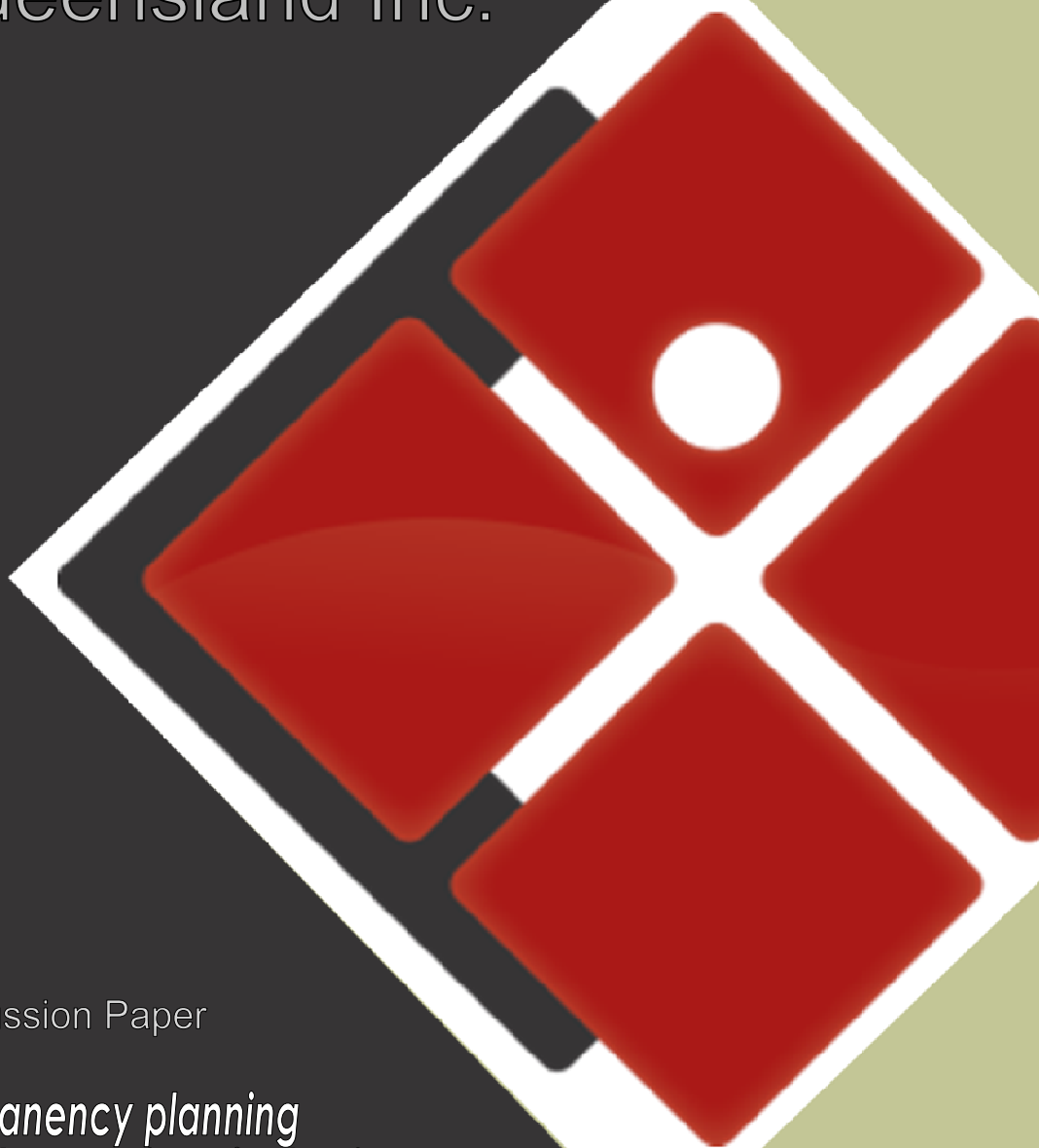


PeakCare Queensland Inc.



Discussion Paper

*Permanency planning
and the question of adoption*

February 2013

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BACKGROUND

On 1st July 2012, the Queensland Child Protection Commission of Inquiry (the Commission) was established for purposes of making recommendations for 'charting a new roadmap for child protection over the next decade'. The Honourable Tim Carmody SC was appointed as Commissioner and charged with the responsibility of providing a report with recommendations to the Premier by 30th April 2013.

Witnesses appearing at public hearings of the inquiry as well as submissions lodged by individuals and organisations have raised concerns and issues about permanency planning for children¹ who might otherwise be facing long term guardianship to the 'chief executive'² and placement in out-of-home care. Some contributors have asserted that adoption should be used more frequently to meet these children's need for long term stability and security.

Views and factors interested parties cite as reasons to discuss permanency planning and to consider adoption as an option for achieving permanency in the care provided for children include:

- the increasing number of children living in long term out-of-home care arrangements, the associated pressure this places on the foster care system and the subsequent increased use of (costly) residential care
- the increasing proportion of children who are being made subject to long term orders
- the trend indicating that children are experiencing longer stays and more placements while living in out-of-home care
- an apparent 'frustration' with seemingly intractable parents who are unable or unwilling to remedy the concerns that keep their child/ren in statutory care and the associated view that children are subject to multiple unsuccessful reunification attempts
- children's needs and desire for permanency, stability and emotional security
- concerns about the harm to children caused by delaying decision making about permanency arrangements, and
- concerns about the window of opportunity lost in children's brain development when permanency is delayed and primary attachments are disrupted.

In addition to issues about permanency planning and adoption being raised by witnesses at the public hearings, other witnesses have also been questioned about their views concerning these matters. The topic also received attention in the Commission's *October 2012 options for reform paper*.

¹ The terms 'child' and 'children' have been used to refer to persons aged 0 to 17 years. Where specifically referring to older adolescent children, the terms 'young person' and 'young people' have been used.

² The term 'chief executive' has been used in the same manner in which it is used in the *Child Protection Act 1999* (i.e. it refers to the Director-General of the Department of Communities, Child Safety and Disability Services).

Most who have expressed views about this matter to the Commission seem to agree that 'open adoption' has a place in a continuum of permanency options. Most mention the specific and tragic historical context that must be taken into account in considering permanency options, particularly adoption, for Aboriginal and Torres Strait Islander children.

Some advocate setting specific timeframes for decision making in the process of permanency planning. Some argue that adoption should constitute the next preferred option when a child's reunification with family is not possible. Some advocate that, in some circumstances, parental consent to a child's adoption should be dispensed with and that there should be no or limited contact between the adopted child and their biological family until the child reaches adulthood.

In entering into further discussion about permanency planning and adoption, it should be acknowledged that understandings of, and approaches to, adoption have changed over time in line with changes to societal norms and community standards. This has been accompanied by general improvements in the availability of welfare services and income support which have assisted children to remain in the care of their own family.

Over the last three or four decades in Australia, it can be observed that adoption has moved from being a secretive, closed, forced and / or coercive process to a mostly open one. This trend has been informed by evidence gathered in public inquiries and well-publicised stories and experiences of those affected by adoption policies and practices of the past. This includes the reported intense feelings of loss felt by relinquishing parents as well as adopted children. Acknowledgement of the inherent cruelty of past adoption policies has recently elicited apologies by Australian governments to the various parties who suffered the deleterious impact of these policies on their lives.

Central to the concerns of the current inquiry, as stated by Commissioner Carmody, is assessing the extent to which the State should exercise legislated authority in "interfering with family privacy and autonomy" in relation to the exercise of parental rights. Commissioner Carmody stated, "It can only do that on clear and transparent grounds that the community is willing to permit that's consistent with contemporary values that are shared and you can only act, if you're the State, in accordance with the law" (http://www.childprotectioninquiry.qld.gov.au/data/assets/pdf_file/0018/172440/Day-37-16-January-2013,-Brisbane.pdf p. 37-7).

It may be expected therefore that the Commission will wish to carefully consider any proposed changes to legislation, policy and / or practice concerning permanency planning and the use of adoption, especially when this may involve amendment to the circumstances that allow for dispensation of parental consent, given that these changes may lead to greater authority held by the State to intrude upon the 'autonomy' and 'privacy' of families. As indicated by comments made by Commissioner Carmody, consideration of any proposed changes would need to thoroughly weigh up perceived benefits to children that may be achieved from such changes with any inadvertent consequences that may be anticipated.

PeakCare's intentions in producing this Paper are to facilitate an identification and analysis of the evidence-base and the range of opinions held about permanency planning practices including the use of adoption, to assist the deliberations of the Commission of Inquiry.

Purposes of this paper

In keeping with PeakCare's intentions in producing this paper, the specific purposes of the paper are to:

- identify and methodically explore the key issues that need to be taken into account in considering any changes that may be made to legislation, policy and/or practice concerning permanency planning and the use of adoption
- serve as a catalyst for further discussion and debate amongst PeakCare's member agencies, supporters and other interest groups about this important matter
- collect and collate the range of views and opinions formed by these parties based on their research, practice experience and knowledge, and
- provide this information to the Commission, thereby adding to the body of knowledge being considered in its inquiry.

Parts of the paper

To assist in 'tracking through' and focussing on the various elements of this matter, the paper is presented in five parts:

- Part 1 proposes definitions of permanency planning and adoption
- Part 2 sets out how the issues have been considered in previous inquiries into child protection and out-of-home care in Queensland and nationally
- Part 3 describes what we know and don't know about the situation in Queensland in respect of current practice and approaches to permanency planning, including the use of adoption of children facing long term out-of-home care
- Part 4 describes how the issues are being considered in the hearings, statements, submissions and inquiry-generated papers as well as referring to approaches in other jurisdictions and within contemporary literature, and
- Part 5 presents PeakCare's summation of the major legislative, policy and practice issues discussed in the paper.

Throughout the discussion paper, opportunity is provided for comments to be entered either by individuals or representatives of organisations, or in response to facilitated group discussions.

Part One:

HOW TO DEFINE 'PERMANENCY PLANNING' AND 'ADOPTION'

For the purposes of this paper, the following definitions have been used:

- 'Permanency planning' refers to purposeful, individualised case planning directed at meeting, in a timely manner, the long term stability, security and continuity needs of a child who has been removed from their parent/s' care and where the child or young person cannot return safely to the full-time care of their birth parents. Permanency is about ensuring lifetime relationships and a sense of identity and belonging.

"Permanent options generally include preventing unnecessary placements through family preservation, return home ('reunification'), permanent foster care or relative care (with or without guardianship) and adoption" (Tilbury & Osmond, 2006, p. 266).

- 'Adoption' refers to a formal legal process whereby the relationship between a child and their birth parent/s is permanently and legally substituted with a relationship between the child and their adoptive parent/s.

The child's biological parents no longer have any rights over the child. The child becomes a member of the new family with all the rights and privileges of a birth child, including the right of inheritance. A new birth certificate is issued, the content of which depends on the issuing jurisdiction's legislated arrangements for recording the child's birth and adoptive family's details.

Your comments:

- *Are these useful and appropriate definitions for the purposes of this discussion?*
- *Are there other aspects of either 'permanency planning' or 'adoption' that should be reflected in these definitions? If so, why?*

Part Two:

HOW PREVIOUS QUEENSLAND AND NATIONAL INQUIRIES HAVE CONSIDERED THIS ISSUE

The Royal Commission into Aboriginal Deaths in Custody and *Bringing Them Home*, the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, highlighted the long term effects of the forced removal of Aboriginal and Torres Strait Islander children from the care of their parents and families, particularly the ongoing legacy of undermining those children's right to and sense of identity and belonging with family, community, culture and country.

Other inquiries on behalf of the Commonwealth Government have considered the experiences of adults who as children experienced institutional and out-of-home care during the 20th century. These children, often referred to as Forgotten Australians, former child migrants and members of the Stolen Generations, were removed from the care of their families by the State or were relinquished by their parents for a range of welfare-related reasons, not dissimilar to contemporary parents' experiences. In addition to many not receiving the standard of care to which they were entitled, many have not been able to access information about their 'in-care' and personal histories or to find and connect with family members, leading to an overwhelming sense of loss and lack of identity attributable to the often enforced dislocation from family members and 'automatically' being in care until adulthood. Again, these are issues with which children in care, their families, service providers and governments are still grappling today.

An Australian Senate Committee report into the Commonwealth's contribution to past forced adoption practices was released in 2012. The Committee heard accounts of the many underhanded and duplicitous ways in which parents, particularly single mothers, were forced or coerced into 'consenting' to the adoption of their child. Certainly not to disrespect or underplay in any way the feelings and experiences of children and relinquishing parents subject to forced adoption, feelings of grief, loss and disconnection are also felt by those were party to 'closed' adoptions that were not 'forced'. Recommendations centred not only on apologies and redress about past processes but also on future open adoption processes.

The 2004 Crime and Misconduct Commission (CMC) *Inquiry into Abuse of Children in Foster Care* heard testimony from children and professionals about the importance of stability and support when children are placed in out-of-home care. The report stated "Not at all surprisingly, it would seem that for those in care what is important is a sense of belonging and a belief that being in care means being respected, valued and supported. For a variety of reasons, especially workload demands, not all children in care see their relationship with the Department as characterised by those attributes" (Crime and Misconduct Commission, 2004, p. 103).

In observing the issue from this perspective, the CMC's recommendations focused on prevention and early intervention, better relationships between statutory workers and families, increasing the number and range of out-of-home care placement options, and meeting children's holistic needs while engaged with the system.

The Department³ released two discussion papers - *Stopping the drift* in 2003 and another in 2006, *Improving permanency for children in care*, about legislative and practice options to improve permanency for children in the guardianship of the chief executive and unable to return to the care of their parents. The Department's 2006 discussion paper proposed 'permanent parenting orders' but this option was never progressed.

Your comments:

- *Are there other findings of previous Queensland or national inquiries that should be taken into account when considering permanency planning and the use of adoption?*

³ The term 'Department' has been used to refer to the Queensland Government agency responsible for administering the *Child Protection Act 1999*.



Part Three:

WHAT WE KNOW AND DON'T KNOW ABOUT PERMANENCY PLANNING IN QUEENSLAND

The *Child Protection Act 1999* provides the overarching framework for the approaches by government and non-government agencies to the care and protection of children in Queensland.

The principles for administering the *Act* (s.5B and 5C) include:

- parents have the primary responsibility for the care and protection of their children
- parents should be supported in this role
- where a child is in need of protection, the state has a responsibility to intervene and remove the child if the parents are not able or willing to care for their child
- parents or others with whom the child is placed should be provided with assistance or support to enable their capacity to care for the child
- a child has a right to long term alternative care if the child does not have a parent able and willing to give the child ongoing protection in the foreseeable future
- if the child is Aboriginal or Torres Strait Islander, the child should be allowed to develop and maintain a connection with their family, culture, traditions, language and community, and
- if the child is Aboriginal or Torres Strait Islander, the long term effect of decisions on the child's connection with family and community should be taken into account.

The *Act* (s.7) also sets out the chief executive's responsibilities. These include providing or helping to provide:

- information about child development and safety needs to families
- preventative and support services to strengthen and support families and reduce the incidence of harm
- services to families where the risk of harm to a child has been identified, and
- services for the protection of children and responses to allegations of harm.

Read together, as they should be, these provisions should, as Commissioner Carmody pointed out, mean that families are supported by government and non-government services to care for their children (http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0018/172440/Day-37-16-January-2013,-Brisbane.pdf p. 37-9). Where harm is identified, parents should be supported to reduce their 'impaired' parenting capacity to a level that is acceptable and therefore not warranting of State intrusion. If families are not being supported in these ways, the chief executive's obligations under the *Act* may be being breached.

Consistent with the broad approaches observed in many jurisdictions, a range of options is stated as available to meet the permanency needs of children who are unable to return (full time) to the care of their parents. These range in their level of intrusiveness, that is, from the least intrusive option of long term guardianship to kin or other third party, to long term guardianship to the chief executive and placement in out-of-home care, to adoption by known or unknown parties.

The utilisation of the different 'options' and approaches to permanency planning appear more reflective of practice and perhaps resource issues than a considered preference for or prioritisation of one option over another. This is not to say however that Queensland's use of adoption as an option has been afforded priority.

This part of the paper examines:

- what the available administrative data tell us about children under child protection orders in Queensland
- administrative data that, if made available, could usefully inform deliberations about current and improved approaches to ensuring stability, security and identity development for children in long term out-of-home care, and
- current regulation and use of adoption in Queensland.

What does Queensland data tell us?

Data that would assist in properly defining the 'problem/s' and therefore consideration of the issues and unintended consequences of different approaches to ensuring stability, security and identity development for children in out-of-home care in Queensland include:

- rates of, and age at, entry to care to understand the population of children, for example, in respect to the movement of babies and infants through out-of-home care
- 'successful' reunification of children with their parents, although no Queensland data are available about all attempts made to facilitate reunification from which distinctions could be made between reunification attempts that proceed from those that do not, and / or data about enduring reunifications compared with those that are not sustained - there is much anecdotal evidence about little work being done toward reunification and children being subject to poorly planned reunification attempts
- utilisation of existing 'less intrusive' options, such as long term guardianship to relatives or third parties
- self-placement by young people with parents or other family members, and
- number of placements and length of time in care at exit from care, to understand the extent to which children experience instability, multiple or unplanned placement changes, or are in care 'too long'.

Without further data being (publically) available if at all collected, correctly defining the 'problem' in Queensland is difficult. In other jurisdictions, for example the United Kingdom (UK), researchers are able to state that the majority of children entering care return to their family and for those who remain in care, the majority of placements remain into adulthood (eg. Thoburn, 2002).

Rates of and age at entry to care

The rate of entry to care - admission - in Queensland is stable, as it is in most Australian jurisdictions. The rate of children exiting care in Queensland is also stable. The 'problem' is that children are staying longer and moreover, that the Queensland Government, in the most recent Ministerial Portfolio Statement, expects the number of children entering the system and living in out-of-home care to continue to increase through 2012/13.

Around 41% of children admitted to child protection orders in 2010/11 were aged 0 to 4 years, including 11% who were less than 1 year of age. Just less than 30% were aged 5 to 9 years (Australian Institute of Health and Welfare (AIHW), 2012b, p. 58). Following the CMC inquiry, permanency panels were established to consider permanency planning for children under 4 years of age when the case plan goal is no longer to work toward reunification and to pursue an alternative long term stable living arrangement for the child. Practice guidance indicates that pursuing an alternative long term stable living arrangement is synonymous with seeking a long term guardianship order. Consistent with the *Act*, the *Child Safety Practice Manual* contemplates adoption for infants or young children.

Use of the different types of child protection orders

The *Child Protection Act 1999* provides for a range of short and long term custodial and non-custodial child protection orders. The intention is that, in respect of a child's individual circumstances, the least intrusive court order, for the least amount of time, should be sought by the Department and made by the Court.

There is provision for third party long term guardianship of a child by family members or another suitable person (eg. carer). Data published by the Department in 2006, as at 31 January 2006, showed that of the children on long term guardianship orders (1974), around 8% granted guardianship to a relative and around 8% to a foster carer (Queensland Department of Child Safety, 2006, p. 9). The most recent data (2011/12) (Steering Committee for the Review of Government Service Provision (SCRGSP), 2013, Table 15.A7) shows Queensland's use of third party (relative or other suitable person) guardianship orders is just over 11% of total child protection orders, compared with New South Wales (NSW), for example, which reported around 22%.

Number of placements and length of time in care for children exiting care

In respect to length of time in continuous out-of-home care, almost 36% of the children in out-of-home care at 30 June 2012 had been in out-of-home care for 5 or more years and just over 29% had been in out-of-home care for 2 to less than 5 years (SCRGSP, 2013, Table 15A.20). These data are comparable to most other Australian jurisdictions, except for South Australia where around 67% of children had been in the same placement for 5 years or more, and the Northern Territory where this was the case for less than 24% of children.

Of the children who exited care during 2011/12 in Queensland, 55.3% had been in out-of-home care for less than 2 years (SCRGSP, 2013, Table 15A.21).

Of the children under an order who exited care in 2011/12 after less than 12 months, 81.8% had been in 1 to 2 placements compared with 89.9% in 2010/11. For those exiting care after 12 or more months, 38.2% had been in 1 to 2 placements compared with 44.7% in 2010/11 (SCRGSP, 2012, Table 15A.25).

The Department's annual report (2012, p. 43) states that "As at 30 June 2012, there were 1356 children aged zero to three years subject to child protection orders granting custody or guardianship to the chief executive. During 2011-12, the majority of children (57.1 per cent) aged zero to three who exited out-of-home care did so within 12 months of entering out-of-home care."

Your comments:

- *Are there other ways in which you may interpret the relevance of the above-listed data?*
- *Are there other Queensland data that are relevant to understanding current approaches to permanency planning and discussion of changes to legislation, policy or practice?*

The regulation and use of adoption in Queensland

The *Adoption Act 2009* regulates adoption in Queensland. The main object of the *Act* refers to promoting “the wellbeing and best interests of adopted persons throughout their lives” (s.5(a)) and the guiding principles refer to the purpose being “to provide for a child’s long-term care, wellbeing and development by creating a permanent parent-child relationship between the child and the adoptive parents (s.6(2)(a))”.

The *Act* (s.6(2)(iii)) contemplates adoption as appropriate for a child if the child’s parents choose adoption or “the child does not have a parent who is able and willing to protect the child from harm and meet the child’s need for long-term stable care”. A child’s cultural background is considered in the matching process and the *Act* does not promote the adoption of children and young people of Aboriginal and Torres Strait Islander descent.

The *Act* stresses consideration of the child’s and the parents’ views about the proposed adoption and keeping the child informed about the proposed adoption. Principles of openness are embraced in that, despite the legal relationship between the child and their biological parents being severed, it may be in the child’s best interests to have information about their family and to continue contact with biological family members.

Parental consent to the adoption is required although the court can dispense with consent in some circumstances. The *Act* provides for the child’s birth certificate to be changed to record the names of the adoptive parent/s and for the court to allow family information to be withheld. The *Act* (s.76) precludes adoption by same sex couples.

The number of adoptions in Queensland has been declining for some time. The Department’s 2011/12 annual report states that at 30 June 2012, 7 Queensland children were placed with adoptive families, and 20 children from overseas were placed with adoptive families in Queensland. Annual reporting to the AIHW for 2011/12 shows that of the adoptions in Queensland, 20 were inter-country, 7 were ‘local’ and 6 were ‘known’ (i.e step parent, family member or carer) adoptions (2012a, p. 11). The majority of adopted children are under 5 years. Across Australia, however, the profile of adoptees and adoptive parents reflect each jurisdiction’s approach and, for inter-country adoption, the requirements of ‘donor’ countries.

For a range of reasons, no current or past data are available about the breakdown of ‘local’ or ‘known’ adoptions in Queensland or Australia.

Your comments:

- *Are there other relevant aspects of the regulation and use of adoption in Queensland that should be noted?*



Part Four: THE ISSUES UNDER CONSIDERATION

Witness statements, hearings, submissions and an Inquiry-generated issues paper have raised a range of factors relating to permanency planning for children removed from their parent/s' care. These include recognising and promoting the consideration of adoption as an option in a continuum of permanency planning responses.

A range of views has been expressed. The main issues can be grouped into the following sometimes contradictory broad assertions:

- Permanency and stability are critical for the developing brain of children aged 3 years or younger and therefore a baby or infant is best settled in a permanent family before they are 2 or 3 years of age. The mother's experiences and lifestyle in the first trimester of pregnancy are also determinants of a child's brain development.
- Set timeframes should be introduced by which parental issues and the circumstances preventing parents from caring for their children should be resolved or else signal a change in the case plan goal away from 'reunification', notwithstanding that concurrent planning can occur or a child can continue contact with family members.
- Once the permanent family has been determined, contact between the child and their biological parents should be restricted or ceased until the child reaches adulthood.
- Permanency planning assessments and decision making should be made by a multi-disciplinary team, expert opinion should be sought by the Department and by the court, and the Director-General of the Department should be the departmental decision making delegate.
- Adoption should be promoted and utilised more for children assessed as being unable to return to their parent's care.
- Parental consent to permanency planning decisions, particularly adoption, should be dispensed with where parents unreasonably withhold their consent.
- There are special, additional considerations when making permanency decisions in respect of Aboriginal and Torres Strait Islander children.

This part of the paper examines the views raised by witnesses as well as consideration of the issues in the hearings and published submissions. Australian and overseas literature about approaches to permanency planning and adoption is also referred to. The following aspects are discussed:

- permanency planning practice
- permanency decisions involving babies and infants
- timeframes for decision making about permanency planning
- legal alternatives to adoption that seek to promote permanency

- adoption as a permanency planning option
- adoption of children in the child protection system, and
- parental rights versus a child's right to stability and security.

Permanency planning practice

Many submissions to the Inquiry have raised concerns and described examples of where parents, children and carers have been subject to inadequate, unsupported, unfair, un-transparent and un-timely permanency decision making, predominantly in respect of perceived gaps between what the Act and policy and practice guidance state, and actual practice by Departmental officers with children and families.

Submissions from organisations working with or representing children, parents and carers (eg. Mercy Family Services, Foster Care Queensland, Family Inclusion Network Queensland (Townsville), Queensland Law Society) refer to high caseloads, turnover and under-resourcing of departmental officers; inadequate case consultation with carers and service providers; decisions not being timely for the child; inadequate family contact arrangements during placements; poor quality casework with children and families; and inadequate preparation for and lack of transparency in court documents. The inextricably related processes around matching children to placements, actively seeking kin placements, involving children and families in decision making, and access to legal advice and representation have also been raised for their contribution to children experiencing multiple placements, and parents becoming disillusioned and 'giving up'.

The need for clear practice guidelines and procedures that prioritise permanency planning, irrespective of reactive responses to crises, was asserted in the submission from the Mater Hospital Child and Youth Mental Health Service. The Service also submitted that 'permanency planning' should be assessed against a performance indicator around long term placement of children. The Australian Association for Infant Mental Health Qld argued for enforced treatment plans with parents and concurrently planning and expediting permanency for infants.

In acknowledging the magnitude of the decisions being made in respect to a baby's or infant's life and development, Dr Stephen Stathis, Royal Children's Hospital, argued for a multi-disciplinary team comprising, at a minimum, representatives of Child Safety Services and Queensland Health.

Of course, the child, their family, carers and other professionals should be involved in assessments as well as the individuals and agencies providing services to the child and family. For Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds, the involvement of culturally specific agencies is also imperative.

A number of submissions refer to the need for 'concurrent planning' - planning for reunification at the same time as planning for permanency, a practice usually associated with set decision making timeframes and avoiding time delays caused through sequential planning (Tilbury & Osmond, 2006,

pp. 270-271). Recruiting for permanent carers (eg. as in the UK and Victoria) is an example of approaches to avoiding multiple placements and managing concurrent planning. In their 2012 discussion paper about child protection reforms (p. 4), the NSW Government proposes concurrent planning through the creation of a new category of carer who is authorised as a prospective adoptive parent as well as to provide long term care, or streamlining the assessment of authorised carers and adoptive parents.

In respect to post-permanency contact between a child and their biological family, Dr Stathis, for example, stated “I believe that that mother (one from whom a child has been permanently removed) should be able to have the opportunity to reunite with her child when they're 18 or later on, but, no, I don't think - I think if it's permanent, it's permanent...”

(http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0004/167800/Day-32-7-November-2021,-Brisbane.pdf p. 32-32). He did not preclude offering supports to the child's mother before or after intervention. Decisions about contact between a child and their family need to take account of the child's age and views about ongoing contact. The issue, of course, is even more complex when considering ways and means to maintain and promote cultural and ethnic identity, a matter which Dr Stathis was queried about by Counsel for the Aboriginal and Torres Strait Islander Legal Service.

Clarity and agreement about the purpose, nature and frequency of family contact is necessary, as is preparation for contact. Viewed within the context that most young people seek out the family from whom they were removed while in or post-care, ensuring that children and family members have maintained family relationships and/or have the skills to manage the complications and their understandings is critical.

Dr Stathis also referred to the need to have properly trained and well paid ‘permanent’ carers for children removed from parental care.

There is also potentially a significant issue for children and for carers if a change in ‘parental’ responsibilities, through a third party guardianship or parenting order, or adoption, mean that case management (and associated facilitation and payment for supports and therapeutic services) and/or access to ongoing financial and other carer and child supports ceases. This would particularly act as a disincentive to kinship carers who should be sought out for their role in promoting a child's stability, identity and connection to family.

A recent research briefing from the UK cites research that reveals most children “...return to a birth parent at some time during their childhood, or go to them for support as young adults” (Thoburn, Robinson, & Anderson, 2012, p. 2) but states that the evidence is growing that reunification is the ‘least successful’ option, largely because of a lack of attention by policy-makers and practitioners about decision making, effective approaches to working with children in care and their families, and predictors of stability and wellbeing on return home.

‘Successful’ reunification requires, among other things, that supports are available and provided to parents and children after a child returns to the family home. This issue was raised in PeakCare’s submission to the Inquiry both in respect of acknowledging this and the need for step-down, less intensive services to be available (PeakCare Queensland Inc. (PeakCare), 2012, p. 40), as well as the importance of allowing (funded) organisations that are already working with either or both the parents and child the flexibility to continue contact and support to them even though they may have exited the service, for example, an out-of-home care placement (PeakCare, 2012, p. 58).

Your comments:

- *Are there other practice issues currently impacting on the effectiveness of permanency planning in Queensland? If so, how should these issues be addressed?*
- *For which cases, if any, should case planning and decision making adopt a ‘concurrent planning’ approach?*

Permanency decisions for babies and infants

Submissions, witness statements and questioning at the hearings have yielded much testimony about in utero development and a child's brain and neurological development in the early years, drawing the conclusion that it is essential to an abused or neglected child's life outcomes to find them a permanent family at the latest by three years of age.

The submission from the Australian Association for Infant Mental Health Qld, for example, presented research about the criticality of an infant's early attachment and attachment-informed interventions with infants by carers and others. Ms Corelle Davies (Child Safety Director, Queensland Health) testified, "So the first three years are absolutely a critical phase and in our child protection system babies are probably the easiest to remove and foster and then put back and then remove and foster and put back because anyone can look after a baby, but we are now very much aware of the evidence that this is a significant time of brain development in an infant which will impact upon the rest of their life"

(http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0015/161043/2012-08-21-QCPCI-Day-7-Brisbane.pdf p. 5-95).

Dr Stathis testified, "Can I say, it (the age at which infants are adversely affected) was even lower for speech and language problems. I think it was 15 to 18 months." and "If you don't act within two years, the door's closed"

(http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0004/167800/Day-32-7-November-2021,-Brisbane.pdf p. 32-29).

Brown and Ward (2012, p. 14) however query the generalisability of studies carried out with severely socially and emotionally deprived children such as those in Romanian orphanages to maltreated children experiencing less severe circumstances.

A number of other witnesses, for example Dr Brett MacDermott, Dr Elisabeth Hohen and Dr Jan Connors, as well as public submissions, also assert the importance of achieving permanency for babies and infants as a matter of urgency.

A 2006 literature review by Tilbury and Osmond on the evidence base for permanency planning found that children's behaviours may be un-related to attachment, stating that behaviours are the result of a range of individual factors including the child's experiences and temperament, and influenced by cultural differences in attachment patterns (p. 268). The literature review confirmed the relevance of age-differentiated assessment and intervention given that age is relevant to particular interventions as well as determining of placement outcomes (p. 269).

Reflecting on the formation of racial and cultural identity, particularly for Indigenous children, the authors identified the importance of consistently considering cultural identity in permanency planning and therefore including the views of family members and community agencies in planning and decision making (p. 270). They cite an English study (Moffatt & Thoburn, 2001) which found that the earlier in a child's life that a trans-racial placement occurs, the better the outcomes, with

‘success’ declining as the child gets older. Better child outcomes were found to be achieved with culturally matched placements and that the English studies are, in many respects, not comparable to the situation for Indigenous Australians.

Brown and Ward (2012, p. 13) argue that much of the research on brain development has been undertaken on animals. While (dead) human subjects are increasingly being used, they assert the difficulty of drawing conclusions about humans. Combining neuroscience and social science research, they argue is an emerging but under-developed evidence base showing that experience does shape brain development, with adverse experiences detrimentally impacting on brain functioning. They concur with the argument about the criticality of the first three years of life and note, for certain types of development, there is a ‘short window of opportunity’ which, if missed, compromises the child’s next developmental stage and long term wellbeing (p. 29). Physical and intellectual development, behaviours and social relationships are all adversely affected, short and long term, by neglect and abuse (p. 47) particularly for infants and in early childhood.

In respect to the age at which children in the UK are adopted, citing a Department of Education report, Brown and Ward (2012, p. 72) state that largely due to poor planning and case management, most children are 2 years or older before they reach their adoptive family. This, they assert, is at odds with the research about getting a baby securely attached to their new carers. The timeframes are as follows: average time (for all ages) between the child becoming looked after and the decision to pursue adoption is 11 months, an average of 10 months (again for all ages) before a child is matched and placed with an adoptive family, and a further 10 months before the adoption is finalised by an adoption order.

Brown and Ward (2012, p. 88) also refer to “double jeopardy” (6 months or more in an abusive environment followed by a short period of stability and then a disrupted attachment) and the consequent repeated loss felt by young children.

The Australian Association for Infant Mental Health Qld raised the need to evaluate and research service development initiatives about infant needs in the child protection system.

Your comments:

- *What legislative, policy and / or practice changes, if any, would need to occur to realise timely permanency planning for babies and infants?*
- *Are there other issues which warrant consideration in respect of babies and infants?*

Timeframes for decision making about permanency

In contributions to the Inquiry, a number of different timeframes have been raised in respect to the period over which a child's parents should be expected to have addressed the issues and circumstances preventing them from caring safely for their children.

Ms Davies referred to some states in the United States of America (USA) having a timeframe of 6 months to get a stable placement for a child under 3 years or "guardianship is awarded to another significant person"

(http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0015/161043/2012-08-21-QCPCI-Day-7-Brisbane.pdf p. 5-99).

Dr Stathis asserted that in the first instance, parents, particularly mothers, should receive support to address issues and keep the family together, concluding that "Well, if we do that (permanent placement) by three we're giving the brain a better chance, a better opportunity, to develop normally" (http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0004/167800/Day-32-7-November-2021,-Brisbane.pdf p. 32-29).



While not advocating for a set timeframe, the submission from Ms Sheri Shenker, National Adoption Awareness Week asserts there are 'early indicators', such as termination of the parents' parental rights for another child, severe untreated parental mental illness, serious harm by the parents of another child and unaddressed alcohol or substance abuse, that point to a child not returning to their parents.

Foster Care Queensland's submission argues that parents should be supported to successfully redesign their skills and ability to care for their children (i.e. reunification) within a set, legislated timeframe to which the Department and Court should adhere. After all, "...there is a time when enough should be enough" (Foster Care Queensland, 2012, p. 61).

The 2012 NSW Government's discussion paper on child protection reform proposes set timeframes for decisions about feasibility for reunification - for children aged less than 2 years, 6 months, and for children over 2 years, 12 months (p. 4). When reunification is no longer the case plan goal for children in Victoria, the Victorian legislation sets out age-related maximum timelines within which a stability plan (i.e. plan for permanent care) must be made. These are:

- 12 months in care for a child under 2 years
- 18 months in care for a child aged 2 but under 7 years, and
- 24 months in care within a period of 3 years for a child aged over 7 years (Victoria Department of Human Services, 2013a).

Brown and Ward (2012, p. 72) in their UK report, refer to the collision of timeframes related to a child's development, court processes and local authority (i.e. statutory agency) processes.

On the question of decision making timeframes, Tilbury and Osmond's literature review identified that the critical factor was for the individual child's needs and interests to drive decision making, rather than arbitrary timeframes that can delay or rush decisions. They argue "There are different issues at stake for infants and adolescents, differences in risk levels, differences in child needs and differences in the quality of relationships between the child and the parents that influence the optimum timing of permanency planning" (2006, p. 271-272)." They cite a USA study (Barth, 1997) that showed that "...successful reunifications continue to occur at a substantial rate for children in care after 2 years" (p.272).

There are however unintended consequences of set decision making timeframes where adoption is identified as being in the child's best interests and parental rights have been extinguished to 'free' the child for adoption. While the child awaits adoptive parent/s, they face instability and 'legal limbo'. The Inquiry's *emerging issues paper* reports this as the case for 60,631 out of 104,236 children (58.2%) in the USA as at 30 September 2011.

Your comments:

- *Are there advantages and/or disadvantages for a child of setting specific timeframes for making decisions about permanency? If so, what are they?*
- *Are there advantages and/or disadvantages for parents and extended family members of setting specific timeframes for making decisions about permanency? If so, what are they?*
- *What factors should the decision maker take into consideration in determining a timeframe to decision making for different cohorts of children?*
- *Are there advantages and disadvantages of extinguishing parental rights to free a child for adoption? If so, what are they?*
- *Over the period that a case is open and leading up to a mandated 'deadline', what are the minimum actions, services and /or interventions that the Department should provide and / or facilitate through non-government and other government agencies?*
- *What should be the balance between timely decision making and mandating set timeframes?*



Legal alternatives to (open or closed) adoption that promote permanency for children

A child's well-being is tied to a sense of permanence and stability and personal and cultural identity. A secure legal status contributes to a child's and a new family's sense of permanence and stability. Although adoption is the ultimate legal option in this regard due to the high level of intrusiveness into the birth family's life, there are alternative legal options which do not sever a child's legal relationship with their biological parents. One reason for a different approach is that some children, particularly young people, as well as the child's parents, may not be comfortable with the changed legal status.

As stated above and without knowing the reasons why, Queensland's use of third party (relative or other suitable person) guardianship orders is about 11% of total child protection orders (SCRGSP, 2013, Table 15.A7). Whether these are short or long term orders is not reported.

An advocate of adoption, the National Adoption Awareness Week not surprisingly asserts that guardianship orders do not give a child (or carers) the same sense of security and stability as an adoption order because birth parents can contest the order at any time. Because there is no legal bond between the carer/s and the child, the child does not have the carer's name and the order ends when the child turns 18 years, the organisation argues the temporariness and child's lack of sense of belonging to the family in which they are being raised. This position is also argued by Foster Care Queensland.

Victoria utilises both adoption and permanent care orders, the latter being a legal alternative to adoption in granting legal custody and guardianship of a child to a third party (Victoria Department of Human Services, 2013b). A permanent care order is made by the Children's Court and grants custody and guardianship to the permanent family until the child turns 18 years. The finalised order has the effect of giving the carers parental decision making rights and the child's name, birth certificate and inheritance rights are not automatically affected. Permanent care orders can be revoked, although this is unusual. Around 65 children are placed for permanent care each year and about 20 infants are placed for adoption. Since 2006/07, there have been around 200 permanent care orders granted each year, with a 29% increase to 243 in 2011/12 (AIHW, 2012a, p. 45). Children placed for permanent care are usually up to 12 years of age. Children are eligible for permanent care when the Department determines the child is unable to return home to their birth parents or other family. The order can only be made if the child has been out of the care of the birth parents for six months and the Court is satisfied that the parent is unwilling or unable to resume care of the child or that is not in the child's best interests. Children are initially placed in foster care over the period in which reunification is the case plan goal prior to placement with permanent carers. Parents can seek review of a decision about permanent care for their child initially through the Department and can appeal a children's court decision through the County Court. Potential permanent carers are approved before a child is placed in their care. There is a 'transition' period of around 2 years during which time the child is placed with the matched carers, a permanent care program has guardianship and/or custody rights prior to the court granting a legal order and service

staff support the placement. The carers do not receive financial assistance although assistance is available to help with some expenses. Post the order, access to ongoing support is also available. Single, married or unmarried people, with or without children, can apply to be permanent carers. Permanent care of Indigenous children must be consistent with the Child Placement Principle and where care by non-Indigenous carers is proposed, it must be recommended by the local Aboriginal Child Specialist Advice Support Service (ACSASS) before the court can approve the order.

Western Australia utilises 'special guardianship orders', which can record contact between the child and biological parents. The Australian Capital Territory's regime includes 'enduring parental responsibility' orders, an equivalent concept to third party orders which do not extinguish parental rights.

Although alternative legal options are important to consider, where a child is subject to such an order granting guardianship to another party (kin or carer), the door should not be closed to them when they exit the order at 18 years should they require practical, financial or other supports. Access to these entitlements - a safety net - would otherwise have applied if the child had remained in the guardianship of the chief executive.

Your comments:

- *What are the reasons for the low usage of third party child protection orders, already provided for in the Queensland legislation? What could or should (if anything) be done to promote their use?*
- *Should Queensland's permanency planning options include more or different options for court orders? If so, what would be the features of the order/s and what would be their purpose?*
- *If alternative legal options (eg. permanent care orders) are introduced, what if any, supports - financial, practical and emotional - should be available to children and the adults to whom parental responsibility is transferred?*

Promoting and utilising adoption more to achieve permanency

A number of submissions support prioritising adoption as a means to facilitate a child's development, security, identity and stability for children who would otherwise be in the full time care of the State until 18 years of age. The vast majority of submissions and witnesses support open, transparent, non-coercive adoption processes. For example, the submission from Barnardos states that adoptions should be 'open' with post-adoption contact maintained between the child and their parents / carers.

Barnardos argue that Queensland should make more use of adoption, particularly for non-Indigenous children, as it would prevent children from being "'stuck' in care until age 18" and "condemned to repeated failed restorations or a life in the unstable foster care system" (2012, p. 1). Their argument is two-fold - those children's wellbeing, emotional security and sense will be greatly improved and government will save money.

The recent Victorian Inquiry into child protection reported that adoption may be more appropriate "Where a child has spent little time in their biological family, enters care at a young age, does not have a significant attachment to their biological parents and there is no member of the extended family to provide suitable stable placement for the child" (Cummins, Scott, & Scales, 2012, p. 229).

The following submissions also support using adoption more in Queensland:

- The National Adoption Awareness Week queries why, despite the high number of (non-Indigenous) children under 4 years in out-of-home care and what is known about a child's need for stability and security, ethical transparent adoption practices are not used.
- Family Voice Australia, which, building on their stance that children's needs are best met in heterosexual marriages, argues that adoption should be promoted for children in long term care.
- Fresh Hope Toowoomba submit that children subject to long term guardianship orders should be available for adoption so they can permanently settle with their foster families in a loving stable home.
- Dr Connors, Mater Children's Hospital argues that adoption should, in select cases, for example young children, be elevated as a permanency planning option as although it is not 'least intrusive', it responds to a child's emotional needs and not just their safety.

Barnardos also assert that the Inquiry should recommend set targets for adoptions from care.

Australian jurisdictions have taken different approaches to the promotion and use of adoption, with NSW, as Barnardos argues, prioritising it. The Queensland Inquiry's October 2012 *options for reform paper* refers to the *Adoption and Safe Families Act 1997* (USA) which makes adoption the 'second best option' where a child's return to their biological parents is not possible. The Act prescribes the steps that must be taken to terminate parental rights where a child has been in out-of-home care for 15 of the past 22 months or the parent has committed a serious offence against the child or a

sibling. Adoptive parents must be sought unless the child can return home, live with a relative or it would not be in the child's best interests.

The NSW Government consultation paper (2012, p. 4) proposes a legislatively defined hierarchy for reunification with adoption the next preferred response after long term guardianship to a relative or kin. Where long term guardianship and adoption have been considered and discounted, the last option is proposed as parental responsibility to the Minister.

To facilitate Queensland's use of adoption, Barnardos argue that the adoption legislation should be amended so that carers can adopt children placed in their care.

Just as the Aboriginal and Torres Strait Islander Child Placement Principle is included in each state's and territory's child protection legislation, similar provisions are included in respect of legislated provisions for the adoption of Aboriginal and Torres Strait Islander children. While noting that adoption is not considered culturally appropriate for some children, particularly those from Aboriginal communities, the NSW consultation paper (2012, p. 27) raises that this option, which is available to the broader community, should be available to Aboriginal families and that any adoptions should be consistent with the Child Placement Principle. Counselling to the relinquishing parent is also proposed.

The submission from the Port Kennedy Association however raises the concern that the *Child Protection Act 1999* does not recognise traditional adoption practices in the Torres Strait, which adversely impacts on those whom the Department and the court recognise as the child's parents.

Dispensing with parental consent

Past adoption practices, for which the Australian Government and most state and territory governments have recently made formal apologies, relied on coercion, force and other duplicitous means to ensure that parents relinquished newborns and babies were available for 'deserving' couples. While not intending a return to these means or ends, the Inquiry has heard support for dispensing with parental consent in particular circumstances. The submission from Barnardos, for example, argues for dispensing with parental consent after an appropriate timeframe or where parents unreasonably withhold their consent.

The Victorian Inquiry reported that dispensing with parental consent to adoption in Victoria is extremely rare and recommended that the Victorian Department should "pursue timely action to secure the release of children for adoption if parental consent is unavailable and if the child's circumstances would make them eligible for parental dispensation of consent to adoption. This should be done in circumstances where suitable adoptive parents are available and where there is no suitable member of the extended family who can provide an alternative permanent placement for the child" (Cummins, Scott, & Scales, 2012, p. 229). They identified no problems with the dispensation provisions in the Victorian legislation.

The NSW Government's consultation paper about reform of the child protection system proposes amending the *Adoption Act 2000* (NSW) to allow additional grounds for dispensing with parental consent where the parent is unable to care for the child, the parent cannot be located or full time care by the child's parents is unrealistic, despite reasonable efforts to correct the 'problems' (2012, p. 5).

Operationalising adoption as an option

If adoption is to be promoted, other matters for consideration include the process for selecting the agency/ies charged with facilitating adoptions, how best to recruit adoptive parents and alternatives to changing a child's birth certificate. In terms of adoption agencies, in NSW and Victoria, for example, adoptions are facilitated by both the state and accredited non-government adoption agencies.

Denby, Alford and Ayala (2011, p. 1550) studied the recruitment and assessment of adoptive parents in the USA. When prospective parents were queried about why they persisted or discontinued with the adoption process, the responses related to having a good relationship (or not) with the agency social worker, personal or professional support throughout the process and for those who dropped out, the time consuming and daunting nature of the process.

The changing of a child's birth certificate to record the adoptive family's details and difficulties with having details corrected or amended in an 'official' document are often raised by adopted children and relinquishing parents as a barrier to understanding identity and family history. The Senate Community References Committee on the contribution of the Commonwealth to former forced adoption policies and processes received a number of submissions addressing this matter and after considering the legal and technical issues of an adopted child having two birth certificates, the Committee recommended that all jurisdictions adopt 'integrated birth certificates'. The idea is that in a single certificate, details are recorded about the birth family, adoptive family and the adoption (The Senate Community Affairs References Committee, 2012, p. 225).

Integrated certificates are used, for example, in Western Australia and in South Australia, the parties can agree the certificate will include both the adoptive parents' and birth parents' names (South Australia Department for Communities and Social Inclusion, 2013). For adoptions in Queensland, the child's birth certificate is changed to record the adoptive family's details, rather than the child's birth family details.

Does adoption offer permanency to children?

There is limited research about the success or otherwise of adoption generally or for children who are adopted from the child protection system. The AIHW's *Adoptions Australia 2011-12* states that while most local and known adoptions are successful, a minority are 'disrupted' before the adoption process is legally finalised or are 'dissolved' following the conclusion of the legal process.

The report refers to a 2008 study which identified adoption of 'special needs' children as the most common to experience disruption. The report states, "Research shows the children most at risk of unsuccessful outcomes include: children adopted at an older age; children with a history of physical abuse, deprivation and neglect; children with a history of sexual abuse; and children with emotional and behavioural problems (DECD 2010; Roberson 2006)" (AIHW, 2012a, p.11). The report also cites 2006 research that found that for local and inter-country adoptions, unless a sense of attachment and / or an improvement in the child's behaviour is detected by the adoptive parents within 12 to 15 months, the adoption process is at an increased risk of ending.

Barnardos argue that outcomes are better for adopted children than for children in long term foster care. The Victorian inquiry reported however that "A recent UK study suggests that the main factors influencing outcomes in care are age, pre-placement adversity and delay in placement (that is, exposure to adversity). Where adversity levels are similar, children in stable foster care and adopted children had similar needs and outcomes when they arrived at their placements at similar ages. Overall there were no significant differences in outcomes between children in stable foster care and children who were adopted (Beek et al. 2011, pp. 2-4)" (Cummins, Scott, & Scales, 2012, p. 229).

Denby, Alford and Ayala (2011, p. 1544) cite a number of USA studies about adoption placement disruption rates. Generally thought to be between 11% and 13%, adoption disruption or displacement for 'special needs' children (i.e. older children, children of colour, sibling groups and children with disabilities) is estimated to be 10% to 16%. Reasons for this are thought to be both child and adoptive parent related, and predominantly related to the adoptive parent having access to information about the child, good preparation and a good relationship between the adoption agency and the adoptive parent.

Tilbury and Osmond's literature review (2006, p. 271) identified Australian and English studies that found that confirmation of a temporary foster placement delivered as good outcomes as other permanent arrangements (Sellick & Thoburn, 2002) and that long term foster care was a positive experience for most children (Barber & Delfabbro, 2005).

Your comments:

- *Under what child and family circumstances (if any) should adoption be utilised as a permanency planning option?*
- *Do the Child Protection Act 1999 and / or the Adoption Act 2009 require amendment to provide a legislative framework that facilitates greater use of adoption (if greater use of adoption is preferred)? If so, what amendments are required?*
- *In addition to the provisions already contained in the Adoption Act 2009 for dispensing with parental consent, are there other circumstances which might warrant this action? If so, what?*
- *What, if any, review rights should parents whose consent has been dispensed with have? Why?*
- *Under what circumstances, if any, should adoption be used in permanency planning with Aboriginal and Torres Strait Islander children? Why?*
- *If adoption of children in care is promoted and utilised more, what, if any supports - financial, practical and emotional - should be available to children and adoptive parents while the adoption is being finalised and once finalised?*



Adoption of children in the child protection system

Will children and young people in care be adopted? Children in out-of-home care are there for one or more reasons, including that they have complex or multiple needs and these are often accompanied by and 'acted out' through displays of 'challenging' behaviours. All children in out-of-home care are not the same and, as such, each has unique, individual needs and some are part of (complicated) sibling groups. Will an adoptive (or other permanent family) be found? Will high or special needs children, of different ages, possess the characteristics of children that adoptive parents are contemplating?

The cost of caring for these children is significant and when placed with foster or kinship carers, the carer/s receive an allowance, can access reimbursements associated with any extraordinary costs of caring for the child, plus have access to a discount card. Because the children are in State care and where their case plan includes it, the child has planned and facilitated access to health, educational and other supports. The child also has an assigned statutory case worker who is expected to undertake case planning, coordination and related activities with the child.

Are the foster and kinship carers with whom a child is placed potential adoptive parent/s? In the USA, 54% of the 50,516 children adopted with government child welfare agency involvement in 2011 were to the child's foster carer/s. England now recruits prospective adoptive parents as foster carers. Denby, Alford and Ayala (2011, p. 1551) found that potential adopters of a 'special needs' child (i.e. older children, children of colour, sibling groups and children with disabilities) in the UK felt they had something to offer a 'forgotten' or 'unwanted' child. Many however had previously been foster carers and therefore had some understanding of the needs of these children.

Brown and Ward (2012, p. 84) cite a 2010 study (Farmer, Dance, Beecham, Bonin & Ouwejan) which found that child factors affecting delays in finding adoptive parent/s include age, ethnicity, health and developmental difficulties. In short, the older the child when placed for adoption, the less likely a 'match' will be found.

Your comments:

- *If adoption is to be promoted as a permanency planning option, what strategies should be used to ensure children in the child protection system have the best chance of being adopted? Why?*

Parental rights versus a child's right to stability and security

An issue raised by some as a stumbling block to achieving permanency for children is a perception that parental rights take precedence over a child's right to stability and security, in a safe and loving environment.

In respect of adoption, the recent Victorian Inquiry concluded that, "...the right to adoption should be available to eligible children for whom this is appropriate and who have no other prospect of a secure and stable family to whom they can belong" (Cummins, Scott, & Scales, 2012, p. 229).

Parents have a right to participate in decision making about their child's future, even if the child will not be in their day-to-day care. Parents, as well as children, need to understand why and what assessments, interventions and decisions are being considered and progressed.

Your comments:

- *Are the mechanisms already in place through the Child Protection Act 1999 (eg. principles, Charter of Rights for a Child in Care) sufficient to balance a child's rights and those of their parents? Why? Why not?*



Part Five:

PEAKCARE'S SUMMATION OF THE ISSUES

This paper focuses on permanency planning for children who are not able to return to the full time care of their families. Meeting each child's needs for stability, security and identity and ensuring they are set up with lifelong relationships and connections is fundamental to case planning practice, from a child's first contact with the child protection system, and for every child and their family.

Permanency planning is not simply about placement or where and with whom a child resides. Permanency is about relationships, identity and a sense of belonging (Lahti, 1982; Fein & Maluccio, 1992; Brydon, 2004; Sanchez, 2004 in Tilbury & Osmond, 2006, p. 267) wherein a child's emotional, social *and* physical needs will be met.

Although adoption is one of the current suite of permanency planning options, debate generated by the Inquiry's role to chart a road map for the next decade, has raised the question of whether the use of adoption should be increased. This question is being raised at the same time as observations and opinions are being provided which indicate that less intrusive approaches to State intervention in family life offered through the range of child protection orders - type, duration and effect – appear to be under-utilised. The nature and weight of factors – legislative, policy and / or practice – leading to most children being under long term orders granting custody and guardianship to the chief executive are all under the spotlight.

Notwithstanding the unquestionable rider about 'where safe and in a child's best interests', the principles which should underline permanency planning practice and decision making include:

- A child has the right to experience permanence, emotional security and stability as well as develop and experience a lifetime sense of identity, belonging and connection with family, community and culture.
- Decision making in relation to each child should be individualised, purposive, timely and culturally appropriate.
- A child has the right to know about and have contact with immediate and extended family members and to have information about their family and personal history.
- A child has the right to knowledge about, and to form and/or preserve connection with, their cultural identity.
- A child has the right to participate in decision making about their life and future.
- A parent has the right to receive the information, help and supports they need to keep their children safe as well as to address the circumstances and issues adversely affecting their capacity and ability to care for their children.
- A parent has the right to participate in decision making about interventions and their child's future.

- Siblings have the right to be in contact with each other and to stay together.
- Evidence-based practice must inform reunification work with families and permanency decision making.

So, what are the 'problems' that permanency planning including adoption should be addressing? Considering publically reported data, Queensland's permanency planning is not markedly different to other Australian jurisdictions. The following are apparent - low percentage of children on third party orders, generally stable entry and exit rates from out-of-home care, increasing number of children in out-of-home care chiefly relating to longer stays in out-of-home care, more placements while in care and grossly disproportionate representation of Aboriginal and Torres Strait Islander children amongst those who are entering and remaining in care.

There is however a lack of data and information about reunification planning practice across the state, 'failed' reunification attempts, use of less intrusive and third party orders and the extent to which adoption is considered as an option.

Submissions, witness statements and testimony highlight different perspectives about and proposed changes to:

- the *Child Protection Act 1999* and *Adoption Act 2009*
- departmental policies and practice guidance around permanency planning and funding policy in respect of services delivered by non-government organisations, and
- departmental practice around working with children and families.

In some cases, proposed directions could be dealt with in policy and/ or practice guidelines but stakeholders are arguing for the matter to be prescribed in legislation as they believe this will ensure that the action or desired outcome is achieved. A number of submissions, for example, have noted the soundness of the principles and chief executive's responsibilities in the *Child Protection Act 1999* but lamented the ineffective implementation of the provisions relating to supporting families before and after harm to children.

Legislative change, or in some cases the emphasis placed on the policy stance, is relevant to:

- defining one or more timeframes generally relating to a child's age within which permanency is to be determined
- introducing the concept of 'permanent' carer to whom parental responsibility is transferred until the child turns 18 years
- articulating a hierarchy of permanency planning options i.e. the priority placed on family preservation, family reunification, long term placement with relative carers or foster carers and the option of adoption for children facing long term guardianship to the chief executive
- articulating the timing and extent to which family members are sought out to participate in decision making and providing care for a child

- setting timeframes and/ or expanding the grounds on which parental consent to adoption of a child in care can be dispensed with (eg. where parents unreasonably withhold their consent) while being very clear about why and how this approach could be distinguished from and not represent a return to the past practices of coercion and force
- prescribing approaches or conditions around ongoing family contact for children in care who are adopted or others in 'permanent' long term placements
- determining post-permanency case planning processes and the financial and other supports that can be made available to children, 'permanent' carers, adoptive parents and biological parents
- determining circumstances when the above case-planning processes and supports (or variations of these processes and/or supports) may be made available after children turn 18 years of age
- introducing 'integrated birth certificates' and reviewing the eligibility requirements for prospective adoptive parents in Queensland , and
- determining either the role that may be exercised solely by the Department (as now) or the respective roles to be played by the Department and the selected non-government agency/ies in undertaking assessments of adoptive parents or a category of 'permanent' carers and in facilitating placement and adoption of children in care.

Notwithstanding the inter-relationship with necessary reforms around resourcing early intervention and intensive family support prior to more intrusive interventions, including support provided to mothers of unborn children identified as being at risk of harm following her / his birth; improving pre-placement planning and matching of children requiring out-of-home care with suitable placement settings and prospective carers; enhancing family group participation in decision making and reducing the adversarial nature of departmental and court decision making processes; and improving the qualifications, skills, experience, induction and ongoing training and supervision of government and non-government workers, proposals for changes to departmental policy focus on:

- assigning a hierarchy to permanency options, for example, seeking long term guardianship to the chief executive only where a family member has not been identified
- prioritising early and ongoing searching for suitable family members to (share the) care for children requiring out-of-home placement
- developing a practice framework for concurrent planning, including implementing timeframes within which parents will be expected to remedy the issues that are undermining their capacity to care for their children (i.e. a case plan goal of reunification is no longer pursued)
- resourcing and prioritising family contact and family and cultural connection for children placed away from their families

- consulting and working with other government and non-government agency representatives engaged in providing services to the child and family in assessments and case planning
- developing and implementing specific strategies for ensuring permanency for babies and other young children
- working with young people in their struggles with stability, security, identity development and independence, and how this manifests, for example, in self-placing with family or significant others
- re-assessing the skills, qualifications and case loads of frontline Child Safety Officers in respect of their capacity to work inclusively and effectively with children and families in child-focused, family-centred ways
- introducing performance targets around permanency planning, for example, long term placement of children and adoption of children in care
- articulating approaches to the consideration of permanency options when working with Aboriginal and Torres Strait Islander children and families, and those from culturally and linguistically diverse backgrounds, and
- availability of pre- but particularly post- reunification supports including those that can be delivered by non-government service providers that have been working with the child and family, to ensure an enduring and successful return to parental care.

A long list of practice improvements has been proposed. Interestingly, these are generally consistent with currently stated policy and practice guidance to departmental officers (eg. *Permanency planning practice paper*) and which, if resourced and followed, would deliver purposive, individualised, culturally appropriate case planning directed at meeting a child's needs for long term stability, security and continuity through a continuum of permanency planning options.

If adoption is to receive increased consideration within the permanency planning undertaken for children in care, it is imperative that any legislative, policy and/ or practice changes that are made avoid:

- the perception of, or actual return to, 'closed' adoption or forced or coercive practices of the past
- the creation of any stigma or difficulties for children aged 3 years (or other prescribed age) and one day or for older children who, to date, have not been the subject of concerted permanency planning approaches
- unreasonable delays between a decision having been made that a child is available for 'permanent care' or adoption (particularly if parental rights are extinguished), matching the child with carers, and finalisation of the order



- 'scapegoating' of particular cohorts of parents, such as young parents; those with intellectual disabilities or mental health issues, particularly dual diagnoses; substance users; parents who as children were 'in care'; or parents with older children who are already in care, and
- any disruption to, or reduction in the emphasis placed on the maintenance of, family and cultural connections and contact between children, their siblings, parents and extended family, in recognition that the determination of a child's 'best interests' intrinsically involves connections with family.

Your comments:

- *Please record other comments that you think may clarify or add to this summation of the issues.*



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RESPONDING TO THE DISCUSSION PAPER

PeakCare member agencies, supporters and 'special interest groups' may make use of one (or more) of three ways to respond to this discussion paper:

- attend a facilitated face-to-face discussion with PeakCare staff to be held at 2.30pm on Tuesday, 19th February 2013 at 17 Ross Street, Paddington, and/or
- participate in a teleconference discussion with PeakCare staff to be held at 3pm on Thursday, 21st February 2013, and/ or
- enter written comments into the discussion paper and email a copy to tsmith@peakcare.org.au by no later than Friday, 22nd February 2013.

Submission of written comments

If written comments are being submitted, please complete the following:

Name and position title (if applicable) of person submitting comments:	
Name of organisation or 'interest group' (if applicable):	
Email address:	
Contact phone number/s:	
Please indicate if the comments represent:	
☐ The personal views and opinions of the individual who has submitted the comments	
☐ The properly authorised views and opinions of the organisation or interest group on whose behalf the comments are submitted	
☐ Other: (Please specify)	

Attendance at face-to-face discussion or teleconference

If wishing to attend either the facilitated face-to-face discussion or teleconference, RSVP by Friday, 15th February 2013 to groberts@peakcare.org.au.

Please indicate:

- your name and position title
- the name of your organisation or 'interest group' (if applicable)
- your email address
- contact phone number/s, and
- whether it is the face-to-face discussion or teleconference that you will be attending.