

Improving children's safety, stability and wellbeing

**VCOSS Submission to the Commission for
Children and Young People's Permanency
Amendments Inquiry**

November 2016



About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

Contents

Promote children’s safety, stability and healthy development.....	3
The benefits of stability.....	3
Stability is more than legal permanence.....	4
Broader changes required for the child protection system.....	5
Recommendations.....	7
Impact of legislation.....	7
Case plans and cultural support plans.....	7
Permanency hierarchy.....	7
Implement broader changes to improve stability and outcomes for children.....	7
Maintain Aboriginal children’s connection to community, family and culture.....	7
Engage families and carers in the planning process.....	8
Provide targeted early intervention services.....	8
Maintain sibling relationships.....	8
Increase financial and practical supports for carers.....	8
Support children and young people to have their voices heard.....	8
Impact of legislation.....	9
Reunification timeframes.....	9
Risks of reunification timeframes.....	9
Enable courts to determine the most appropriate court order.....	10
Parental contact.....	11
Enable courts to decide on the frequency of parental contact.....	11
Build the skills of parents through therapeutic contact.....	13
Case plans and cultural support plans.....	13
Increase oversight of case plans.....	14
Address child protection workforce issues.....	14
Provide adequate resources to implement cultural support plans.....	15
VCOSS Submission: Permanency Amendments Inquiry.....	1

Permanency hierarchy	16
Avoid rigid adherence to the permanency hierarchy	16
Implement safeguards around adoption	18
Implement broader changes to improve stability and outcomes for children	20
Maintain Aboriginal children’s connection to community, family and culture	20
Engage families and carers in the planning process.....	21
Provide targeted early intervention services	22
Maintain sibling relationships	23
Increase financial and practical supports for carers.....	24
Support children and young people to have their voices heard	27

Promote children's safety, stability and healthy development

VCOSS welcomes the opportunity to provide feedback to the inquiry into the implementation of amendments arising from the *Children Youth and Families (Permanent Care and Other Matters) Act 2014*, the 'permanency amendments'.

The Victorian government should make every effort to promote the safety, stability and healthy development of children and young people involved in the child protection system. This involves providing families in contact with child protection with timely access to services to give them the best chances of remaining together or being successfully reunified. Where children cannot return safely to their care of their parent(s), they deserve opportunities to develop long-lasting positive and secure attachments with significant others.

The permanency amendments came into operation on 1 March 2016. The stated intent of the amendments is to promote timelier decision making and permanency for vulnerable children and young people. Permanency in this inquiry refers to an 'enduring care arrangement that promotes the child's safety, development and sense of belonging'.¹ In most cases permanency for a child will be found in the care of their parent(s) but in some cases, will be found in a permanent out-of-home care arrangement.

The benefits of stability

The current system takes too long for children, for whom family reunification is not possible, to achieve stability and permanency. The Protecting Victoria's Vulnerable Children's Inquiry (PVVI), found on average it takes 5 years between a child's first child protection report and a permanent care order being made, with many children experiencing multiple placements during this time.² Experiencing placement uncertainty and multiple placements can negatively affect children's

¹ Commission for Children and Young People, *Inquiry into The Implementation of the Children, Youth and Families Amendment (Permanent Care And Other Matters) Act 2014 (Permanency Amendments Inquiry): Consultation Paper*, CCYP, 2016.

² P Cummins, D Scott and B Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, 2012.

wellbeing and development and add to the trauma they have already experienced before entering care.^{3,4,5.}

Conversely, placement stability provides children with the best chance to form positive relationships and attachments, succeed at school, and experience positive development.^{6,7} This is particularly important for babies and infants. The development of reliable and responsive relationships between children and their caregivers is one of the most critical factors in young children's social, emotional and cognitive development.⁸

Stability is more than legal permanence

The legislative amendments largely focused on achieving legal permanence, which is the legal relationship between a child or young person and their family/carer. However, making a permanent care order does not guarantee stability, security and continuity for children.⁹ The quality and suitability of the care relationship, and how the child feels about their placement is critical to its success. The child's characteristics, including their age and background; the carer's characteristics and the home environment provided and the operation of the out-of-home care system will all affect the stability of the placement.^{10,11.}

There are situations where changing placement to get a better fit will be in the best interests of the child, and provide greater stability and security in the long term.¹² Equally, children may find long-term, stable placements, such as with extended family, without a permanent care order.

“—there is a clear distinction between the department making the decision that a child requires a permanent alternative care arrangement and the child being placed in one permanent placement. A long-term or permanent care order in itself may not preclude multiple placements if finding the optimal ‘forever family’ (or ‘family for life’) is the priority...

³ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work (2006), 59, 3, 265-280.

⁴ P Delfabbro, H Jeffreys, N Rogers, R Wilson and M Borgas, *Certainty for Children in Care: Children with Stable Placement Histories in South Australian Out-of-home Care 2000-2005*, South Australian Department for Families and Communities Research and Analysis Unit, Adelaide, 2007.

⁵ Office of the Guardian for Children and Young People, [Literature Review: The impact and experience of moving while in care](#), Government of South Australia, July 2013.

⁶ Office of the Guardian for Children and Young People, [Literature Review: The impact and experience of moving while in care](#), Government of South Australia, July 2013.

⁷ P Delfabbro, H Jeffreys, N Rogers, R Wilson and M Borgas, *Certainty for Children in Care: Children with Stable Placement Histories in South Australian Out-of-home Care 2000-2005*, South Australian Department for Families and Communities Research and Analysis Unit, Adelaide, 2007.

⁸ S Mathers, N Eisenstadt, K Sylva, E Soukakou, K Ereky-Stevens, *Sound Foundations: A Review of the Research Evidence on Quality of Early Childhood Education and Care for Children Under Three: Implications for Policy and Practice*, The Sutton Trust, University of Oxford, 2014.

⁹ Australian Institute of Health and Welfare, *Permanency planning in child protection: A review of current concepts and available data 2016*, Child welfare series no. 64, Cat. No. CWS 58, Canberra, AIHW, 2016.

¹⁰ Office of the Guardian for Children and Young People, [Literature Review: The impact and experience of moving while in care](#), Government of South Australia, July 2013.

¹¹ P Delfabbro, H Jeffreys, N Rogers, R Wilson and M Borgas, *Certainty for Children in Care: Children with Stable Placement Histories in South Australian Out-of-home Care 2000-2005*, South Australian Department for Families and Communities Research and Analysis Unit, Adelaide, 2007.

¹² Office of the Guardian for Children and Young People, [Literature Review: The impact and experience of moving while in care](#), Government of South Australia, July 2013.

*Conversely, stability can occur without permanency-related orders. That is, a child may be in a long-term, stable care situation without having the legal permanency of a long-term order or adoption.*¹³

The literature describes permanency as consisting of three key elements, relational, physical and legal permanence:

- relational permanence – stable, unconditional emotional connections. This may include relationships with carers and birth parents, siblings, extended family, friends and significant others.
- physical permanence - safe, stable living arrangements. It may also include the broader physical environment including school and neighborhood.
- legal permanence - the legal relationships between a child or young person and their carer, as determined by the child welfare system^{14,15,16}

Long term permanency planning should take into account all three elements.¹⁷ Stable living arrangements, positive relationships and a sense of belonging affect the stability of a child's placement.¹⁸ While achieving legal permanence may lead to relational and physical permanence, it does not automatically achieve it.

Entering care or moving placements, not only disrupts children's relationship with their biological parents and/or carers but can affect their connections with siblings and extended family, friends and other significant people in their life,¹⁹ as well as connections to community and school. Options to improve stability for children, in addition to the care placement, should also be considered, such as enabling a child to continue to attend the same school, sport and recreational activities, maintaining cultural connections, and sustain relationships with friends and extended family.

Broader changes required for the child protection system

VCOSS supports the intent of providing children with continuity and stability by making informed and timely decisions about permanent arrangements for children to live with their family or in other home-based care arrangements. All children deserve the opportunity to live in a stable, loving family, which promotes their positive emotional, psychological and physical development.

However, while some of the legislative changes are positive we believe other changes may result in negative unintended consequences for some children and young people. Our submission below

¹³ AIHW, *Permanency planning in child protection, A review of current concepts and available data*, AIHW, 2016

¹⁴ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work (2006), 59, 3, 265-280.

¹⁵ E Brady, *Permanency in out-of-home child welfare care*, Practice and Research Together (PART), Ontario Association of Children's Aid Societies, 2014.

¹⁶ T Stott and N Gustavsson, 'Balancing permanency and stability for youth in foster care', *Children and Youth Services Review*, 32(4), 2010, pp. 619-625.

¹⁷ J Osmond and C Tilbury, 'Permanency Planning Concepts', *Children Australia*, Vol 37, Issue 03, 2012, pp 100-107.

¹⁸ E Brady, *Permanency in out-of-home child welfare care*, Practice and Research Together (PART), Ontario Association of Children's Aid Societies, 2014.

¹⁹ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work (2006), 59, 3, 265-280.

addresses some of the key legislative changes most pertinent to our membership. Our position, while representative of many members, is certainly not unanimous. VCOSS members hold diverse views on the impacts of the particular legislative amendments, in particular the reunification timeframes. VCOSS's general position is the best interests of children and young people are served when courts have strong oversight and discretion to tailor decisions to the individual needs and circumstances of each child and young person.

The legislative amendments also do not address the underlying reasons some children experience ongoing instability and uncertainty in care. We believe broader changes to the child protection system are required to improve the safety, stability and wellbeing of children and young people. In particular, VCOSS members identify more timely access to early intervention services for families to provide them with the best chance of remaining together or being reunified. For children who do enter care, greater stability can be achieved by listening to the views of children and young people; sustaining relationships with siblings and extended family, friends and significant others; maintaining connection to community and culture, particularly for Aboriginal children; and providing more financial and practical assistance to carers.

Recommendations

Impact of legislation

Reunification timeframes

- Reinstating the Children's Court powers to extend Family Reunification Orders beyond current timeframes, where deemed in the best interests of the child

Parental contact

- Provide Children's Court's with the power to attach conditions to care by secretary orders
- Reinstating the Children's Court's power to order contact between a child and their parents at the frequency deemed most appropriate
- Invest in programs which provide therapeutic family contact and build the skills of parents.

Case plans and cultural support plans

- Increase oversight for case planning to ensure correct processes are followed and timely reviews are held.
- Address child protection workforce issues, including resourcing and appropriate training.
- Retain the requirement to develop a cultural support plan for every Aboriginal child and young person in out-of-home care.
- Increase investment in cultural support planning, so funding is available to action items contained in the plan.
- Increase oversight of cultural supports planning, to ensure meaningful plans are created for every Aboriginal child and young person.

Permanency hierarchy

- Enable flexibility to select the most appropriate care arrangement for children, rather than focusing on adhering to the permanency hierarchy.
- Implement safeguards to ensure adoption is not pursued when it is not in the best interests of the child and family.

Implement broader changes to improve stability and outcomes for children

Maintain Aboriginal children's connection to community, family and culture

- Implement recommendations from the Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria and the Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria.

- Invest in culturally appropriate, intensive and targeted family support services for Aboriginal children and families.

Engage families and carers in the planning process

- Increase access to advocacy and culturally safe legal assistance for families when first coming into contact with the child protection system.
- Actively engage families and carers in the planning process.

Provide targeted early intervention services

- Fund additional Targeted Care Packages for placement prevention and reunification.
- Fund child and family services to meet demand.
- Fund specialist services, including drug and alcohol treatment, mental health, and housing services to meet demand.

Maintain sibling relationships

- Amend the legislation to include specific provisions relating to siblings being co-located in out- of-home care and maintaining their relationships.
- Develop policy guidance on facilitating contact between siblings when placement together is not possible, and guidance about when it is not desirable for siblings to be placed together.

Increase financial and practical supports for carers

- Enable all types of carers (foster, kinship and permanent carers) to be eligible for carer reimbursements which align with the needs of the child, as well as out of pocket expenses such as school and medical costs.
- Increase access to training and practical assistance to all carers to help them provide stable care arrangements.

Support children and young people to have their voices heard

- Ensure children and young people's voices are heard in child protection matters, and are assisted to develop and express their views through access to independent advocates.
- Provide children with access to independent legal representation, where developmentally appropriate.

Impact of legislation

Reunification timeframes

Recommendation

- Reinstating the Children's Court powers to extend Family Reunification Orders beyond current timeframes, where deemed in the best interests of the child

Risks of reunification timeframes

Changes to the legislative amendments introduced 12 month timelines for family reunification. This can be extended to 24 months only if the Court is satisfied there is compelling evidence reunification is likely to occur during this time. The timeframes are cumulative and apply retrospectively.

VCOSS endorses more timely decisions about the care arrangements of children and young people. However, we believe decisions must take into account relational and physical permanence, not just legal permanence. Imposing strict timeframes on the use of Family Reunification Orders may risk decisions being made which are not in the best interests of children and young people. In some cases, it may be clear children do not have a reasonable chance of returning home and permanent care orders can be made quite quickly. However, in other cases an unrealistic timeframe may limit the option of a child returning home²⁰, when this may be the best outcome for the child.

Many families face complex interrelated issues, such as family violence, insecure income and/or unemployment, housing insecurity and mental health issues which require more than 12 or 24 months to resolve. VCOSS members report these timeframes can be particularly difficult to achieve for single mothers, particularly those who have experienced family violence. This is compounded by families experiencing substantial delays accessing the services they require to enable change. This may result in children being placed on permanent care orders before their families have received adequate assistance. VCOSS members are particularly concerned strict timeframes will have a detrimental impact on Aboriginal children in out-of-home care, fast-tracking their removal from families and communities.

In time, and with continued support these parent(s) may be in a good position to provide a safe nurturing environment and returning home may provide the best long-term outcome for children and young people. VCOSS members report instances of children and young people being

²⁰ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work, 59 (3), 2006, pp. 265-280.

successfully and permanently reunified with their families beyond two years. Similarly, some evidence from the US suggests reunification timeframes of one to two years may be unrealistic, and successful reunifications continue to occur after this time period.²¹

Case study – Aboriginal children successfully reunified with family

Through the ‘as if’ guardianship project, Victorian Aboriginal Child Care Agency (VACCA) was able to successfully reunify 46 per cent of Aboriginal children who have been in out-of-home care for long durations, with their parents or another family member.²² In all cases involved in the project, VACCA were able to re-establish positive relationships between the child and their family, including extended family.

There is also a risk fixed timelines may lead to some children being returned to their families before issues have been fully resolved.²³ This may pose risks of harm to children and result in them reentering care. Since the introduction of the timelines, VCOSS members report some instances of children being returned to their families before families are ready, in order to meet the timeframes.

Enable courts to determine the most appropriate court order

Both among VCOSS members and the literature there is debate about timeframes for permanency planning.²⁴ However, we believe the best interests of children and young people are achieved by providing courts with the flexibility to determine the most appropriate court order, including family reunification, based on particular needs and circumstances of children and young people. The best decision for each child will depend on a range of factors including their age and development needs and family relationships.²⁵ The decision must weigh up all the risks and take into account a wide range of factors including:

- the child’s age and development needs and wishes
- the time children have spent in care
- the family’s strengths and characteristics
- the child’s attachment to the birth parents and to significant others including siblings, extended family and carers
- child’s current care arrangements and level of stability
- risk and safety factors
- advice from service providers and experts

²¹ E Brady, *Permanency in out-of-home child welfare care*, Practice and Research Together (PART), Ontario Association of Children’s Aid Societies, 2014.

²² Naughton&Co, S.18 ‘As If’ Project Evaluation Report, VACCA, 2015, p.42.

²³ Child Welfare Information Gateway, *Family Reunification: What the Evidence Shows*, U.S. Department of Health and Human Services, Administration for Children and Families Administration on Children, Youth and Families Children’s Bureau, Washington, DC, June 2011, p.6

²⁴ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work, 59 (3), 2006, pp. 265-280.

²⁵ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work, 59 (3), 2006, pp. 265-280.

Parental contact

Recommendation:

- Provide Children's Court's with the power to attach conditions to care by secretary orders
- Reinstate the Children's Court's power to order contact between a child and their parents at the frequency deemed most appropriate
- Invest in programs which provide therapeutic family contact and build the skills of parents.

“The uniqueness of each child’s and family’s situation (and attachment relationships) means that it is impossible to provide general recommendations for contact.”²⁶

Enable courts to decide on the frequency of parental contact

Regular, quality and meaningful parent-child relationships can have a positive impact on their wellbeing. It can increase the likelihood of children being reunified with their families and reduce the time spent in out-of-home care^{27,28} It can also improve placement stability.²⁹ Many young people return to live with their birth families at some time.³⁰ Aboriginal children and young people are particularly likely to return to their biological family once they leave care³¹ and identify maintaining relationships with their biological family as their primary concern.³² Fostering positive quality contact with birth parents, and other family members, can help make this return more successful.

Although, there are situations where regular contact may be detrimental to children³³ and create difficulties and complexities maintaining care arrangements.³⁴ For instance, there are cases in South Australia where children have requested there be no contact with their birth families.³⁵ What

²⁶ D Scott, C O'Neill and A Minge, *Literature review: Contact between children in out-of-home care and their birth families*, Centre for Parenting & Research, NSW Department of Community Services, July 2005.

²⁷ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work (2006), 59, 3, 265-280.

²⁸ S Panozzo, A Osborn and L Bromfield, *Issues relating to reunification, NCPC Brief No. 5 — October 2007*, Child Family Community Australia, AIHW.

²⁹ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work (2006), 59, 3, 265-280.

³⁰ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work, 59 (3), 2006, pp. 265-280.

³¹ Victorian Aboriginal Child Care Agency (VACCA), *Submission in response to: Victorian Parliamentary Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*, VACCA, July 2015, p. 19.

³² Office of the Guardian for Children and Young People, *Literature Review: The impact and experience of moving while in care*, Government of South Australia, July 2013.

³³ C Tilbury and J Osmond, *Permanency planning in foster care: a research review and Guidelines for practitioners*, Australian Social Work (2006), 59, 3, 265-280.

³⁴ P Delfabbro, H Jeffreys, N Rogers, R Wilson and M Borgas, *Certainty for Children in Care: Children with Stable Placement Histories in South Australian Out-of-home Care 2000-2005*, South Australian Department for Families and Communities Research and Analysis Unit, Adelaide, 2007.

³⁵ P Delfabbro, H Jeffreys, N Rogers, R Wilson and M Borgas, *Certainty for Children in Care: Children with Stable Placement Histories in South Australian Out-of-home Care 2000-2005*, South Australian Department for Families and Communities Research and Analysis Unit, Adelaide, 2007.

will be in the best interest for each child and young person, will differ based on their unique circumstances. Some children may benefit from limited contact and some may have better outcomes and greater stability from more frequent contact.

The legislative amendments arbitrarily place a limit of four contact visits per year between the child and their biological parents, once they are placed on a permanent care order,³⁶ although, additional contact can be arranged from time to time by agreement. Further, courts cannot attach conditions to care by Secretary orders, such as contact between the child and their parents. This will particularly impact children who have been under a custody to Secretary order for two or more years, who will automatically transfer to the new care by Secretary order.³⁷ Unlike the new care by Secretary orders, Custody to secretary orders enabled courts to impose conditions.

Placing restrictions on the conditions that can be applied to court orders, does not allow the wishes of children, or the risks and benefits of parental contact, to be considered. VCOSS members also questioned how families can demonstrate their ability to care for their child, if they are provided with limited opportunities for contact. Providing courts with the ability to determine the nature and frequency of contact with birth parents and other family members, is more likely to provide the best outcomes for all children.

Case study – Limitations on parental contact once child moves to permanent care

Julia* is a 7 year old girl who has been in care for five years, during which time she has experienced multiple placements. Julia is very settled in her current foster care placement. DHHS, the children's court and the foster carers are keen to make this a permanent care placement, to provide Julia with greater stability.

Julia currently has weekly face-to-face contact with her biological parents, and through her independent child lawyer has cleared expressed her desire to continue this contact frequency. The foster carers and biological parents are happy with the current arrangements and both the DHHS child protection worker and the Magistrate believe maintaining regular contact is in Julie's best interests.

However under the legislative amendments, changing Julie's protection order to a permanent care order, would place a limit of four contacts per year. The magistrate has adjourned this case and is trying to find a solution which meets the best interests of the child.

*name has been changed.

³⁶ Child Youth and Family Act s321 (1) (d), (1A)

³⁷ Child Youth and Family Act s 154 (4) (b)

Build the skills of parents through therapeutic contact

Increasing access to programs which actively build the skills of parents, such as the Enhanced Therapeutic Contact Service, can help foster positive interactions between children and their families. This may improve the chances of a timely reunification of children with their families, or where this is not possible, help promote and maintain healthy relationships.

Enhanced Therapeutic Contact Service³⁸

The Enhanced Therapeutic Contact Service (ETCS) provides therapeutic contact and transportation services to children and families during court ordered supervised contact. It was implemented by Connections in 2013, with funding from DHHS.

The program employs a qualified and experienced team of multidisciplinary staff including social workers, occupational therapists, psychologists and therapeutic support workers.

ETCS helps create safe and relaxed environments for families to interact positively. It uses these contact sessions as an opportunity to coach and build the skills of families, rather than traditional models of supervised contact, which largely observe contact and provide minimal support.

Under ETCS, contacts are tailored to the individual needs of children, young people and families and may be structured, semi-structured or free play. Children and families are encouraged to participate in planning activities to build on their strengths and reach their goals.

For reunification case plans, staff encourage positive interactions, as well as attachment and bonding between children and their families. The program helps family members respond appropriately to children's behaviours and emotions and builds their parenting skills, such as identifying and responding to cues, or developing routines, boundaries and disciplinary skills. This helps support the child's reunification home.

The program can also work with children on a permanent care case plan, to promote positive contact between children and their biological family, and encourage children's positive understanding of their history and identity. The program also helps birth and permanent care families to develop independent relationships.

Case plans and cultural support plans

Recommendations

- Increase oversight for case planning to ensure correct processes are followed and timely reviews are held.

³⁸ Connections UnitingCare, *Connections Out of Home Care Submission to Community Affairs References Committee*, October 2014, p.3 -7.

- Address child protection workforce issues, including resourcing and appropriate training.
- Retain the requirement to develop a cultural support plan for every Aboriginal child and young person in out-of-home care.
- Increase investment in cultural support planning, so funding is available to action items contained in the plan.
- Increase oversight of cultural supports planning, to ensure meaningful plans are created for every Aboriginal child and young person.

Increase oversight of case plans

Commencing case planning at the time a report is substantiated, rather than waiting until a protection order is made, can help provide more timely intervention. However, there is a risk this may lead to hasty, and incorrect, decisions being made about the likelihood of reunification. It is therefore crucial Department of Health and Human Services (DHHS) child protection workers obtain holistic, accurate information when developing case plans, and follow correct processes such as holding Aboriginal Family-Led Decision Making conferences.

Undertaking timely, regular case reviews, can also ensure plans are up-to-date if circumstances change or new information becomes available. VCOSS members report instances of case plan reviews not occurring, and lengthy delays in reviewing plans. The DHHS Stability Planning and Permanent Care Project, identified case plans lacked triggers for when reviews should occur and as a result 'there were often lengthy periods in which the existing case plan for the child had been overtaken by events, or simply by the passage of time, but had not been thoroughly reviewed'.³⁹ Improving the oversight for case planning processes and review, including their timeliness and effectiveness, could help ensure plans are accurate and up-to-date for children.

VCOSS members also report families involved in child protection are often referred to their service by DHHS, but, are provided with very limited information on the family's circumstances. This makes it difficult for services to provide the most appropriate assistance and requires them to do their own assessment.

Address child protection workforce issues

VCOSS members report DHHS is under resourced leading to delays in case planning and supports being provided. Members report instances of lengthy delays in assigning child protection workers to cases. The DHHS Stability Planning and Permanent Care Project, also identified high workloads can lead to cases being re-prioritised and re-assigned, with children experiencing an average of 10-11 different child practitioners.⁴⁰ This makes it difficult for children and families to form

³⁹ Department of Health and Human Services, *Stability Planning and Permanent Care Project 2013–14: Final Report*, Victoria, 2015.

⁴⁰ Department of Health and Human Services, *Stability Planning and Permanent Care Project 2013–14: Final Report*, Victoria, 2015.

relationships with workers, creates delays due to workers needing time to understand the case and leads to some workers re-visiting matters the previous practitioner considered settled.⁴¹

VCOSS members also report under-resourcing and regular changes to case managers negatively impacts on workers being able to develop expertise and knowledge in working with parents with disability. Members report examples of children being removed because incorrect assumptions have made about their parental capacity based on their disability.⁴² The over-representation of parents with disability in child protection is influenced by prejudice, lack of understanding from practitioners and a lack of appropriate support.^{43,44}

Provide adequate resources to implement cultural support plans

The requirement to include cultural support plans for every Aboriginal⁴⁵ child and young person in care can help protect their cultural identity and connection to community. Previously this was only mandated for Aboriginal children on Guardianship to the Secretary Order and Long-term Guardianship to the Secretary Order. The legislative changes will necessitate a large expansion in the quantity of cultural support plans. The investment of \$5.33 million is a positive step, but VCOSS members advise this amount is insufficient to deliver meaningful plans and deliver on the cultural activities identified, including return-to-Country trips. The government can ensure high quality plans are implemented by providing additional brokerage funding for the implementation of plans. Findings from Taskforce 1000 identify serious quality issues, even with a much smaller cohort of cultural support plans.

*'the quality of the (cultural support) plans was overwhelmingly poor. Many plans were rudimentary and could be considered tokenistic. They had not been updated or reviewed and had minimal input from the child's parents, extended family or Aboriginal community, nor did they consider the child's views. Involvement and engagement with ACCOs in completing the plans did not occur consistently.'*⁴⁶

Regular monitoring and reporting can also help ensure plans are implemented for every Aboriginal child and young person in out-of-home care, as recommended by the Commission for Children and Young People.⁴⁷ A recent review of child protection cases revealed low compliance with the requirement to produce cultural support plans. Under existing arrangements, only 29 per cent of Aboriginal children who were mandated to have a cultural support plan had one in place.⁴⁸

⁴¹ Department of Health and Human Services, *Stability Planning and Permanent Care Project 2013–14: Final Report*, Victoria, 2015.

⁴² Office of the Public Advocate, *Rebuilding the village: Supporting families where a parent has a disability*, Report 2: Child Protection 2015, Office of the Public Advocate, 2015.

⁴³ A Lamont and L Bromfield, *Parental intellectual disability and child protection: Key issues*, AIFS, 2009.

⁴⁴ Office of the Public Advocate, *Rebuilding the village: Supporting families where a parent has a disability*, Report 2: Child Protection 2015, Office of the Public Advocate, 2015.

⁴⁵ Throughout this submission the term Aboriginal is used to refer to both Aboriginal and Torres Strait Islander peoples

⁴⁶ Commission for Children and Young People, 'Always was, always will be Koori children', *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Melbourne, Commission for Children and Young People, 2016, p. 74.

⁴⁷ Commission for Children and Young People, 'In the child's best interests', *Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, Commission for Children and Young People, 2016, p.33.

⁴⁸ Commission for Children and Young People, 'In the child's best interests', *Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, Commission for Children and Young People, 2016, p.23.

Permanency hierarchy

Recommendations

- Enable flexibility to select the most appropriate care arrangement for children, rather than focusing on adhering to the permanency hierarchy.
- Implement safeguards to ensure adoption is not pursued when it is not in the best interests of the child and family.

Avoid rigid adherence to the permanency hierarchy

Amendments to the *Children, Youth and Families Act 2005* introduced 'permanency objectives' to case planning. A permanency hierarchy, identifies the order of preference as follows:

- Family preservation – children remaining in the care of their parent
- Family reunification – child being placed in out-of-home care with the aim of returning them to the care of their parent
- Adoption – formally adopting children with another carer,
- Permanent care – arranging a permanent placement for a child with a permanent carer
- Long-term out-of-home-care – placing a child in a long-term care arrangement.

Being in stable, secure and permanent care arrangements is good for children's development and wellbeing. However, the most suitable option for each children will vary based on the particular circumstances of their case. Rigid adherence to the permanency hierarchy risks decisions being made which are not in the best interests of every child. Moving a child to a permanent care placement, if it is not a good match, is likely to be counterproductive.⁴⁹

There are many instances where children are in stable long-term out-of-home care placements, such as with extended family members. Due to various factors, these family members may not wish to make this a permanent care arrangement. For example, kinship carers frequently report tension or conflict with birth parents⁵⁰ and converting a kinship placement to permanent care may adversely impact these relationships. Legal issues around children's caring arrangements can often be adversarial and pit family members against each other.⁵¹ Converting a foster or kinship placement to permanent care or adopting the child will also result in reduced financial and other support, as explored further in this submission.

Since permanency amendments were introduced, VCOSS members report examples of kinship and foster carers being pressured by the department to become permanent carers and where this does not occur, the department has explored other alternative permanent care placements.

⁴⁹ E Brady, [Permanency in out-of-home child welfare care](#), Practice and Research Together (PART), Ontario Association of Children's Aid Societies, 2014.

⁵⁰ R Breman, *Peeling back the layers – kinship care in Victoria 'Complexity in Kinship Care' – Research Report*, Bapcare Research Unit in partnership with OzChild and Anchor, October 2014

⁵¹ M Kialy, *A review of kinship carer surveys: The "Cinderella" of the care system?*, CFCA PAPER NO. 31 2015, Child Family Community Australia, AIFS, 2015.

However, the current placement may provide the most optimal and stable environment for children's development. Pursuing legal permanence at the expense of relational or physical permanence may result in further disruption and instability for the child.⁵² It also fails to recognise the distinction between children being in stable, long-term care arrangements and children drifting in care, who experience multiple placements and disruptions.

While the PVVI recommended barriers to permanent care arrangements be removed, it also identified discretion should be applied when determining whether a permanent care order should be made.

*"... Where it is deemed not appropriate to do so (for example, where a child's stable foster placement would be disrupted), the decision not to make application for a permanent care order should be endorsed at a senior level."*⁵³

Case study – Kinship carers pressured to become permanent carers

This case study focuses on a sibling group of five Aboriginal children and their family. The three eldest children had already been placed in the care of paternal grandparents while the parents dealt with family violence and substance abuse issues. The grandparents maintained close relationships with the parents, involved them appropriately in the lives of their children. After continuing to struggle to engage in services and recovery from their complex personal problems the parents agreed to a permanent care order for the oldest three children in 2014.

In 2014 the parents had another child. This child was removed at birth and placed with the paternal aunt who lives with the paternal grandparents. The aunt has provided exceptionally good quality care. The mother has had regular access, has taken up the opportunity through access to stay connected with and support her children and access has been a positive experience for the children.

The mother has engaged in support services including developing her parenting capacity. The father continues to experience problems with substance abuse and violence. He has also been incarcerated intermittently during this period.

In 2016 the parents had another child and the mother is caring for this child with supports from family and the local Aboriginal agency. There are now no ongoing protective concerns. All reports are positive and the mother has also begun having more regular access with all of her children.

⁵² E Brady, *Permanency in out-of-home child welfare care*, Practice and Research Together (PART), Ontario Association of Children's Aid Societies, 2014.

⁵³ P Cummins, D Scott and B Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, 2012, p. liii.

Due to family reunification timelines being introduced in March 2016 and being applied retrospectively DHHS are pursuing a permanent care order for the two year old child, specifically seeking the Aunt's agreement to accept the permanent care of the child.

This has caused enormous grief and disruption for the family as they see the mother recovering and striving in her maternal role. There is no concern about the safety or health of the new baby, other than the father needing to engage in support and be supervised for access with his children (usually done by family members).

Should the Aunt not agree to a permanent care order for the two year old child DHHS will be obligated by the legislation to pursue another permanent care placement for them.

Potentially this could see the child placed in permanent care away from their family. Should the Aunt agree to a permanent care order this will exacerbate family tensions and conflict at a time when the child's mother has worked hard and demonstrated her parenting capacity to care for children.

The grandparents continue to hold hope for full recovery, and now have to deal with hostile court proceedings, where the mother and aunt are forced to contest each other.

*This case study was provided by Berry Street and is an extract from one of several case studies included in their submission to this inquiry.

Implement safeguards around adoption

The legislative changes may result in an increase in adoptions. For instance, the vast majority (87 of 94) of carer adoptions in 2014-15, occurred in New South Wales, where policies promote adoption as a method of achieving stability.⁵⁴ Adoption can provide a positive, stable environment for some children, but VCOSS members raise concerns about adoption taking place without families' consent and when it is not in the best interest of children. In particular, concerns are raised about the potential to permanently sever connections between Aboriginal children and their families and communities.⁵⁵

There is also a risk some parents, particularly those with an intellectual disability, may not fully understand the consequences of giving consent or be coerced into giving consent. VCOSS members report examples where parents with intellectual disability were pressured to consent to adoption without fully understanding the implications.

VCOSS recommends safeguards are developed to help prevent adoption being pursued when it does not serve the best interests of children and families. This includes ensuring all biological parents are made aware of their rights, and assisted to understand the impact of any decisions made. Where required, parents should have access to appropriately skilled legal representatives or advocates. The legislation could also be amended clarify the particular circumstances under

⁵⁴ Australian Institute of Health and Welfare, *Permanency planning in child protection: A review of current concepts and available data 2016*, Child welfare series no. 64, Cat. No. CWS 58, Canberra, AIHW, 2016.

⁵⁵ SNAICC, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, SNAICC, July 2016, p.9

which adoption can or cannot be pursued. As highlighted by Connections Uniting Care, the Adoption Act specifies circumstances under which courts can dispense of parental content. These could apply to many situations where children have been placed in out-of-home care.⁵⁶

⁵⁶ Connections UnitingCare, *Permanency Amendments Inquiry Submission to the Commission for Children and Young People*, November 2016.

Implement broader changes to improve stability and outcomes for children

Maintain Aboriginal children's connection to community, family and culture

Recommendations

- Implement recommendations from the *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria and the Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*.
- Invest in culturally appropriate, intensive and targeted family support services for Aboriginal children and families.

Aboriginal families continue to be substantially over-represented in the child protection system, with Aboriginal children in Victoria 12.3 times more likely to be on care and protection orders.⁵⁷ The number of Aboriginal children who have entered out-of-home care between June 2005 and June 2014 has grown by 149 per cent.⁵⁸ The impact of the permanency changes are therefore likely to disproportionately impact on Aboriginal children and families.

Maintaining cultural connection and identify is fundamental to the emotional, physical and spiritual wellbeing of Aboriginal children and young people. In light of the new permanency changes it is even more critical the Aboriginal Child Placement Principal (ACPP) is complied with to help more children safely remain with the families, be placed according to the placement hierarchy and their connection to culture, family and community be maintained.

*For an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity in connection with family, kin, culture, and country.*⁵⁹

Recent report of compliance with the ACPP⁶⁰ and case reviews as part of Taskforce 1000⁶¹ identified a range of systemic issues, including:

- incorrect identification of Aboriginality;

⁵⁷ Australian Institute of Health and Welfare, *Child Protection Australia 2014–15, Child Welfare Series Number 63*, AIHW, 2016, p.44.

⁵⁸ Commission for Children and Young People, 'In the child's best interests', *Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, Commission for Children and Young People, 2016, p.33.

⁵⁹ SNAICC, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, SNAICC, July 2016, p.5

⁶⁰ Commission for Children and Young People, 'In the child's best interests', *Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, Commission for Children and Young People, 2016, p.33.

⁶¹ Commission for Children and Young People, 'Always was, always will be Koori children', *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Melbourne, Commission for Children and Young People, 2016, p. 115.

- inadequate involvement of the Aboriginal Child Specialist Advice and Support Service, only occurring in 70 per cent of cases where decisions about permanent care orders were recommended.⁶²
- lack of evidence to demonstrate Aboriginal children are being placed at the highest level of the placement hierarchy, including with extended family and community. For example, over 60 per cent of Aboriginal children were placed with a non-Aboriginal carer.⁶³
- failure to convene timely Aboriginal Family-Led Decision-Making meetings, only occurring in 43.5 per cent of cases;⁶⁴ and
- lack of cultural support and case plans which identify approaches to continue connections with community and culture.

Implementing the recommendations of the *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria* and the *Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria* could help improve compliance with the ACPP and improve the stability and wellbeing of Aboriginal children and young people.

Additional investment in culturally appropriate, intensive and targeted family support services, including services which recognise and address intergenerational trauma, can help reduce the number of Aboriginal families entering child protection. It can also provide Aboriginal families with the best chance of successful reunification. Aboriginal Community Controlled Organisations are best placed to deliver services to their communities, but require adequate resources to deliver these services and to grow their workforce.

Engage families and carers in the planning process

Recommendations

- Increase access to advocacy and culturally safe legal assistance for families when first coming into contact with the child protection system.
- Actively engage families and carers in the planning process.

Ongoing collaboration with family members leads to good decision-making and better outcomes for children.⁶⁵ Yet VCOSS members report the perspectives of parents can be disregarded and not valued by child protection staff. Parents can also find the child protection system threatening and confusing.⁶⁶ This is compounded by the power imbalance between families and child protection

⁶² Commission for Children and Young People, 'Always was, always will be Koori children', *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Melbourne, Commission for Children and Young People, 2016, p. 115.

⁶³ Commission for Children and Young People, 'Always was, always will be Koori children', *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Melbourne, Commission for Children and Young People, 2016, p. 10.

⁶⁴ Commission for Children and Young People, 'Always was, always will be Koori children', *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Melbourne, Commission for Children and Young People, 2016, p. 115.

⁶⁵ C Tilbury and J Osmond, Permanency planning in foster care: a research review and Guidelines for practitioners, *Australian Social Work*, 59 (3), 2006, pp. 265-280.

⁶⁶ S Panozzo, A Osborn and L Bromfield, Issues relating to reunification, NCPC Brief No. 5 — October 2007, Child Family Community Australia, AIHW.

workers, particularly for Aboriginal families and parents with intellectual disability who are overrepresented in the child protection system.

Improving access to advocacy and specialist legal assistance, can empower parents to understand and participate in the process, and create better outcomes for children. Skilled advocates can build trust and understanding between families and child protection workers.⁶⁷ Yet VCOSS members report DHHS often views advocates as adversarial, instead of viewing their involvement as an opportunity to develop better outcomes. While parents can be accompanied by an advocate at child protection meetings, there is no requirement for families to be referred to advocacy services, and no structured programs to obtain advocacy support.⁶⁸ This can make it difficult for parents to access advocacy services.

Early access to culturally safe legal advice and representation for Aboriginal families engaged in the child protection system can also provide better outcomes for Aboriginal children and families. Implementing a mandatory Child Protection notification and referral system for Aboriginal families to an Aboriginal Community Controlled Organisation could help Aboriginal families get timely access to appropriate legal assistance.

VCOSS members also report carers can provide valuable information about the wellbeing of children to assist with effective case planning, but their input is often not considered. Listening to carers knowledge and experience of the child can also help ease children's transition into new placements or their reunification with their family.

Provide targeted early intervention services

Recommendations

- Fund additional Targeted Care Packages for placement prevention and reunification.
- Fund child and family services to meet demand.
- Fund specialist services, including drug and alcohol treatment, mental health, and housing services to meet demand.

Investing in culturally safe and inclusive prevention and intensive intervention services, can strengthen families' capacity to provide a safe and nurturing environment for their children. In turn, this helps prevent children entering the child protection system and provides children and families with the best chance of remaining together or being safely reunified. The \$2 million investment in individualised Family Preservation and Reunification Packages to support the implementation of the permanency amendments is welcome, but VCOSS members advise further funding for

⁶⁷ Office of the Public Advocate, Rebuilding the village: Supporting families where a parent has a disability, Report 2: Child Protection 2015, Office of the Public Advocate, 2015.

⁶⁸ Office of the Public Advocate, Rebuilding the village: Supporting families where a parent has a disability, Report 2: Child Protection 2015, Office of the Public Advocate, 2015.

prevention and reunification services is required to help more families access targeted, flexible assistance.

Families involved in the child protection system may face a range of complex and interrelated issues including family violence, substance misuse, mental health problems and socio-economic disadvantage.⁶⁹ Yet parent(s) often experience difficulty accessing specialised services due to lack of available services and long waiting lists. VCOSS members report it is common for children and their families to remain on lengthy waitlists for specialist services in the community, such as housing, alcohol and drug rehabilitation. This can limit the ability of children to be reunified with their families within mandated timeframes. Increasing funding of specialist services to meet demand, such as housing, mental health, financial counseling, housing and alcohol and other drug treatment services and early parenting centers, can help families access timely support.

There has also been significant growth in both the number of referrals and complexity of cases received by Child and Family Information, Referral and Support Teams (Child FIRST) and Integrated Family Support Services (IFS).⁷⁰ Child FIRST and IFS were established to provide early intervention services and help divert children and families from protective care; however funding has not kept pace with the growth in demand. This is placing pressure on services and causing them to concentrate on assisting children, young people and families with high needs and reducing their capacity to provide early intervention for families and help prevent problems from escalating.⁷¹ This results in some children and families facing disadvantage being unable to access services when they need it. Increasing funding to meet demand for child and family services and ensuring the new safety and support hubs are equipped to provide early interventions for vulnerable families will help families to access the right assistance when they need it.

VCOSS members report of a lack of support and education services, particular parenting programs, tailored to the needs of parents with disability.⁷² Parents with disability have to access mainstream parenting services which may not have the appropriate skills and experience. The over-representation of parents with disability, particularly intellectual disability in child protection,⁷³ could be partly addressed by providing families with access to tailored programs. Programs should be available to parents with disability who are at risk of, or who enter the child protection system.

Maintain sibling relationships

Recommendations

- Amend the legislation to include specific provisions relating to siblings being co-located in out- of-home care and maintaining their relationships.

⁶⁹ P Cummins, D Scott and B Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, 2012, p.30

⁷⁰ Victorian Auditor-General's Office, *Early Intervention Services for Vulnerable Children and Families*, May 2015, p. x.

⁷¹ Victorian Auditor-General's Office, *Early Intervention Services for Vulnerable Children and Families*, May 2015, p.vii

⁷² Office of the Public Advocate, *Rebuilding the village: Supporting families where a parent has a disability*, Report 2: Child Protection 2015, Office of the Public Advocate, 2015.

⁷³ A Lamont and L Bromfield, *Parental intellectual disability and child protection: Key issues*, AIFS, 2009.

- Develop policy guidance on facilitating contact between siblings when placement together is not possible, and guidance about when it is not desirable for siblings to be placed together.

Children in care benefit from living with and maintaining connections with their brothers and sisters.⁷⁴ Sibling relationships can help reduce adverse effects of trauma, anxiety, grief and loss experienced by children entering care, and provide emotional and social support into adulthood.^{75,76} Both the US and the UK have recognised the importance of placing siblings together and encourage co-placement through both practice and legislation.⁷⁷

There are currently no DHHS policies or legislative measures which mandate siblings be placed together or help maintain relationships between siblings.⁷⁸ Case reviews identify a high proportion of children, including Aboriginal children, are separated from their siblings.^{79,80} The DHHS Stability Planning and Permanent Care Project identified both inadequate planning for sibling placement and insufficient contact arrangements for siblings placed apart.⁸¹

More siblings could be placed together by introducing a legislative amendment to recognise the rights for siblings to be together in out-of-home care and have their sibling relationships maintained. This can be reinforced by developing policy guidance about how to facilitate greater contact between siblings when placement together is not possible, and guidance about when it is not desirable for siblings to be placed together.

Increase financial and practical supports for carers

Recommendations

- Enable all types of carers (foster, kinship and permanent carers) to be eligible for carer reimbursements which align with the needs of the child, as well as out of pocket expenses such as school and medical costs.
- Increase access to training and practical assistance to all carers to help them provide stable care arrangements.

VCOSS members report inadequate assistance for carers as a major barrier to the lack of placement stability and permanence. Carers report limited financial assistance to raise children

⁷⁴ J. J McDowall, *Sibling placement and contact in out-of-home care*, CREATE Foundation, Sydney, 2015.

⁷⁵ J. J McDowall, *Sibling placement and contact in out-of-home care*, CREATE Foundation, Sydney, 2015.

⁷⁶ S Panozzo, A Osborn and L Bromfield, Issues relating to reunification, NCPIC Brief No. 5 — October 2007, Child Family Community Australia, AIHW.

⁷⁷ S Panozzo, A Osborn and L Bromfield, Issues relating to reunification, NCPIC Brief No. 5 — October 2007, Child Family Community Australia, AIHW.

⁷⁸ Centre for Excellence in Child and Family Welfare Inc, *Permanency and reunification: working together in the best interests of the child*, 2016.

⁷⁹ J. J McDowall, *Sibling placement and contact in out-of-home care*, CREATE Foundation, Sydney, 2015.

⁸⁰ Commission for Children and Young People, 'Always was, always will be Koori children', *Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Melbourne, Commission for Children and Young People, 2016, p. 10.

⁸¹ Department of Health and Human Services, *Stability Planning and Permanent Care Project 2013–14: Final Report*, Victoria, 2015.

they are caring for as a primary concern.⁸² Carers may also experience further costs related to children's particular health and development needs, as a consequence of experiencing trauma.⁸³

Current foster carer allowances fall short of meeting the real costs of caring for children and young people, with a gap of around \$4,000 per year.⁸⁴ Lack of financial support deters up to 60 per cent of potential foster carers.⁸⁵ Similarly, half of all kinship carers report financial stress.⁸⁶ In foster care, there are five levels of care allowance based on the department's assessment of each child's needs.⁸⁷ However, kinship carers and permanent carers are automatically assigned to the lowest level of care allowance, regardless of their circumstances or the complexity of issues experienced by children in their care.

Children and young people entering the out-of-home-care system are also presenting with increasingly complex needs.⁸⁸ While foster carers and kinship carers receive some training, it does not sufficiently equip them with the skills required to manage children's emotional and behavioural issues, as a result of experiencing trauma. Providing carers with adequate training and support to manage trauma related behaviours can help prevent placements breaking down.⁸⁹ Surveys of kinship carers also highlight other gaps in support including access to respite, access to counselling and support groups, legal assistance in court proceedings, and help managing relationships and contact with the children's parents.⁹⁰

The government can help provide vulnerable children and young people with stable, warm and supportive placements, by providing all carers with adequate financial and practical assistance. Carer allowances, and access to practical assistance should be aligned to the needs of the child in care, rather than the type of caring arrangement. It could also ensure adequate coverage of out of cost expenses such as medical and educational costs.

Lack of financial and practical support can also pose a barrier to carers becoming permanent carers or adopting children in their care. The DHHS Stability Planning and Permanent Care Project identified a fear of lack of support deters people from becoming carers.⁹¹ It also deters foster and kinship carers from becoming permanent carers for children in their care. The report recommended a review of financial and practice assistance provided to permanent carers be undertaken, and a

⁸² M Kialy, A review of kinship carer surveys: The "Cinderella" of the care system?, CFCA PAPER NO. 31 2015, Child Family Community Australia, AIFS, 2015.

⁸³ M Kialy, A review of kinship carer surveys: The "Cinderella" of the care system?, CFCA PAPER NO. 31 2015, Child Family Community Australia, AIFS, 2015.

⁸⁴ Foster Care Association of Victoria, *Claims for Improvement Manifesto: July 2016 Victorian foster care*, 2016.

⁸⁵ Berry Street and Foster Care Association of Victoria, *Save Foster Care*, <http://savefostercare.org.au/about>, accessed 16 September 2016.

⁸⁶ R Breman, *Peeling back the layers – kinship care in Victoria: 'Complexity in Kinship Care' – Research Report*, Baptcare Research Unit in partnership with OzChild and Anchor, 2014,

http://www.baptcare.org.au/advocacy/research/Documents/BaptcareKinshipReport_WEB.pdf

⁸⁷ Department of Health and Human Services, *Care allowances and other financial support for carers*, June 2016.

⁸⁸ ACIL Allen Consulting, *Professional Foster Care: Barriers, opportunities and options*, Melbourne, 2013.

⁸⁹ A Osborn, S Panozzo, N Richardson and L Bromfield, *Foster families*, NCPC Brief No. 4, Child Family Community Australia, AIFS, @007.

⁹⁰ M Kialy, A review of kinship carer surveys: The "Cinderella" of the care system?, CFCA PAPER NO. 31 2015, Child Family Community Australia, AIFS, 2015.

⁹¹ Department of Health and Human Services, *Stability Planning and Permanent Care Project 2013–14: Final Report*, Victoria, 2015, p. 8.

post-placement support service be established to provide advice, counselling and financial assistance for permanent carers.⁹²

VCOSS members report the lack of support may also prevent some carers from adopting children in their care. Once carers adopt children, the Department ceases to have any responsibility or oversight for the children and adoptive parents do not receive ongoing financial or practical support.

Case study – foster care family unable to adopt children due to lack of support

Mackenzie* and Tilly* were four year old twin girls living in a regional town in NSW. They had two siblings. Sadly, their mum, Anne*, passed away suddenly and care was urgently needed for the four children. Their father, David*, had lived with them for a short time but Anne and the children had left David as a result of family violence. David wasn't part of their lives when Anne passed away. A close relative of Anne's said she could care for the siblings but couldn't take the twins. A foster care placement was found for Mackenzie and Tilly, with the Poulos family.

Jenny Poulos* was a psychologist with three teenage children. She was well suited to caring for Mackenzie and Tilly and had a good understanding of their trauma-based behaviours. Mackenzie's behaviour was particularly problematic at times, and Jenny relied on the support of her NGO case managers for reflection, parenting advice and support when Mackenzie's behaviour was challenging. Mackenzie was particularly scared of her father and would have flash-backs of his violence towards her, her siblings and Anne.

When the adoption laws were relaxed in NSW, Jenny was encouraged to consider adopting Mackenzie and Tilly (now 7). Anne's family supported this arrangement. FACS located David and he didn't oppose the adoption.

Jenny commenced the pre-adoption process. When she learnt she would no longer receive any financial or case management support after adopting Mackenzie and Tilly, she decided she couldn't proceed. All she wanted was to give the girls a permanent and secure home, and felt the adoption process would help. Jenny knew adoption would erase any fears Mackenzie had that one day her dad could come and get her. However, she also knew as the girls entered adolescence she would need more support (including financial support) to care for them. She had experience raising teenagers and knew she couldn't care for the girls after support was dropped following the adoption.

Although she wanted nothing more than to give the girls the security of a loving home environment, she knew she couldn't do it without support, and didn't proceed with the adoption.

⁹² Department of Health and Human Services, *Stability Planning and Permanent Care Project 2013–14: Final Report*, Victoria, 2015, p. 8.

* Names changed

VCOSS members report the lack of framework or guidelines for undertaking permanent care may also pose a barrier to recruiting permanent carers and converting foster carers to permanent care. Implementing a state-wide framework for permanent carers could help provide a consistent approach to training, assessments and post-placement support.⁹³ This could also help formalise arrangement for fosters carers to convert to permanent carers.

Support children and young people to have their voices heard

Recommendations

- Ensure children and young people's voices are heard in child protection matters, and are assisted to develop and express their views through access to independent advocates.
- Provide children with access to independent legal representation, where developmentally appropriate.

The literature highlights the benefits of listening to children views and involving children and young people in decision-making, where developmentally appropriate.^{94,95} Children and young people may have opinions on their preferred carers, but also their connections with immediate and extended family members, and other important considerations such as their preferred school. Too often, young people are not consulted in decisions about their care arrangements.⁹⁶ CREATE's survey of children and young people in out-of-home care identified they wanted more meaningful participation in decisions affecting their lives.⁹⁷

Children of any age require appropriate information and counselling to develop and express their views. VCOSS recommends independent advocates, with early childhood or youth expertise, are available to work with children to represent them.

We also believe, children should be granted access to independent legal representation where developmentally appropriate. The *Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013* removed the right of children under the age of 10 to separate legal representation. Prior to this, Courts could make a judgment regarding the maturity and capacity of children under the age of 10.⁹⁸ A child's right to adequate representation and to be heard in all

⁹³ Connections UnitingCare, Permanency Amendments Inquiry Submission to the Commission for Children and Young People, November 2016.

⁹⁴ C Tilbury and J Osmond, Permanency planning in foster care: a research review and Guidelines for practitioners, *Australian Social Work*, 59 (3), 2006, pp. 265-280.

⁹⁵ Office of the Guardian for Children and Young People, [Literature Review: The impact and experience of moving while in care](#), Government of South Australia, July 2013.

⁹⁶ P Cummins, D Scott and B Scales, Report of the Protecting Victoria's Vulnerable Children Inquiry, Department of Premier and Cabinet, 2012, p. 96.

⁹⁷ J McDowell, *Experiencing Out-of-Home Care in Australia: The Views of Children and Young People*, CREATE Report Card 2013, CREATE Foundation, 2013.

⁹⁸ Berry Street, *Submission Victorian Legal and Social Issues Committee Inquiry Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*, July 2015.

decisions about their lives is enshrined in Article 12 of the UN Convention on the Rights of the Child.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.⁹⁹

Children and young people should also be consulted in any reforms to child protection policies and practices. Their direct experience can provide valuable insight into what works best and the risks and benefits of proposed changes.

⁹⁹ United Nations, Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

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