres Strait Islander child or young person) for the child or young person to be adopted,

(d) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), (b) or (c), the last preference is for the child or young person to be placed under the parental responsibility of the Minister under this Act or any other law,

(e) if it is not practicable or in the best interests of an Aboriginal or Torres Strait Islander child or young person to be placed in accordance with paragraph (a), (b) or (d), the last preference is for the child or young person to be adopted.
Children, Youth and Families Act 2005 – Victoria
Section 167  Permanency objective

(1) A case plan must include one of the following objectives (a permanency objective) to be considered in the following order of preference as determined to be appropriate in the best interests of the child—

(a) family preservation—the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent;

(b) family reunification—the objective of ensuring that a child who has been removed from the care of a parent of the child is returned to the care of a parent;

(c) adoption—the objective of placing the child for adoption under the Adoption Act 1984;

(d) permanent care—the objective of arranging a permanent placement of the child with a permanent carer or carers;

(e) long-term out of home care—the objective of placing the child in—

(i) a stable, long-term care arrangement with a specified carer or carers; or

(ii) if an arrangement under subparagraph (i) is not possible, another suitable long-term care arrangement.

(2) For the purposes of subsection (1)(c) to (e), it is to be preferred that a child is placed—

(a) with a suitable family member of the child or other person of significance to the child; or

(b) if a placement under paragraph (a) is not possible, with another suitable carer or carers.

(3) For the purposes of this section, a permanency objective of family reunification would be appropriate if the child has been in out of home care for less than 12 months and the safe reunification of the child with a parent is likely to be achieved.

(4) For the purposes of this section, a permanency objective set out in subsection (1)(c) to (e) would be appropriate if—

(a) the child has been in out of home care for 12 months and there is no real likelihood for the safe reunification of the child with a parent in the next 12 months; or

(b) except in exceptional circumstances, the child has been in out of home care for a total of 24 months.
Children and Young Persons (Care and Protection) Act 1998 (NSW)

Section 10A    Permanent placement principles

(1) In this Act:
permanent placement means a long-term placement following the removal of a child or young person from the care of a parent or parents pursuant to this Act that provides a safe, nurturing, stable and secure environment for the child or young person.

(2) Subject to the objects in section 8 and the principles in section 9, a child or young person who needs permanent placement is to be placed in accordance with the permanent placement principles.

(3) The permanent placement principles are as follows:

(a) if it is practicable and in the best interests of a child or young person, the first preference for permanent placement of the child or young person is for the child or young person to be restored to the care of his or her parent (within the meaning of section 83) or parents so as to preserve the family relationship,

(b) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), the second preference for permanent placement of the child or young person is guardianship of a relative, kin or other suitable person,

(c) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a) or (b), the next preference is (except in the case of an Aboriginal or Torres Strait Islander child or young person) for the child or young person to be adopted,

(d) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), (b) or (c), the last preference is for the child or young person to be placed under the parental responsibility of the Minister under this Act or any other law,

(e) if it is not practicable or in the best interests of an Aboriginal or Torres Strait Islander child or young person to be placed in accordance with paragraph (a), (b) or (d), the last preference is for the child or young person to be adopted.

PROTECTION ORDER (TIME LIMITED) – POSSIBLE MODEL FOR PERMANENCY PLANNING

Provisional protection & care

Court can only make PO (TL) if reunification is a possibility

Protection order (time limited) (up to 12 months)

Court can only extend PO (TL) if reunification is viable and progressing

Order expires - reunification successful

Protection order (supervision) (up to 12 months)

Extension of protection order (time limited) (up to 12 months)

No order (child returned to family)

Order expires - reunification successful

Protection order (supervision) (up to 12 months)

Permanent order - protection order (until 18) - protection order (special guardianship)

Permanent order - protection order (until 18) - protection order (special guardianship)

Extension of PO(TL) beyond total 24 mths in OOHC in special circumstances only

0 Months

24 Months