



Discussion Paper

# Improving permanency for children in care



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Disclaimer:

The information contained in this paper is to facilitate the Department of Child Safety's consultation regarding consideration of a new Permanent Parenting Order.

The paper does not reflect Queensland Government policy.



## Minister's foreword

All children need, and importantly deserve, to feel safe and secure and that they are part of a family who care for them. The Department of Child Safety provides protective care for vulnerable children and works to support families so that, wherever possible, children in care can go home to live with their family.

Over recent years, the Queensland Government has significantly reformed the child protection system, making it more child-focussed, responsive and accountable than ever before. To date, we have worked to address the immediate need to provide a range of placement options and improve the quality of out-of-home care, but have continued to focus on prevention, early intervention, family support and reunification.

As we look towards the future, we are now giving greater attention to providing stability for children and young people in protective care who cannot safely return to their birth families, and investigating strategies to enable them to leave the child protection system permanently.

Our aim is to ensure that children and young people live in a nurturing family environment so they may experience a regular family life and have the best possible chance to reach their full potential. We are now considering a new Permanent Parenting Order to provide permanent care and a real family environment for children and young people who cannot safely return to their birth family. The order would offer the benefits of long-term stability while allowing children to maintain their connection and legal relationship with their birth family.

The *Improving permanency for children in care discussion paper* explores the new Permanent Parenting Order under consideration and the issues associated with providing permanence for children in long-term care. The paper compares permanency options, considers who might be a permanent caregiver, identifies the key considerations and issues relevant to the new order, and looks at approaches to permanency planning in other jurisdictions.

There are no more important issues than those regarding the care and protection of children. We are interested in hearing your views on the proposed Permanent Parenting Order and how to best provide permanence for children who cannot safely return to the care of their birth family. Child protection is a whole-of-community issue and we welcome feedback from all areas of the community – from children in care, parents, foster carers, child protection workers and organisations, people considering adopting a child and all other interested members of the public.

You can provide feedback on the matters raised in the discussion paper by responding to the questions listed or by making comments generally.

I am looking forward to hearing the views of the Queensland community about this very important issue so together we can ensure that children who come through the child protection system are given the best possible chances in life.



Mike Reynolds AM MP  
Minister for Child Safety





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## Background

All jurisdictions in Australia and overseas are grappling with the consequences of rapid changes in social and economic structures, and their effects on the protective needs of children and young people, and their families. Child protection services everywhere are experiencing significant demand pressures as a result of changing demographics and environmental factors, increasing community awareness and expectations, and the escalating needs of children who come into the care of the state (Sinclair 2005; Sultman 2006).

In Queensland, the demand pressures on the child protection system are reflected in the increasing number of child protection notifications and substantiations across the state. From 2002-03 to 2004-05, the number of notifications recorded increased from 31,068 to 40,829, a rise of 31.4 per cent, and the number of notifications substantiated increased from 12,203 to 17,307, a rise of 41.8 per cent.

Over recent years, the Queensland Government has implemented a series of major reforms to strengthen the child protection system and improve outcomes for children and young people at risk. The centrepiece of the reform strategy was the establishment of the Department of Child Safety to focus exclusively on the needs of children at risk of harm through abuse or neglect.

In 2004, the *Blueprint* for implementing the recommendations of the Crime and Misconduct Commission (CMC) report, *Protecting Children: An Inquiry into Abuse of Children in Foster Care*, outlined a range of whole-of-government initiatives to assist families to care for their children and to better protect children who come into care. The *Blueprint* set a timeframe of three years to implement all the CMC's recommendations. As at May 2006, 94 of the 110 recommendations have been implemented and the remaining 16 are well underway.

Evidence from around the world overwhelmingly confirms that warm, loving relationships with primary caregivers underpin all other areas of children's development and wellbeing, and that investing in the early years of children's lives results in significantly improved outcomes for them over their whole life (Department of Communities, Queensland 2006). The government is committed to supporting families to raise and nurture their children, and it takes a holistic approach to ensure that appropriate intensive support services are provided to families in need. Coordinated case management responses identify 'at risk' families before they come into contact with the child protection system, and targeted support services are provided to these families to help them create a safe environment for their children.

The CMC report specifically recognised the important relationship between effective parenting, access to quality child and family services and the number of children who end up in the child protection system. It called for a comprehensive framework to improve services for all Queensland families. In response, the Department of Communities is developing a new child and family support framework to deliver the 'right service at the right time' in the areas of health, child care and education. The development of this Early Years Strategy builds on the recent history of investment in prevention and early intervention services across all sectors and service systems.

An increasing number of families are coming to the attention of the Department of Child Safety, presenting with poor parenting skills, substance abuse problems, domestic and family violence or mental health issues. These families do not represent a high risk in terms of child safety concerns, but do require significant support to address their problems. The Referral for Active Intervention (RAI) program, due to commence in late 2006, will provide services to address parenting issues and prevent progression within the statutory child protection system.

The Department of Child Safety will refer families subject to low level child protection concerns to non-government services for active intervention. RAI services will be funded by the Department of Communities to provide case management and a range of family support services. The RAI program will also arrange for other specialist or support services as needed by individual families. These may include domestic or family violence and other specialist counselling, drug and alcohol rehabilitation, mental health services, parenting programs, and early childhood education and care services.

Through substantial additional funding, the Department of Child Safety is implementing a range of measures to improve its capacity to respond to the growing demand for child protection. For

example, it is actively recruiting additional foster carers, particularly Aboriginal and Torres Strait Islander carers, and providing better training, support and financial assistance to all foster and kinship carers.

As part of the integrated service delivery system, the department is also providing extra places in a broad range of diverse placement options, including kinship and foster care, specialist foster care, therapeutic residential care and supported independent living, to ensure appropriate care environments that meet the diverse needs of children and young people. Effective therapeutic and behavioural support services are being provided for children with significant behavioural and mental health needs through collaboration with Queensland Health and Disability Services Queensland.

The Queensland Government has recognised the importance of maintaining children's family relationships as much as possible by introducing a new legislative principle to guide the Department of Child Safety's placement practice. The principle requires proper consideration be given to placing children with kin, that is, relatives or other persons of significance, as the first option. The government has also specifically increased funding to extend the network of family reunification services provided by the department's community partners for children in care.

The Department of Child Safety is actively addressing the over-representation of Aboriginal and Torres Strait Islander children and young people in the child protection system. It is working in partnership with Indigenous communities to ensure better outcomes for Aboriginal and Torres Strait Islander children by keeping them at home or returning them to their families, where at all possible. In addition, the Aboriginal and Torres Strait Islander Child Placement Principle has been strengthened to ensure that Aboriginal and Torres Strait Islander children in care maintain their cultural identity through close, regular contact with their extended family and community.

The department continues to invest in research to ensure policy and procedures are evidence based and best practice, and that outcomes for children and young people and their families are continuously improving. The *Child Safety Research Strategy 2006-2009* promotes a research culture and aligns the department's research priorities with its strategic intents.

The Department of Child Safety has led the development of the *Queensland Child Protection Strategy 2006-09* to provide direction for government and non-government agencies over the next three years. Queensland's child protection system is more child-focussed, responsive and accountable than ever before.

The Commission for Children and Young People and Child Guardian recently released a survey of more than 1,700 children and young people in out-of-home care. Of these children and young people, 90 per cent said they were better off since coming into care. Most, 84 per cent, also believed that things are better now than they were a year ago.

The Commission identified several themes coming through the views expressed in the survey. Children and young people in care wanted to be like 'normal' kids. They wanted stability and their carers to have guardianship of them. They also wanted to be able to maintain contact with their birth families (CCYPCG 2006).

The Department of Child Safety realises that children who have been abused are already at significant disadvantage, and that despite its best care and protection, out-of-home care will always be less than ideal. The objective for children should always be a nurturing family environment rather than growing up in care.

So, while the recent major reforms to Queensland's child protection system have focussed on providing a range of suitable placement options for children in care and improving the quality of care, they have also focussed on prevention, early intervention, family support and reunification.

In addition to these measures, the department is now concentrating on providing stability and a regular family life for children and young people who cannot safely return to the care of their birth families, and investigating strategies to enable them to exit the child protection system permanently.

## Introduction

Parents have primary responsibility for the upbringing, protection and wellbeing of their children, and the Department of Child Safety works with parents to reunify children in care with their families, wherever possible. Most of these children do go home within a short time. In Queensland, 55 per cent of children who left care in 2005 had been in care for less than one year, 73 per cent had been in care for less than two years and 82 per cent had been in care for less than three years.

However, there are a significant number of children who cannot safely return to their birth families and who remain in long-term care. For example, in Queensland 1,264 children exited out-of-home care in 2005, and 10.6 per cent of these children and young people had been in care for five years or more. Over the last decade, the need to provide stable long-term care for children who cannot safely return to their birth families has increasingly been identified as a priority across the western world (Tilbury 2006).

Recent evidence from practice and research has highlighted the devastating consequences for children who 'drift in care' because of the lack of long-term planning and timely decision making (Cashmore and Paxman 2006). Researchers have called for permanent care to be vigorously pursued when it is clear that family reunification is not possible (Scott 2002). The CMC report also identified the need to improve stability for children in long-term care in Queensland (CMC 2004, Recommendation 7.46).

Instability in care arrangements has significant adverse short and long-term effects on children's emotional and social development and wellbeing (DFES 2005 (a)). It is essential for their healthy development that young children form a secure attachment to a primary caregiver (Gribble and Jeffrey 2004). All children need to feel safe and secure, and that they belong in a family (Schofield and Beek 2005; Gilligan 2006). It goes to the very core of their capacity to love and be loved, and the very essence of their humanity (Scott 2006).

Some children who suffer abuse in their birth family are placed in out-of-home care and remain there for many years. During that time, they may experience multiple placement changes and it can be difficult for them to develop and retain secure attachments. Children living in unstable care arrangements and who are unable to form secure attachments can suffer delays in development, long-term behavioural problems, learning difficulties and problems forming positive relationships (Department of Human Services, Victoria 2005).

Data show that children who have suffered through multiple placements in foster care demonstrate poor outcomes in adulthood across a range of indicators of social and economic wellbeing. The negative effects commonly include reduced health status, lower education levels, higher unemployment and homelessness rates, lack of stability in future relationships, and a higher incidence of imprisonment, drug abuse and mental health problems (JCICS 2005). 'In contrast, children who are adopted have better outcomes, similar to those of children in the general population' (CMC 2004).

In the past when children were in need of protection, protective orders generally transferred parental responsibility to the relevant child welfare department. More recently, all other states in Australia and comparable jurisdictions overseas have introduced options for transferring custody and legal guardianship to an individual. Jurisdictions have introduced these permanent care options granting full parental responsibility to a caregiver in an attempt to address the problem of instability for children in out-of-home care.

In Queensland, there is currently the option of long-term guardianship to a suitable person, which aims to provide stable long-term care for children who remain in the child protection system. The Department of Child Safety is considering the need for a new option that will provide greater permanence and a regular family environment for children, and reduce the perceived stigma and intrusion into children's lives that may be associated with the continued involvement of the department.

The department is contemplating a new Permanent Parenting Order that would provide a permanent family environment for children without changing their identity or severing their legal relationship with their birth family, as happens with adoption. The order under consideration would last until a child turns 18, but the bond that would be created is expected to last a lifetime.

The order would not be another Child Protection Order, instead it would give children a regular family life and allow them to leave the child protection system permanently.

This paper explores the issues associated with a potential new Permanent Parenting Order and seeks feedback on the proposal and related issues.

## What would a Permanent Parenting Order be?

A new Permanent Parenting Order would provide a more permanent option for children who are in the child protection system and who cannot safely return to the care of their birth family, but for whom adoption is not appropriate. For many children, their sense of identity is strongly linked to their birth family and they may not want to sever their legal relationship with their biological family. For other children, there are cultural or religious reasons why adoption is not appropriate.

Children who may be unable to return to live with their biological family still need permanence in their alternative care arrangements. The proposed Permanent Parenting Order would provide children with a life long relationship with a permanent caregiver and caregiver's family, while allowing them to maintain their original identity and an ongoing meaningful relationship with their birth family.

For a caregiver, the Permanent Parenting Order would mean being granted custody and full legal guardianship until the child turns 18. It is intended that the arrangements would provide a sense of permanence and allow the caregiver and child to develop a bond that would last a lifetime.

However, the Permanent Parenting Order would not change a child's name or birth certificate, as happens with legal adoption. A child's birth parents would still be recognised by law as the child's parents but they would be unable to exercise any parental responsibilities and would no longer be responsible for making decisions about the daily care or long-term welfare of the child. Importantly, a child would still be able to maintain regular ongoing contact with their birth parents, extended birth family and other significant people in their life, where this is appropriate.

The proposed order would only be made if strict criteria were met. These would include:

- that it is not possible for the child to return safely to the care of their birth family in the foreseeable future
- that the proposed caregiver is a suitable person to care for the child permanently.

The order would be made by the Childrens Court but would sit outside the child protection system and not be considered a Child Protection Order. The intention is to move children out of the child protection system and normalise the situation for them and their new family as much as possible, reducing the potential stigma and associated intrusion into family life.

In a recent New Zealand survey, young people who had left care expressed their desire to be just like any other young person and specifically identified the stigma of being in foster care as having been a significant concern for them. They spoke about how they hated moving from one placement to another and how they longed to be part of a 'real family' who was committed to them and who would 'stick it out' (Hessell et al 2006).

It is anticipated that once a Permanent Parenting Order is made, the department would have no further involvement in the child's life. Where a cohesive family unit has developed, current long-term guardianship arrangements that involve ongoing monitoring by the department can be intrusive for a child and their new family.

The order would provide complete autonomy for permanent caregivers in raising children. Any distinction in practice between open adoption and the proposed order is expected to be minimal. It is intended that the permanent arrangements would increase caregivers' sense of control and responsibility. Permanent orders elsewhere have deepened caregivers' commitment, and this has provided additional security and stability for the children. Such caregivers see themselves as parents, and the children have made significant progress in their personal development and become more settled since the orders were granted (Ward 2004).

Evidence from the United States suggests that permanent caregivers are as likely as adoptive parents to feel their arrangement is permanent, and children in their care experience similar feelings of permanence and exhibit similar levels of social functioning as adopted children (Barbell and Freundlich 2001; Sellick et al 2004).

## Context

Increasingly across the western world, there has been greater recognition of the need to provide permanence and a family life for children in care. The impetus for this emphasis on stability has stemmed from the realisation, in both research and practice, that the focus placed on reunification with birth families has sometimes resulted in parents' wishes being given precedence over the rights and best interests of children (Sargent 2003).

The Department of Child Safety is considering the need for a more permanent option to be made available in Queensland for a specific cohort of children who might benefit from more permanent care arrangements but for whom adoption is not appropriate.

During the second half of 2003, the government undertook statewide consultation on its discussion paper *Stopping the drift: Improving the lives of Queensland's children and young people in long-term care*. The paper acknowledged the significant number of young people who suffer from drifting through multiple placements in the child protection system.

Feedback from the consultation indicated widespread support for improvements in long-term planning for children in care. The feedback confirmed that priority needed to be placed on providing children with secure, stable long-term care.

Young people in care specifically identified the lack of available permanency options as a problem because it potentially limited the capacity to meet their need for stability. They said that being accepted as part of a family and not having to move continually was very important to them. They believed that feelings of being loved and belonging provided children and young people with a sense of certainty and normality and made them feel confident and happy (CREATE Foundation 2003).

In 2004, the Crime and Misconduct Commission's inquiry also highlighted the need to improve case planning to ensure children's needs for stability and continuity of care are met, and advocated a child-focussed approach to this issue (CMC 2004, Recommendations 7.36-7.40 and 9.3).

To address such concerns, the *Child Protection Act 1999* has been amended to ensure that priority is given to children's need for long-term stability and continuity of care while in the child protection system. This occurs throughout the cycle of assessment, case planning, implementation and review. The Act now requires the Department of Child Safety to report, through case plan reviews, on how this priority is being actioned and progressed for every child on custody or guardianship orders.

These amendments strengthened the permanency planning elements of the existing legislation. For example, the principles of the Act stipulate that reunification with children's birth families is the preferred permanency option for them, but if children do not have a parent able and willing to provide ongoing protection, they have a right to alternative stable long-term care.

In addition, current departmental practice requires planning in order to be able to progress alternative long-term arrangements, if reunification with a birth family cannot be achieved in a safe and timely way.

The CMC report recommended the introduction of a standardised, evidence based system for all assessment and case planning (CMC 2004, Recommendation 7.35). In response, the department has recently implemented a suite of Structured Decision Making (SDM) tools to regularise and improve all frontline decision making. The SDM tools provide an objective and consistent decision making model based on thorough research. They aim to reduce further harm to children and advance stable long-term arrangements to prevent children drifting in care.

The introduction of the tools gives effect to the recent legislative amendments to strengthen permanency planning. Building on the SDM framework, the department is currently developing a permanency planning strategy to secure appropriate permanent placements for children in a timely manner. The strategy will further ensure that consistent best practice principles guide all assessment and case planning decisions, whether they are for children's reunification with birth parents or for their transition to long-term, out-of-home care.

The department is also actively reviewing and exploring all permanency options for children as the new case planning requirements are operationalised. The availability of a range of suitable permanent placement options will be critical in securing permanency for children in a timely manner.

This discussion paper has been produced to facilitate consideration of the need for an expansion of the existing long-term care options. Feedback from the *Stopping the drift* consultations has informed this paper.

## Current permanency options in Queensland

There are two long-term or permanent care options currently available in Queensland for children who are in the child protection system and who cannot safely return to the care of their birth family. They are:

- that the child lives with a member of their family or a foster carer under a Child Protection Order granting long-term guardianship to the family member or carer under the *Child Protection Act 1999*
- that the child is adopted under the *Adoption of Children Act 1964*, although this is currently a rare event.

For some older children unable to return home, the time may have passed where they are able to form a bond with a new alternative family. In these cases, the most suitable arrangement may be for the Department of Child Safety to support the young person's transition to independent living, and permanency plans would focus on supporting the young person's enduring familial relationships into adulthood.

The type of alternative long-term arrangement considered most appropriate for a particular child will depend on an assessment of their specific needs and circumstances, and on the input of the child, their family and other significant people in their life. In the case of an Aboriginal or Torres Strait Islander child, the involvement of the relevant Recognised Entity with responsibility for that particular child, alongside extended family and community members and other significant people in their life, is also essential in the development of an alternative long-term care plan.

### Long-term guardianship

Section 59 of the *Child Protection Act 1999* allows the Childrens Court to make an order granting long-term guardianship of a child when the court is satisfied that:

- there is no parent able and willing to protect the child within the foreseeable future
- the child or young person's need for emotional security will be best met in the long term by making the order.

The court can grant long-term guardianship of a child to any of the following:

- a member of the child's family
- another suitable person
- the Chief Executive of the Department of Child Safety, with the child usually living with a carer.

In recognition of the benefits provided by a stable and secure family environment, the Act stipulates a preference for a long-term guardianship order in favour of a person other than the Chief Executive. The Act clearly states that the court must not grant long-term guardianship to the Chief Executive if it can properly make the order to another suitable person.

Currently, the Childrens Court can grant long-term guardianship of a child to a person other than the Chief Executive when the child is considered to have an ongoing need for protection. Strict criteria must be met before the court can determine that the order is appropriate for a particular child.

The court may only grant long-term guardianship of a child to a person who is not a member of the child's family if the child is already in the custody or guardianship of the Chief Executive. The department must nominate the suitable person to the court and, in practice, will only nominate a person who has had the care of the child for some time.

The department must also be satisfied that the carer is a suitable person to become the long-term guardian of the child. It makes this decision based on whether the carer has consistently demonstrated the ability to provide high quality care for the particular child. The carer must have also demonstrated that they are able and willing to provide adequate opportunity for ongoing contact between the child and their parents and birth family.

However, a child or their birth parents can apply to revoke a long-term guardianship order. The court may only revoke an order if it is satisfied that the order is no longer necessary to protect the

child. While this provides some certainty about the stability of the placement, long-term guardianship is still a less than permanent option.

In recent years, the number of long-term guardianship orders to a person other than the Chief Executive, as a proportion of all long-term guardianship orders, has been steadily increasing. In Queensland, as at 31 January 2006, 1,974 children were on long-term guardianship orders. Of these children, 157 were in the guardianship of relatives, 165 were in the guardianship of foster carers, and 1,652 were in the guardianship of the Chief Executive.

Currently, more than one quarter of long-term guardianship orders are made to kinship and foster carers, where there is no risk to the placement and carers do not need substantial support from the department or assistance to facilitate contact with the child's birth family. Yet the department realises that a greater proportion of long-term guardianship orders could be made to suitable individuals to reduce ongoing departmental involvement in children's lives.

Improved permanency planning processes are now identifying a greater number of children in care for whom a long-term guardianship order, to their carer, would be appropriate.

## Adoption

Adoption provides the greatest degree of permanence for children who cannot be returned to the care of their birth family in a safe and timely way. Adoption permanently changes the legal identity of a child and severs the child's legal relationship with their birth parents and all other members of their birth family, even though it may not sever these relationships in practice. Adoption has been seen as a beneficial option for a child in out-of-home care because it addresses some of the child's apprehension about their status in their new family and birth parents are not able to challenge the order (Cashmore 2000).

The *Adoption of Children Act 1964* provides for the adoption of children in Queensland and has been undergoing a major review over the last few years. Opportunities for adoption can occur at various points along the child safety intervention spectrum and, clearly, infant adoption maximises the opportunities for a successful placement.

Some parents are not able or not willing to care for a particular child. In such instances, the department may serve the child's interests best by raising, early in their life, the option of adoption as one of a range of responsible choices that a parent might make.

However, adoption should not be ruled out for older children. For example, in the United Kingdom in 2003-04, the average age of children adopted was four years and five months, and for children adopted by their foster carers, six years and seven months. Of those adopted, 30 per cent were between five and nine years of age, and six per cent between 10 and 15 years of age (DFES 2005 (b)). In Queensland, the number of children adopted from the child protection system is quite low, but in recent years several adolescents have been adopted by their long-term foster carers.

If adoption is being considered for a child in the child protection system, the views of the child are taken into account, where the child is old enough to express them. In practice, all other options for the stable long-term care of a child are pursued before seeking the birth family's consent to the child's adoption.

There has been an increasing trend towards adoption in both the United States and the United Kingdom as a means to provide permanent care for children. For example, as at 31 March 2004, 61,100 children in the United Kingdom were in the care of local authorities. During the previous year, 3,700 children, or six per cent, were adopted from care (DFES 2005 (b)).

In Australia, adoption is used less frequently as an option for children in care. Approximately one per cent of children in care are adopted, compared with between six and seven per cent in the United States (Cashmore 2001). This is partly because research shows that the older a child is, the greater the risk of placement breakdown and difficulty finding a family to adopt the child. In many instances though, older children have significant emotional ties to their birth family and do not want to alter their identity or lose their legal relationship with them.

The Australian Institute of Health and Welfare report *Adoptions Australia 2004-05* reveals that there were 86 adoptions nationally of a 'known child' in that year, including adoptions by foster carers, step-parents and relatives, as follows:

State	Number of 'known child' Adoption Orders
Queensland	6
New South Wales	42
Victoria	13
Western Australia	16
South Australia	1
Tasmania	3
Australian Capital Territory	5
Northern Territory	0
Total	86

In 2004-05, 52 'known child' adoptions were by step-parents, 29 were by foster carers and five were by relatives other than step-parents. No orders were made in favour of carers in Queensland.

The Department of Child Safety is exploring the further use of adoption as a permanency option for children in care but adoption will only ever be the solution for a minority of children. It permanently severs a child's legal relationship with their birth family and cannot be varied or revoked once an order is validly made. To consent to a child's adoption represents a major and sometimes painful decision for most parents, even for those who may have had little involvement with their child. Adoption may also not be acceptable to some older children as it changes their legal identity.

Adoption is not usually considered a culturally appropriate option for an Aboriginal child, as traditional custom relating to child rearing practices does not recognise such a concept. However, a very small number of parents from an Aboriginal background do choose adoption for their child. Torres Strait Islander families traditionally practise a form of customary kinship adoption but this is very different from the official system of adoption in Queensland.

There are a significant number of children in the long-term care of the child protection system for whom adoption is not a viable option for reasons such as identity, and bonding and attachment with their birth family. Nevertheless, evidence suggests that many children in care long for the sense of belonging and certainty that adoption affords (PIU 2000). These children would benefit from an option that would provide permanence and stability, but not sever all legal ties with their birth family.

### Proposed Permanent Parenting Order

The Department of Child Safety is looking at finding a middle way between the two existing options of long-term guardianship to a suitable person, other than the Chief Executive, and adoption. The department wants to ensure that children and young people in the child protection system have access to a range of long-term care options to provide them with the best possible chance to reach their full potential.

The proposed order would be a more appropriate permanent care option for some children currently within the child protection system for whom adoption is not appropriate, and it would provide a greater degree of permanence than long-term guardianship. Importantly, the proposed new option would not be a Child Protection Order and is intended to reduce the perceived stigma of association with the child protection system and its intrusion into family life.

It is estimated that there may be up to 300 children in long-term care over the next five years for whom the Permanent Parenting Order might be identified as the most appropriate permanency option, with fewer than 100 orders being made per year.

However, long-term guardianship orders to a suitable individual will continue to be available where a carer is committed to a child, but the child or carer continues to need some ongoing support and financial assistance from the department.

The following table outlines the key features of the different options for providing permanent out-of-home care in Queensland, which have been discussed above.

### Comparison of permanency options

Characteristics	Long-term guardianship order	Proposed Permanent Parenting Order	Adoption Order
<b>Threshold</b>	<ul style="list-style-type: none"> <li>Where a child cannot be safely returned to their birth family in the foreseeable future</li> <li>The child has been in out-of-home care for a prescribed period, and all reasonable attempts at reunification have been exhausted</li> <li>The timeframe may differ for children of different ages</li> <li>Can only be made if the child is already in custody or guardianship under a Child Protection Order</li> <li>Can only be made to a non-relative carer if the child is already in this placement</li> <li>No legislative requirement for parental consent but it is current departmental practice to seek it</li> </ul>	<ul style="list-style-type: none"> <li>Where a child cannot be safely returned to their birth family in the foreseeable future</li> <li>The child has been in out-of-home care for a prescribed period, and all reasonable attempts at reunification have been exhausted</li> <li>The timeframe may differ for children of different ages</li> <li>Final order can only be made if the child is already in this placement</li> <li>No proposed requirement to obtain parental consent but agreement would be sought where possible</li> </ul>	<ul style="list-style-type: none"> <li>Birth parents must provide consent, but in specified circumstances it can be dispensed with by the court</li> </ul>
<b>Legal status</b>	<ul style="list-style-type: none"> <li>Long-term guardians have legal custody and guardianship of the child, but the Department of Child Safety maintains an oversight role</li> <li>Birth parents are the legal parents but cannot exercise any parental responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>Permanent caregivers would become the legal guardians of the child and there would be no departmental oversight</li> <li>Birth parents would retain legal status as parents but could not exercise any parental responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>Adoptive parents become the legal parents of the child</li> <li>Birth parents are no longer recognised by law as the child's parents</li> <li>Removes the child's legal relationship with their extended birth family</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>Until the child is 18 but subject to review</li> </ul>	<ul style="list-style-type: none"> <li>Until the child is 18 but is intended as an enduring bond</li> </ul>	<ul style="list-style-type: none"> <li>Life long</li> </ul>
<b>Name change</b>	<ul style="list-style-type: none"> <li>No name change</li> </ul>	<ul style="list-style-type: none"> <li>Name change not part of order but could occur by other means</li> </ul>	<ul style="list-style-type: none"> <li>New birth certificate – usually name change</li> </ul>
<b>Ongoing support and financial payment</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>
<b>Ongoing monitoring</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>
<b>Inheritance</b>	<ul style="list-style-type: none"> <li>Through birth parents</li> </ul>	<ul style="list-style-type: none"> <li>To be considered</li> </ul>	<ul style="list-style-type: none"> <li>Through adoptive parents</li> </ul>
<b>Contact with birth family</b>	<ul style="list-style-type: none"> <li>Yes – can be assisted by department</li> </ul>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>Limited</li> </ul>
<b>Revocation options</b>	<ul style="list-style-type: none"> <li>The department or birth parents can apply to the Childrens Court for revocation</li> <li>Strict criteria for court consideration</li> </ul>	<ul style="list-style-type: none"> <li>Only the department could apply to the court for revocation</li> <li>Only in exceptional circumstances</li> </ul>	<ul style="list-style-type: none"> <li>By Supreme Court and only when the order is made improperly or in error, and before the child turns 18</li> </ul>

Adoption may be the most appropriate option for infants or very young children because it might best address their need for emotional, social and legal permanence within a family. It may also be appropriate for an older child who has been in a long-term stable foster care placement and who does not have, or it is not in their best interests to have, an ongoing relationship with members of their birth family. The appropriateness of adoption depends, in each case, on an expert and holistic assessment of whether it is in the best interests of the particular child.

Long-term guardianship with a kinship or foster carer may be the most appropriate option for an older child who wishes to maintain an ongoing relationship with their birth family, and where the carer or child needs some financial assistance or other support from the department. This option may be the most suitable for a child with high support needs or behaviours, or where parents want to be involved in their child's life but do not have the capacity to be the primary caregiver, for reasons such as mental illness or drug problems.

The Permanent Parenting Order may be the most appropriate option where a child would benefit from the security and stability that a permanent family could provide and where the child or caregiver does not need any ongoing assistance or support from the department. The order would be more difficult to revoke than a long-term guardianship order and, therefore, more secure. Importantly, there would be no departmental oversight or intrusion into family life. The child would also still be able to maintain an ongoing meaningful relationship with their birth parents, who may want to be involved in their child's life but who are not able to provide day-to-day care for the child.

No single alternative permanent placement option is right for all children, but permanence does provide them with better outcomes (Thoburn 2003; Cashmore and Paxman 2006). In making decisions about the most appropriate option for a particular child, it is necessary to identify the option that will maintain the child's links and legal relationship with their birth family to the extent that this is in the child's best interests. At the same time, it is also necessary to identify which option will provide a sufficient degree of permanence to promote the child's long-term security in a placement with permanent caregivers.

**Question 1**

Is it necessary to consider another permanent alternative care option in addition to the existing alternative care options in order to secure stable long-term care for children who cannot be reunified with their birth family?

**Question 2**

What might be the advantages and disadvantages of such an order?

## Who might be a permanent caregiver?

It is hoped that the proposed Permanent Parenting Order would allow a greater number of people in the community to provide a safe and secure family environment, on a permanent basis, for children in care.

A range of people may choose to become a permanent caregiver for a child. This could include current carers, or prospective carers for a particular child they know. In some instances, the Department of Child Safety would identify appropriate individuals who might become permanent caregivers. In other cases, relatives or carers who are already known to a child could signal their interest to the department.

The department also anticipates that there may be people who want to, and are able to, care appropriately for a child in the child protection system even though they do not yet have a relationship with the child.

### Foster carers and long-term guardians

Across all jurisdictions, the number of foster carers is generally declining while the number of children coming into care continues to increase (Barber and Delfabbro 2004). It is hoped that some people who may have considered fostering or previously been foster carers might decide they could provide a stable family environment for a child in the child protection system, until they become an adult.

In addition, many current foster carers and long-term guardians may wish to become the permanent caregiver of a child already in their care. They might welcome the opportunity to take up the new order because it would give the carer or guardian, and the child in their care, a greater sense of security and reduce the fears of separation they both might feel (Fenster 1997).

### Relative or kinship carers

An increasingly common feature of permanency planning across all jurisdictions is the reliance on relatives or kinship carers as the preferred out-of-home permanent care option for children (Barbell and Freundlich 2001). Relatives or kinship carers are usually the first preference for placing children in alternative care because they best meet children's needs for familial, cultural and community continuity, and are best able to retain children's sense of personal and cultural identity (Department of Children and Youth Services, Ontario 2005). They are also more likely to be able to keep sibling groups together (Bissell 2005).

These placements provide more stability for children and possibly better mitigate children's feelings of loss and grief associated with separation from their birth parents (Barber and Delfabbro 2004). Relative or kinship care is particularly appropriate for Aboriginal and Torres Strait Islander children and young people.

However, kinship care has so far been under utilised in Queensland. As at 31 January 2006, 6,352 children were in out-of-home care and only 1,862, or 29 per cent, were placed with relatives. Of the 1,974 children who were on long-term guardianship orders, only 157, or eight per cent, of orders were to relatives.

In recognition of the priority now being placed on this group of carers, the *Child Protection Act 1999* has been amended to require priority to be given to placing children with kin, wherever possible. Kin refers to significant people in children's lives, including members of their family.

Regulation has also been strengthened through legislative and policy amendments to ensure that kinship carers meet the same standards as those required of foster carers, and to provide them with the same level of support. This will ensure that the large numbers of children in these placements continue to receive high quality care.

It is hoped that existing kinship carers may wish to become permanent caregivers of children in their care who cannot return to their birth parents in a safe and timely way. In addition, relatives of children who are in need of protection, and who otherwise might have become kinship carers, might choose to become permanent caregivers instead, as soon as it becomes clear that children will not be able to return to their birth parents.

## Prospective adoptive parents

Prospective adoptive parents generally choose not to become foster carers because they are seeking to form a permanent family and they do not want to form an attachment with a child and then have the child removed from their care. However, prospective adoptive parents may choose to become permanent caregivers as an alternative to becoming adoptive parents because the proposed order would provide sufficient autonomy and certainty to allow them to form a permanent family. There are a significant number of children in the child protection system for whom adoption is not appropriate but who would benefit greatly from the family environment that the Permanent Parenting Order is intended to create.

In addition, there may also be many other people in the community who are not currently foster or kinship carers, or prospective adoptive parents, who would like to become a permanent caregiver for a child in the child protection system. They may wish to become a permanent caregiver for a child they do not yet know because they can offer a safe and secure family life on a permanent basis.

### Question 3

What type of people might want to assume full parental responsibility for a child?

## Suitability criteria

The Department of Child Safety would need to be satisfied that a prospective permanent caregiver was a suitable person to provide long-term care for a particular child, and that the child's ongoing care needs could be properly met by the potential permanent caregiver.

The department is considering appropriate suitability criteria for a permanent caregiver. Suggested suitability criteria, based on the criteria for adoption, include:

- the person is of good character and has the appropriate emotional capacity and other personal qualities necessary to provide long-term care for a child
- the person is financially stable and has the necessary financial capacity to provide long-term care for a child
- the person is able and willing to ensure a child's safety and wellbeing
- the person has an appropriate attitude to, and understanding of:
  - the physical and emotional developmental needs of children
  - the responsibilities and duties of providing long-term care for a child
  - issues about informing a child of their origins
  - parents and birth family's significance to a child
  - the importance of developing and maintaining relationships with a child's parents and birth family
  - the importance of developing and maintaining a child's cultural background
- the person is in good health and does not have a condition which is likely to have an adverse impact on their ability to care for a child
- if the person has a spouse, the quality of that relationship, including its duration and stability
- neither the person, nor any member of their household, would pose a risk of harm to the child
- any other factors relevant to the person's capacity to provide for a child's emotional, physical, educational, recreational and social needs.

### Question 4

Are the suggested suitability criteria appropriate?

#### Question 4a

Are there any other suitability considerations relating to prospective permanent caregivers that the Department of Child Safety should have regard to?

## Key considerations

There are several important considerations regarding the proposed Permanent Parenting Order. These are discussed below.

### Principles – child’s best interests paramount

The benefits of pursuing reunification with birth parents as the preferred permanency option for children in care are irrefutable, wherever it is possible and in their best interests. However, the previous focus on reunification did not require an assessment of the benefits of continuing reunification efforts compared to the benefits of providing children with a secure permanent placement. The consequence of this has generally been a high tolerance of impermanence in case planning for children.

Permanency planning stresses the need for children to have a stable permanent family, and the urgency of timely decision making, in order to provide them with a safe and secure environment as soon as possible. This is whether it is with children’s birth family as the first preference or another permanent alternative (Wise (a) 2000). The new emphasis on securing alternative permanent placements for children unable to be reunified with their birth parents, in a timeframe appropriate to children’s ages and circumstances, is a major change from the previous emphasis on reunification.

The proposed Permanent Parenting Order is based on the principle that the best interests of children are the paramount consideration. The proposal for the order is in response to the pressing need to provide security and stability to ensure that children’s best interests are met in the long term. It is anticipated that as soon as it becomes clear that a child will not be able to be returned to their birth family in a safe and timely way, a Permanent Parenting Order would be considered as a means of providing long-term care for the child. This reflects the principle that the best interests of the child must take precedence over the wishes of birth parents.

### Reunification

Reunification is, and will always be, the first and preferred permanency goal for any child removed from the care of a parent, unless it is not in the child’s best interests or not possible. The principles outlined in the *Child Protection Act 1999* recognise that a child’s natural family has the primary responsibility for the upbringing, protection and development of their child, and that the preferred way of ensuring a child’s wellbeing is through the support of their family.

The Act also stipulates that if a child is removed from their birth family, the Department of Child Safety must work with parents with the aim of safely returning the child to their family, if at all possible. The department understands that parents need clear and unambiguous information about identified problems, timelines, case goals and the department’s expectations of them, early in the intervention process.

The department also appreciates that parents need adequate and appropriate support services in order to build their parenting capacity to make sure that children can safely return to their birth family if at all possible. The department provides, and funds non-government organisations to provide, intensive family support and reunification services to birth families.

Timeliness and responsiveness are vital to successful reunification. Evidence suggests quite clearly that the longer children remain in out-of-home care, the less likely they will be able to be returned home successfully (Barber and Delfabbro 2004). Current practice in Queensland and other jurisdictions recognises the need for timely decision making to maximise the chances of children’s successful return home, or if this is not possible, to provide an alternative long-term care option.

Timely decision making not only increases the chances of successful reunification, but where this is not possible, it ensures appropriate placements that are best able to meet children’s specific needs are identified and secured at the earliest opportunity. It also provides greater stability in alternative care arrangements and better maintains children’s relationships with their birth family if they are in alternative care (Frame, Berrick and Brodowski 2000).

## Attachment

Early attachment with a primary caregiver is extremely important to the overall emotional health and wellbeing of children, and to healthy adolescence and adulthood. This first primary bond becomes an internal representation of how children will go on to form relationships with the rest of the world throughout their life (Gribble and Jeffrey 2004). It even influences children's personalities and perception of themselves and others (Tilbury 2006). Secure attachment is particularly important for children up to four years of age, after which time they start to develop as separate and independent people (UNICEF 2004).

The interaction between children and their primary caregivers plays a critical role in shaping children's physical, emotional, social, cognitive and language development over their lifetime (Department of the Premier and Cabinet 2006). Secure attachments also build greater resilience and self-esteem and result in improved ability to function (Schofield 2003). Children who are not able to form healthy attachment relationships are at serious risk of numerous negative developmental consequences (Wise (a) 2000; ACU 2005).

Children who have experienced abuse and neglect often develop poor or insecure attachments. Attachment difficulties are exacerbated when abused children are placed in out-of-home care and then subjected to constant change in their living arrangements and relationships (Department of Children's Services, Alberta 2003). Some children can even become resistant to forming an attachment and become particularly difficult to care for (Wilkes 2002). Not being able to form a proper attachment has life long major mental health implications for their capacity to form trusting relationships (Lowe and Murch et al 2002).

However, there is compelling evidence that permanent caregivers can help children to develop secure attachments and recover from poor early attachment experiences and previous traumatic events. Research confirms that better outcomes are achieved for children who are permanently placed earlier (Harden 2004; Kanuik et al 2004).

The proposed Permanent Parenting Order would allow children and their caregivers to commit fully to a permanent relationship. Crucially, this would enable children to develop and maintain a stable and secure attachment with a primary caregiver. The proposed order is intended to facilitate a life long relationship between children and their caregiver, which arises out of the children's feelings of belonging.

Research from the United States suggests that most caregivers and children in similar arrangements there have a strong psychological sense of permanence that is based on these feelings of belonging (Bissell and Kirana 2004). A New Zealand study has also shown that children in such arrangements consider their permanent caregivers to be their parents (Ward 2004).

## Identity

A strong sense of identity is critical to children's current and future wellbeing because it determines their sense of worth and where they belong. Children's ability to develop a robust sense of identity depends on three main factors:

- the experience of feeling wanted and loved within a secure environment
- knowledge of their background, personal history and cultural connections
- being perceived as a worthwhile person (Triseloitis 1983).

Children who are taken into care at an early age can lose their sense of identity, or fail to develop an integrated identity. For older children entering the child protection system, their sense of identity has already been firmly established and is strongly linked to their birth family. This family and cultural identity and children's self-concepts are powerful and cannot simply be replaced. Even when children do not return to live with their birth family, their self-identification and identification with their birth family remain important (Bath 2000).

The proposed permanent care arrangement would allow older children to build on their existing sense of identity as they become secure in their new family, as well as allowing them to maintain an affinity and meaningful relationship with their birth family. This continuing sense of

connection with their birth family assists children to deal with any potential identity issues (Cashmore 2000).

The proposed Permanent Parenting Order would also enable younger children, or those who do not strongly identify with their birth family, to develop a healthy sense of identity in connection with a new family. For all children, having a secure base and being part of a new family for life can replace their 'care' identity and any associated stigma (Schofield 2003).

## Stability

About 20 years ago Australian jurisdictions moved to de-institutionalise children in care. The subsequent reliance on foster carers to provide a 'normal' family environment for these children has created a system that has often unintentionally resulted in impermanence (Bath 2000).

Over that time, most children in foster care have had numerous placements. The lack of stability for children in foster care has been a primary concern in all jurisdictions (Monck et al 2003). Multiple placements are undesirable because they are disruptive and lead to the development of insecure attachments and the loss of trust and continuity in children's lives (CMC 2004).

The inaugural research forum held by the Department of Child Safety in late 2005 identified that children's feelings of security and having a stable placement are key factors in predicting a positive outcome for them during and after leaving care (see Cashmore and Paxman 2006).

The department has already attempted to address the problem of instability by amending the *Child Protection Act 1999* specifically to recognise the right of children in out-of-home care to a safe and stable living environment in the long term.

In Queensland, 1,264 children exited out-of-home care in 2005. The majority, 73 per cent, had been in care for less than two years. However, 16.4 per cent had been in care between two and five years, and 10.6 per cent had been in care for five years or more. Of those children who had been in care for two years or more, 27 per cent had four or more placements.

The following table shows the length of time in out-of-home care and number of different placements for children who exited care during 2005 in Queensland.

Length of time in out-of-home care	Number of placements				Total
	1 to 3	4 to 6	7 to 9	10 or more	
1 month to 6 months	482	2	0	-	484
6 months to 1 year	194	15	1	-	210
1 year to 2 years	188	37	3	-	228
2 years to 3 years	84	25	4	1	114
3 years to 4 years	45	10	5	1	61
4 years to 5 years	18	14	1	-	33
5 years or more	92	31	9	2	134
<b>Total</b>	<b>1,103</b>	<b>134</b>	<b>23</b>	<b>4</b>	<b>1,264</b>

The number of placements children experience generally increases the longer they stay in care. The proposed Permanent Parenting Order is expected to minimise the number of placements that children experience and result in greater security and stability in their lives.

## Case planning

The problem of instability was further addressed by amendments to the Act in 2004, which stipulated that case plans must be developed for every child as soon as they enter the child protection system. The Childrens Court cannot make a Child Protection Order unless there is a case plan already in place for the child.

Case planning increases stability and continuity in a child's life by ensuring that all decisions made about the child's care contribute to the long-term care goal for the child. The purpose of

case planning is to protect a child against short-term or reactionary decision making regarding their care arrangements, and to prioritise a child's needs for long-term stability and continuity of relationships (*Child Safety Legislation Amendment Act (No. 2) 2004* Explanatory Notes; CMC 2004).

Under the Act, case plans must be written and detail specific matters relevant to the child, as well as the long-term care goal for the child. Case planning must involve the child, parents, carers and any other significant people in the child's life. These plans must be reviewed at least every six months and, in practice, are reviewed more frequently when there is a significant change in circumstances for a child or family. For a child under three years of age, departmental policy stipulates that case plans be reviewed every three months.

The department's robust, best practice framework for long-term planning and decision making includes concurrent or contingency planning.

### **Concurrent planning**

Concurrent planning allows a number of alternative care options to be planned for simultaneously. The case planning process for a child in the Queensland child protection system includes planning for reunification with their birth family while at the same time, planning for stable long-term, out-of-home care as a contingency. In other words, the primary goal of working towards reunification with a child's birth family can continue while planning for an alternative long-term care option occurs at the same time, to prepare for the event that the primary goal may not be possible.

The plan for alternative long-term arrangements must be progressed only as a contingency in parallel with work to achieve reunification, where that is the goal. It must not detract from the primary goal of reunification.

Under current legislation, the department is required to commence planning for alternative long-term care when there is a real risk that a child's needs for permanency and stability may not be able to be met by a parent within a timeframe that is appropriate to the child's age and circumstances.

## Issues

There are several key issues associated with the introduction of the potential new Permanent Parenting Order. These are discussed below.

### Threshold

The purpose of permanency planning is to prioritise children's need for stable long-term care and promote moving children out of the child protection system as quickly as possible and appropriate (Department of Children's Services, Alberta 2003).

Evidence has shown that the application of timeframes to working with birth families towards reunification encourages more purposive and focussed interventions and reduces the length of time children spend in care (Monck et al 2003). The proposed Permanent Parenting Order would only be made when children are already in the child protection system and when there is no prospect that it will be safe to return them to their birth family within a reasonable timeframe.

The *Child Protection Act 1999* stipulates that work to reunify children with their parents must be planned and undertaken within a timeframe that best meets an individual child's needs for stability. It also provides flexibility to respond in the most appropriate way to each particular child's need for long-term, out-of-home care.

The Act currently provides that the individual circumstances of each particular case, rather than automatically imposed timelines, will determine when planning occurs for alternative care options. The factors that need to be considered in making decisions about the long-term care of a child or young person include:

- the child's age and developmental needs, specifically, the need for secure attachments
- the child's views
- the length of time the child has been in out-of-home care
- the child's stability and quality of care in current care arrangements
- the child's connection and interaction with their birth parents
- the child's connection and interaction with other family members and cultural community, and sense of identity within the family group
- the extent to which the child has been able to maintain continuity of relationships and connections with peers, the community and schooling
- the previous history of the child's birth family
- the type and severity of abuse or neglect
- parental willingness, capacity and commitment to change
- the parents' progress in addressing risks and associated needs
- the child's particular needs and circumstances
- the child's general physical, emotional, social and cultural needs (Maluccio, Fein and Olmstead 1986).

At present, the Department of Child Safety uses a set of Structured Decision Making tools to guide all frontline decision making and determine when it is appropriate and in a child's best interests to stop trying to reunify a family. The tools outline decision pathways and establish timeframes for making decisions about whether to continue to work towards reunification or to proceed with finding an alternative long-term care placement for the child. The factors listed above are incorporated in the tools, and all considerations are carefully weighed before any decision is made about the long-term care of a child.

#### Question 5

Are there any other factors or processes the Department of Child Safety should consider in securing stable long-term care for children who cannot be reunified with their birth family?

## Timeframes

The decision making process for pursuing out-of-home care is based on an objective assessment of a range of factors, mentioned in the previous section, concerning a child and their family. However, it is generally considered appropriate that, for a child under three years of age, reunification efforts cease when:

- the risk level has remained 'high' or 'very high' for 12 consecutive months
- the contact has been rated as 'fair', 'poor' or 'none' for 12 consecutive months
- the household has been deemed unsafe for 12 consecutive months
- the child has been in out-of-home care for 18 of the past 24 months.

For a child three years of age and over, reunification efforts cease when:

- the risk level has remained 'high' or 'very high' for 18 consecutive months
- the contact has been rated as 'fair', 'poor' or 'none' for 18 consecutive months
- the household has been deemed 'unsafe' for 18 consecutive months
- the child has been in out-of-home care for 24 of the past 30 months.

Where it is decided that reunification with a child's birth family will not be achieved, planning for long-term, out-of-home care arrangements progresses to enable the case plan goal to be changed and a timely transition made to long-term, out-of-home care for the child. The case plan must also provide for the maintenance of relationships and connections with family members and the child's cultural community.

The age of a child when decisions need to be made is extremely important to the decision taken because of children's different needs for attachment at different ages. The developmental needs of very young children may require timely decision making in order to protect their best interests. Recent evidence shows that young children's caretaking environment, particularly in the first three years of life, has a profound impact on the structure and functioning of their brain, both now and into the future.

A child's family environment lays the foundation for their life long cognitive and other competencies or deficits, and can determine their health, wellbeing and social functioning throughout their lifetime. For example, parts of the brain of severely abused and neglected children can be substantially smaller than those of healthy children (Department of the Premier and Cabinet 2006).

As at 31 December 2005, there were 208 children under three years of age who had been in out-of-home care for at least 18 of the preceding 24 months. Of these children, 41 per cent had been placed in care within one month of their birth. Almost one third, 29.5 per cent, had three or more placements during their time in care. Only a small minority, nine per cent or 19 children, were on long-term guardianship orders in total – one was under the long-term guardianship of a relative and five were under the long-term guardianship of another suitable person.

In some instances, the needs of young children may conflict with the time required by their parents to resolve the problems preventing them from caring for their children. In these cases, difficult decisions must be made. The pivotal question for the Department of Child Safety and the community is at what point is it appropriate that parenting responsibilities be given to someone other than a child's parents on a permanent basis.

The department understands how important it is to provide birth parents with sufficient appropriate support services in order to maximise the chances of children being able to return home. To this end, the department currently has 114 Child Safety Officers, 17 per cent of its frontline staff, dedicated to providing intensive family support to birth families. The department also funds non-government organisations to provide family reunification services.

In addition, the Department of Child Safety and the Department of Communities have recently allocated significant additional funds to set up new prevention and early intervention services across the state.

The services will target vulnerable families with young children, particularly those with multiple previous low level notifications. They will provide intensive assistance to help parents who are committed to working towards providing better care for their children.

#### **Question 6**

At what point should a Permanent Parenting Order be considered for a child?

#### **How would a Permanent Parenting Order be made?**

The Permanent Parenting Order would be made by the Childrens Court because it is this court that must authorise the child's entry into the child protection system, and the proposed order would end a child's association with the system.

It is proposed that the order be made by the court only after strict criteria have been met. As is currently the case for granting long-term guardianship of a child under the *Child Protection Act 1999*, the Childrens Court would have to find, by clear and convincing evidence, that:

- there is no parent able and willing to protect the child within the foreseeable future
- the child or young person's need for emotional security will be best met in the long term by making the order.

Critically, the court would also have to be satisfied that the Department of Child Safety had made all reasonable attempts at reunification with the child's birth family.

It is proposed that only the department would be able to make an application for a Permanent Parenting Order because the order would only be available to a child in the child protection system, and the department is therefore responsible for the welfare of the child. The department would only make an application for an order where it was in the best interests of a particular child. Practitioners would use specialised tools specifically developed to guide their decision making about what is the best permanency option for a particular child.

Despite these conditions, it is proposed that the Permanent Parenting Order would not be considered a Child Protection Order. This would mean that a child who had been in the child protection system and is now living with a permanent caregiver is part of a new family, and no longer a child in care or a child in need of protection. The department would expect to have no more involvement in the child's life, allowing the child and caregivers to experience a normal family life.

#### **Question 7**

Should legislation specifically require the Childrens Court to be satisfied that all appropriate attempts at reunification with a child's birth family have been made?

#### **Interim order**

The *Adoption of Children Act 1964* allows for the making of an Interim Order before a final Adoption Order is made for a child. Interim Orders are mostly used in the case of children from overseas who are adopted in Queensland, to allow the department to monitor their placements.

Similarly, it is proposed that an initial Interim Permanent Parenting Order would be made for 12 months. The department would monitor the placement during that year, and on the expiry of the 12 month period, the department would either make an application to the court for the full order to be made, or withdraw the application. It is proposed that while a child is on an Interim Permanent Parenting Order, they will remain in the guardianship of the Chief Executive.

In some instances, it may be appropriate for an interim order to be extended for a certain period. However, if it were decided that it would not be in a child's best interests to make a final order, the Childrens Court would discharge the interim order. The proposed interim order would provide an additional safeguard against an unsuccessful placement.

Where a child has already been in the long-term care of the proposed permanent caregiver, for 12 months or longer, a final Permanent Parenting Order could be made without a prior interim order, on certain conditions. These conditions would include:

- the department supporting the making of the order
- consent provided by the caregiver and the child, if the child is old enough to express their views.

It is anticipated that any existing Child Protection Order would be extinguished on the granting of the interim or final order.

#### **Question 8**

Is the proposed Interim Permanent Parenting Order an appropriate safeguard to protect children's best interests?

#### **Question 9**

If yes to question eight, should there be support from the Department of Child Safety during the interim order, and what type of support should be provided?

#### **Question 9a**

Should it continue after the making of the final order?

### **Birth parents' consent to order**

If the Childrens Court decided to proceed with making a proposed Permanent Parenting Order, it is not anticipated that birth parents would be required to give their consent. This is to ensure that priority would be placed on meeting the best interests of the child rather than respecting birth parents' wishes. However, parents' cooperation would definitely be sought, and better outcomes are no doubt achieved where parents support the granting of an order. In addition, a child's parents would necessarily have been involved in the case planning process that leads to the decision to pursue the proposed Permanent Parenting Order.

The department understands that deciding a child cannot be returned to the care of their birth family is a hard decision to make, but recognises that hard decisions are sometimes necessary to protect the best interests of a child. Current departmental policy stipulates that decisions to stop reunification efforts are only ever taken after all reasonable attempts to work with parents for reunification of the family have been made. Parents would also have the right to appeal the decision in a higher court, within a specified timeframe.

The proposal for the new Permanent Parenting Order does not diminish the importance of children's birth families in their lives. The proposal for the new order promotes meaningful relationships with children's birth families as much as possible. More than being about parents' rights, parental participation is essential to the principle of children's interests being paramount because it leads to better outcomes for children (Tilbury 2006). As well as being in children's best interests, the ongoing contact between children and their birth family would also provide better outcomes for birth families who cannot provide a safe environment for their child but who still want to be involved in the child's life (Iwanek cited in O'Neill 2000).

In addition, it is expected that there would be significant benefits for a child's new family, for example, a birth family has important information about a child's background that no one else has (Monck et al 2003). Also, evidence from research into open adoption suggests that helping a child to maintain contact actually increases the sense of psychological entitlement that guardians feel regarding their relationship with the child (Iwanek and Ryburn cited in O'Neill 2000; Wise (a) 2000).

### **Ongoing contact with birth family**

Children on Permanent Parenting Orders would be encouraged to maintain contact with their birth family, where and as appropriate. Evidence suggests that most children want to retain attachment to their birth family despite previous negative experiences (Macaskill 2002). One of the most positive aspects of the proposed order is that it would not sever these relationships.

Indeed, the whole purpose of the proposed order is to provide children with a permanent, stable and secure family environment while also allowing them to maintain relationships with members of their birth family. This would allow children to retain their sense of identity and remain connected to their origins, while having the benefit of a healthy, stable permanent care alternative.

Research and practice have shown that children's ongoing contact with birth family members assists children to settle into placements (Sinclair 2005) and form attachments with their new family (Sellick et al 2004). It also contributes to their stability and helps to sustain the placements (Thoburn 2003; Plunkett and Osmond 2004). In addition, maintaining contact with their birth family protects children against the feelings of stigma and rejection associated with being in out-of-home care (Masson 1990).

Open ongoing relationships with their birth parents and other members of their birth family also allow children to reconcile their separation from their birth family and to clarify any misconceptions from their past experiences (Wise (b) 2000). Even if they do not live with their birth families, all children need to understand their family dynamics and come to terms with their family background in order to become healthy and mature adults (CMC 2003; SNAICC 2005).

The department understands that, for children in the child protection system, their identity may already be established in connection with their birth family and they may have significant attachment to, and bonding with, that family. The continuity of care principle recognises that it is definitely in children's best interests to maintain a healthy relationship with their birth family, where at all possible.

The continuity of care principle also recognises the importance of children maintaining relationships with other significant individuals in their life, such as members of their extended birth family, school friends and members of clubs and other associations. The value of ensuring continuity in care extends to the full range of children's personal relationships, including in social, cultural and educational contexts.

It is possible that the Childrens Court, when making orders, could stipulate conditions to ensure children have the opportunity to maintain meaningful relationships with their parents, siblings, extended family members and other significant people, wherever this is possible and appropriate.

It may be the case that a relevant person wishes to vary contact conditions at some point in the future. In this instance, it is suggested that only the department could apply to the court for any variation of future contact arrangements. This would provide an additional safeguard to ensure that the ongoing best interests of a child continue to be protected.

#### **Question 10**

Should the Permanent Parenting Order granted by the Childrens Court stipulate conditions about ongoing contact with children's birth families and other significant people?

#### **Question 11**

If yes to question 10, who should be able to apply to the court to vary contact conditions?

### **Ongoing monitoring and support**

As with adoption, it is not anticipated that the Department of Child Safety would have any monitoring role after a final Permanent Parenting Order was granted by the Childrens Court. The court would have to be satisfied that the proposed permanent caregiver could provide appropriate high quality care for the child.

The department would only apply for an order to be granted to a person who was assessed as suitable to provide high quality care for a particular child, and who had demonstrated that they were able and willing to provide such care consistently in the long term. The department's decision would be informed by the proposed interim period and any previous care of the child.

The intention of granting the proposed order would be to create a regular family environment for a child and permanent caregiver without the perceived stigma associated with the child protection system or the intrusion into family life that may be caused by ongoing departmental involvement.

A permanent caregiver would be considered to be taking full parental responsibility, including financial responsibility, for a child. To receive financial support from the department would be inconsistent with the role of a permanent legal guardian with all the powers, duties and responsibilities that would otherwise have been vested in the child's birth parents.

The payment of foster care allowances is linked to the Chief Executive's responsibility for a child and, as a result, carers are accountable to the government for the money they receive. In contrast, the department would have no further responsibility for a child once a Permanent Parenting Order was granted, unless the child was in need of protection in the future. Therefore, it would not be appropriate for the department to provide any ongoing financial assistance after an order was granted.

It is not the Queensland Government's role to provide child income support for families, but permanent caregivers would be entitled to apply for Commonwealth assistance. This entitlement depends on having the care of a child, not on the legal mechanism for how this occurs.

Depending on their incomes, caregivers could be eligible for a range of benefits and payments from the Australian Government through Centrelink. These are:

- a Health Care Card, issued in the name of the child
- Family Tax Benefit A, to help families with the cost of raising children
- Family Tax Benefit B, to provide extra assistance to families with only one main income, including sole parents
- Childcare Benefit
- Carer Allowance and Carer Payment, for carers of children or young people with a disability.

In addition, children or young people on a Permanent Parenting Order may be eligible to receive:

- a Disability Support Pension
- a Youth Allowance
- Abstudy.

Where a carer is committed to a child but continues to need some support and financial assistance from the department, long-term guardianship orders to a suitable individual will continue to be available.

## Revocation

It is intended that the new Permanent Parenting Order would last until a child turns 18. However, it is expected that an enduring bond would be created between a permanent caregiver and a child, which would last for the rest of their lives.

It is not anticipated that an order be revoked except in exceptional circumstances. Consequently, the conditions for revoking an order would need to be reasonably stringent. As an additional safeguard, it is suggested that only the department would be able to apply to the Childrens Court for revocation of an order, where unforeseen circumstances have arisen.

It is not considered appropriate that a child be able to apply to the court to have an order revoked. A child would be considered to have substantially the same rights as children in natural families in terms of becoming independent of their permanent caregivers.

It is proposed that there be only two grounds considered sufficient to revoke a Permanent Parenting Order:

- some part of the process of making the order was false or improper
- there are other exceptional circumstances that warrant the revocation of the order.

Any exceptional circumstances would have to constitute clear and convincing evidence that a permanent caregiver had failed to, or was unable or unwilling to, provide proper care for a child or that an order was no longer in a child's best interests.

### Question 12

Under what circumstances should a Permanent Parenting Order be able to be revoked?

### Inheritance

The *Succession Act 1981* makes provision for distributing a person's estate amongst their next of kin when they die without leaving a will. There is also provision for certain people who are not adequately provided for to make a claim against a deceased person's estate.

Currently, the Act applies to children who were born or adopted into a family, where a parent dies without leaving a will. Under the existing law, children on a Permanent Parenting Order who were a dependant of a caregiver at the time of the caregiver's death would be able to make a claim against the deceased caregiver's estate, where the children are not adequately provided for, because of this relationship of dependency.

Where a person who had been under a Permanent Parenting Order had reached 18 years of age, there would no longer be a legal relationship between the person and the permanent caregiver. Under the current succession law, for a person in these circumstances to inherit from a caregiver, the caregiver would have to leave a will and name the person as a beneficiary. This is in contrast to the situation of an adopted child, now an adult, who would inherit from their adoptive parent in the event of the adoptive parent dying intestate.

Any eventual legislation providing for the new order would have to consider whether children under 18 years of age would inherit from their caregiver's estate where the caregiver dies without leaving a will, even if the child was no longer dependent on the caregiver. Consideration would also have to be given to the issue of whether children on such an order would still retain automatic inheritance rights from a birth parent who died without leaving a will.

### Change of child's name

As they feel part of a new family, children on Permanent Parenting Orders may wish to take the last name of their permanent caregivers. Changes to children's names or parts of their name would be able to be registered under the *Births, Deaths and Marriages Registration Act 2003*.

In such cases, children's birth certificates would be amended to reflect their new name but would also include a record of their birth parents' names.

The Act currently allows parents and guardians to apply to change a child's name, and children over 12 years of age must also provide their consent.

The Department of Child Safety is considering what issues might be relevant to enabling a change of name, or part of a name, to be made for children on Permanent Parenting Orders.

### Question 13

Should a child on a Permanent Parenting Order, or their permanent caregiver, be able to apply to change the child's name?

## Aboriginal and Torres Strait Islander Peoples

Aboriginal and Torres Strait Islander children have an intrinsic relationship with their family, community and country. It provides the foundation of their identity, culture and spirituality and gives them great inner strength and resilience (SNAICC 2005).

Before British settlement, Aboriginal and Torres Strait Islander peoples had developed a mosaic of communities, each with its own rich and enduring culture centred on an intimate relationship with lands, waters and seas (ATSIC 1995).

Despite their social and cultural differences, Aboriginal and Torres Strait Islander peoples, as a whole, traditionally take a different approach to child rearing from that taken by the majority of the non-Indigenous population. Within Aboriginal and Torres Strait Islander cultures, the responsibility for raising children belongs not only to children's immediate families, but also to their extended families and the whole community.

Families and kinship networks are extensive and they are supported by intricate patterns of responsibility and obligations that are still generally followed by all community members. Continuing strong ties to country and kin include the spirituality, values, history and obligations associated with an area and relationships with extended family.

These are integral elements of Aboriginal and Torres Strait Islander peoples' identity and have a significant impact on Aboriginal and Torres Strait Islander child rearing practices. Even today, kinship systems and family relationships and obligations remain the single most important mechanism for care, control and nurturing in many Indigenous communities.

The sense of the broader family as the basis of Aboriginal and Torres Strait Islander cultures means that the permanent placement of a child outside their community is completely foreign to Indigenous cultures and totally unacceptable to Aboriginal and Torres Strait Islander peoples.

In the past, the misunderstanding of Aboriginal and Torres Strait Islander cultures and child rearing practices led to generations of children being forcibly removed from their families. This has resulted in their dislocation from culture and country, and the breakdown of traditional society and family structures across generations.

Aboriginal and Torres Strait Islander peoples' disempowerment and the lack of control over their own lives have subsequently led to poverty and unemployment, as well as alcohol and substance abuse. In turn, these have led to a high incidence of family violence and child abuse and neglect. As a result, Aboriginal and Torres Strait Islander peoples are significantly over-represented in the child protection, and juvenile and criminal justice systems, as both offenders and victims.

Aboriginal and Torres Strait Islander cultures are dynamic and continue to evolve. Contemporary Indigenous peoples live a variety of lifestyles and face the challenge of preserving their traditional cultures while participating fully in a modern economy (DATSIP 2005). This makes maintaining cultural and community identity critical for Aboriginal and Torres Strait Islander children, both as individuals and members of their cultural groups (Harden 2004), and is the whole reason behind the Aboriginal and Torres Strait Islander Child Placement Principle.

The purpose of the principle is to preserve and enhance Aboriginal and Torres Strait Islander children and young people's sense of cultural identity by maintaining close, regular contact with their extended families and communities.

Provisions within the *Child Protection Act 1999* give a legislative basis to the principle. They were prepared following extensive consultation with Indigenous communities throughout Queensland over a number of years.

The Aboriginal and Torres Strait Islander Child Placement Principle requires Department of Child Safety staff to:

- provide the opportunity for the relevant Recognised Entity to participate in making any significant decision about an Aboriginal and Torres Strait Islander child, alongside discussions with extended family, community and other significant people, during the investigation of child protection concerns and at all stages of intervention in child protection matters

- consider cultural factors which have a bearing on decision making
- follow the general principle that Aboriginal or Torres Strait Islander children should be cared for within their own community
- ensure that all consultations, family meetings and other proceedings involving an Aboriginal or Torres Strait Islander person be conducted in a culturally appropriate way and in a culturally appropriate location.

Where it is not possible for an Aboriginal or Torres Strait Islander child to remain in the care of their immediate family because of a serious child safety concern, the Child Placement Principle must be observed. Alternative placements must be culturally appropriate and maintain the child's cultural identity. Family contact must be maintained and work must focus on family reunification.

In addition, a hierarchy of placement options must be adhered to, wherever possible, to ensure children are not removed from their community.

- First preference must be given to placing a child with a member of their family.
- The second preference is placing a child with a member of their community or language group, and should only be used if the first preference is not possible.
- The third preference is placing a child with another Aboriginal or Torres Strait Islander person who is compatible with the child's community or language group, and should only be used if the first and second preferences are not possible.
- The fourth preference is placing a child with other Aboriginal or Torres Strait Islander people, and should only be used if the first, second and third preferences are not possible.

However, there are times when an Aboriginal or Torres Strait Islander child who has been removed from their home cannot be placed with an Indigenous family. Extra safeguards have recently been enshrined in legislation to protect the child's sense of Aboriginal or Torres Strait Islander identity and to ensure the child maintains a continued connection with their family, community and culture in these instances.

The additional safeguards when placing a child with a non-Indigenous carer include:

- that the carer must live near the child's family, community or language group
- that the carer must be committed to:
  - facilitating contact with the child's parents and other family members
  - helping the child maintain contact with their community or language group
  - helping the child maintain a connection with their culture
  - preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.

The Department of Child Safety understands that there are particular and unique circumstances affecting child protection for Aboriginal and Torres Strait Islander peoples. The legacy of the stolen generations lives on in the memories and current circumstances of most Indigenous families in Queensland.

For this reason, there is a need for caution about any discussion of the placement of an Aboriginal or Torres Strait Islander child or young person outside their family and community, whether temporary or permanent. Particular concerns arise in relation to any proposal that would cause a child to be placed away from family or community on a permanent basis.

The history and central importance of the Aboriginal and Torres Strait Islander Child Placement Principle are crucial to any sense of trust between the Department of Child Safety and Aboriginal and Torres Strait Islander communities. Because of this, any new policy or practice must be faithful to the government's stated commitment to Aboriginal and Torres Strait Islander communities and reflect the importance of sustaining Aboriginal and Torres Strait Islander cultures.

Indigenous Queenslanders have significant concerns about child safety interventions, and their feelings of mistrust are the result of past government practices. The damage previously done to Aboriginal and Torres Strait Islander peoples still has a profound effect on the emotional and physical health and quality of life of many Indigenous peoples today. Specifically, this damage has contributed to the large number of Aboriginal and Torres Strait Islander children currently in care (SNAICC 2005).

Cultural factors and the legacy of previous government intervention to separate families mean that the appropriate child protection response needs to be different for Aboriginal and Torres Strait Islander children. To this end, the proposed Permanent Parenting Order values the cultural norms of extended families and seeks to respect the rights of birth parents and other members of a child's family and community to an ongoing relationship with their child.

In addition, if such an order were to be considered for an Aboriginal or Torres Strait Islander child, it would have to be progressed in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle. Nevertheless, in light of past practices, Indigenous communities might have particular fears about the proposed order in relation to an Aboriginal or Torres Strait Islander child.

**Question 14**

What specific issues might be relevant to the making of the proposed Permanent Parenting Order for an Aboriginal or Torres Strait Islander child?

## *Family Law Act 1975*

The Commonwealth *Family Law Act 1975* created the Family Court of Australia to decide, among other things, issues about the care of children, in the event that the relationship between children's parents comes to an end. The court can also adjudicate where parents have never been in a domestic relationship, or where other relatives or non-relatives seek to acquire parental responsibilities with respect to a particular child.

The Act allows the Family Court to make Parenting Orders regarding the following matters:

- the person or people with whom a child is to live
- the time a child is to spend with another person or other people
- the communication a child is to have with another person or people
- maintenance of a child
- any other aspect of parental responsibility for a child.

The legislation defines parental responsibility as all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children. A Parenting Order confers parental responsibility for a specific child on a person, but does not take away or diminish any aspect of the parental responsibility of any other person for the child, except to the extent expressly provided for in the order or necessary to give effect to the order.

The Family Court will make a Parenting Order it thinks proper for a child, but in deciding whether to make a particular order, the court must consider the best interests of the child as paramount. A Parenting Order may be made in favour of a parent, a grandparent or any other suitable person who is concerned with the care, welfare or development of a child.

It may be the case that while a matter is being heard in the Family Court, it becomes apparent to the court that neither parent is able and willing to protect a child from harm and provide proper care. In this case, the matter can be brought to the attention of the relevant state or territory department responsible for child protection and, if appropriate, a decision may be made by the child protection authority to intervene in the Family Court proceedings.

There is an emphasis on resolving issues through mediation and sharing parental responsibility in the family law jurisdiction, unless allegations of child abuse are made, in which case the matter must be heard in the Family Court.

Recent amendments to the Act strengthen this alternative dispute resolution approach by stipulating a preference for parenting plans, rather than court orders, to determine the various aspects of parental responsibility for a particular child. Where at all possible, decisions about suitable parenting arrangements are to be made through the development of a parenting plan between people with parental responsibility for the child, outside the court system through new parenting centres.

Although such mediation is subject to secrecy and confidentiality, exceptions apply to allegations that a child has been abused or is at risk of abuse, or disclosures by a child to this effect, and this material may be heard in evidence presented to the Family Court. The court does not have the power to investigate such allegations itself. The Act stipulates that court personnel must notify the relevant state or territory child welfare authority about any reasonable suspicion that a child has been abused or is at risk of being abused.

The family law jurisdiction concerns private law matters, as opposed to public law, which governs criminal prosecutions or child protection hearings. Nevertheless, a child can often be made safe by family law orders regulating where the child lives, who the child has contact with and how this occurs. Consequently, the powers and responsibilities of a child protection authority may not be invoked. There are also some circumstances where it is appropriate that the relevant authority gives its consent to allow matters relating to the care of a child in need of protection to be dealt with by the Family Court.

However, a Child Protection Order can usually better protect a child from an abusive parent. The Act prevents the Family Court from making an order about a child in care unless the permission of the relevant state or territory child protection authority is obtained, or the order will not come into

effect until the child ceases to be on a protective order. This prevents a Child Protection Order being overridden by an order of the Family Court.

Before introducing a new Permanent Parenting Order, consideration would have to be given to how the order would interact with the Act. This consideration would occur in consultation with the Commonwealth Government.

## Comparisons with other jurisdictions

Throughout the western world, more and more children are coming into state care (Barbell and Freundlich 2001; Barber and Delfabbro 2004). Children and their families are presenting with more complex problems, and children are remaining longer in care (Thoburn 2000; Plunkett and Osmond 2004). Lack of stability for these children has been identified as a significant problem (Scott 2006) and the need to address this instability through permanency planning has become urgent (DFES 2005 (a)).

Permanency planning has taken various forms across different jurisdictions, but in all that are comparable with Queensland, returning children to their birth family is the preferred option for providing permanence in their life.

Where reunification with children's birth families is not possible, all comparable jurisdictions acknowledge that providing stable long-term alternative care needs to be a priority. Typically, they require work to reunify children with families to be done within specified timeframes, and when these attempts have been unsuccessful, they require planning for long-term, out-of-home care. Crucially, where the goal of a case plan is reunification, the imposition of timeframes is linked to the provision of support services to birth families.

Despite the differences across jurisdictions, there are some common features to the approaches taken to permanency planning. These include:

- that permanency planning is implemented as a hierarchy of options with reunification as the preferred permanency option for children
- a focus on timely decision making and intervention to support early family reunification
- the provision of intensive support to parents to address risks of future harm and facilitate reunification
- a reliance on kinship care as the preferred out-of-home permanency option for children
- the introduction of a permanent care option transferring full parental responsibility to a caregiver until a child turns 18
- in some jurisdictions, increasing commitment to adoption as part of a suite of permanency planning options.

In accordance with Australia's ratification of the *United Nations Convention on the Rights of the Child 1989*, all states and territories share the principles that the best interests of a child are paramount, and that families have the primary responsibility for the upbringing, protection and development of their children.

### Victoria

Permanent Care Orders, granting sole custody and guardianship to a caregiver, have been available since 1992. Under a Permanent Care Order, full parental responsibility is granted to a guardian or guardians. A child's birth parents are recognised at law as the child's parents but they are unable to exercise guardianship or custody responsibilities.

The order lasts until the child turns 18 but aims to provide an enduring bond to last a lifetime. The order also stipulates conditions for ongoing contact with the child's biological family, and is supported by financial assistance until the child reaches 18. Victoria does not have an equivalent of Queensland's long-term guardianship order to a suitable person.

The *Children and Young Persons Act 1989* outlines the specific conditions for when an alternative permanent placement can be sought for a child or young person. It applies a threshold, where, if the parents have not had the care of a child for at least two years, or two out of the last three years, the Department of Human services can apply to the Family Division of the Children's Court to grant a Permanent Care Order to a suitable person. Children seven years of age and over are required to consent to the making of the order. Birth parents are not required to give their consent but there is scope for parents to apply to have the order revoked or contact conditions varied.

The new *Children, Youth and Families Act 2005* is expected to commence in late 2006 and will replace the *Children and Young Persons Act 1989*. The new legislation follows a number of

external and internal reviews of the Victorian child protection system, including an examination of factors contributing to instability in out-of-home care placements. A white paper was produced for consultation to inform the legislative change and examine options to improve stability for children, particularly in the infant years.

The new Act will incorporate shorter timeframes for permanency planning, which are linked to a child's age and developmental level. Permanency decisions must be made no later than:

- 12 months after entering out-of-home care, for a child under two years of age
- 18 months after entering out-of-home care, for a child between two and six years of age
- two years after entering out-of-home care, for a child seven years of age or over.

The new legislation will also specifically reduce the timeframe required before an application for a Permanent Care Order can be made, a child will only have to have been subject to a Child Protection Order for six months.

In addition, the Act legislates for a concurrent or parallel planning model which specifies principles and timeframes. This model allows work towards reunification to be undertaken at the same time as contingency planning, to ensure that children's needs for permanency are met as soon as possible.

The new Act will also allow the order to stipulate conditions about contact with other members of children's birth families and other significant people in children's lives.

In 2004-05, there were 203 Permanent Care Orders granted in Victoria, an increase of 27 per cent from the previous year. In total, 1,681 Permanent Care Orders have been granted since they were introduced in 1992. During this time, there have been very few adoptions by foster carers or relatives caring for children in the child protection system.

Average figures for the last five years show that 53 per cent of orders were made in favour of previous kinship carers, 30 per cent were made in favour of previous foster carers, and 17 per cent were new permanent care placements.

## New South Wales

Permanency planning amendments to the *Children and Young Persons (Care and Protection) Act 1998* commenced in 2002 and are intended to avoid the instability and uncertainty for children in care that arise from a succession of different placements or temporary care arrangements. The Act specifically recognises that long-term security will be assisted by a permanent placement.

The Act requires that permanent placement for children and young people in out-of-home care should be completed in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment. Furthermore, based on theories of bonding and attachment, the younger the age of the child, the greater the need for early decisions to be made in locating a permanent placement.

A permanency planning policy framework, including procedures for staff, has recently been developed. The framework incorporates timeframes for decision making and includes the making of a permanency decision within six months for children under two years of age, and within 12 months for children over two years of age.

The Children's Court may make a Sole Parental Responsibility Order for a child until they turn 18, to a suitable person who must be an authorised carer and must have had the care of the child for a continuous period of at least two years. An order may be made jointly to the person and the person's partner. The legislation defines parental responsibility as all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children. An order confers parental responsibility on the recipients to the exclusion of a child's birth parents.

However, an order cannot be made without the consent of the person or people who had parental responsibility for the child immediately before the child was taken into care. Children 12 years of age and over must also give their consent. A Sole Parental Responsibility Order may stipulate conditions about contact with children's parents, relatives and other significant people in their life. Caregivers might continue to receive an allowance if they had previously been doing so,

subject to the continuing provision of the allowance being reviewed every 12 months. New South Wales does not have an equivalent of Queensland's long-term guardianship order granting sole guardianship to a carer.

The legislation affirms its first aim is to reunify children with their birth family but also promotes the importance of permanence for children in the child protection system. It expressly states that 'the safety, welfare and wellbeing of a child or young person who has been removed from his or her parents are paramount over the rights of the parents'. However, timelines on decision making and the requirement for concurrent planning are contained in policy only, not in legislation.

A major review of the *Adoption Act 2000* is currently underway and seeks to ensure consistency with the permanency planning principles of the Children and Young Persons (Care and Protection) Act. The review particularly aims to identify and remove any unreasonable obstacles or impediments to achieving permanent placements for children and young people in out-of-home care. It is expected to make recommendations that will enable better outcomes for children in long-term care by being able to secure safe, stable and permanent placements and deliver the most efficient means of effecting adoption.

## South Australia

In South Australia, the *Children's Protection Act 1993* empowers the Youth Court to transfer the guardianship of a child to a third party who is an appropriate person, or two appropriate people, until the child reaches 18 years of age. The person, or people, is then the lawful guardian, or guardians, of the child to the exclusion of the rights of any other person.

The court can also provide direction to a person not to have any contact with a child and may make consequential or ancillary orders about the child's access arrangements with another person and about any other matters relating to the care, protection, health, welfare or education of the child. Caregivers usually receive an allowance, approximately half that for foster carers, subject to ongoing provision of the allowance being reviewed every 12 months. South Australia does not have an equivalent of Queensland's long-term guardianship order to a suitable person.

The legislation states that the order should be considered to secure a settled and stable living arrangement for children where they have been in out-of-home care for two years.

## Australian Capital Territory

The *Children and Young People Act 1999* specifically acknowledges that it is important for children and young people to have settled and permanent living arrangements, but there are no firm timelines on decision making.

Under the Act, the Childrens Court may make an Enduring Parental Responsibility Order for a child until they turn 18, if the child has been in care for two continuous years, or for periods that total two years out of the last three. The order may only be made to a proposed caregiver, or two caregivers, who is a suitable person to care for the child and if the child has already been in the care of that caregiver for the same amount of time.

The Department of Disability, Housing and Community Services must provide a report to the court on the suitability of the proposed caregiver and support their application for the order. The report also takes into account the caregivers' willingness to facilitate contact with the child's birth family.

An Enduring Parental Responsibility Order is a residence order that confers parental responsibility for the day-to-day and long-term care, welfare and development of the child or young person. Parental responsibility means all the duties, powers and responsibilities parents ordinarily have, by law, in relation to their children.

Caregivers usually receive the equivalent of a foster care allowance in the first instance, but this does not necessarily continue until the child turns 18. Where support is provided, the Department of Disability, Housing and Community Services monitors the placement to ensure that public money is spent appropriately. This is similar to Queensland's long-term guardianship order to a suitable person.

The Australian Capital Territory is currently reviewing the Act to determine what barriers there might be to the further use of Enduring Parental Responsibility Orders and open adoption.

## Tasmania

Under the *Children, Young Persons and their Families Act 1997*, the Magistrates Court (Children's Division) can make a Guardianship Order for a child until the child reaches 18 years of age, to an appropriate person or two appropriate people.

The Act states that a guardian has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have, to the exclusion of any person who does not have guardianship or has not been granted guardianship under this Act.

A court order may stipulate conditions for access or for any other aspects of the care of a child. Ongoing support and financial assistance can be provided, but need is assessed on a case-by-case basis. Tasmania does not have an equivalent of Queensland's long-term guardianship order to a suitable person.

The legislation also stipulates that priority must be placed on securing settled and permanent living arrangements for children.

## Western Australia

Under the *Children and Community Services Act 2004*, the Children's Court can grant an Enduring Parental Responsibility Order to a person, or two people jointly, until a child turns 18. The enduring parental caregiver then has parental responsibility for the child to the exclusion of any other person. The court may make an order as soon as it finds that a child is in need of ongoing protection, without first having to make a short-term order for the child's protection.

Parental responsibility includes all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children. The Enduring Parental Responsibility Order may impose conditions about contact between the child and another person but must not include any other conditions.

Caregivers usually receive the equivalent of a foster care allowance where the court determines it appropriate. However, parental responsibility caregivers do not receive other payments, in addition to the foster care allowance, that foster carers do. Western Australia does not have an equivalent of Queensland's long-term guardianship order to a suitable person.

The Act prioritises the importance of continuity and stability in a child's living arrangements and the relevant department must provide the court with a written report that the proposed caregiver is a suitable person to provide long-term care for the child.

## Northern Territory

Under the *Community Welfare Act*, the Family Matters Court can grant the sole rights in relation to the guardianship of a child until the child turns 18 to a person, or two people, as the court thinks fit. Guardianship is defined as the custody of a child and the responsibility for their long-term welfare, including decisions concerning education, changes in place of residence, religion, employment and the general health of the child.

The court can only grant an order if the parents of the child have, without a reasonable excuse, failed to maintain substantial contact with the child during the 12 month period before the application for the order is made. The court may give a direction relating to access by the child's parents and any other person. Caregivers do not receive any financial assistance or other support. The Northern Territory does not have an equivalent of Queensland's long-term guardianship order to a suitable person.

## New Zealand

Due to Maori and Pacific Islander cultural influences, New Zealand places an emphasis on sharing care arrangements with birth parents, wherever possible. However, under the new *Care of Children Act 2004*, which has recently replaced the *Guardianship Act 1968*, the Family Court can

make a Guardianship Order to a third party who is a suitable person to care for a child, until the child turns 18, marries or enters into a defacto relationship. The guardian then has all the duties, powers, rights and responsibilities that a parent would have in relation to the upbringing of a child, to the exclusion of all other persons. The court may make an order detailing contact arrangements between the child and their birth family.

New Zealand uses a concurrent planning model and there is no absolute threshold for seeking an alternative permanent care option. Although the timelines for making an order are not automatically imposed, alternative permanent arrangements are generally sought when:

- children under three years of age have been in care for six months without significant progress by parents
- children three years of age and older have not been able to return home for a period between 12 and 24 months.

There is also the option of a Custody Order to a suitable person, until a child reaches 17 years of age, and a Guardianship Order for a child which can continue until the child turns 20 or marries, under the *Children, Young Persons, and their Families Act 1989*. In this case, the guardian takes responsibility for a child but continues to receive ongoing financial or other assistance.

In such a case, the Department of Child, Youth and Family still has a legal responsibility to ensure a child's ongoing care needs are met, which does not end when a caregiver assumes responsibility for the child. This order is similar to the long-term guardianship order to a suitable person in Queensland where the Department of Child Safety continues to provide assistance and maintain an oversight role.

In New Zealand, adoption is seldom used as a permanent option for children in care because it alters their legal identity. There is a preference for providing permanence through Parenting Orders, granting custody, and Guardianship Orders under the *Care of Children Act 2004* for the majority of children who cannot return to their birth family, to reduce the possible stigma of foster care and ongoing monitoring. Guardianship until a child turns 18 can be achieved in several different ways, some attract financial assistance and others do not.

## United States of America

Over the last decade in the United States there has been an emphasis on achieving permanency through case planning to address instability in care arrangements for children in the child welfare system, including timely decision making. The new permanency planning policies have also contributed to an increased focus on adoption as a permanency outcome for children in place of long-term foster care.

Specifically, the federal *Adoption and Safe Families Act 1997* has led to significant increases in the adoption of children in care. However, even in the United States, adoption is still used in only a minority of cases. Reunification continues to be the most frequent permanency destination for children. The numbers of children and young people placed in long-term kinship care are also increasing due to long-term care options within children's family groups and existing networks of support being identified as the preferred way of meeting their need for long-term stability (Barber and Delfabbro 2004).

The Act was a landmark in federal child welfare law and placed a child's wellbeing and permanence at the top of the agenda (Miller 2000; JCICS 2005). It expressly states that the paramount concern should be the best interests of the child, rather than family reunification, when making any decision about a child in care.

The Act establishes clear timeframes for decision making and specifically endorses concurrent planning. Permanency hearings must be held no later than 12 months after a child enters care and every 12 months after that. In most cases, if a child has been in care for 15 out of the most recent 22 months, termination of parental rights is automatically initiated by the relevant state (Department of Health and Human Services, U.S.A. 2004). However, the legislation requires states to make 'reasonable efforts' to keep families together and to reunite children with their parents, although it does not define 'reasonable efforts'.

The Act also formally recognises permanent legal guardianship as an appropriate permanency option for children in the care of a state. The Act amended federal social security legislation to

allow federal funds to be used for state based subsidised guardianship programs. As a result of these changes, complementary legislation across the states has been reformed to better support the federal Act. No direct federal subsidy is available as it is for foster care, but caregivers usually receive some ongoing financial assistance if required.

Legal guardianship orders are similar to the proposed Permanent Parenting Order in that legal guardians have the same rights and responsibilities as birth parents would have, such as making all the decisions about the daily care and the long-term welfare and development of children.

The Act expressly acknowledges legal guardianship as a ‘permanent and self-sustaining’ care option for children in care, where adoption is not appropriate. The granting of legal guardianship to a suitable caregiver or relative leaves birth parents with certain residual rights and responsibilities such as the right to visitation with the child, as determined by the court, and also the responsibility to pay child support (Goldhill 2005).

The legislation specifically defines legal guardianship as ‘a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person and decision making’.

The intention of legal guardianship orders is to provide a permanent placement until the child turns 18. To reflect this intention, the conditions on which orders may be revoked are stringent. Some states, for example, require that the relevant court find the guardian unfit as a necessary condition for revoking an order.

Preliminary data from the two biggest states suggests that these legal guardianship arrangements have an extremely low dissolution rate (Bissell and Miller 2004) and that, specifically, few birth parents attempt to modify existing guardianship arrangements (Bissell and Kirana 2004).

## United Kingdom

In the United Kingdom there has also been an increased focus on adoption as a way of providing permanence for children in the care of authorities, but it still only occurs in a minority of cases. However, there have also been significant changes to the traditional concept of adoption in legislation and practice to enable ongoing contact between adopted children and their birth families.

After a review of adoption legislation (PIU 2000), the United Kingdom Government released a white paper (Department of Health 2000) that proposed initiatives to increase the number of adoptions of children in care. The proposals included:

- increasing funding for services and support for children and their adoptive families
- setting timeframes for permanency plans and adoptive placements
- setting targets to significantly increase the number of adoptions of ‘looked after’ children.

The paper also identified the need for an intermediate legal status for children that offered greater security than long-term fostering but without the absolute legal severance from their birth family that stems from an Adoption Order.

The United Kingdom requires that a plan for permanence be made for each child within six months of being continuously ‘looked after’ by the authorities, and delivered promptly. Local authorities should also use concurrent planning to ensure more timely permanent placements (DFES 2004). Where the plan for permanence is adoption, the child should be matched with a prospective caregiver within six months.

The *Children Act 1989* and the *Adoption and Children Act 2000* also introduced a new Special Guardianship Order at the end of 2005 as an integral part of the government’s policy to create more opportunities for permanent family placement, reducing the number of children in the child protection system.

Special Guardianship Orders grant parental responsibility for a child until the child reaches 18 years of age and may be made to a suitable person individually, or several people jointly. Guardians have parental responsibility for the child to the exclusion of anybody else who is not a special guardian. They have clear responsibility for all day-to-day decisions and for making important decisions about the child's upbringing.

Before the court can make an order, the local authority must provide a report on the suitability of the prospective guardian and any issues relevant to a child and the child's family. The report may make recommendations about contact between a child and any person, and the court may make an order regarding contact. A foster carer must also have had the care of a child for the 12 months immediately before the application is made, or have the consent of the local authority.

Special Guardianship Orders are expected to be used where the relationship between children and their carers would benefit from greater legal security, but where adoption is not suitable. This may apply to older children who do not wish to be legally separated from their birth family and to those who have cultural and religious difficulties with adoption. Carers, with support from the local authority, are encouraged to apply for a Special Guardianship Order, and support services and financial assistance are provided where appropriate. The United Kingdom does not have an equivalent of Queensland's long-term guardianship order granting sole guardianship to a suitable person.

Special Guardianship Orders transfer responsibility to caregivers for all aspects of caring for children and for making decisions to do with their upbringing. The children are no longer looked after by a local authority. The orders:

- are legally secure
- preserve the basic link between children and their birth family
- provide a firm foundation on which to build a life long relationship between children and their caregivers.

## Conclusion

The proposal to establish a new Permanent Parenting Order is an attempt to improve security and stability for children who cannot live safely with their birth families, but for whom adoption is not appropriate.

The development of the new order is in response to the increasing recognition of the need for stability and permanence for children who are in the long-term care of the child protection system. It represents a shift in attitude from an absolute priority on reunification with children's birth families, to an increased focus on providing stable, permanent care for children.

The proposal reflects the Department of Child Safety's concentration on protecting the best interests of children. The proposed Permanent Parenting Order is intended to provide a greater sense of permanence than is currently available and to allow some children to leave the child protection system once and for all.

The proposed option is planned as a practical response to the unprecedented number of children remaining in the child protection system.

This paper is the first step in identifying the relevant issues and exploring the possibilities this new option might provide.

### **Question 15**

Are there any other issues relating to the proposed Permanent Parenting Order in Queensland?

### **Question 16**

Are there any other issues relevant to permanency planning for children who cannot be reunified with their birth family that you would like to raise?

The Department of Child Safety is seeking feedback on the proposed Permanent Parenting Order under consideration and invites your input on the proposal and any related issues through the questions listed below. These questions are included on the enclosed feedback form. You can also provide feedback online through ConsultQld at [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au)

## Questions

- 1 Is it necessary to consider another permanent alternative care option in addition to the existing alternative care options in order to secure stable long-term care for children who cannot be reunified with their birth family?
- 2 What might be the advantages and disadvantages of such an order?
- 3 What type of people might want to assume full parental responsibility for a child?
- 4 Are the suggested suitability criteria appropriate?
- 4a Are there any other suitability considerations relating to prospective permanent caregivers that the Department of Child Safety should have regard to?
- 5 Are there any other factors or processes the Department of Child Safety should consider in securing stable long-term care for children who cannot be reunified with their birth family?
- 6 At what point should a Permanent Parenting Order be considered for a child?
- 7 Should legislation specifically require the Childrens Court to be satisfied that all appropriate attempts at reunification with a child's birth family have been made?
- 8 Is the proposed Interim Permanent Parenting Order an adequate safeguard to protect children's best interests?
- 9 If yes to question eight, should there be support from the Department of Child Safety during the interim order, and what type of support should be provided?
- 9a Should it continue after the making of the final order?
- 10 Should the Permanent Parenting Order granted by the Childrens Court stipulate conditions about ongoing contact with children's birth families and other significant people?
- 11 If yes to question 10, who should be able to apply to the court to vary contact conditions?
- 12 Under what circumstances should a Permanent Parenting Order be able to be revoked?
- 13 Should a child on a Permanent Parenting Order, or their permanent caregiver, be able to apply to change the child's name?
- 14 What specific issues might be relevant to the making of the proposed Permanent Parenting Order for an Aboriginal or Torres Strait Islander child?
- 15 Are there any other issues relating to the proposed Permanent Parenting Order in Queensland?
- 16 Are there any other issues relevant to permanency planning for children who cannot be reunified with their birth family that you would like to raise?

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