Certainty for Children, Fairness for Families?

Synthesised Research Findings from the Permanency Amendments Longitudinal Study

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Abbreviations

CBSO	Care by Secretary order
CPLO	Child protection litigation office
CRIS	Client relationship information system
CSO	Community service organisation
CTSO	Custody to Secretary order
CYFA	Children, Youth and Families Act 2005 (Vic)
DHHS	The Victorian Department of Health and Human Services[1]
FPO	Family preservation order
FRO	Family reunification order
GSO	Guardianship to Secretary order
IAO	Interim accommodation order
IPO	Interim protection order
LTCO	Long-term care order
OOHC	Out-of-home care
PA	Protection application
PALS	Permanency amendment longitudinal study
PCO	Permanent care order
PO	Protection order
PVVCI	Protecting Victoria's Vulnerable Children Inquiry
SCO	Supervised custody order
SO	Supervision order
VACCA	The Victorian Aboriginal Child Care Agency

1 On 01 February 2021, the DHHS was separated into the Department of Families, Fairness and Housing (DFFH) and the Department of Health (DoH). The DFFS includes the DHHS portfolio of Child Protection.

Executive Summary

Despite the legislative framework supporting permanency planning in Victoria, the report of the Protecting Victoria's Vulnerable Children Inquiry (PVVVI) (Cummins, Scott & Scales, 2012) found that the average time taken between a child's first child protection report and a permanent care order (PCO) was just over five years. This was deemed too long, as children run the risk of accumulating further psychological harm as the result of drifting in multiple, unstable care arrangements for extended periods of time, living with uncertainty about their future care, and losing connections with family, community, and culture.

The legislative amendments known as the permanency amendments were introduced specifically to address the problem of drift in out-of-home care (OOHC) and provide children who enter care with a permanent family (either their own, or another family) within children's developmental timescales. Based on recommendations from the PVVCI and findings from the Stability Planning and Permanent Care Project 2013–14 on barriers to timely permanency resolution, in August 2014 the *Children, Youth & Families Amendment (Permanent Care & Other Matters) Bill 2014* was passed in Parliament.

The permanency amendments came into effect on 1 March 2016. The major amendments made to the Children, Youth and Families Act 2005 (CYFA) 2005 included

- a hierarchy of permanency objectives;
- a new suite of protection orders;
- provisions and pre-requisites attached to the new suite of protection orders and PCOs that restrict the discretion of the Children's Court to determine when certain protection orders can be made, the length of some protection orders, who the child lives with, and the length of time for which the Court may extend orders that may include conditions; and
- new and expanded provisions and pre-requisites in the making of PCOs.

In conjunction with a new range of Court orders, the permanency amendments created a new child protection case planning framework requiring a case plan to be developed following substantiation. All case plans must include one of five permanency objectives to be considered in order of preference (family preservation, family reunification, adoption, permanent care, long-term OOHC). The permanency amendments also introduced the requirement that the case plan for all Aboriginal children in OOHC includes a Cultural Plan.

Six months after the permanency amendments came into effect, the Commission for Children and Young People (CCYP) conducted an independent inquiry to examine whether the stated objectives of the reforms were being realised and whether unintended consequences were negatively affecting children (CCYP, 2017). The Commission's "... safe and wanted..." report indicated that the narrow timing of the inquiry limited the conclusions that the Commission could safely draw about the longer-term impact of the amendments and recommended that a "longitudinal study" be conducted to measure the impact of this legislation, and that this study inform a second review after a further two years. The University of Melbourne (UoM), in collaboration with the University of New South Wales (UNSW) and the University of Sydney (USyd), were subsequently engaged to conduct the Permanency Amendments Longitudinal Study (PALS).

The overarching questions for the PALS were:

- What changes have occurred because of the permanency amendments?
- What, if any, unexpected or unintended outcomes have occurred as a result of the permanency amendments?
- Have changes (positive and negative, intended, and unintended) differentially affected children including Aboriginal or CALD children or other identified cohorts?
- Have any systemic issues prevented achievement of timely decision-making?

Guided by an amendments "logic" developed specifically for the study, the PALS addressed the research questions using a combination of quantitative and qualitative methods, including

- analysis of CRIS data;
- Children's Court file analysis;
- child protection and contracted case management workforce survey;
- focus group and key informant interviews; and
- in-depth interviews with birth parents, carers and children.

Data from the different methods were brought together at the end of the research process to compare and synthesise the results to arrive at overall conclusions about the impact of the permanency amendments on the expected outcomes as well as the barriers and facilitating factors of their implementation at each stage of the "permanency pathway". The PALS also examined the causes of dominant events and patterns that emerged following the amendments, including the values and beliefs of people who operate in the system.

The PALS found that, overall, the permanency amendments achieved much of what they set out to accomplish. Importantly, timelier PCOs were observed – the average duration from child protection intake to PCO dropped by approximately nine months on average – from a peak of 56.6 months pre-amendments (2012–2013) to 47.3 months post-amendments (2018–2019). The average number of PCOs granted each month also increased from 22.8 pre-amendments to 35.5 post-amendments, demonstrating that more children in OOHC who cannot be reunified within a reasonable timeframe have more certainty about their future care. Younger children, non-Aboriginal children and children already living with their intended permanent carer (typically kin) are more likely to achieve timely permanent care. Generally, it was more difficult to find a permanent alternative family for older children, and some adolescents who entered care as younger children before the permanency amendments may remain in temporary OOHC for their entire childhoods without hope of reunification or finding a permanent alternative family.

Timelier PCOs occurred because the permanency amendments succeeded in accomplishing

- earlier and permanency focused child protection case planning;
- greater attention to the possible harmful effects of delay and the desirability of early decisions about permanent/long-term care;
- contact congruent with a permanent/long-term care case plan; and
- more kinship carers willing to convert to permanent care.

Children's transition to permanent care within a developmentally appropriate timeframe is intended to lead to stable caregiving, a sense of security and certainty with associated developmental benefits. However, given the short follow-up period, the PALS was unable to make definitive conclusions about what the future holds for the growing number of children who are subject to a PCO. Professionals, carers, and children themselves suggested that permanent/long-term care contributes to children's sense of belonging, safety, and wellbeing. However, timelier PCOs also occurred in some cases because parents and magistrates are averse to the new care by Secretary order (CBSO) and push for a PCO earlier than the child protection service plans. As a result, kinship carers can feel pressured to agree to a PCO shortly after a case plan has changed from reunification to permanent care and may not fully appreciate that children subject to a PCO do not receive ongoing case management. The PALS also revealed concern among diverse stakeholders about the level of post-order support available to support permanent carers to meet the developmental needs of a rising number of children subject to PCOs and manage parent contact. Further, while Cultural Plans that accompany applications for PCOs are detailed and thorough, and s 321(1) CYFA specifies that a permanent carer must preserve the child's connection to their culture, questions remain about the implementation of Cultural Plans and their appropriateness as children grow through different developmental stages.

While more children entering OOHC experienced timelier permanent care following the amendments, there was no substantial change observed in the timeliness of reunification that could be attributed to the permanency amendments. The PALS also revealed concerns among magistrates and legal representatives for parents about efforts to reunify families when this is the permanency objective and to maintain family connections when permanent/long-term care is the case plan goal. These stakeholders also preferenced family reunification over timely enduring alternative care in best interests decision-making and disagreed with the reduced role of the Children's Court in resolving child protection matters.

Concerns among legal stakeholders were connected to unforeseen (and, in one instance, perverse) Court decisions and actions, some of which provided windows of opportunities for parents to make and sustain changes in their lives in ways that were not envisaged in the legislation. Unforeseen outcomes at Court included

- delayed resolution of PAs so the Court can oversee parents' engagement with support and services;
- extensions to FROs without compelling evidence of likely permanent reunification;
- delays in settling applications for CBSOs;
- bypassing CBSOs to provide certainty regarding contact and placement; and
- a more litigious Court culture.

The results occurring at Court can be interpreted as a *failure of implementation* resulting from a lack of engagement with legal stakeholders whose support was essential to success. The results also show that the formulation of rules in best interests decision-making is problematic when there is no consensus surrounding the values or principles underlying the rules. While the impact on children of Court decisions and actions that undermine the aims of the amendments are currently unknown, unintended results occurring in the Court may have undesirable consequences by placing additional burden on child protection and the Court.

Moving forward it is important that conflicting aims regarding family reunification and timely alternative care, as well as disagreements relating to the allocation of power in child protection decision-making, are reconciled. Addressing genuine concerns about the impact of the permanency amendments on family life and family connectedness and the role of the Children's Court in OOHC case management, will improve the way in which the Children's Court and child protection interrelate. A more harmonious interconnection between these two sectors will improve the effectiveness and efficiency of the whole system and the experience of those who operate in the system, and the children, families and carers involved. Paying attention to early warning signs about the vulnerability of some permanent care placements will also help prevent PCO breakdowns and ensure the ongoing developmental needs of a rising number of children subject to PCOs are met.

Real improvements can be made if representatives from all parts of the system come together to find solutions to three key questions that target tensions or systemic issues driving unintended results and concerns about the fragility of some permanent care arrangements. The three questions for change are:

- How might we better support successful reunifications and confidence in the reunification process when this is permanency objective?
- How might we ensure successful family and cultural connections for children when permanency with parents is not deemed to be viable? and
- How might we ensure prospective permanent carers are ready to transition to a permanent care arrangement and receive a level of post-order support that enables them to meet children's developmental needs over time?

When solutions are found that everyone can live with, the current culture of conflict will have a chance to abate, and the arguments of adults will cease to drown out the voice of the child. An environment may then emerge where complex and consequential child protection decisions can be made, rooted in trust and mutually respectful interactions.

Introduction

Children subject to child protection intervention and placed in out-of-home care (OOHC) can be further harmed by drifting in multiple, unstable care arrangements for extended periods of time, living with uncertainty about their future care, and losing connections with family, community, and culture. Achieving permanence in a timely way supports children's safety, security, and sense of belonging, providing them with the opportunity to be happy, thrive and achieve their best outcomes possible.

The Concept of Permanence

The concept of permanence within child protection emerged in the United States in the 1970s in response to criticism about delayed decisions and children being allowed to "drift"[2] in care (Roth, 2013). There are different kinds of permanence, or goals of permanence; legal, relational, and cultural:

- *Legal permanence* is the legal underpinning of permanency. It means the child's direct caregiver has a lasting (or until the child turns 18 years) and legally secure relationship with the child.
- *Relational permanence* concerns the child's relationships and emotional connections with family members, carers and others who are important in defining children's sense of self.
- *Cultural permanence* recognises the importance of and maintaining a continuous connection to family, tradition, race, ethnicity, culture, language, and religion.

2 "Drift" means lengthy placement away from the natural family, without a clear goal to return the child or find some other permanent home (Hartley, 1984).

Legal Permanence

In Australia, family preservation (remaining with birth parents) and family reunification (returning to live with birth parents) are always the policy preferences (Fernandez, 2013; AIHW, 2016), but once permanent family reunification with the child's birth parent/s has been ruled out as unsafe, permanence in an alternative care arrangement (such as legal guardianship, in which authority for the child is transferred from the parent to an alternative caregiver until the child turns 18 years) is the preferred alternative (AIHW, 2016). Often, an alternative permanent family is achieved through kinship placement. Adoption from care is not as widespread in Australia as it is in the United Kingdom or the United States (Fernandez & Atwool, 2013; Wright, Luu, & Cashmore, 2021), although there is an ongoing national policy discussion about how much adoption should be used to provide permanency if reunification with birth parents is not possible. In Victoria, adoption from care is very rare, and is used only where there is parental consent[3]. Traditional adoption is considered the least favourable preference for Aboriginal children as it is considered culturally inappropriate (SNAICC, 2016, p.14).

Legal permanence is the mainstream child welfare goal of permanence. However, *relational and cultural permanence* have an important influence on the child's sense of self and long-term outcomes. Relational and cultural permanence recognise the added importance of emotional connections and maintaining a continuous connection to family, tradition, race, ethnicity, culture, language, and religion.

Cultural Permanence

For Aboriginal children, cultural permanence involves experiencing stability and continuity of meaningful relationships with their family, extended family, community, and culture (Bennett, 2015). From the perspective of the Secretariat of National Aboriginal and Islander Child Care (SNAICC), permanency does not rely exclusively on developing bonds with a particular set of parents or carers. "Permanence for Aboriginal children is developed from a communal sense of belonging; experiences of cultural connection, and a stable sense of identity including knowing where they are from, and their place in relation to family, mob, community, land and culture" (2016, p. 7).

Permanency Planning and Action Processes

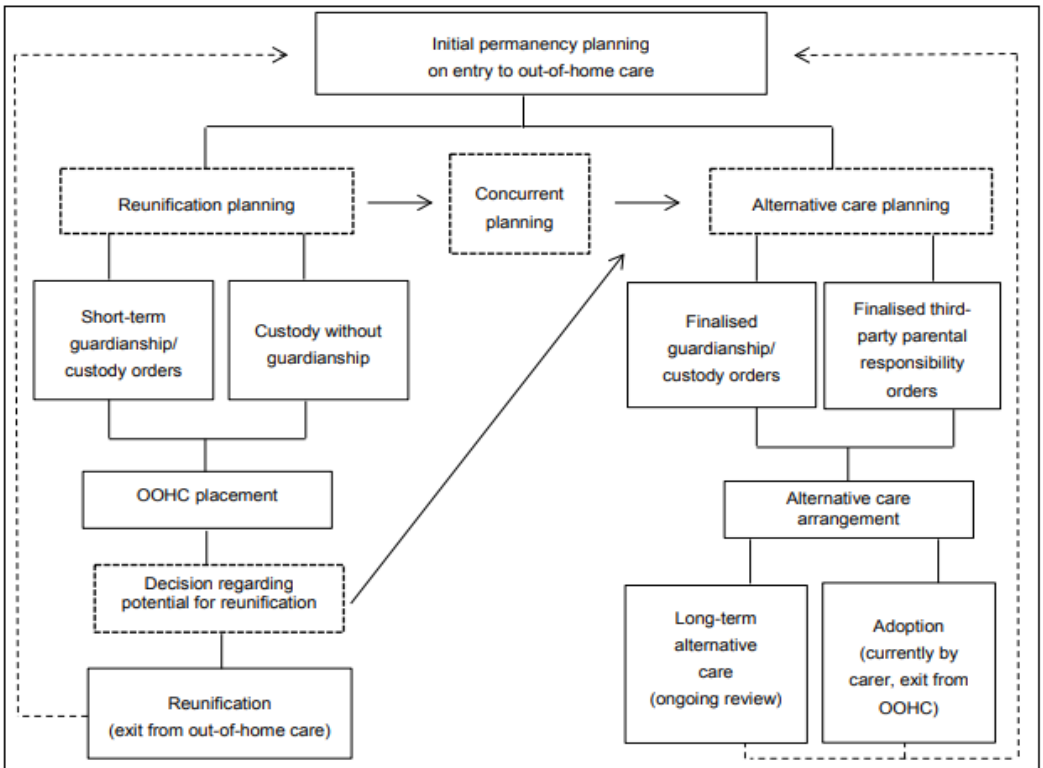
There are different routes to permanence, which depend on the needs and circumstances of the child. The process undertaken to achieve a stable long-term care arrangement for children is called permanency planning (Tilbury & Osmond, 2006, p. 2). A high-level diagram developed by AIHW (2016) shows the general process of permanency planning in Australian states and territories, based on two discrete pathways dependent upon whether safe reunification is possible or not (Figure 1). Concurrent planning involves plans for reunification in parallel with contingency plans that exclude reunification. Figure 2 shows the child protection decision process, with the Department of Health and Human Services (DHHS) child protection case planning process in parallel with the Children's Court decision process.

In Victoria, permanency planning is a component of *case planning*. Child protection practice in Victoria has incorporated elements of permanency planning since the 1980s, and section 101 of Victoria's *Children and Young Persons Act 1989* reflected the concepts of permanency planning by requiring the Children's Court to consider the likelihood of successful reunification and the appropriateness of making a permanent care order (PCO), when considering whether a custody to Director-General (later amended to Secretary) order should be extended beyond the end of its second year. The *Children, Youth and Families Act 2005* (hereafter referred to as the CYFA) strengthened permanency planning requirements by requiring the case planner to make a "stability plan" for the child within 12, 18 or 24 months of being placed in OOHC depending on the child's age. Since 1992, Victoria also has had the PCO as a permanent alternative care arrangement, which grants parental responsibility to the child's permanent carer "to the exclusion of all other persons" until the child is 18 years of age. As discussed later in the introduction, the 2014 amendments to the child protection provisions of the CYFA (the permanency amendments) created a new child protection case planning framework, with the aim of ensuring timelier and better integrated case planning and decision-making.

3 Or where Court dispenses with consent, for example in cases where parents cannot be found after extensive effort.

Figure 1

Permanency Planning Pathways



Notes

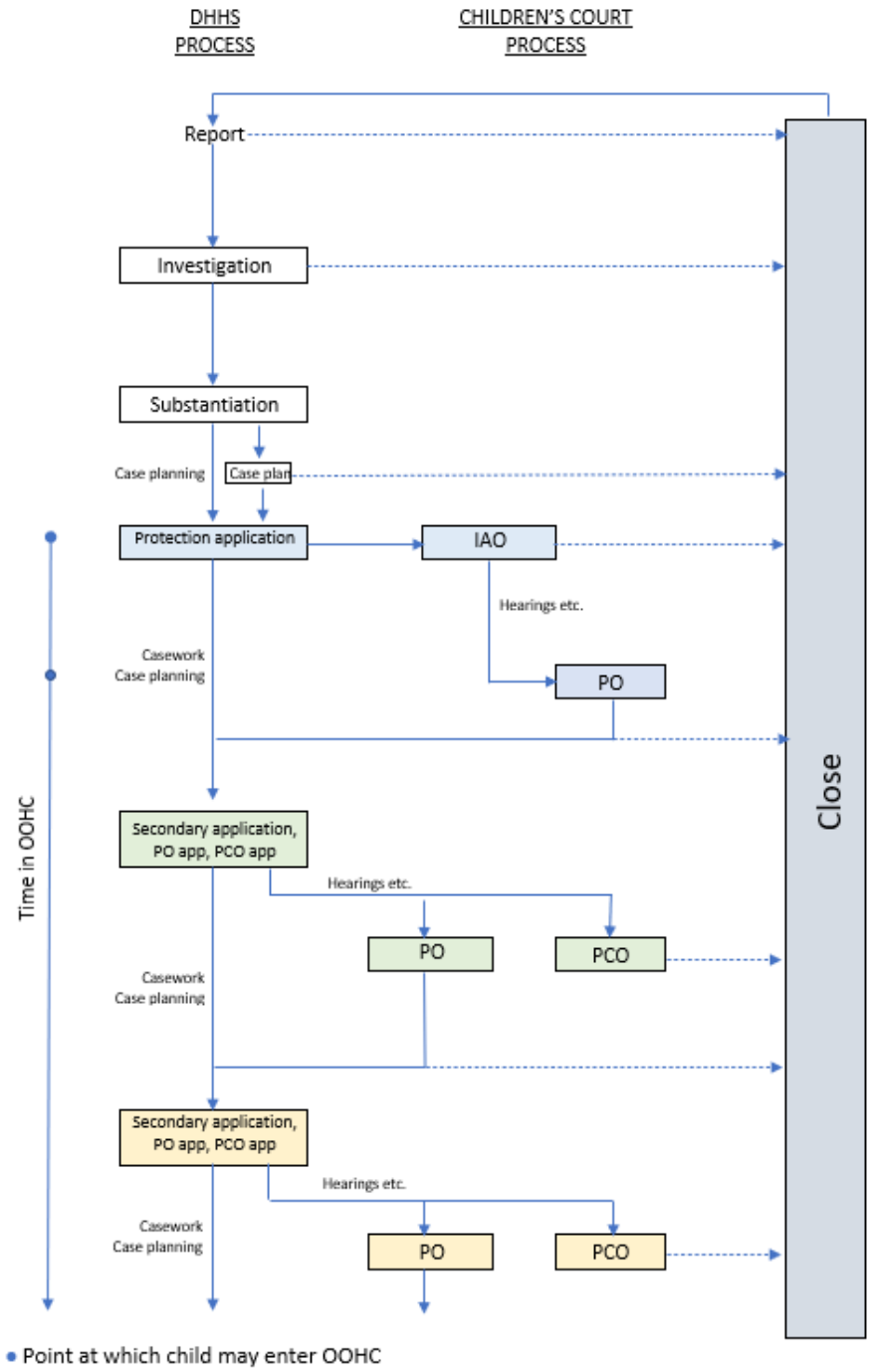
1. Intervening steps and time frames vary across jurisdictions and plans for each child.
2. The term 'short-term orders' is not used or defined in the NSW *Children and Young Persons (Care and Protection) Act 1998*. Orders are either interim orders or final orders and are made for a specified period of time.
3. New South Wales does not classify children on guardianship orders (a subset of third-party parental responsibility orders) as being in scope for the national OOHC collection. Western Australia does not classify children under third-party parental responsibility orders as being in scope for the national OOHC collection. The term 'alternative care' (rather than 'out-of-home care') has been used to reflect this variation.
4. The implementation in some jurisdictions of concurrent or parallel planning and/or dual authorisation for carers may facilitate children moving from a long-term guardianship/custody order to adoption by carer.
5. In South Australia care orders do not provide a pathway to adoption, which is seen as a separate process.
6. This figure was developed by the AIHW based on the information in Appendix A <http://www.aihw.gov.au/publication-detail/?id=60129557071>.

Figure 2.1: Overview of permanency planning pathways

Source: Australian Institute of Health and Welfare (2016), p.8. Figure 1

Figure 2

Child Protection Case Planning Process and the Children's Court Process



Permanency Reform in Victoria

Despite the legislative framework supporting permanency planning in Victoria, (the stability planning provisions in the Act prior to the permanency amendments), the report of the Protecting Victoria's Vulnerable Children Inquiry (the PVVCI report) tabled in Parliament in 2012 (Cummins, Scott & Scales, 2012) found that

> The average time taken between a child's first report and their ultimate permanent care order, at just over five years, is too long. For children who have been abused and known to statutory child protection services at a young age, it takes too many years for a permanent care order to be granted when this is necessary to ensure their safety and wellbeing. During this time, many children are subjected to multiple placements, compounding psychological harm (p. 229).

While reunification has not been a feature of routine child protection performance monitoring in Australia, the Stability Planning and Permanent Care Project 2013–14 (see below) also identified that a proportion of children spend long periods in OOHC before being reunified with their parents. In 2011–12, 25.4% of children who returned home in that time had been in OOHC for two years or more. Proportionally, it took longer to reunify children in 2011–12 than it did a decade earlier (2014, pp. 12–13). The PVVCI report also raised concerns about the number of Court visits for each child protection case, the involvement of the Children's Court in case management decisions, and the adversarial nature of the Children's Court.

The Process of Permanency Reform

The PVVCI report recommended the simplification of Children's Court orders, focusing the Children's Court's role on a narrower range of matters, simplifying case planning processes and removing barriers to permanency. The PVVCI stated it was unable to identify all the barriers to earlier permanency resolution and recommended that government fund research to identify and remove barriers to achieving the most appropriate permanency outcomes.

The Stability Planning and Permanent Care Project 2013–14 (DHHS, 2014) was undertaken during 2013 and early 2014 to conduct the research recommended by the PVVCI in 2012.

Stage one of the project was a review of 1,332 cases involving children aged less than 10 years who had been in OOHC for more than one year. In stage two, project workers provided consultation, training, and professional development to allocated child protection practitioners as well as direct casework and case planning in an action research approach to improving permanent care outcomes. *The Stability Planning and Permanent Care Project Report* identified barriers in achieving permanency (whether by reunification or alternative care) for children in both the child protection service and the Children's Court. These included

- delays in child protection case planning and case implementation caused by unresolved Children's Court matters, review processes and workload issues (e.g., unallocated cases, practitioner turnover) and incongruence between case plan direction and Children's Court Order and conditions;
- longer and more contested Court hearings delaying final outcomes;
- lack of available permanent carers; and
- difficulty placing children with permanent carers due to children's high needs.[4]

The development of the permanency amendments was further informed by the findings and recommendations of the Stability Planning and Permanent Care Project 2013–14. The (then) Department of Human Services (DHS) also undertook stakeholder consultations on the proposed changes before the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill* was introduced to parliament in August 2014 (Legal and Social Issues Committee, 2014, pp. 8–9).

The Minister's second reading speech regarding the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill,* delivered to the Legislative Assembly on 7 August 2014, referred to the harm caused to children by periods of instability in OOHC and stated,

> This bill proposes an alternative strategy to break this cycle of compounding instability for children. It ensures that decisions regarding vulnerable children will be made in a timely way, to avoid children being in care without a timely response and to promote permanency of care arrangements.

4 UK research reviewed by Brown and Ward (2013) identified a similar set of factors that contribute to delays in achieving permanency for children who enter OOHC. Social workers tended to delay moving towards making and implementing permanent alternative care plans once children are placed in voluntary accommodation and the pressure to resolve a crisis has been relaxed. Poor planning and inadequate case management was also observed for children under a Court order. As well as reactive case management (or lack of proactive case management) and poor planning (which is compounded by demand pressure), delays in Court proceedings were identified. These delays were caused by poorly prepared Court applications, poorly engaged parents, disputes between parties, and insufficient capacity of Courts to meet demand. Attempted placements with parents, waiting for parenting assessments/assessments of relatives and changes of plan (Court decisions that did not align with the local authority assessment) to ensure that parents' rights and needs are respected and to reduce the likelihood of a contested hearing were other reasons for delay.

> Care arrangements for vulnerable children need to be settled as quickly as possible. Ideally, permanency will be provided by the child's own parents. Where this is not possible within a reasonable time frame, it is critical for the child's stability that an alternate permanent carer is identified to care for the child until adulthood, while maintaining the child's relationship and connection with their birth family and culture. In order to meet these objectives, the main provisions of the bill will

- ensure timelier and better integrated case planning and decision-making;
- create a simpler range of Children's Court protection orders that promote timely resolution of protective concerns; and
- clarify the rights and responsibilities of the Secretary, parents and carers to make decisions regarding a child's care (Mary Wooldridge, Parliamentary Debates Legislative Assembly, 7 August 2014, p.2,657).

The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill* was passed by Parliament in August 2014, and the amendments to the child protection provisions of the CYFA came into effect on 1 March 2016. Significant policy, professional development and program resources were made available to assist implementation of the permanency amendments. These included

- new case planning guidelines and in-person and online training for the child protection workforce;
- additional funding for services to support family preservation and family reunification;
- an additional 34 specialist case planner positions as part of the area-based operating model introduced in April 2018;
- funded helpline and flexible packages for new and existing permanent carers; and
- funding for a new model for preparing Cultural Plans.

Concerns about the 2014 Amendments to the *Children, Youth and Families Act 2005*

In 2014, as shadow Minister for Community Services, Jenny Mikakos promised to reinstate existing requirements of s 276 of the CYFA that were amended in 2014.[5] Section 276(1) of the CYFA requires the Children's Court to be satisfied that reasonable steps have been taken by the Secretary of the DHHS to provide services in the best interests of the child before the Court can make a protection order.

In May–June 2015, the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill* 2015 was debated in Parliament. The bill was passed on 11 August 2015, which addressed one concern relating to the 2014 amendments to the CYFA 2005. The bill had been referred to the Standing Committee on Legal and Social Issues of the Victorian Parliament for inquiry. The Committee conducted two public hearings and received 27 written submissions, examining the bill in the context of 2014 amendments to the CYFA. The evidence received by the Committee focused mainly on the 2014 Act, indicating that some stakeholders had outstanding concerns, which can be summarised as

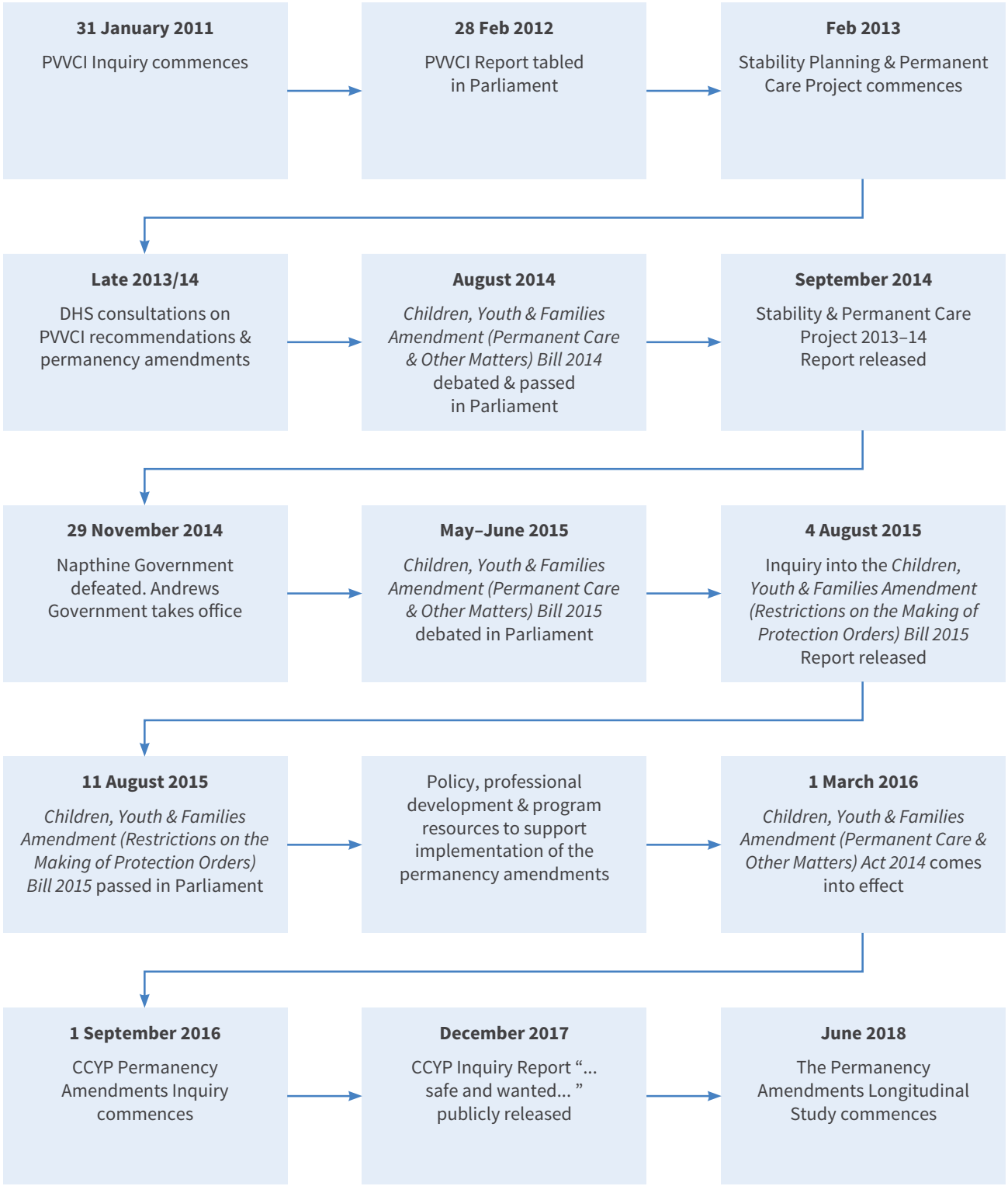
- the lack of availability of permanent carers and services and supports to permanent carers;
- the lack of availability of family preservation and reunification support services and waiting times for these services;
- the potential for Aboriginal children in permanent alternative care arrangements to lose cultural and family connections;
- the reduction in the role of the Children's Court and the exercise of judicial power;
- the Children's Court's capacity to manage a growing number of protective matters; and
- opposition to the placement of adoption third in the "permanency objectives hierarchy", ahead of permanent care and long-term care.

The process of permanency reform is illustrated in Figure 3.

5 https://www.jennymikakos.com.au/parliament/children-youth-and-families-amendment-permanent-care-and-other-matters-bill-2014/

Figure 3

The Process of Permanency Reform in Victoria



The Permanency Amendments Longitudinal Study

Six months after the permanency amendments came into effect, and at the request of the Minister for Families and Children, the Commission for Children and Young People (CCYP) conducted an independent inquiry to examine whether the stated objectives of the reforms were being realised and whether unintended consequences were negatively affecting children (CCYP, 2017). The Commission's "... safe and wanted ..." report indicated that the narrow timing of the inquiry limited the conclusions that the Commission could safely draw about the longer-term impact of the amendments and recommended that a "longitudinal study" be conducted to measure the impact of this legislation, and that this study inform a second review after a further two years.

In response to the recommendations made by the CCYP, DHHS engaged the University of Melbourne (UoM), in collaboration with the University of New South Wales (UNSW) and the University of Sydney (USyd), to conduct a longitudinal study of the impact of the March 2016 permanency amendments to the *Children, Youth and Families Act 2005, referred to as the Permanency Amendments Longitudinal Study* (PALS).

Structure of the Report

The rest of this report includes an overview of the permanency amendments, the PALS research approach, and findings from all five methods of the PALS to provide a detailed and multi-perspective picture of the changes that have occurred following the permanency amendments coming into effect. The technical appendices provide rich detail of the approach and results from each of the five component methodologies. The synthesis consolidates the findings where there is agreement and thus validation of results across multiple research methods.

The Content of the Permanency Amendments

Several significant amendments were made to the CYFA in 2014 to achieve timelier permanency outcomes for children entering OOHC (http://www5.austlii.edu.au/au/legis/vic/bill_em/cyafacaomb2014628/cyafacaomb2014628.html).

Hierarchy of Permanency Objectives

The permanency amendments introduced a *hierarchy of permanency objectives* in order of preference, as appropriate in the best interests of the child (CYFA s 167(1))

- *family preservation* – the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent;
- *family reunification* – the objective of ensuring that a child who has been removed from the care of a parent of the child is returned to the care of a parent;
- *adoption* – the objective of placing the child who is unable to safety return to the care of a parent for adoption under the Adoption Act and Adoption Regulations;[6]
- *permanent care* – the objective of placing the child who is unable to safety return to the care of a parent with a permanent carer or carers; and
- *long-term OOHC* – the objective of placing the child who is unable to safety return to the care of a parent in a stable, long-term care arrangement with a specified carer or carers or, if this is not possible, another suitable long-term care arrangement.

New Suite of Protection Orders

The permanency amendments introduced a *simpler suite of Children's Court Orders* that are aligned with the hierarchy of permanency objectives (above). Table 1 lists the suite of protection orders available to the Children's Court after 1 March 2016. The orders that could be made by the Court prior to 1 March 2016 are also shown for comparison.

6 An Adoption Order would be made by the County Court.

Table 1

Care and Protection Orders Pre- and Post-Amendments

Pre-amendments orders		Post-amendments orders		
Order	**Provisions**	**Order**	**Provisions**	**Permanency objective**
Interim accommodation order	• Specifies care arrangement[7] • Other conditions can be attached	**Interim accommodation order**	• Existing provisions remain • An IAO must not be made if a protection order/PCO could be made (new)	N/A
Interim protection order	• 3-month order • Assigned care to parent, community service, suitable person or department • Conditions could be attached • Purpose to test viability of case plan/care arrangement	• Existing IPOs continued until the next hearing. This order type was not replaced. Post-amendments, any of the new protection orders could be made instead, usually a FPO or FRO, depending on care arrangement and permanency objective.		
Supervision order	• 12 or 24 months • Parents have custody and guardianship (or a specific parent if separated) • DHHS has right to supervise and give directions • Conditions can be included (e.g., contact to non-custodial parent, services etc.)	**Family preservation order**	• Name change to make purpose clear • Additional requirement that conditions are capable of being carried out, directed towards family preservation and in the child's best interests. • Parents have exclusive parental responsibility (term change only) • Conditions to be in best interests of child, reasonably able to comply, and to promote child remaining in parental care (new).	Family preservation
Custody to 3rd party order	• Custody to specified person for 12 months • Parents retained guardianship • No DHHS supervision (case closed) • Custody reverted to parent at end of order	• Existing CTTPOs continued until their expiry. This order type was not replaced. Post-amendments if alternative limited parental responsibility and care is required a FRO could be made.		

7 Parent, community service/foster care, suitable person/kin etc.

Pre-amendments orders		Post-amendments orders		
Order	**Provisions**	**Order**	**Provisions**	**Permanency objective**
Supervised custody order	• Specified person had Custody (foster or kin) for 12 months • Parent retained guardianship • Could include conditions – e.g. contact, services • DHHS supervised and gave directions • Purpose is to reunify within 12 months • Could by direction become a supervision order	**Family reunification order**	• Must not exceed child in care for 12 months (but can be extended up to when child in care 24 months when compelling evidence will return permanently to parental care during order)[8] • DHHS has care of the child[9] and limited parental responsibility – parental agreement required regarding major-long term issues • Conditions can be attached • May, by direction, become a family preservation order	Family reunification
Custody to Secretary order	• DHHS had Custody, typically for 1 or max 2 years, but could then be extended by further 1- or 2-year periods without limit • Guardianship remained with parents • Could attach conditions (contact etc.)	**Care by Secretary order**	• 2-year order • DHHS has parental responsibility • No conditions • May by direction become a family preservation order	Long-term OOHC/ permanent care or family re-unification in exceptional circumstances
Guardianship to Secretary order	• DHHS had Custody and Guardianship, typically for 1 or max 2 years, but could then be extended by further 1- or 2-year periods without limit • No conditions	**Long-term care order**	• Made until age 18 • Child of any age • Pre-requisite that carer does not consent to PCO, and child over 10 is not opposed • DHHS has parental responsibility • To remain with carer (kinship or foster care) • No conditions	Long-term OOHC
Long-term guardianship to Secretary order	• Made until age 18 • Restricted to child 12+ years, with consent of child and carer • DHHS had custody and guardianship • To remain with carer (kinship or foster care) • No conditions			

8 Duration of order calculated from date of entry into OOHC (as the result of an IAO, FRO, CBSO, LTCO, TTPO).

9 Usually kinship or foster placement.

Pre-amendments orders		Post-amendments orders		
Order	**Provisions**	**Order**	**Provisions**	**Permanency objective**
Permanent care order	• Carer had exclusive custody and guardianship until age 18 • must include conditions re contact with parents • May include conditions re contact with siblings and others • Court could require a cultural plan for an Aboriginal child • Could not be made for Aboriginal child to non-Aboriginal carer without Aboriginal agency recommendation	**Permanent care order**	• Carer becomes permanent care parent (new) and has exclusive parental responsibility until age 18. • May include up to 4 court-ordered contacts with parents when order first made – after 12 months, no limit on contacts if varied (new limit) • Pre-requisite considerations before including conditions (new) • ACCO recommendation and cultural plan pre-requisites for making PCO for any Aboriginal child (expanded) • Standard condition unless ordered otherwise requiring permanent care parent to preserve the child's identity and connection with family and culture (new) • Birth parents require leave of court to apply to vary or revoke (new) • Siblings able to apply to vary contact (new) • Reverts to CBSO if permanent care parent/s die (new)	Permanent care

Certain provisions and pre-requisites attached to the new suite of protection and permanent care orders restrict the discretion of the Children's Court to determine when a protection order can be made,[10] the length of some protection orders, who the child lives with, and the length of time for which the Court may extend orders that may include conditions

- the Children's Court must not make an IAO if a protection order can be made (s 262(5A) CYFA);
- the FRO can only be made for a period placing the child in OOHC for no longer than 12 months, with an additional 12 months only where the Children's Court is satisfied there is compelling evidence[11] that the child will return permanently to their parent's care during the period of extension, and that the child will not be in OOHC for a cumulative period of more than two years in total (s 294(A)(1)(a) CYFA);
- the CBSO is a fixed-term two-year order (s 289(1)(b) CYFA);[12]
- as was the case with CTSOs and guardianship to Secretary orders (GSOs), there continues to be no capacity to name the carer when a child is placed on a FRO or a CBSO[13], although there is a new general requirement to place children with a suitable family member where possible (s 167(2) CYFA);
- time limits on the extension of FROs mean the Court is not able to extend an order in which it can include conditions beyond these limits;[14] and
- a limit of four court-ordered contacts each year with birth parents (with additional contact by agreement) when a PCO is first made; no limit applies if these conditions are varied on application after 12 months, and the amendments also enable siblings to apply to vary their contact conditions (s 326(1A) CYFA).

10 As discussed earlier, pre-existing restrictions on the making of a protection order under s 276 CYFA remain.
11 Compelling evidence could, for example, be evidence of progress towards reunification achieved in the first 12 months.
12 This is to enable development/implementation of long-term OOHC/permanent care case plan. Previous similar orders had been for *up* to two years.
13 A specified person had custody on custody to third party orders and supervised custody orders.
14 Previously the Court had been able to extend a CTSO, which could include conditions, for up to two years at a time.

Other new provisions and pre-requisites in the making of protection and permanent care orders include

- in determining whether to make a FRO, CBSO or LTCO, the Children's Court is to have regard to advice from the Secretary about various matters (s 276A CYFA);[15]
- before including conditions on a PCO, the Children's Court is to have regard to the primacy of the child's relationship with the permanent care family and various other matters (s 321(1B) CYFA);
- before making a PCO in respect of an Aboriginal child, irrespective of whether the proposed permanent care parents are Aboriginal or non-Aboriginal, the Children's Court is to be provided with a Cultural Plan and the recommendation of an Aboriginal agency (s 323(2) CYFA);[16]
- a standard condition to be included on PCOs unless otherwise ordered that the permanent care parents preserve the child's identity, and their connections with culture and birth family (s 321(1)(ca) CYFA); and
- birth parents are required to obtain leave of the Court to apply to vary or revoke a permanent care order (s 326(1)(b) CYFA).

New Child Protection Case Planning Framework

In conjunction with a new range of Court orders, the permanency amendments created a new child protection case planning framework. This requires the first case plan to be developed following substantiation. All case plans must include one of five "permanency objectives" to be considered in order of preference (see hierarchy of permanency objectives above). Section 169 of the CYFA now stipulates clear timeframes for the Secretary to review a case plan.

The permanency amendments sought to ensure that the permanency objective articulated in the case plan was in the child's best interests and, where made, consistent with a current order of the Children's Court. As outlined above, in determining whether to make an order, the permanency amendments require the Children's Court to have regard to advice from the Secretary. Where the Children's Court makes an order that is not consistent with the Department of Health and Human Service's (DHHS; the Department) advice, the Department must make a new case plan with a permanency objective that is consistent with the Children's Court order and provide a copy to the family within eight weeks of the order being made.

The permanency amendments introduced the requirement that the case plan for all Aboriginal children in OOHC (not just Aboriginal children under a GSO, as previously) includes a Cultural Plan. A Cultural Plan is required for every Aboriginal and Torres Strait Islander child in care. It is DHHS policy that Cultural Plans are endorsed within 19 weeks of an Aboriginal child entering OOHC. Child protection retains the legislative responsibility for seeing that a Cultural Plan is provided to the child. However, it is the shared responsibility of all members of the care team to develop it, and all are expected to contribute. Cultural Plans must set out how the child is to remain connected with community and culture (s 176(3) CYFA). The plans must be regularly reviewed and updated – at least every 12 months at case plan review (s 169 CYFA). The timelines and process for cultural planning (child protection policy) are shown in Figure 4.

To overcome barriers to permanency and achieve timelier permanency, the amendments were intended to result in

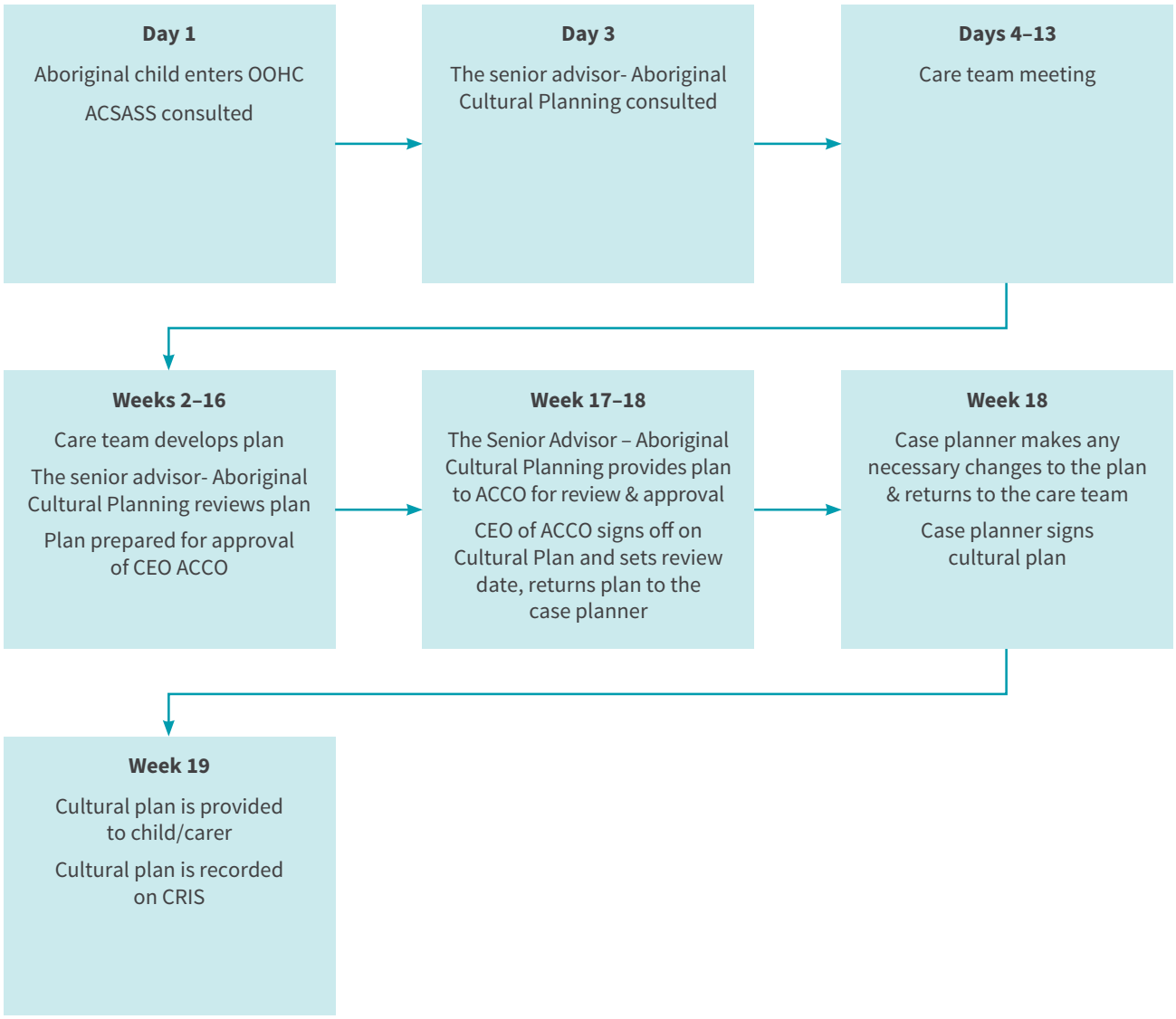
- earlier and permanency focused case planning;
- protection applications (PAs) supported by higher quality information/clearer evidence;
- parents and children better understanding the purpose of child protection intervention;
- permanency objectives articulated in case plans that are consistent with a current order of the Children's Court;
- children spending less time on an IAO before a final protection order (PO) is made;
- earlier engagement with birth parents and earlier commencement of reunification casework;
- earlier family reunification;
- timelier decisions where reunification is unachievable;
- increased availability of permanent carers;
- timelier PCOs;
- permanent carers secure, and placements not disrupted by conflictual contact arrangements or inappropriate applications to revoke;
- cultural support and Cultural Plans for all Aboriginal children in OOHC; and
- cultural safety for all Aboriginal children in OOHC.

15 About: the likelihood of permanent reunification being achieved; the outcome of previous attempts to reunify any child in the family with the parent; if a parent has had another child permanently removed, the desirability of an early decision about permanent care; the benefits of a CBSO to facilitate alternative arrangements for permanent care (beyond 12 months in OOHC where reunification is not realistic and there is no permanent care arrangement available); and the desirability of making a PCO if the child is placed with the intended permanent carer.

16 This includes children placed with Aboriginal carers, as well as those placed with non-Aboriginal carers (as was the only requirement prior to the amendments).

Figure 4

Cultural Planning Timelines



The Permanency Amendments Longitudinal Study Research Approach

The overarching questions for the PALS were:

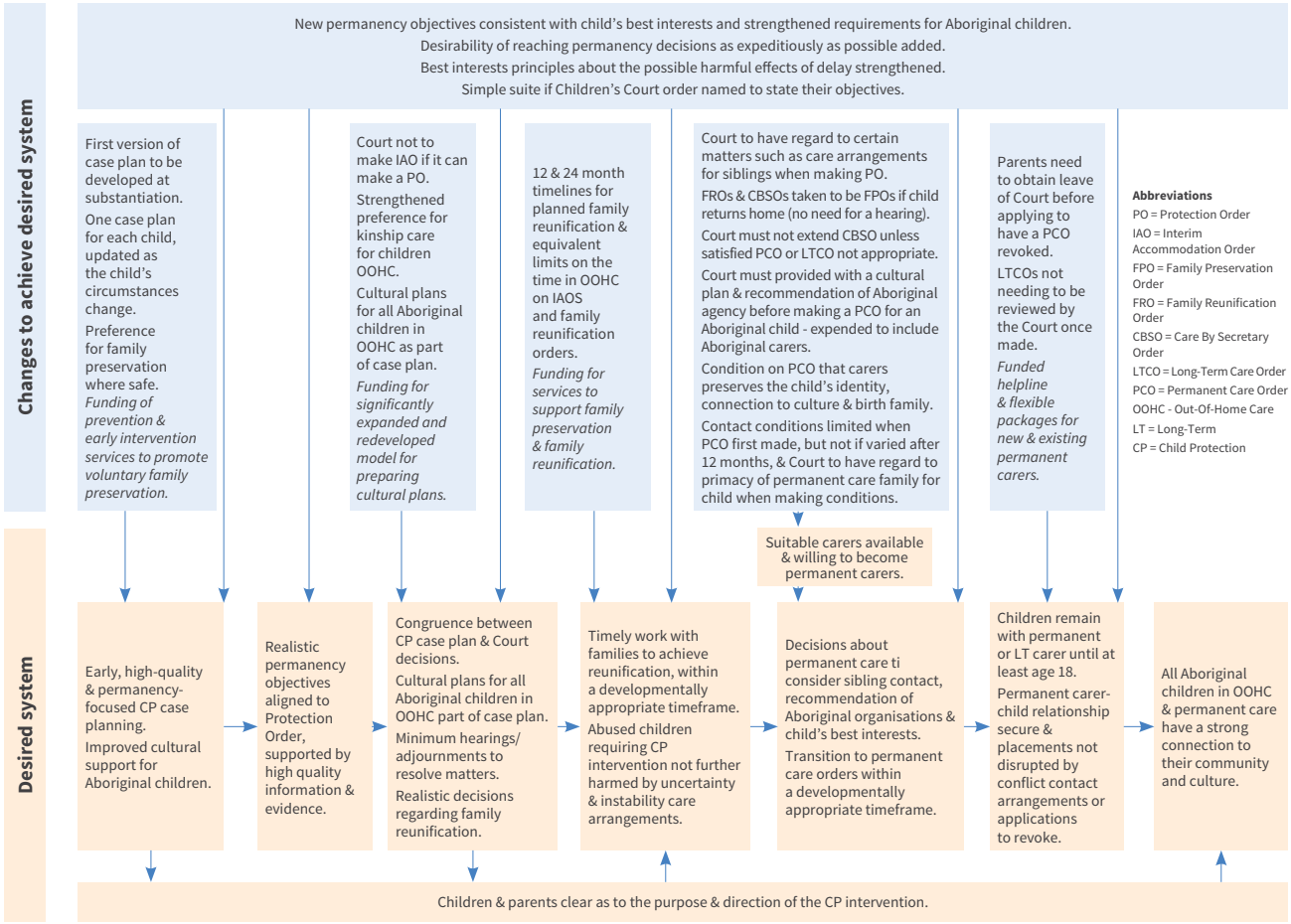
- What changes have occurred because of the permanency amendments?
- What, if any, unexpected or unintended outcomes have occurred as the result of the permanency amendments?
- Have changes (positive and negative, intended, and unintended) differentially affected children including Aboriginal or CALD children or other identified cohorts?
- Have any systemic issues prevented achievement of timely decision-making?

The Permanency Amendments Logic

The legislative reform referred to as the "permanency amendments" and their role in ensuring timely permanency outcomes for children requiring child protection intervention, is summarised in an "amendments logic" (Figure 5). The amendments logic is a tool developed by the research team with input from a DHHS working group and the project stakeholder advisory group to help plan the study and guide the measurement of short-term and long-term objectives.

Figure 5

Permanency Amendments Logic



As there is no comparison group, the main approach to addressing the research questions was a pre-post examination of outcomes to provide a robust analysis of changes over time. The PALS addressed the research questions using a combination of quantitative and qualitative methods (multimethod design: Morse, 2003). While the methods are relatively complete on their own, data from the different methods were brought together at the end of the research process to compare and synthesise the results to arrive at overall conclusions – about the impact of the permanency amendments on the expected outcomes as well as the barriers and facilitating factors of their implementation (referred to as methodological triangulation).

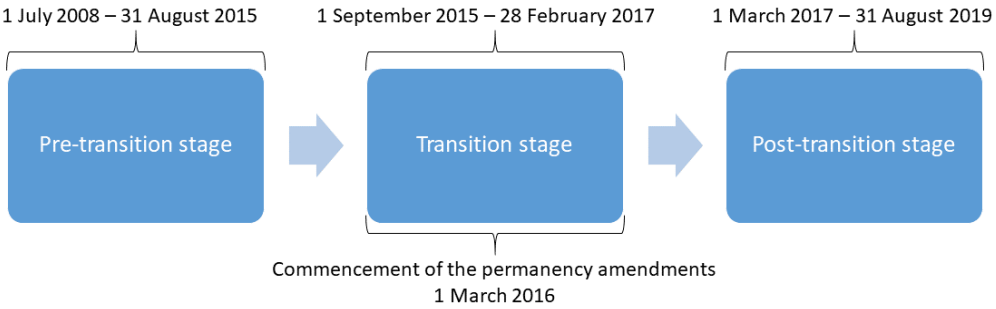
To make comparisons before and after the permanency amendments, time periods were established for different stages (Figure 6). These are

- pre-transition stage: 1 July 2008–31 August 2015;
- transition stage: 1 September 2015–28 February 2017; and
- post-transition stage: 1 March 2017–31 August 2019.[17]

17 It should be noted that certain analyses of CRIS data, as well as the Court file review, references different time periods within the broad pre- and post-amendments stages.

Figure 6

Pre-transition, Transition and Post-transition Timeframes[18]



These date ranges were chosen based on discussions with DHHS and the Children's Court. The purpose of specifying pre- and post-amendment time periods was to avoid a "transition stage", immediately before and after the commencement date, where system performance fluxes. For example, in anticipation of the March 2016 changes, a significant number of applications for PCOs were finalised prior to 1 March 2016 (Children's Court of Victoria, n.d.), p. 36).

The Five Components of the Permanency Amendments Longitudinal Study

The five methods used in the PALS were

- analysis of CRIS data;
- Children's Court file analysis;
- child protection and contracted case management workforce survey;
- focus group and key informant interviews; and
- in-depth interviews with birth parents, carers and children.

Analysis of CRIS Data

The quantitative analysis investigates the effects of the permanency amendments using data extracts from the Child Protection Client Relationship Information System (CRIS). As shown in Figure 6 above, the data extract used for the analyses of CRIS data includes all substantiated cases (or clients) that were either open on 1 July 2008 or entered the child protection system between 1 July 2008 and 31 August 2019. The observation period was split into three groups; 1 July 2008–31 August 2015 (the pre-transition period), 1 September 2015–28 February 2017 (transition period) and 01 March 2017 and 31 August 2019 (the post-transition period).

Thus, the timeframe or window of opportunity following the implementation of the amendments to explore case trajectories, that is children's journeys from a PA to a final order, from one order to another order, or case closure was relatively short.

The analysis of CRIS data examined

- timeliness of initial case planning;
- recording of case plans and provision to families;
- congruence between permanency objectives and Children's Court orders;
- cultural planning for Aboriginal children;
- Court proceedings;
- timeliness of reunification; and
- timeliness of transition to alternate permanent care arrangements.

The Quantitative Analysis of CRIS Data Technical Appendix appears at Appendix 1.[19]

Children's Court File Analysis

The data in the Children's Court file analysis were derived from 51 Court files provided by the Victorian Children's Court; 26 pre-amendments (cases substantiated in the period March 2013 to September 2015) and 25 post-amendments (cases substantiated in the period March 2017 to September 2017). Court files related to cases heard at metropolitan and regional Courts and were matched on several aspects, including Court location, manner by which an application was initiated,[20] type of Court order, sibling group composition, Aboriginality/ CALD status, child age and whether the application concerned children's entry to care for the first time or not.

18 Pre-amendments/pre-transition and post-amendments/post-transition are used interchangeably in this report.

19 The findings of the CRIS analysis must be interpreted considering the counting rules applied. In particular, the time that children spent in OOHC, exits from OOHC and re-entries to OOHC were derived from Court order durations. As such, the figures presented in relation to the CRIS analysis may not be directly comparable to findings presented in other publications (see Appendix 1 for details).

20 Emergency care application, secondary applications etc.

Court files were compared on several aspects, including the type of Court orders sought and made, the level of contact ordered, the way Children's Court magistrates and child protection practitioners refer to permanency, and factors that may have enabled or hindered timely decision-making (e.g., judicial continuity, number of hearings and adjournments).[21]

Court file data were supplemented by information from CRIS on the longer-term outcomes for the children involved in these applications – whether there were further reports, substantiations, placement changes, Court orders and reports for Court proceedings after the last action/orders in the Court files.

The Children's Court File Analysis Technical Appendix appears at Appendix 2.

Child Protection and Contracted Case Management Workforce Survey

The Child Protection and Contracted Case Management Workforce Survey (the survey) was an online survey of child protection practitioners and supervisors and contracted case managers and supervisors, which explored workers' subjective views about the effectiveness of different aspects of the amendments. The survey had mostly closed-ended questions (i.e., individuals were asked to respond to statements on a 5-point Likert-type scale), but there were also some sections where respondents could type in their own comments to follow up on their responses to the closed-ended questions.

All (then approximately 2,000) child protection practitioners employed by DHHS and case managers employed by Community Service Organisations (CSOs) and Aboriginal Community Controlled Organisations (ACCOs) contracted to deliver case management services during the child protection order phase were invited to participate in an online survey. A total of 372 professionals participated in the survey (56.8% DHHS, 18.1% CSOs, 25.1% ACCOs).

The Child Protection and Contracted Case Management Workforce Survey Technical Appendix appears at Appendix 3.

In-Depth Interviews with Birth Parents, Carers, and Children

Qualitative interviews were conducted with 19 foster/kinship carers and permanent carers, 13 birth parents and seven children aged 12 years or more, about a finalised permanent care or protection order where PAs were issued after March 2017. The interviews provided in-depth information pertaining to participants' experiences and viewpoints of child protection and legal decision-making processes.

The In-Depth Interviews Technical Appendix appears at Appendix 4.

Focus Group and Key Informant Interviews

Nine focus group discussions were conducted with professionals (e.g., adoption and permanent care practitioners, parent's legal representatives, child protection case planners and practitioners, Child Protection Litigation Office (CPLO) legal representatives, agency placement workers and managers, practitioners, and managers from specialist services) to examine implementation of the permanency amendments and the impact of changes on different stakeholder groups. Where possible, stakeholders compared the situation before and after the amendments, otherwise they were asked about the impact of the changes on their practice or their experiences of the system.

Key informant interviews were also conducted with key stakeholders, including the President of the Children's Court, Children's Court magistrates, the Director of the Children's Court Clinic, the Executive Director for Family Youth and Children's Law, Victoria Legal Aid, the Director, Child Protection Policy, DHHS, the Principal Children's Commissioner and the Aboriginal Children's Commissioner, and the CEOs/representatives of Peak Bodies (PCA families, the Centre for Excellence in Child and Family Welfare, the Foster Care Association of Victoria, the Victorian Public Advocate, the Victorian Aboriginal Child Care Agency (VACCA), Kinship Carers Victoria). Key informant interviews took place over most of the year 2020 with individuals holding these positions during that time.

The Focus Group and Key Informant Interview Technical Appendix appears at Appendix 5.

21 Researchers extracted data from Court files using a data extract template developed specifically for this purpose.

Synthesis of Research Findings from the Permanency Amendments Longitudinal Study

To ensure PALS findings are accessible, meaningful, and actionable, they are triangulated according to stages of the "permanency pathway" (Figure 7) and by the "level of thinking" (Figure 8).

The permanency pathway sets out the routes to permanency; either family preservation/reunification or a permanent/long-term care order. The stages of the permanency pathway in focus are initial case planning stage, protection application (PA) stage, family reunification order (FRO) stage, application for care by Secretary order (CBSO) stage, CBSO stage and permanent/long-term order stage. Each stage is reported on separately.

The four levels of thinking model (Maani & Cavana, 2007) (Figure 8) uses the analogy of the iceberg to help explain the link between system results (the events we can see in the world) and the patterns, structures, and mindsets (or internalised rules) that can't be seen. The four levels of thinking model provides a helpful illustration of the fact that in complex systems, systemic structures (how system parts fit together), and the mindsets from which they arise, generate behaviour and performance for the whole system. It is particularly suitable in the context of this research because the Victorian Child Protection system comprises interactions between state funded and delivered services for children and families, state decision-makers, legal services for the state, children, and parents, and Court services and judicial decision-makers.

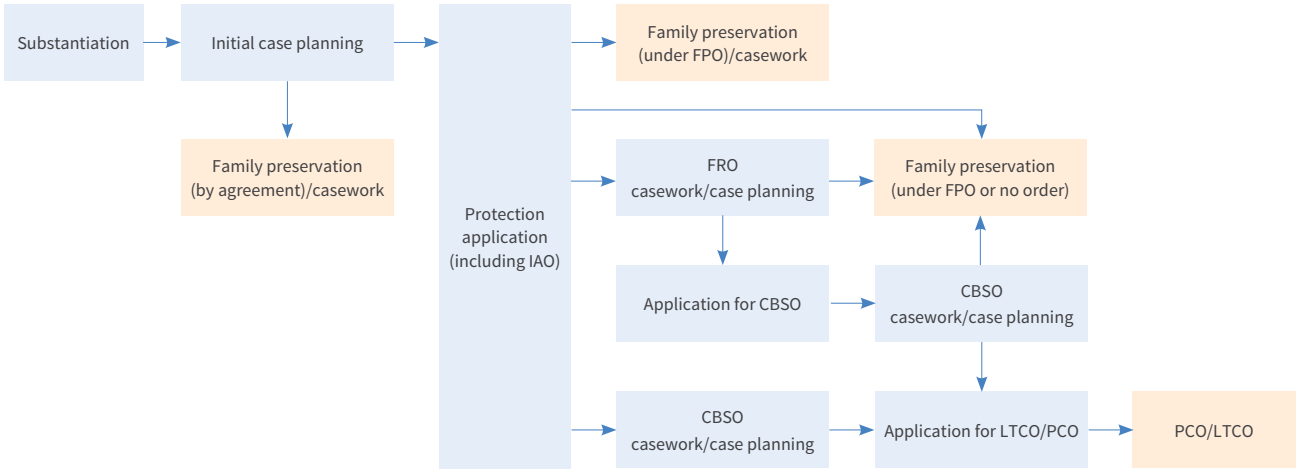
For each stage of the permanency pathway, findings are presented in terms of events/patterns (what is happening) and systemic structure (links between outcomes and causes, or why events and patterns are happening). For unexpected/unintended outcomes, the mental models or values/attitudes/beliefs that are anchoring or driving unexpected systemic structures are also examined where relevant.

For the events and patterns level of thinking, intended outcomes were established a priori via the permanency amendments logic (see Figure 5 above). Some unintended outcomes were also identified a priori.

The systemic structures level of thinking shows links between intended and unintended/unanticipated outcomes and causes or reasons for these outcomes. These links are presented in structure diagrams.[22] The connections between outcomes and causes are based on a synthesis of the CRIS data, the Children's Court file analysis, together with the views expressed by those with experience of the permanency amendments as reflected in the child protection and contracted case management workforce survey, interviews and focus groups with judicial and legal professionals, Aboriginal agencies, DHHS and agency managers and caseworkers, and in-depth interviews with children, parents, and carers. Structure diagrams were also verified during sessions with the stakeholder advisory group during which our interpretation of the data was tested.

Figure 7

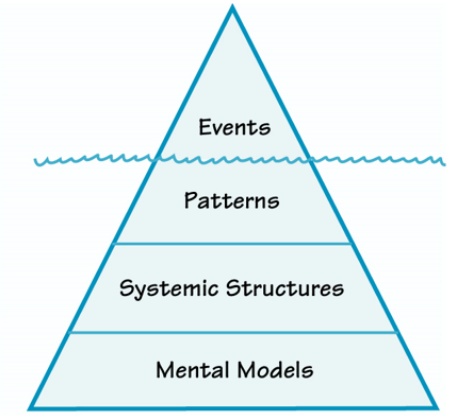
Permanency Pathway



22 To read the structure diagrams
- locate the intended or unintended outcome of interest;
- look at the arrows that connect factors;
- read the symbol positioned at the arrowheads understand how one factor affects another (factors move in the same direction (there is a positive relationship between them) if there is a "+" symbol. Factors move in the opposite direction (there is a negative relationship between them) if there is a "-" symbol).

Figure 8

The Four Levels of Thinking Model



Source: Maani & Cavana (2007)

Initial Case Planning Stage

The following section describes what happens at the initial case planning stage of the permanency pathway, the outcomes expected or intended because of the permanency amendments (and unintended outcomes to be avoided), events and patterns at the initial case planning stage and an explanation of why events and patterns at the initial case planning stage are occurring.

What Happens at the Initial Case Planning Stage of the Permanency Pathway?

Case planning is crucial for effective child protection intervention and timely permanency for children. In conjunction with a new suite of protection orders, the permanency amendments created a new child protection case planning framework. This required an initial case plan to be developed for each child following substantiation where previously a case plan had not been required until after a protection order had been made. The new child protection case planning framework also includes the requirement that all case plans have a permanency objective (s 167 CYFA) to improve clarity about the case plan's intention. The alignment of the permanency objective and Court orders is required through legislation. This ensures clarity for the child and family in relation to the purpose and direction of child protection intervention.

To the extent that it can be achieved in the child's best interests, case planning is intended to be an inclusive, collaborative and consensus-driven process. This requires the active participation of families and, where old enough, children. As before the amendments, Aboriginal Family Led Decision Making (AFLDM) is the preferred case planning process to be followed for Aboriginal children, and the Aboriginal Child Specialist Advice and Support Service (ACSASS) should be involved in relation to case planning decisions.

Intended Outcomes

The new case planning framework was intended to support earlier and permanency focused case planning, to clarify the purpose and direction of the child protection intervention for parents and contribute to better prepared PAs on which the Court can base its decisions.

Unintended Outcomes to Be Avoided

It is DHHS child protection policy that initial case plans are endorsed within 21 days of substantiation. A potential unintended outcome is that the 21-day key performance indicator provides insufficient time to involve the child, parents, carers, and professionals in developing the case plan as required to comply with decision-making principles (ss 11–14 CYFA) (CCYP, 2017).

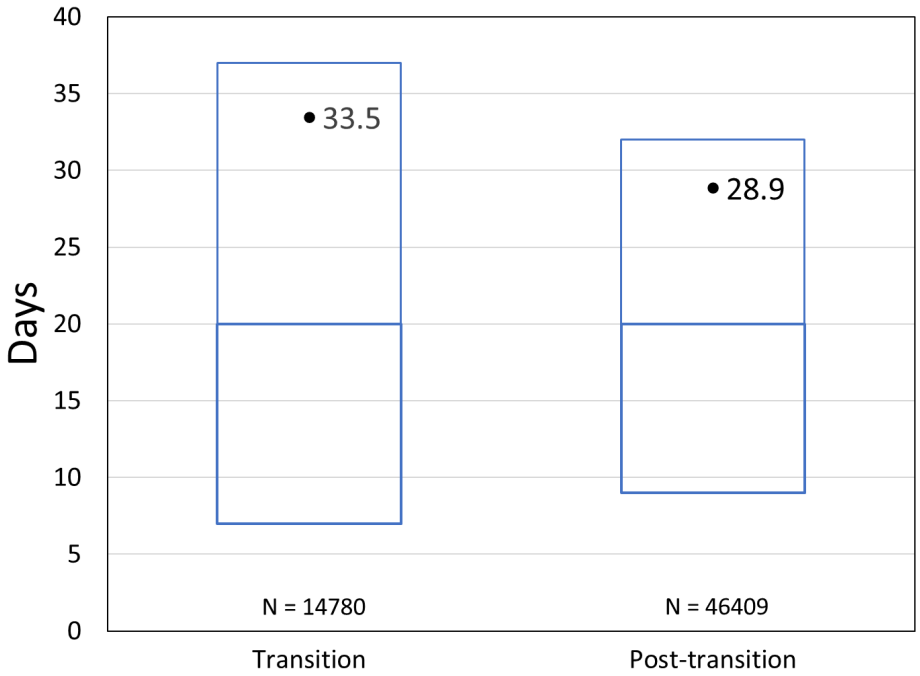
Events and Patterns at the Initial Case Planning Stage

Several results were identified at the initial case planning stage. These were

- mean time for case plan endorsement for all children was outside the mandatory timeframe;
- Aboriginal children were less likely to have an endorsed case plan 21 days after substantiation compared to non-Aboriginal children;
- the purpose and direction of child protection intervention was perceived to be clearer for parents post-amendments;
- improvement in the quality of child protection case plans post-amendments;
- no change in the involvement of children and parents in the development of case plans post-amendments; and
- continuing challenges involving Aboriginal programs and services in initial case planning post-amendments.

Figure 9

Time (days) from Substantiation to Endorsement of First Case Plan, by Stage of Substantiation



Mean Time from Substantiation to Case Plan Endorsement Outside Mandatory Timeframes

The analysis of CRIS data shows that the mean time from substantiation to case plan endorsement improved by approximately five days from 33.5 days during the transition stage to 28.9 days post-amendments (Figure 9).[23]

Longer Timeframe for Case Plan Endorsement for Aboriginal Children

The analysis of CRIS data shows that during the transition and post-amendment stages, there was an even chance that non-Aboriginal children would have an endorsed case plan with 21 days of substantiation (54.2% and 51.4% probability). It was less likely that Aboriginal children would have an endorsed case plan with 21 days of substantiation at either the transition or post-amendments stage, although the probability increased from the transition to post-amendments stage (37.6% to 42.7%).

Purpose and Direction of Child Protection Intervention Clearer for Parents

During key informant interviews and focus groups, DHHS participants indicated that in their experience, the new case plan requirements and other changes had made the purpose and direction of the child protection intervention clearer for parents. A DHHS participant in the online survey said, "it [case plan requirements] gives a direction for the families as to where we go from here and lays down bottom lines and expectations in a formal setting, which is really good". The DHHS, Director, Children and Families Policy said, "you do hear kids and families now talk about what the plan and objective is in a way that I don't think we had before". Similarly, a participant in the DHHS policy focus group said,

23 It is important to note that for the analysis here, cases were included only if they were substantiated after 29 February 2016. Cases substantiated during the transition stage between 1 September 2015 and 29 February 2016 are excluded. Included are cases for which a case plan was endorsed.

> having that permanency objective is such a clear and strong view to signal and progress … the work that you're going to do. And I think that's one of the really significant changes in the permanency amendments is you actually have to try and think about what the objective is, and then work towards that, rather than orders that probably didn't articulate that, and therefore didn't drive the practice the way that it should have.

The online survey also explored the extent to which DHHS respondents agreed/disagreed that the case planning framework was effective in making the purpose and direction of the child protection intervention clear to birth parents and children. Of the 183 respondents, 66.6% indicated that the new case planning framework was effective/very effective in making the purpose and direction of the child protection intervention clear to birth parents and children; 18.6% indicated that the case planning framework was ineffective/very ineffective. Further, of all respondents in the online survey (n = 300), 57% indicated that the new suite of Court orders was effective/very effective in making the objective of individual POs clear; only one in four indicated that they thought the new Court orders were ineffective or very ineffective. However, the participants in the BDAC and Njernda focus group indicated that the meaning of the Court orders is not clear to the Aboriginal community. Two participants said,

> *Participant A*: "I think the Court order names should be changed like care by Secretary order to be something else".
>
> *Participant B*: "Yeah, that's right. It needs understandable language to our community".

Improvement in the Quality of Child Protection Case Plans

The Court file analysis indicated notable improvements in the quality and documentation of case plans and the clarity of permanency objectives from the pre-to post-amendments cases. Nearly all the post-amendments cases (23 of 25) had clear first case plans and permanency objectives at the start of the PA that were generally of better quality (i.e., more detailed assessment of the strengths and risks of the parent/family). Most DHHS respondents in the online survey also thought that the new case planning framework had been either "effective" or "very effective" in supporting key case planning objectives.

Child protection staff who participated in a focus group also thought that case planning had improved. A participant in the placement practitioner focus group said, "I just think planning in general, including Cultural Plans, has just gotten much better. It's much better, it's happening".

No Change in the Involvement of Children and Parents in the Development of Case Plans, and Ongoing Challenges Involving Aboriginal Programs and Services

While increased involvement of parents and children in the development of case plans was not an objective of the amendments, as discussed above, it was important to check that the DHHS child protection policy that initial case plans are endorsed within 21 days of substantiation did not undermine the involvement of children, parents, and Aboriginal agencies in the case planning process. The online survey results showed that DHHS respondents (n = 114) who had been working in a child protection program for at least six months prior to the amendments were fairly equally split in agreeing and disagreeing that it had been easier to engage families and children and Aboriginal programs and services in case planning following the amendments.

While there was no perceived impact on the involvement of parents and children in case planning following substantiation according to DHHS participants in the online survey, some parents who took part in an in-depth interview felt excluded from case planning processes generally, or if they were present, felt they had little influence or "voice" in decision-making. One parent said, "They made decisions without me. They had meetings without me. They didn't notify me when my [child] was sick. They didn't notify me when my [my child] ended up in hospital". Another parent said,

> they can say what they want, at the end of the day I'm invited to case plan meetings – I feel that I'm invited to case plan meetings because legally they have to, but they don't actually take on anything I say.

Some children and carers who took part in an in-depth interview also did not feel included in case planning. Like parents, one child said that "I was given a say, but it wasn't really acted on".

Some participants in the VACCA focus group also indicated a lack of change or improvement in the involvement of Aboriginal programs and services in case planning following the amendments. One participant in the VACCA focus group said,

> It's not uncommon for Lakidjeka workers to find out by default or after the decision's been made around the direction of the case and the permanency objective. Some of that is about our resources and their [DHHS] resources, but I don't think that overall, there's been any improvement in that space with the changes.

Why Events and Patterns are Occurring at the Initial Case Planning Stage

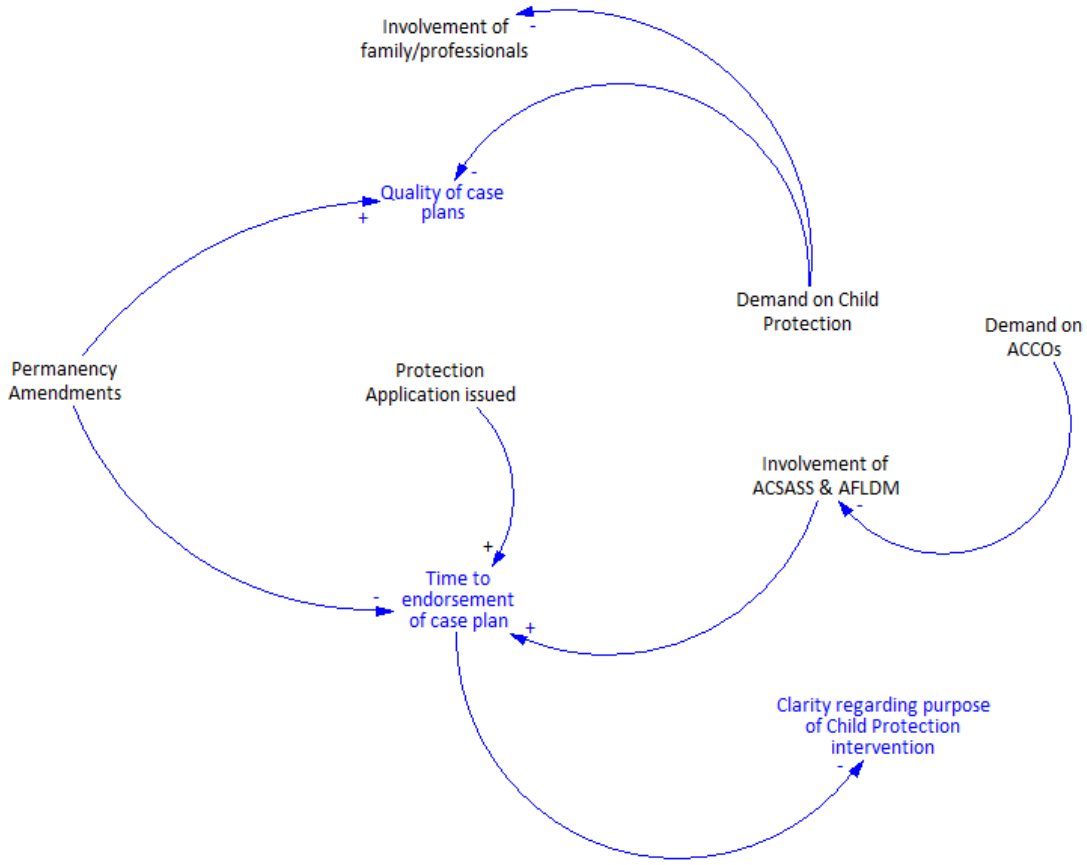
The possible causes of the key outcomes (time to case plan endorsement, quality of case plans and clarity as to the purpose and direction of the child protection intervention) are discussed below. The connections between causes and outcomes are illustrated in Figure 10.

Factors that Influence Time to Endorsement of Case Plan

As well as policy that initial case plans are endorsed within 21 days of substantiation, Aboriginality, demand on child protection, and whether a PA had been issued within 21 days following substantiation, had a bearing on the length of time to case plan endorsement.

Figure 10

Structure Diagram of Factors that Influence Outcomes at the Initial Case Planning Stage



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

Intended outcome

Aboriginality.

It was less likely that an Aboriginal child would have an endorsed case plan 21 days following substantiation post-amendments than non-Aboriginal children (42.7% and 51.4% probability respectively). Some participants in the online survey and focus groups suggested delays for Aboriginal children are caused by the requirement for child protection to consult with Aboriginal agencies during initial case planning, and the too few workers within Aboriginal agencies to meet demand. A participant in the child protection practitioner focus group said, "… we have great difficulty because we have to coordinate with the local Aboriginal Cooperative to hold those case plans and most often, they're not … available to have a meeting with in the 21 days' time frame".

Demand on Child Protection.

Some DHHS participants in the online survey indicated that under-resourcing within child protection had a negative impact on the length of time to case plan endorsement. One participant said, "Resource issues continue to impact the capacity of child protection practitioners to do the planning in a timely way, but it is still so much better than it used to be". Similarly, another participant said, "Whilst case planning has improved there are too few case planners to meet the demand".

A participant in the child protection/practitioner focus group also thought that lack of decisive child protection decision-making compounded the demand pressures on time to case plan endorsement saying,

> I think we do sit with them a little bit … rather than make that definitive decision early. I think … we tend to sit with cases and because the next one comes in, and the next one, and you try to focus on all the ones that are coming after that, those cases just sit, not drift as such but they are sort of put in holding patterns.

Protection Application Issued.

The CRIS data analysis showed that case plans took longer to endorse if a PA had been issued within 21 days following substantiation.

Summary of Results at the Initial Case Planning Stage

Intended Changes that Occurred Because of the Permanency Amendments

- The purpose and direction of child protection intervention perceived to be clearer for parents.
- Improvement in the quality of child protection case plans.
- Earlier case planning post-amendments.

Systemic Barriers to Earlier Case Plan Endorsement

- Demand on child protection.
- PA issued within 21-day period.
- Additional requirements for Aboriginal children and capacity of Aboriginal agencies.

Cultural Plans

The following section describes the current requirements for Cultural Plans, the events and patterns related to Cultural Plans and an explanation of why events and patterns related to Cultural Plans are occurring.

Current Requirements for Cultural Plans

The permanency amendments created the requirement that the case plan for all Aboriginal children placed in OOHC (not just Aboriginal children under a guardianship to Secretary order, as previously) must include a Cultural Plan (s 166(3)(b) CYFA). The requirement that all Aboriginal children in OOHC have a Cultural Plan was intended to maintain and develop the child's Aboriginal identity and encourage the child's connection to his/her Aboriginal community and culture (s 176 CYFA).

Child protection retains the legislative responsibility for seeing that a Cultural Plan is provided to the child. However, policy and funding indicate that the Cultural Plan is the shared responsibility of all members of the Care Team, with the support of Senior Advisors, Cultural Planning in ACCOs. Cultural Plans are to be signed by the relevant ACCO CEO, and then endorsed by the case planner within 19 weeks of children entering OOHC. Cultural Plans must set out how the child is to remain connected with community and culture (s 176(3) CYFA). They must be regularly reviewed and updated – at least every 12 months at case plan review (s 169 CYFA).

Events and Patterns Related to Cultural Plans

The following results were identified in relation to Cultural Plans

- significant improvement in the proportion of Aboriginal children in OOHC with a Cultural Plan post-amendments;
- performance plateau in compliance with mandatory requirements post-amendments;
- considerable variation in achieving an endorsed Cultural Plan with 19 weeks of OOHC across DHHS divisions; and
- considerable variation in the quality of Cultural Plans.

Improvement in Compliance with Mandatory Requirements, but Performance Plateaued

Between March and August 2016, the CCYP reported that more than 80% of Aboriginal children in OOHC did not have a Cultural Plan (CCYP, 2017). According to data provided to the PALS research team specifically for the purpose of examining Cultural Plans, 40% of Aboriginal children in OOHC for more than 19 weeks in March 2017 had a Cultural Plan, which represents a significant improvement off a low base and still well short of compliance. Some participants in the DHHS policy focus group reinforced the general improvement in the proportion of Aboriginal children in OOHC with a Cultural Plan post-amendments. One participant said,

> in terms of the number of Cultural Plans in place, so I think we were only at about 40–50% of children who should have a Cultural Plan have a Cultural Plan in place … but pre-permanency amendments, we might have been 10%.

The proportion of Aboriginal children in OOHC for more than 19 weeks with a Cultural Plan increased from 40% in March 2017 to 47% in April 2018, then gradually declined to 40% in September 2019, suggesting challenges in meeting the 19-week timeframe for all Aboriginal children.

Considerable Variation in Compliance Across Department Divisions

There was considerable variation in compliance with Cultural Plan requirements across DHHS Divisions. Specifically, in the post-transition stage, compliance rates ranged from 73.4% in the DHHS West division to 23.6% in the DHHS South division. Compliance rates in the DHHS North and East divisions were 53.7% and 33.4% respectively.

Considerable Variability in the Quality of Cultural Plans

Participants across different focus groups and interviews attested to the considerable variation in the quality of Cultural Plans. The President of the Children's Court said, "Where VACCA are involved and have assumed responsibility for a Koori family, the Court generally observes a greater focus on Cultural Plans and Cultural Plans that are meaningful, detailed and thoughtful". A magistrate highlighted the variable quality of Cultural Plans saying,

> the quality is really variable. I've seen Cultural Plans that are brilliant. You've got photographs of family and you've got a family setting, and a broader mob setting, and a much broader cultural setting, all addressed in a document that might go for 20 or 30 pages. And I've seen other reports that don't mention immediate or extended family at all. To be relevant, Cultural Plans need to place the child in both a family context and a broader social context.

A participant in the VACCA focus group also queried the quality and usefulness of some Cultural Plans saying,

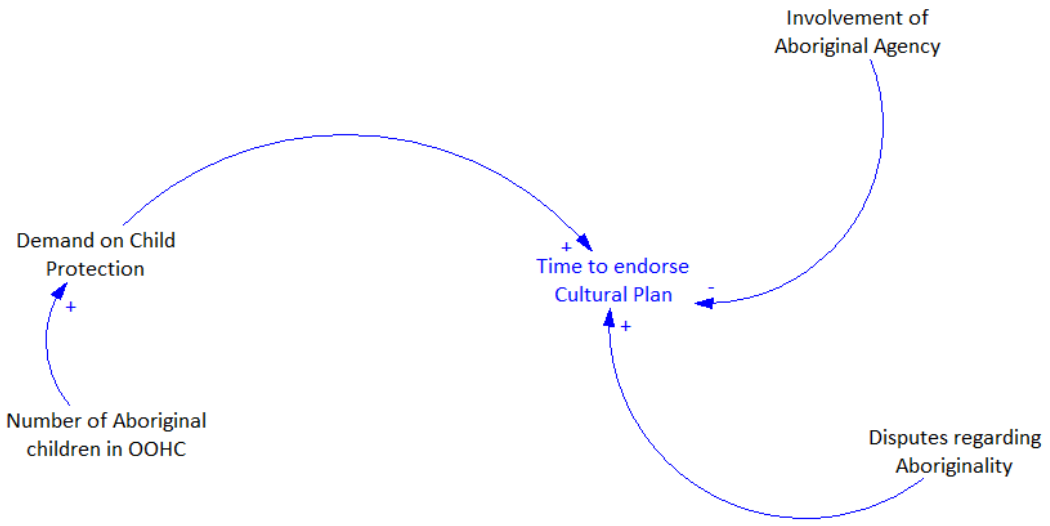
> You see the other side of it too where you get those one-page documents … and it's just so brief and there's no quality and there's nothing in there in terms of actual content. It seems like a cut and paste. If you've got siblings, it's almost a cut and paste of the siblings, and sometimes the same name at the top of the document. Is it being rushed? Is it actually useful? Is there a lot of process happening beforehand that goes into preparing those plans or are we just getting something because it was rushed, and a tick box requires it to be done?

Why Events and Patterns are Happening in Relation to Cultural Plans

The causes of key outcomes relating to Cultural Plans – time to endorsed Cultural Plans and the quality of Cultural Plans are discussed below. A diagram showing the associations of time to endorsed Cultural Plan appears in Figure 11.

Figure 11

Structure Diagram of Factors that Influence Time to Endorse Cultural Plan



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

Intended outcome

Factors that Influence Time to Endorse Cultural Plans

Significant resources were committed to support the implementation of the Cultural Plan requirements. As a member of the DHHS policy focus group said,

> it's [cultural planning] both significantly resourced as a result of coming into law … getting a slightly different platform has led to a really big injection of funding from a fraction of an FTE [Full-Time Equivalent position] in different parts of the state to 17 full FTE. So, it was a big injection.

Yet some participants in focus groups and interviews indicated that cultural planning was delayed when there wasn't an Aboriginal agency in the Care Team or an Aboriginal agency with authorised responsibility for preparing Cultural Plans. A magistrate said, "It's less of an issue for some regions that have very active Aboriginal agencies, but it's really sad that you get cases where no one's turned their mind to it". A legal representative for parents made a similar observation saying,

> Through our local Aboriginal Co-op, we've got a Section 18 team who have delegated Department powers under the Act … and they're very good at getting timely Cultural Support Plans and things like that which can be a problem outside of that with the Department.

While it was not reported how frequently disputes regarding Aboriginality occur, several focus group participants mentioned that this causes delays in preparing Cultural Plans. A participant in the DHHS policy focus group indicated that some Aboriginal agencies only require children/parents to identify as Aboriginal, while other agencies have additional criteria, such as being accepted as Aboriginal by the community in which they live (or formerly lived) saying, "… some ACCOS will go down the line of self-identification, whereas others will want more evidence of a community". A participant in the community services practitioner focus group said, "A barrier for us is we've got a situation where we've got a four-year-old in placement who's been in placement since she was about two and we're still waiting on child protection to verify or deny her Aboriginality".

Factors that Influence the Quality of Cultural Plans

Focus group participants from child protection and Aboriginal agencies were very clear that DHHS practitioners (and practitioners from CSOs) did not have sufficient cultural knowledge to prepare high quality Cultural Plans. A participant in the DHHS policy focus group said,

> One of the other things in the Cultural Plans space is who is best placed to do them? Currently, it's the Department's responsibility. It is the Department's responsibility to do the Cultural Plan with the advisors … [or the] … Care Team's responsible, but basically led by probably the CSO. So, is a CSO or the Department best placed to be doing that? Preparing a Cultural Plan for a child when they're not Aboriginal themselves? And Aboriginal agencies ultimately probably want to move to be the ones that are more responsible for that, but it would need significant resourcing.

A participant in the BDAC and Njernda focus group similarly said,

> It's one of those classic things that came out of the Aboriginal community pushing for the need for every child to have a Cultural Support Plan – where it falls onto mainstream to do that, and the whole intended purpose of it is lost and it just becomes another sort of bureaucratic thing that needs to be done.

Summary of Results on Cultural Plans

Intended Changes that Occurred Because of the Permanency Amendments

- Significant improvement in the proportion of Aboriginal children in OOHC with a Cultural Plan, off a low base.

Unintended Ooutcomes Unrelated to the Permanency Amendments

- Considerable variation in the quality of Cultural Plans and compliance with the 19-week timeframe for endorsed Cultural Plans across DHHS Divisions.

Systematic Barriers to Compliance with the 19-Week Timeframe for Endorsed Cultural Plans

- Absence of Aboriginal agency in the Care Team.
- Disputes surrounding Aboriginality of the child.

Systematic Barriers High Quality Cultural Plans

- Requirement for Care Team (where lead by non-Aboriginal DHHS or CSOs) to prepare Cultural Plans.

Protection Application Stage

The following section describes what happens at the PA stage of the permanency pathway, the outcomes expected or intended because of the permanency amendments (and unintended outcomes to be avoided), events and patterns at the PA stage and an explanation of why events and patterns at PA stage are occurring.

What Happens at the Protection Application Stage of the Permanency Pathway?

When child protection assesses that a child needs care and protection, a PA can be made to the Children's Court. PAs can commence by emergency care or by notice. When a protective intervener places a child in emergency care, they must make a PA to the Court as soon as possible (s 240(3) CYFA).

After placing a child in emergency care, a protective intervener must make an application for an IAO to the Court, or a bail justice if that is not possible within 24 hours.[24] Most applications for IAOs are made by protective interveners by taking a child into emergency care.[25] Section 276 of the CYFA was amended in 2014, requiring that an IAO must not be made if the Court is satisfied that a protection order can be made (s 262(5A) CYFA). A related change to the same end was the expansion of the best interests principle requiring consideration of the possible harmful effect of delay in making a decision or taking an action (was s 10(3)(p) CYFA) with the addition of "the desirability of making decisions as expeditiously as possible" (now s 10(3)(fa) CYFA). Before making a protection order, the Court must be satisfied on the balance of probabilities[26] that a protection order is necessary (requires evidence and proof).[27]

Intended Outcomes

The intention of the restriction on the making of an IAO was to help bring about timelier resolution of PAs and earlier engagement of parents and services to address protective concerns where the child was in OOHC and family reunification was the permanency objective.

24 Bail justice hearing requirements were suspended due to the COVID-19 pandemic in April 2020.

25 Extensions to IAOs are a function of the interventions and actions of DHHS as protective intervener as well as the orders made by the Court.

26 The standard of proof in Children's Court proceedings is the civil standard – on the balance of probabilities.

27 The Court must be satisfied on the balance of probabilities that the child or young person has been orphaned or abandoned without anyone to care for him or her; or has suffered or is likely to suffer, significant harm as a result of physical abuse, emotional abuse, sexual abuse or neglect and the parents have not protected (or are unlikely to protect) the child or young person. See CYF Act section 162.

Events and Patterns Occurring at the Protection Application Stage

Several results were identified at the PA stage, including

- longer Court proceedings and increased duration of IAOs;
- more IAOs to parent supervised by kin;
- judicial case management through IAOs;
- more disputes between adult parties;
- a higher proportion of children exiting OOHC[28] from IAOs post-amendments;
- initial case plans overlooked by magistrates;
- no change in parental engagement in the change process; and
- more first POs enabling a case plan for permanent alternative care.

Longer Court Proceedings and Increased Duration of Interim Accommodation Orders

Contrary to intention, the timeframe from a PA to final order[29] increased following the amendments. The analysis of CRIS data found the average number of days from PA to final order increased from 149 days pre-transition to 154 days post-transition. The median increased from 112 days to 117 days. The longer duration was mainly due to the increase in time from PA to final order for Aboriginal children following the amendments – 147 days pre-transition compared to 167 days post-transition (Table 2).

Table 2

Duration (Days) from Protection Application to First Protection Order, by Implementation Stage, 1 March 2013–31 August 2019

	Days from PA to first PO pre-transition	Days from PA to first PO post-transition
All cases	148.6 (*N* = 7,007)	153.9 (*N* = 9,146)
Aboriginal children	146.7 (*N* = 1,296)	166.6 (*N* = 1,880)
Non-Aboriginal children	149.1 (*N* = 5,711)	150.6 (*N* = 7,266)

As would be expected with longer durations between a PA and a final order [30] the CRIS data analysis showed that the average duration of individual IAOs also increased following the amendments – from 41 days pre-amendments to 61 days post-amendments.[31] However, the median number of IAOs made prior to the first PO in a case remained constant at two, and the average number of hearings[32] per PA was stable at just above five hearings per application.[33]

In the Court file review, a similar increase in the average number of days for the overall time[34] on IAOs was observed in the post-amendment matters (178 days post-amendments cases compared to 156 days pre-amendments cases). Results from the Court file analysis were also consistent with findings from the CRIS data analysis suggesting no difference between the average number of IAOs and hearings in the pre- and post-amendments cases.

The protracted time children spend on IAOs following the amendments was a dominant theme in the open-text responses of the online survey and in the interviews and focus groups involving participants from DHHS and Aboriginal agencies. A participant in the child protection practitioner focus group said,

> we're finding that IAOs are forever extending … where we've gone two years on an IAO and time's already ticking and we're just like: "We could have had a final order and we're almost doing the reunification on an IAO", when really we could have had final orders and moved the case along.

A participant in the BDAC and Njernda focus group also raised the length of IAOs following the amendments saying, "We're still seeing interim accommodation orders that go on for quite a long time and children not having any decent stability, while we are working through that system". A DHHS participant in the online survey observed "Children are on IAOs a lot longer, there are a lot more IAO contests and the children have generally been in care more than 12 months before a final order is made".

28 OOHC durations were based on Court orders. For detailed discussion see Appendix 1.

29 Based on cases where POs were issued. For the analysis of overall durations from PA to first PO, Interim Protection Orders (IPO) were not included in the definition of "first PO".

30 For the analysis of Interim Accommodation Orders, Interim Protection Orders were included in the definition of first PO made within a case.

31 It should be noted that a higher proportion of children 0-17 years exited OOHC from an IAO post-amendments than pre-amendments; that is, there were more cases where an IAO was not followed by a PO.

32 All types of hearings considered (mention hearing, IAO contests, conciliation conference, direction hearing).

33 PAs represent 82% of order applications. The mean number of hearings for applications for LTCOs and PCOs were 2.4 and 2.3 post-amendments, respectively.

34 Meaning the entire series of IAOs.

More Interim Accommodation Orders to Parents Supervised by Kin[35]

Although the Court file analysis showed no increase in IAOs to parents supervised by kin,[36] some participants in CPLO and child protection practitioner focus groups thought that magistrates at Broadmeadows Children's Court (where there are specialist Court processes including the Family Drug Treatment Court and Koori Court) were ordering IAOs to parents supervised by kin more often. A participant in the child protection practitioner focus group said,

> What we're finding as well is with IAO to parents ... So that the clock doesn't keep ticking so the Court is being very strategic around the IAOs being made to parents with people living in the home [supervising them].

Judicial Case Management Through Interim Accommodation Orders

A specific approach to judicial case management during IAOs appears to have emerged following the amendments. It involves deferring a decision that the threshold for intervention has been proved until a disposition is decided and monitoring a reunification plan or care arrangement through an IAO. Child protection practitioners sometimes refer to this practice as "case managing" or "case planning" from the bench.

More Disputes Between Adult Parties at the PA Stage

In an adversarial court process[37] there is some evidence that the reunification timeframes have increased conflict between parents and DHHS as there are more areas for dispute and matters are more difficult to settle. A participant in the child protection practitioner focus group said, "It can be the best plan in the world, but it still doesn't make any difference. I still think the family's focus is on the fight with the Department rather than the case plan".

While matters were more difficult to settle at the PA stage, it does not mean that contestation necessarily led to a fully contested hearing. Data in the Children's Court annual reports show there has not been an increase in cases progressing beyond conciliation conferences stage following the amendments. There was also little difference in the resolution rate of these conferences in the pre- and post-amendments cases included in the Court file review. This suggests that the effectiveness of conciliation conferences to settle matters has not diminished following the amendments.

High Proportion of Children Exiting Out-Of-Home Care from Interim Accommodation Orders

The CRIS data analysis found that post-amendments, a high proportion (67.4%) of all children aged 0–17 years who exit OOHC[38] to parental care/independent living do so from an IAO. This was higher than the 59.4% of children who exited OOHC from an IAO prior to the amendments.

No Change in Parental Engagement in the Change Process

Parental engagement in the change process is considered crucial in child welfare. The intention of the restriction on the making of an IAO was to help bring about timelier resolution of PAs and earlier implementation of reunification case plans where this was the permanency objective. It was also hoped that the time limits on reunification would support parents' cooperation with DHHS and engagement in services. However, longer IAOs where the threshold for intervention had not been proved potentially works against this aim. Online survey responses also indicated that the time limits on family reunification had had no impact on the level of engagement of parents with DHHS or supporting timely work with families.

Initial Case Plans Overlooked by Magistrates

Some magistrates indicated that case plans prepared immediately following substantiation may be of little assistance in determining what order to make on a PA. A magistrate said,

> but where the parents contest it [the case plan], and we're working on addressing the protective concerns, getting the Department's case plan in the early days is not a huge assistance. It doesn't really change much for me because what we're working on is – can the protective concerns be addressed?

35 While IAOs that place a child in parental care supervised by kin means that a child remains in parental care for the purpose of calculating cumulative time in OOHC, it is unlikely that this practice has any bearing on the child, as the Court would previously sometimes place the child with kin and allowed a parent to live with that person under their supervision.

36 The Court file review showed the number of each of the various types of IAOs is similar pre- and post-amendments.

37 An adversarial system refers to a system in which the parties are responsible for defining the issues in dispute and for carrying the dispute forward. In child protection cases where there is dispute, those who give evidence must expect to have their views and assessments scrutinised.

38 OOHC exits were derived from Court orders. A child can exit OOHC multiple times, and the analysis here counts multiple exits per child where these are observed. See Appendix 1 for further details.

Some participants in the child protection practitioners focus group also felt that magistrates pay little attention to their assessments and recommendations. One participant said, "… we walk into the courtroom and particularly the Melbourne Court, rather than the regional Courts, knowing the assumption is we haven't done our job. We have to fight them to let them know what we are talking about …".

The online survey also showed that most respondents (64.9%) "disagreed/strongly disagreed" that there has been less questioning of child protection case planning by the Children's Court following the amendments; only 8.8% "agreed/strongly agreed".

More First Protection Orders Enabling a Case Plan for Permanent Alternative Care

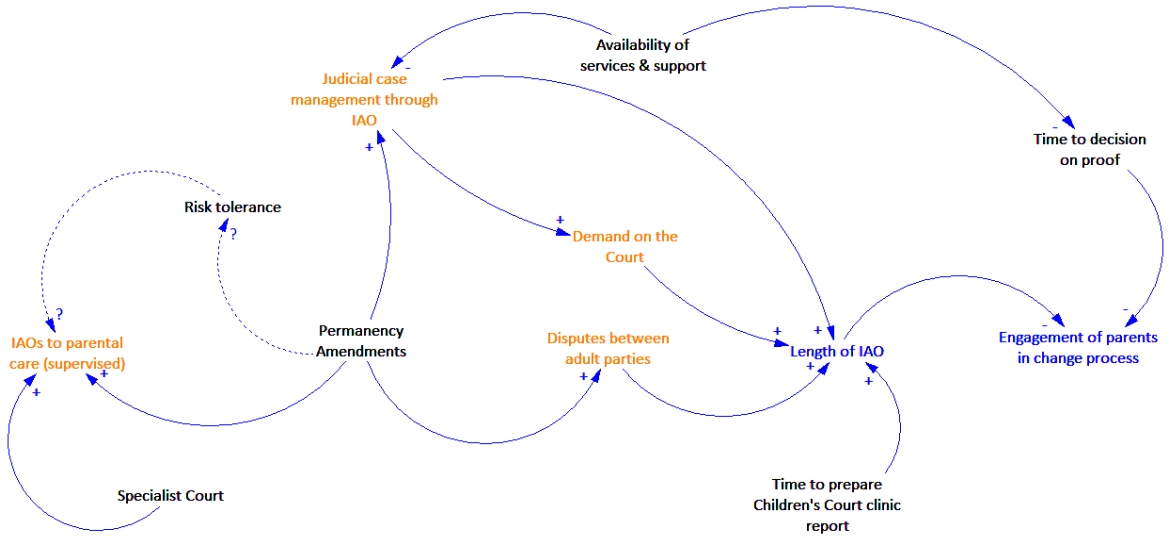
The CRIS data analysis shows that the proportion of first protection orders enabling the implementation of a case plan for alternate permanent care was higher post-amendments (6.3% CBSOs and LTCOs) than pre-amendments (2.4% GSOs). In the Court file review, two of the 26 pre-amendments reviewed cases had a GSO as the first protection order, compared to four of the 25 cases post-amendments cases where a CBSO was the first protection order.

Why Events and Patterns are Happening at the Protection Application Stage

The possible causes of the key outcomes at the PA stage are discussed below and illustrated in a structure diagram (Figure 12).

Figure 12

Structure Diagram of Factors that Influence Outcomes at the Protection Application Stage



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

? A relationship that may not occur

Intended outcome

Unintended/unexpected outcome

Factors that Increase the Length of Court Proceedings and Interim Accommodation Orders

Three factors appear to increase the length of Court proceedings and IAOs

- disputes between adult parties;
- magistrates choosing to case manage for a period before making a final order (see above); and
- provisions surrounding the length of the family reunification order.

Disputes Between Adult Parties.

Interviews with magistrates and legal representatives for parents indicated that if a child is subject to an IAO and placed in OOHC, disputes can be continued to negotiate who has care of the child and for the Court to ensure that steps are taken to provide reunification support and services. A legal representative for parents said,

> The clock is ticking. It would more be in the scenario, say, if they're on an IAO to out-of-home care – but you don't want to agree to a family reunification order until you've seen some progress in the reunification while the matter is still before the Court, and that's why IAOs are dragging on for so long.

A high proportion of DHHS participants in the online survey who had been working in a child protection program for at least six months prior to the amendments "disagreed/strongly disagreed" that IAOs were more easily resolved (68.8%) and that there were fewer delays in resolving PAs (70.8%). The level of disagreement with these statements was highest in the DHHS South division. In the Court file review, the two longest lasting series of IAOs, with children subject to IAOs for over 500 days were both contested matters.

Provisions Surrounding the Length of the Family Reunification Order.

Once children enter OOHC on an IAO, if the Court is considering making a FRO, the duration of that FRO must not have the effect that the child will be placed in OOHC for a cumulative period that exceeds 12 months commencing on the date that the child is first placed in OOHC (s 287A CYFA).

In the Court file review, there were post-amendments cases in which an adjournment was sought to allow a longer FRO to be made.[39] Some magistrates indicated that rules regarding the duration of FROs leads to delay in finalising applications, as the Court and the Department want to adjourn beyond the initial limit in OOHC so that a longer FRO can be made. A magistrate said,

> One bad thing, an absolutely illogical thing about the so-called time limits, they just don't make any sense. S 287A sets time limits for family reunification orders. And the effect of those is that if a child had been in out-of-home care for 11 months, the Court can only make a one-month family reunification order. But, if the child has been in out of home care for 13 months, the court can make an 11-month family reunification order. It makes no sense in logic, in child development theory or in anything. And it inevitably leads to delay because everybody will be trying to push a case, both the Court and the parties, and the Department representatives, will be trying to delay a case until it hits that 12-month period so that it can make a 12-month order. There's no point in making a one-month family reunification order. However, we do see DHHS seeking family reunification orders for two to three months to accommodate the legislative requirements. It is artificial as the chances of reunification in these cases within this timeframe is non-existent or extremely remote.

Other Issues Unrelated to the Permanency Amendments.

An increase in PAs by emergency care, which often require more mentions at Court than PAs by notice[40] is also likely to contribute to an increase in delays. Demand on the Children's Court Clinic can cause delays in completing reports, which can also lead to adjournments. The Director, Children's Court Clinic said,

> Sometimes there can be a time delay from when we get the referrals to when we actually can allocate due to demands on the service pushing out timelines. Sometimes there might be a couple of months gap ... It waxes and wanes in terms of how many referrals we might get from the Court. Sometimes, we might have to push out timelines, which I guess causes issues with DHHS wanting them quicker because they might have to then adjourn the case.

Factors that Increase Judicial Case Management Through Interim Accommodation Orders

The legislated reunification timeframes appear to have increased judicial case management through IAOs.

39 Shorter orders of four to six months were also sought and made well within the available time frame.

40 The Taskforce 1,000 report (as cited in PPVCI, 2012, p. 389) indicated that PAs by emergency care were likely to require more mentions at Court than PAs by notice and that safe custody applications were increasing as a proportion of overall applications. Taskforce 1,000 was established in 2014 by the Commission for Children and Young People with the former Department of Human Services. Its purpose was to review the cases of approximately 1,000 Aboriginal children in OOHC to identify and address key issues for children and their families (CCYP, 2016).

The availability of reunification support and services[41] assumed greater importance in the context of the legislated reunification timeframes. Magistrates (and legal representatives for parents) indicated that IAOs are being used to assess parents' engagement in required services. In the Court file review, IAOs in post-amendment cases were regarded as a "holding operation" to assess parents' access to and engagement with supports and services and to ensure the current placement is suitable. Similar views were expressed by judicial and legal professionals and VACCA participants in interviews and focus groups. A magistrate said, "Interim orders allow for determining where the child is placed and contact regimes. In the absence of conditions of this type on final orders, the IAO is often seen as preferable". A participant in the VACCA focus group made a similar observation about the use of IAOs post-amendments saying,

> Because the Court's oversight has been limited by the suite of orders, it has literally meant that the practitioners and parents are trying to do more with this two-years to keep the accountability there, "Why wasn't this service done?" "Well, we're not going to resolve until you have linked them in" and having the oversight done that way. I don't mean to call it case managing from the bench, but I don't see that as a negative, totally. I don't like being in Court more than I have to, but I can understand the rationale for why there's case management from the bench, because the magistrate needs to know these things before they can sign off on this being in the child's best interests.

Influences on Parental Engagement in the Change Process

DHHS (or delegated Aboriginal agency) participants in focus groups and interviews identified disputes between adult parties as having a negative influence on parental engagement in the change process. The reasons are discussed below.

Disputes Between Adult Parties.

Protracted disputes between parents and DHHS (or delegated Aboriginal agency) while a child remains on an IAO may undermine trust and rapport necessary for parental engagement that may have existed prior to the adversarial Court process. The Court process also takes the focus away from the fulfilment of goals and actions to address protective concerns. During this time parents may feel, or be advised, that any engagement with the case plan undermines their position in relation to the Court outcome, by implying acceptance of the problems and actions needed to address them. A participant in the BDAC and Njernda focus group highlighted the impact of protracted disputes during IAOs saying,

> if parents aren't doing what they need to do, for instance, and lawyers are just saying "Well you know, you can fight this" … or, if we're saying, "Well you need to do this and this and this and then we'll be able to move forward" but the lawyers are more interested in causing an argument because we haven't done something that they think that we should have done, and they're more interested in sticking on that … I think that the system is not geared to get the best outcomes possible for children.

Similarly, a participant in the DHHS policy focus group said,

> I think there is … a position that from the get-go, the lawyers are basically getting the parents to not agree, to not work with us, and then get stuck in a difficult process of long IAOs. We can't establish a case plan and actually do the work with the family whilst we're still in this kind of conflictual pattern of behaviour, which then means that we're struggling when we get a final order to actually embed.

Poor parent-child protection practitioner working relationships and parental mistrust prior to Court can lead to disputes and, in turn, become a vicious cycle. As the CEO, Centre for Excellence in Child and Family Welfare points out, the child protection field has long experienced tensions between its two main missions, protecting children and supporting families, which can decrease parental engagement saying,

> I think that it's a tricky arena. Child protection workers are meant to both be the people who remove children, and then they're also in the lives of these families. Psychologically, mothers are forever affected when you remove their children. I'm not sure that the model we have and in spite of great child protection workers – some of them are amazing – I'm not sure that we've got it set up in the right way for families, for children. I think it's really hard on child protection workers to be relational and yet also make very hard decisions.

The conflicted role of child protection was also noted in the report of the PVVCI (Cummins, Scott & Scales, 2012. p. 388).

It is also the case that parents with children subject to IAOs are not eligible for certain services. A DHHS participant in the online survey said, "Parents focus on the fight at Court rather than commencing treatment to address issues. Funding tied to the FRO means that many parents are not eligible as IAO in place".

41 The Court must not make a protection order unless it is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child (s 276(1) CYFA).

Factors that Increase Interim Accommodation Orders to Parental Care Supervised by Kin

Participants in the Child Protection Litigation Office (CPLO) focus group and the child protection practitioner focus group thought IAOs that place a child in parental care supervised by kin were a response to the reunification timeframes. A participant in the CPLO focus group said,

> We were just discussing it here at CPLO and we're wondering if that's an outcome of the permanency amendments, because in Broadmeadows the magistrates are a little bit more interventionist than they are in Melbourne. And they really want to keep the family unit together. So, a lot more orders come out of there where it's an IAO to the parent, but the parent is supervised 24 hours by an Auntie or Grandma, which is not reflective of the purpose of an IAO. But the reason why they do that is because then the clock on a FRO doesn't start ticking. The child's not considered to be in out-of-home care if the IAO is to the mother, even though the mother has to be supervised 24 hours a day.

Factors that Increase First Protection Orders Enabling a Case Plan for Permanent Alternative Care

Some participants in interviews and focus groups indicated that first protection orders enabling a case plan for permanent alternative care reflected two "types" of cases. The first involves babies where parents had an older child or children on a PCO, indicating severe/high risk and little or no capacity for change.[42] In the second type of case, IAOs run for an extended period, and case plans with a reunification permanency objective change to a permanent/long-term care permanency objective following further assessment. A participant in the CPLO focus group said,

> It seems to be a more of a push for CBSOs on younger children rather than working towards reunification with babies. So, for example, there might be a history – mum's already had two older children removed from her care on permanent care orders. So, we won't give mum a chance with this baby, we'll automatically go for a CBSO, as opposed to going through the steps. And I don't know whether that's been an increase since the changes, but mostly the younger children on CBSOs … I've seen a lot of babies.

A participant in the DHHS policy focus group said,

> A really small number of care by Secretary orders, which might reflect either the IAOs gone on for a very long time and you've passed your timelines, or that there was a really significant history that means this child was never going home straight from the get-go. So that doesn't happen very often.

The Children's Court file analysis supported these observations. In three post-amendment cases involving babies within days of their birth, a FRO was initially sought. However, a CBSO was ultimately made within six months of the PA for two of these babies, and a PCO in the other. Two of these babies already had several older siblings in OOHC.

Mental Models Driving Results at the Protection Application Stage

There were two unintended/unexpected outcomes at the PA stage; judicial case management through IAOs increasing the length of Court proceedings and IAOs to parental care supervised by kin. Beliefs that are driving these outcomes are discussed below.

Parents Needs and Rights and Valuing the Family

Judicial case management and longer IAOs including IAOs to parental care supervised by kin are attempts to promote successful reunifications with family. This is evident in legal stakeholders' concerns about the capacity and motivation of child protection practitioners to assist parents with access to services. A legal representative for parents said,

> I'm finding at the moment, I'm making a lot more applications myself, on behalf of my clients, for a new interim accommodation order because the Department's not doing what they're meant to do, or circumstances have changed, and my client has done everything that they are required to do, and the Department's still insisting on the child staying in out-of-home care.

42 The Victorian Child Protection Manual states that the exceptions to the initial use of a FRO may include: where a child has older siblings already in permanent care and the child's parents' circumstances have not changed, making family reunification unlikely; where the child's parents are dead or significantly incapacitated, or child abandoned, or parents insist they do not wish to resume care of child and want other arrangements made for child's care.

Judicial Powers and Discretion

As participants explained (above), judicial case management through IAOs is an attempt to retain judicial oversight over decisions and actions of the Department before making a final order, specifically to ensure the reunification case plan has been activated. This reflects concern regarding how child protection exercises its duties, and, more specifically, speaks to the role of the Court in making decisions that are in the child's best interests. A legal representative for parents said, "I guess one positive from that is Court oversight because it is returning".

Summary of Results at the Protection Application Stage

Intended Changes that Occurred Because of the Permanency Amendments

- Intended changes at the PA stage were not observed.

Unintended Changes that Occurred Because of the Ppermanency Amendments

- Longer time from PA to first PO post-amendments.
- Increased duration of IAOs post-amendments.
- Judicial case management through IAOs.
- More IAOs to parent, supervised by kin post-amendments.
- More disputes between adult parties.
- A higher proportion of children exiting OOHC from IAOs post-amendments.

Differential Effects of the Permanency Amendments

- Aboriginal children experienced a substantially greater increase in average length of time from PA to first PO than non-Aboriginal children post-amendments.

Systemic Barriers Related to Delays inResolving Protection Applications

- Concerns among legal stakeholders about the capacity and motivation of child protection practitioners to assist parents with access to services.
- Belief among legal stakeholders that the Court should have judicial oversight over decisions and actions of the Department before making a final order.

Family Reunification Order Stage

The following section describes what happens at the FRO stage of the permanency pathway, the outcomes expected or intended because of the permanency amendments (and unintended outcomes to be avoided), events and patterns at the FRO stage and an explanation of why events and patterns at the FRO stage are occurring.

What Happens at the Family Reunification Order Stage of the Permanency Pathway?

The focus of FROs is to mobilise support and services that are needed for parents to sustain the changes that will make it safe for the child to live at home within one year, if possible, and at most within two years of entering OOHC. The permanency amendments introduced a 12-month timeframe for achieving family reunification for children in OOHC and allowed an additional 12 months where the Children's Court is satisfied there is compelling evidence[43] that permanent reunification with a parent is likely in that timeframe (s 294A CYFA).[44]

Intended Outcomes

It was intended that the reunification timeframes would focus parents' attention on the need to achieve parental goals and tasks and reduce the length of separation between parent and child. The pre-condition to the extension of a FRO – compelling evidence that it is likely that a parent will permanently resume care of the child during the period of the extension (s 294A(1) CYFA)) – reflects the intent that permanent alternative care arrangements are to be made expediently.

Outcomes to be Avoided

Premature family reunification with active risk, resulting in OOHC re-entry, was a potential unintended consequence identified at the outset of the study.

43 What constitutes "compelling evidence" is not defined in the legislation.

44 s 294A(1) of the CYFA provides that the Court must not extend a FRO unless satisfied that
- there is compelling evidence that it is likely that a parent of the child will permanently resume care of the child during the period of the extension; and
- the extension will not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 24 months.

Events and Patterns at the Family Reunification Order Stage

Three results were observed at the FRO stage

- no change in time to achieve reunification post-amendments;
- no change in short-term re-entry rates after an OOHC exit from FRO post-amendments; and
- extensions of FROs without compelling evidence of likely safe reunification.

No Change in Time to Achieve Reunification from Pre- to Post-Amendments

Most children who enter OOHC are returned to their families. The CRIS data analysis showed that considering the first exit from OOHC within a case,[45] approximately 60% exited OOHC within six months (60.1% pre-amendments and 60.4% post-amendments). Both pre- and post-amendments, Aboriginal children may be in OOHC longer than non-Aboriginal children prior to the first exit from OOHC.[46]

Early reunification (within the first six months of care) is consistent with findings presented at the PA stage (above), indicating that the majority (67.4%) of children who exit OOHC do so from an IAO. Early reunification is also consistent with international evidence from other western child protection jurisdictions suggesting that if reunification occurs, it is more likely to occur within the first six months of children entering care (see Fernandez & Lee, 2013).[47]

The analysis of CRIS data also showed that fewer than one in four (22%) of all OOHC exits occurred from a FRO. Overall, 36.9% of children who commenced a FRO in the observation period,[48] exited proxy-OOHC[49] from the first FRO within 24 months of OOHC: about half exited within the first 12 months of OOHC, and half in the second 12 months. Overall, the CRIS data analysis showed that 34.9% of children on FROs between 1 March 2017 and 31 August 2017 transitioned from the first FRO[50] to a CBSO within the observation period.

No Change in Out-Of-Home Care Re-Entry After Exiting Care from a Family Reunification Order

Some participants in the child protection practitioner focus group and the online survey felt that children are returning home to situations where they may be at risk of harm and OOHC re-entry. A DHHS participant in the online survey said, "We have seen many children returned to parents when the protective concerns have not been addressed". The perception was those decisions to return children to parental care with active risk were being made to avoid permanent/long-term care or final orders. A DHHS participant in the online survey said, "More children have been returned home with significant protective concerns being unaddressed to prevent the need to move to permanent care or final orders".

Findings from the CRIS data analysis do not support perceptions of any change in children re-entering care within 12 months, that might suggest that they are being reunified with their families inappropriately. The short-term re-entry rate (within 12 months) from a FRO post-amendments was 17.8%. Pre-amendments, the short-term re-entry rate for equivalent orders – CTSOs and SCOs – was 11.4% and 23.0%, respectively. As Figure 13[51] shows, just over one in four children (aged less than 17 years) who exited care for the first-time re-entered care within 12 months. There was little difference between the pre- and post-transition periods (26.7% and 27.4%, respectively). The Children's Court file analysis also found few differences between the pre- and post-amendment cases in relation to children being reunified with their parent/family and the "success" of those reunifications.

45 1 March 2013 to 31 August 2015 for the pre-amendments sample and 1 March 2017 to 31 August 2019 for the post-amendments sample.

46 Time to event analysis of CRIS data using specific cohorts (see Appendix 1).

47 It should be noted, however, that early reunification is not always the result of parents addressing protective concerns in this short timeframe. For example, children may be reunified because the child exits care to live with another parent.

48 Between 1 March 2017 and 31 August 2017.

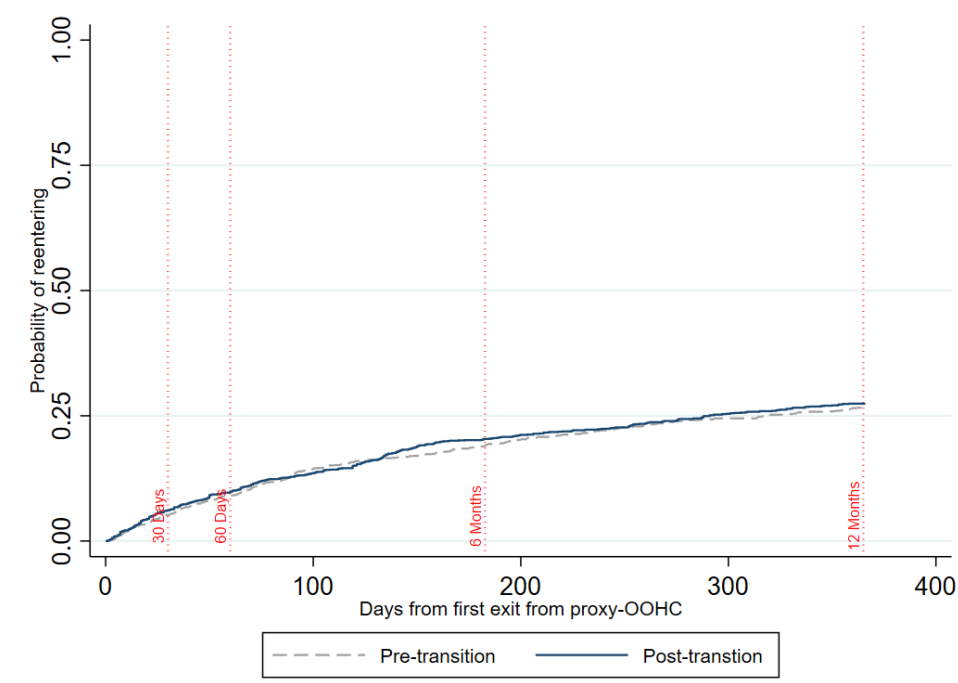
49 Proxy-OOHC refers to the approximate measure of OOHC durations derived from Children's Court order types. In some cases, it may overestimate actual OOHC durations (particularly during the pre-transition stage).

50 See Appendix 1 for more details.

51 Results presented in Figure 13 are based on a time-to-event analysis cohort design (see Appendix 1).

Figure 13

Probability of Returning to Proxy-OOHC after First Exit from first Substantiated Cases, by Stage of First Exit from OOHC and Study Cohort



Extensions of Family Reunification Orders Without Compelling Evidence of Likely Permanent Reunification

As indicated above, a relatively small proportion of children who enter OOHC exit from a FRO (22%). The trajectories of children who commenced on a FRO over a 6-month period between 1 March 2017 and 31 August 2017 were examined using CRIS data.

Of children who commenced on a FRO, 78.1% remained on a FRO after 12 months, 17.4% exited OOHC and 4.5% had transitioned to another order (Table 3). Likewise, in the Court file review, all children in the post-amendments cases who commenced on a FRO were in OOHC for more than 12 months. In some of the Children's Court file analysis post-amendments cases, DHHS was seeking a FRO extension, although the reported circumstances and reasons in the report did not appear to indicate that reunification would be likely.

Table 3

Trajectories of Children who Commenced a Family Reunification Order between 1 March 2017 and 31 August 2017 after 12 and 24 months in OOHC

	Exited OOHC	Transitioned to other Court order[52]	FRO in force
At 12 months	17.4%	4.5%	78.1%
At 24 months	36.9%	32.8%	30.3%

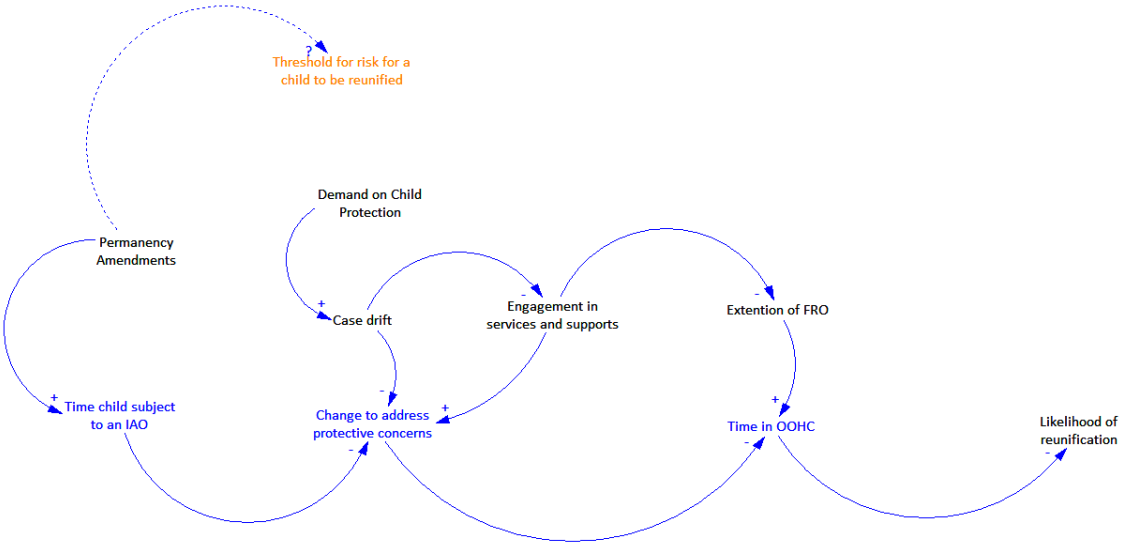
Why Events and Patterns at the Family Reunification Stage are Happening

Several results were identified at the FRO stage. The causes of key outcomes (time to reunification, access to reunification support and services and extensions to FROs without compelling evidence of likely reunification) are discussed below and illustrated in a structure diagram (Figure 14).

52 Almost exclusively CBSOs.

Figure 14

Structure Diagram of Factors that Influence Outcomes at the Family Reunification Order Stage



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

? A relationship that may not occur

Intended outcome

Unintended/unexpected outcome

Factors that Influence Timely Reunification

In addition to parental engagement and extended IAOs identified at the PA stage (above), participants in the interviews and focus groups identified proactive case management, access to services and parental readiness as key factors influencing parental change and, in turn, timely reunification.

Active Case Management.

According to child protection practitioners, reunification timeframes provide a needed framework for focused case planning and practice. Participants in interviews and focus groups again described the child protection service as being overwhelmed with demand, affecting capacity to provide robust case management. A DHHS participant in the online survey said, "Child protection practitioners are crisis-driven in their practice and overwhelmed with the number of cases and the complexity".

There was also a perception among some magistrates that proactive case management diminishes after a child has spent 12 months in OOHC. A magistrate said,

> Ultimately, it's the best interests of the child. I think there's a view for some workers that – "If you don't do it by this day, you're a bad parent". We know that our core group of parents have often been children of the Department themselves, had horrible trauma backgrounds. It's not as simple as that, and I just think that there's been a simplistic approach taken by some, I'd say, basically, because of either the training within their offices, or the need to move cases on.

From the parents' perspective, the expected role of child protection practitioners is to help families throughout reunification by being accessible and knowledgeable. During in-depth interviews, some parents spoke about the challenges of contacting child protection practitioners when needed. One parent who took part in an in-depth interview said, "There's no communication from their side whatsoever. You can leave voice message after voice message after voice message, and you never hear back". Another parent had a similar experience saying, "[Our caseworker] hardly contacts us. It's kind of annoying, really, because we've tried to contact [them], but [caseworker] never answers [the] phone". Another parent indicated that difficulty accessing child protection practitioners and information is compounded when cases are unallocated saying,

> if you don't have a case manager to ring up and ask for, the receptionist will ask you which children are involved, who are you calling about. They haven't been allocated a case manager, so you need to speak to the duty worker. Well, a duty worker in any industry that you go to, everybody knows what a duty worker is. So, they're never available there and then because they'd always be on a phone call, so you need to leave a message and then they prioritise that during the day. So, they may or may not have time to get back to you.

Some parents also felt that child protection practitioner turnover delayed their case moving forward. One parent who participated in an in-depth interview said,

> Okay. That caseworker's dropped off. We'll start a new caseworker and then it goes back to Court and it's, "Okay. Now there's a new caseworker involved, so now the new caseworker needs to be informed on what they need to do, even though the last caseworker hasn't done what they were required to do". This is an ongoing thing.

Access to Services.

In the Court file review, the combination of protective concerns and the limited support available to parents, particularly for children who have disabilities and challenging behaviours, appeared to determine whether children were reunified and the "success" of those reunifications. Participants from diverse professional groups also emphasised problems with several elements of service access, including geographic availability.[53] A magistrate said,

> But what strikes me is the lack of services available to families in rural areas. I'll suggest a certain service and I'll say, "Look – well, that's a good idea, but that's only available two hours' drive away in Ballarat, and the mother hasn't got a car". Service availability and delivery in regional areas is really problematic, and that makes it much more difficult for matters to be satisfactorily progressed.

The Executive Director, VLA also emphasised the lack of services in non-metropolitan areas saying,

> So, everyone might agree that a child needs to remain in out-of-home care until certain concerns are addressed. But if you live in the Latrobe Valley and you're trying to get into a parenting support program or residential rehab or something, good luck doing that there in a timely manner.

The timeliness of service access was a much-cited problem for parents with children subject to FROs, given the reunification timelines. Professional participants emphasised that parents have great difficulty getting housing, mental health, men's behaviour change and drug and alcohol services as soon as they are needed, or for as long as they are needed within the reunification timelines. A participant in the community services practice focus group said, "There's waiting lists for support services like mental health services and drug and alcohol services". A permanent carer who took part in a key informant interview also mentioned long wait times for services saying,

> I think there's real difficulties getting into drug rehabilitation programs for example. There's always ongoing issues around getting housing assistance, which can be a real barrier for achieving reunification with parents. So, I just don't think that the supports are there to be able to deliver on some of those timeframes. Because, you've got to be able to access some of those services pretty quickly. And, my understanding is it can take quite a while to get into drug rehabilitation programs.

The particular difficulty for parents with learning disabilities to access timely and appropriate services, was also noted by participants in interviews and focus groups. One one legal representative for parents said,

> Parents with intellectual disabilities, the same issue. The services aren't necessarily targeted for that. Parenting programs are not great in terms of people who are actually able to communicate with people with disabilities and be able to get across the skills that might be needed. If someone's on the borderline for parenting, there just aren't services that have that expertise of working with people with disability.

Access to services to address housing issues was the most significant barrier to timely reunification identified by DHHS respondents in the online survey, with 57.3% indicating this issue had a major or minor adverse impact on timely reunification.

Parental Readiness.

Motivation is a critical dimension of parental capacity to change (Ward, Brown & Westlake, 2012). Child protection and Aboriginal agency focus group participants recognised that despite assistance to engage in services, parents may not be sufficiently empowered or supported to make changes or to stay on track for change. A participant in the child protection practitioner focus group said,

53 There was little evidence of waiting lists for services or parents being unable to access the required services in the DHHS Court reports and Court files. However, this type of concern may be more likely to be raised in Court and in negotiating outcomes.

> sometimes parents are not in the space where drug and alcohol counselling can be done, or a parenting support service can be done because they're not in a position to do so and my argument would be "Well, we're setting them up to fail". And now services are pushing back, like family services are pushing back and saying, "You know what? They're actually not ready".

A participant in the VACCA focus group stressed the inability of services to provide parents what they need saying,

> we're not that good, from a systems point of view, of working with really challenging families. I think there's a sense, and it came through in the task force [Taskforce 1,000], "We can't get on to them. They're hard to find. They're difficult". They are all those things, but we cannot keep giving up on those families.

The Children's Court file analysis also found that parental non-compliance, where parents do not engage in, or put effort into, bringing about change, was frequently mentioned by DHHS in Court reports as one of the main reasons for the permanency objective changing from reunification to non-reunification and for recommending orders such as a CBSO, a LTCO or a PCO.

Factors that Influence Extensions of Family Reunification Orders Without Compelling Evidence of Likely Safe Reunification

As indicated above, an extension can be made to a FRO if the Court is satisfied that there is "compelling evidence" that permanent reunification with a parent is likely during the extended order (s 294A CYFA). In some of the 10 Court file review post-amendments cases where an FRO extension was granted, the information provided in DHHS reports did not paint a clear picture of why reunification would be "likely" within the period of the extension. The reports supporting an extension to the FRO were often more detailed in relation to the reasons why reunification was not possible or likely than for why it was possible.

Some participants in focus groups and interviews, as well as respondents in the online survey, thought that extensions to FROs were justified in circumstances where parents have not been assisted to engage in services within the 12-month timeframe. A participant in the CPLO focus group said,

> And then we also will get push back from the parents' lawyers because their client will indicate they have made calls to the Department and the Department or child protection worker hasn't called them back. They have evidence to prove that … And so that's where the argument is that they will seek a FRO again and keep them on an IAO so that's sort of the reasoning for some of that.

Mental Models Driving Results at the Family Reunification Order Stage

Beliefs and values driving FROs without compelling evidence of likely safe reunification are discussed below.

Mental Models Driving Extensions of Family Reunification Orders Without Compelling Evidence of Likely Safe Reunification

The analysis of CRIS data (above) showed that most (78.1%) children who commenced a FRO remained on a FRO after 12 months in OOHC. This outcome has its roots in the valuing of family in ensuring children's wellbeing and the importance of judicial discretion.

Parents' Needs and Rights and the Valuing of Family.

Legal and Aboriginal stakeholders said that extensions of FROs were justified without "compelling evidence" of likely permanent reunification, given problems with reunification support and services (see above) and the complex circumstances of some parents. This can be understood as an attempt to ensure parents' needs and rights are respected.

While fairness for families is an important ethical principle, the legislation requires that the best interests of the child must always be paramount (s 10(1)) and several matters must be considered in determining whether a decision or action is in the best interests of the child (s 10(3) CYFA).[54] Decisions that create additional time for the reunification process reflect a valuing of the biological family as the institution best suited to meeting the child's interests, and the priority given to family preservation[55] over enduring alternative care within children's timeframes. A legal representative for parents said, "… I think there should be time given to parents because the overarching aim is to try and preserve the family unit,

54 Section 10 of the CYFA provides:
- that the best interests of the child must always be paramount (s 10(1) CYFA)
- that the need to protect the child from harm, protect his or her rights and promote his or her development must always be considered in determining whether a decision or action is in the best interests of the child (s 10(2) CYFA) and
- that certain additional matters must be considered in determining whether a decision or action is in the best interests of the child (where relevant) (s 10(3) CYFA).

55 This may include considerations to limit intervention into the parent and child relationship (s 10(3)(a) CYFA) and promote positive family relationships (s 10(3)(b) CYFA).

and that two years really should be respected unless you've exhausted all options". A participant in the BDAC and Njernda focus group also revealed that parents are typically given the maximum time for reunification saying,

> if you think of a reunification order that is ideally a 12-month maximum order. I haven't seen any – I haven't seen a care by Secretary order that's been granted after 12 months at all. It always goes to the maximum extent … I mean … the Courts are really reluctant to remove parental rights after 12 months, will drag, will agree to extending that for the maximum period that they can.

Judicial Discretion.

Extensions of FROs without compelling evidence of likely permanent reunification also may reflect valuing judicial discretion over rules such as legislated thresholds. Legal stakeholders who participated in interviews indicated that best interests decision-making calls for highly individualised determinations, and that the Court should have the ability to exercise flexible discretion in best interests decision making, and, specifically, to use their professional competency to determine the duration of a FRO. A legal representative for parents said,

> I think an exception to give magistrates the discretion in circumstances where something may have even been outside of the parents' control that has held things up, where it's on the Departments' end, not the parents' end, that things haven't progressed the way that they should, to be able to make a longer reunification order or whatever it might be.

The Executive Director, VLA made a similar point saying,

> Because they [reunification timeframes] are so strict under legislation, they create arbitrary outcomes. And they don't allow any flexibility for the Court to take into account, for example, "Well, I'm going to take into account that it took six months to even start addressing these issues".

Summary of Results at the Family Reunification Order Stage

Intended Outcomes Related to the Permanency Amendments

- Intended reduction in time to reunification was not seen.

Unintended Outcomes Related to the Permanency Amendments

- No adverse impacts related to the permanency amendments on reunification outcomes that could be observed in the PALS data.
- Extensions of FROs without compelling evidence of likely safe reunification.

Systemic Barriers to Timely Decisions about Permanency by Alternative Care

- Perceived problems with parental access to reunification support and services and the complex situation of some parents.
- Emphasis on family reunification over timely enduring alternative care in best interests decision-making.
- Beliefs about the value of judicial discretion over rules (mandatory reunification timeframes).

Application for Care by Secretary Order Stage

The following section describes what happens at the application for CBSO stage of the permanency pathway, the outcomes expected or intended because of the permanency amendments, events, and patterns at the application for CBSO stage and an explanation of why events and patterns at the application for CBSO stage are occurring.

What Happens at the Application for Care by Secretary Order Stage of the Permanency Pathway?

A CBSO is made where the objective is to make arrangements for the permanent or long-term care of the child when reunification is not possible. In exceptional circumstances, the Department (or delegated Aboriginal agency) can still work towards family reunification. Specific conditions cannot be attached to a CBSO and decisions relevant to the care of the child are managed through the child protection case planning process (s 289 and s 290 CYFA). A CBSO is a fixed 24-month order (s 167(2) CYFA), with oversight through internal review and the Victorian Civil and Administrative Tribunal (VCAT).

The permanency amendments imposed restrictions on the Children's Court to determine the length of FROs and conditions on CBSOs, strengthened best interests principles about the possible harmful effects of delay (s 10(3)(fa) CYFA) and the desirability of reaching permanency decisions as expeditiously as possible (s 10(3)(f) CYFA). Like the former guardianship orders, CBSOs and LTCOs cannot include specific conditions. In determining whether to make a FRO, CBSO or LTCO, the permanency amendments require the Court to have regard to advice from the Secretary about whether reunification is realistic,[56] the desirability of an early decision about permanent care, the benefits of a CBSO to facilitate alternative arrangements for permanent/long-term care, and the desirability of making a PCO if the child is placed with the intended permanent carer. In combination, these changes were intended to support timely decisions about permanent/long term care where family reunification and preservation are not achievable within legislated timeframes.

Intended Outcomes

It was expected that the amendments would contribute to

- timely decisions where reunification is unachievable; and
- greater attention to the possible harmful effects of delay and the desirability of timely decisions about permanent/long-term care.

Contestation over CBSOs was also expected, given that this order typically involves a case plan for permanent/long-term care with the Secretary having exclusive parental responsibility.

What has been Happening at the Application for Care by Secretary Order Stage

Events and Patterns

Several results were identified at the application for CBSO stage

- delays in Court proceedings;
- applications for CBSOs (and extensions of CBSOs) with reunification case plans; and
- greater attention to the possible harmful effects of delay and the desirability of timely decisions about permanent/long-term care.

Delays in Court Proceedings.

The key issue that the Court must resolve with applications for CBSOs is whether reunification is immediately possible. It is unsurprising, therefore, that applications for CBSOs involve a relatively large number of hearings. The CRIS data analysis showed that, on, average, there were 4.2 hearings to resolve applications for CBSOs. This was substantially greater than applications for LTCOs/PCOs (2.4 and 2.3 respectively), and slightly less than the number of hearings to resolve the initial PA (5.2).

56 Specifically, the Children's Court is required to have regard to advice from the Secretary about: the likelihood of permanent reunification; the outcome of previous attempts to reunify any child with the parent; if a parent has had another child permanently removed, and the desirability of an early decision about permanent care.

CRIS data analysis also showed that 30.3% of children who commenced a FRO between 1 March 2017 and 31 August 2017 still had a FRO in force after 24 months in OOHC. Comparably, approximately 33% of children who commenced a FRO in the Court file post-amendments cases were still subject to a FRO after they had been in OOHC for 24 months or more. This occurs when the FRO remains in force while the application for a CBSO is unresolved in Court.

Applications for Care by Secretary Orders (and Extensions of Care by Secretary Orders) with Reunification Case Plans.

As mentioned above, in exceptional circumstances, the Department (or delegated Aboriginal agency) can work towards family reunification when a child is subject to a CBSO. Responses from the key informant interviews and focus groups suggest that this option is being used, especially in Aboriginal cases, either because the Aboriginal Children in Aboriginal Care (ACAC) program developed the case plan, or because magistrates for the Koori Court[57] see it as more appropriate. A participant in the legal representative for parents focus group said,

> in Broadmeadows and in the Koori Court list, we're starting to see a little bit more of applications for care by Secretary orders or extensions of applications for a standard care by Secretary order with a reunification case plan. So that's sort of a situation where time has run out, that order's been made but really, it's pressure from the magistrates in those Courts, that the magistrates have identified that reunification is possible.

A participant in the BDAC and Njernda focus group said,

> We do all we can to get the family back in charge and even if there is a care by Secretary order, I think we would still do all we can to take in account all the families' views and wishes.

Greater Attention to the Possible Harmful Effects of Delay and the Desirability of Timely Decisions about Permanent/Long-Term Care.

While more discretion is desired to extend the decision-making period in individual cases, participants from diverse professional groups indicated that following the amendments, magistrates have become more understanding of children's developmental timescales and the desirability of permanent care when parents have shown little capacity for change. A participant in the adoption and permanent care team focus group said, "… permanency is much more on the agenda than it was" and the CEO, PCA Families said, "I think there's a greater appreciation that it's really important to make timely decisions with and for children, and importantly that children's voices are heard in that process". The DHHS, Director, Children and Families Policy also said, "I think the Court's consciousness regarding the importance of permanent care for kids that can't go home has been raised. I think the timeframes have probably sharpened attention on what it means for children if there's undue delay". A participant in the community services practitioner focus group highlighted how the permanency amendments had contributed to stable care for one child saying,

> So, this young person is now in one placement, and she's stayed in that one placement. Whereas historically what we would have seen for this young person is multiple, multiple foster places prior to the decision being made she can't be returning to her parents.

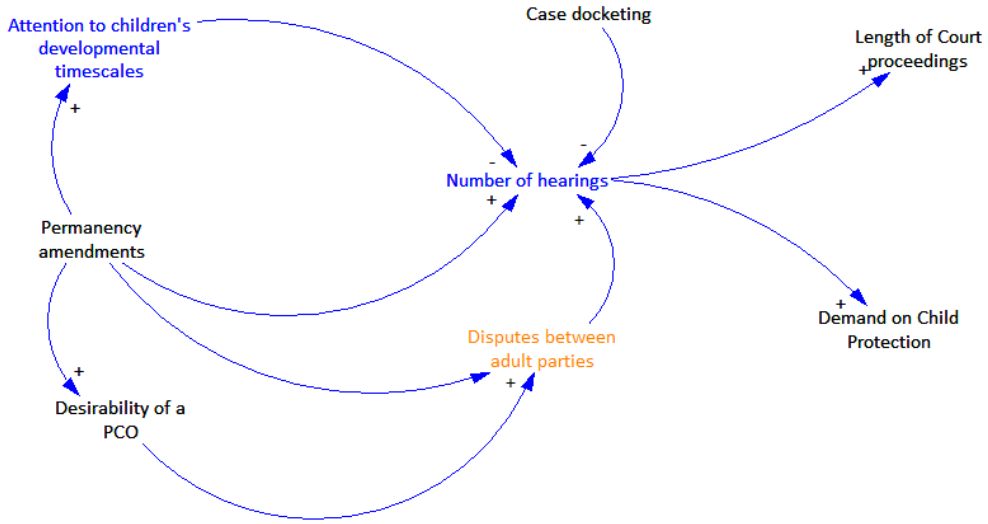
Why Events and Patterns at the Application for Care by Secretary Order Stage are Happening

There were several factors associated with the key outcomes identified above. The structure of relationships is shown in Figure 15 and discussed below.

57 The Children's Court in Broadmeadows was the first Australian Court to establish a Koori Family Hearing Day, known as Marram-Ngala Ganbu (MNG) meaning "We are one" in Woiwurrung language. It aims to improve outcomes for Koori children in child protection proceedings, providing a culturally appropriate process to assist in decision making. It also aims to improve adherence to the Aboriginal Child Placement Principle in the CYFA.

Figure 15

Structure Diagram of Factors that Influence Outcomes at the Application for Care by Secretary Order Stage



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

? A relationship that may not occur

Intended outcome

Unintended/unexpected outcome

Factors that Influence the Length of Court Proceedings

Factors that increase the length of Court proceedings are

- disputes between adult parties;
- adjournments initiated to create additional time for parental change; and
- some parents and magistrates preferring to bypass care by Secretary orders.

Conversely, case docketing (an initiative introduced in 2014 where one magistrate manages a case until its conclusion), and a better understanding of children's developmental timescales are perceived to reduce the length of cases.

Disputes Between Adult Parties.

There was a high level of contestation over CBSOs, which increases the length of cases. According to the lawyers who represent them, parents often will not agree to a CBSO because, other than in exceptional circumstances, it involves a case plan for permanent/long-term care. A legal representative for parents said, "One consequence is that when you get to the application for a CBSO, we're all fighting to the death for a family preservation order". Another legal representative for parents said,

> there is so much at stake. The curtain comes down and you're left with a two-year order with no conditions and effectively no ability to challenge the Departmental decision-making under that order in a Children's Court. So, it's very high stakes. It's a lot harder to settle a case when those are the only options which are provided to your clients. It's like you concede this order and it is effectively the end of the opportunity for children to return to parental care.

Contestation is also caused by the inability to attach contact conditions to a CBSO and the lack of a specified placement. As a DHHS participant in the online survey said, "… the Court and parties will often delay settling on a care by Secretary order due to concerns that there are no conditions on the order". Similarly, a magistrate said, "… it's the uncertainty from the parents' point of view that leads them to continue the contest. If they know the child is going to be on a Court order placed with Grandma or Aunty Joan, they're much more likely to consent to that arrangement". A participant in the CPLO focus group also indicated that the lack of conditions on a CBSO contributed to dispute saying,

> I think there's more litigation these days. People are less likely to settle and that's not so much on the Department side, but parents and children, particularly where you have an order like a care by Secretary order where there are no conditions. Whereas previously, as you would know, we had custody to Secretary orders with conditions. So that's been a huge thing.

In the Court file review, a CBSO was made or applied for in most post-amendment cases and in several pre-amendment cases that transitioned to the new orders after March 2016. The lack of contact or placement conditions was clearly a matter of dispute in at least nine cases.

Adjournments Initiated to create Additional Time for Parental Change.

When parents will not agree to a CBSO, parents' legal representatives may seek adjournments to create additional time for parents to demonstrate change. A magistrate said,

> I think there's also more people who continue down the contest path, again, in the hope that because at least under the current way we're running things, you go from a Conciliation Conference, to a directions hearing six weeks later, to a hearing that's six months down the track, with another direction hearing a few weeks before, so it's buying time.

Another magistrate made a similar comment,

> In a number of cases, families' lawyers will often seek adjournment because the only thing they can really hope for, for so many of their clients, is more time. More time in the hope that the parents can address the protective concerns.

Magistrates may also initiate adjournments if they are optimistic that parents will overcome their difficulties with extra time, or because a CBSO is not in the child's best interests. A legal practitioner for parents said,

> I think the Court are willing to make those lengthy adjournments if progress can be made. I think that's the closest thing to a workaround we have at the moment. They're pretty rigid I think, and I think it's quite hard to work around a care by Secretary order.

A magistrate indicated that adjournments to create additional time for change may be in the child's best interests saying,

> occasionally, not often, but occasionally, you get to a situation where you simply can't make an order. So, you have to adjourn if the paramount consideration is the best interests of the child, as it must be. You have no alternative then but to adjourn the case for things to change. So, you might be able then to get to a situation where you can make an order.

Some Parents and Magistrates Preferring to Bypass Care by Secretary Orders.

Magistrates and legal representatives for parents expressed major concerns about the lack of oversight of DHHS actions and decisions while a CBSO is in force as well as the inability to attach specific conditions to a CBSO. At times, some magistrates consider a PCO to be more desirable than a CBSO and will adjourn matters until the Department (or delegated Aboriginal agency) returns with an application for a PCO. A magistrate said,

> I'm stunned at the number of cases where I'm being asked to make care by Secretary orders or extension orders in relation to care by Secretary orders where you've had good, stable potential permanent carers on the scene for a long time. I say, "Well, why haven't you done a permanent care order assessment?" And I have a sense that there's a real lack of interest by the Department workers in pushing it forward to try to achieve a permanent care order or a long-term care order.

Parents' legal representatives will also argue for a PCO over a CBSO, as this provides a guarantee of contact and certainty of placement. A participant in the CPLO focus group said,

> there's a lot of extra litigation over permanent care versus care by Secretary, even though under the Act, only the Secretary can apply for a permanent care order. But there's cases being adjourned and adjourned, because the parents keep pushing for a permanent care order because they don't want the Secretary to have the power to move the child.

A participant in the VACCA focus group also indicated that the Court and legal representatives promote PCOs when reunification is not possible because of the lack of contact or placement conditions on CBOS saying,

> I think it's an unintended by-product of the limited suite of orders because that's why the Court and the practitioners are pushing for permanent care, because there's no other option. There's no supervised custody orders like we used to have so you can't give Grandma an order to have that stability to know that Grandma's going to keep looking after the child. There's no other order after you get past the FRO, so you get all this pressure at that two-year point to literally make a permanent care order and it's never going to be ready at two years.

Case Docketing.

The existence of a dispute does not necessarily indicate the weight of the arguments put forward. A magistrate explained that case docketing reduces delays because it provides them with continuity of the matter so they can manage disputes more effectively saying, "The difference with docketing is generally one judicial officer is dealing with the case. It imposes a greater ability to have oversight and progress the case, including by ensuring that services and supports are being allocated and utilised".

The President of the Children's Court said,

> The Court introduced case docketing – one family/ one magistrate – at the same time the permanency amendments were introduced. This initiative was enormously successful in reducing contested hearings with the docketed magistrate intensively case managing the protection application from initiation to finalisation. In working this way, the Department and family members are clear about the Court's expectations and what is to be done by all parties to achieve reunification with their child or for other permanent placements to be explored.

Better Understanding of Children's Developmental Timescales.

While earlier findings indicate perceived problems with the lack of flexibility in the amendments, overall, there was a perception that the amendments had led to a better understanding among magistrates of children's developmental timescales and the potential harmful effect of delay, which has helped to manage disputes between adult parties. A magistrate said, "… it's made me a bit tougher, I think, on limiting the timelines for reunification, and the number of chances we give to parents".

Mental Models Driving Results at the Application for Care by Secretary Order Stage

Mental models driving adjournments and motivating parents and magistrates to bypass CBSOs are discussed below.

Mental Models Driving Adjournments Initiated to Create Additional Time for Parental Change

The amendments were intended to ensure decision-making about children's future care happens within children's developmental timescales. Adjournments that create additional time for parental change means children experience longer stays in temporary care and longer periods of uncertainty. Like mindsets driving unintended outcomes at the PA and FRO stages, adjournments to create additional time for parental change have their roots in the value attached to the biological family and attitudes towards judicial powers and discretion.

Parents' Needs and Rights and the Value of the Family.

Although most children who are returned to parental care do so within six months of entering OOHC, there was a widely acknowledged conflict between reunification timescales and parents' timeframes (the time required for parents to overcome their difficulties or sustain change). A legal representative for parents said,

> I think that if anything, it's [the permanency amendments] made it clearer to us as a practice that the kinds of circumstances that many of the families that we work with find themselves in, and have experienced intergenerationally, are not resolvable in the period of time that the statute now provides.

Similarly, the Director, Children's Court Clinic said,

> Particularly with substance use issues or life-long mental health conditions where it's natural for those conditions to wax and wane, you can't possibly predict family stressors. Particularly if they've got quite significant trauma histories or personality difficulties, if you're thinking about those aspects of their presentation needing to change, I think the two years, it does limit it in terms of what's reasonable to be expected.

There was a common concern that parents with learning difficulties and Aboriginal parents need more time than the legislation allows to overcome complex difficulties. A participant in the CPLO focus group said,

> some more complex issues like intellectual disability, things like that ... It takes a long time to get services involved … this doesn't mean that this person can't parent. So, this line in the sand – that's too short for those kinds of parents.

Participants in interviews and focus groups also considered it was unfair to transition a child to permanent/long-term care after 12 or 24 months in OOHC if parents did not receive support and services in a timely manner. A magistrate said,

> The problem with the two-year rule is that it doesn't allow for the kindness of aberration. It just doesn't allow it. It takes six months for a drug addicted parent to actually get themselves to the point where they merely realise they've got to do something, and then it's another six months before they can get a bed in a facility, so that's 12 months. Odyssey is a 6—9-month program. With those timeframes involved, you effectively will get to a point where you are at a care by Secretary order before anything has actually been achieved.

A participant in the CPLO focus group also noted the inflexible nature of the reunification timelines saying,

> we've got this hard line in the legislation, but if nothing's happening on the Department's side, there's no provision to say, "Well, we can take that time out". So, the problem of it being such a hard line, I think it's really problematic.

Finally, some participants expressed the view that the reunification timeframes should be longer, to accommodate parents' timescales and difficulties accessing support and services, and/or to accommodate Aboriginal ways of working. A participant in the BDAC and Njernda focus group said,

> There's you know, the term Koori time that we actually work with families or we work with Elders. We do things in a more culturally appropriate way rather than going with timelines. It's about what feels right, what fits best, what looks best. Like you need time to do that consultation and really engage properly. Once families are in a system that's really driven by time, it doesn't fit. There's all of these other things that come with that but those time constraints really, really don't fit. So, people just end up feeling like I can't do anything that I need to do in that amount of time, so they then end up giving up themselves.

Overall, adjournments initiated to create additional time for parental change have their roots in ensuring parents needs and rights are properly respected, as well as the valuing of the biological family in meeting children's needs.

Judicial Discretion.

Legal and Aboriginal stakeholders also valued judicial discretion in best interests decision making – specifically the ability to use their professional competency to determine the length of a FRO – over rules such as mandatory timeframes. At its roots, this reflects a strong belief in the importance of judicial discretion and individualised determinations. A participant in the legal representative for parents focus group said,

> The Court still needs the power to make adjustment to that period and that is what is missing. I think we could live with the basic period of time; I think two years is [too] soon anyway, but leaving that aside, the Court must be able to make reasonable adjustment to the timeframe.

A participant in the VACCA focus group said,

> That's the problem, it was a "one size fits all". Two years is it. If you don't do it in two years, it's done. There are situations where that might be appropriate, but it's not every situation. Unfortunately, it was "one size fits all", regardless of whether they were Aboriginal children, mainstream children, it's one size fits all.

Mental Models Driving Parents and Magistrates to Bypass Care by Secretary Orders

When reunification is not possible, some magistrates request that DHHS returns to Court with an application for a PCO, or parents' legal representatives argue for a PCO over a CBSO. The practice of bypassing CBSOs is based on parents' and relative/kinship carers' needs for some certainty around the placement and contact arrangements.

Judicial Powers and Discretion.

Magistrates are unable to place conditions on CBSOs, such as who has care of the child and contact. This replicated the pre-existing arrangements under guardianship orders when the Secretary has exclusive parental responsibility and was designed to enable child protection to activate plans for children's permanent/long-term care. However, there was clear opposition among legal stakeholders (including legal representatives for the Department) to care and contact decisions being made by child protection as part of case planning. There was a view that the Courts needed this discretion and flexibility to tailor orders in the child's best interests, and to settle contests. A magistrate said,

> Maybe, the statutory criteria could structure our discretion in a different way. But to remove that discretion completely has been really dangerous, because it's removed that critical judicial oversight on an overworked Department and left us with very little tools available to work with families, to help cases settle, to get cases over the line – because care by Secretary orders are so unattractive for families.

A legal representative for parents said,

> Obviously, a care by Secretary order, just like its predecessor, the Department can move the child during the order to a different placement, but I just feel like, with a lack of conditions, you can't really craft anything on the order to give the child that stability or certainty, if parents do agree to that order being made, of actually what it's going to look like for them.

Finally, a participant in the CPLO focus group said,

> It's very hard to explain to parents and families the reason that was given as the permanency objective, when people are panicking about not being able to see their children or not trusting of the Department that they'll be able to see their children. It's alright until you get to the care by Secretary stage. But I mean, we've been at the Bar for 25 years or so. I can't believe the impact of that change. To me, that's the major one.

There was also a view that judicial discretion to order contact conditions can assist child protection to manage complex situations. The President of the Children's Court said,

> There may be very good reasons you want to be able to impose clear contact or other conditions in the best interests of the child, in cases where the Secretary assumes parental responsibility. Take for instance, a family impacted by family violence. Where a child is placed with the paternal family, but there is an acrimonious relationship with the mother (who may be the victim survivor of family violence) where there is no contact condition in place, you are reliant on the Department to navigate what can a very difficult situation without the normative effect an order of the Court can have.

Further, the CBSO is a fixed-term 24-month order. Legal stakeholders strongly objected to administrative decision-making without judicial oversight for this length of time, especially given the heavy demands on child protection practitioners, and the risky and disruptive behaviours of many older children subject to CBSOs.[58] A magistrate said,

58 Magistrates and legal representatives for parents also indicated that the absence of judicial oversight during the period of a CBSO was contributing to client incidents and the involvement of these young people in the criminal justice system. However, the outcomes for children subject to CBSOs, and the role that judicial oversight has in determining child outcomes, are uncertain. For example, adolescents subject to CBSOs typically entered OOHC prior to the amendments, where permanency within children's developmental timescales was not proactively pursued. Outcomes for these children can therefore be viewed as a legacy of a past system, or long periods of uncertainty and instability in OOHC. The challenge of achieving permanency for older children subject to CBSOs is discussed at the CBSO stage.

"… families are just at the absolute, unfettered discretion of an administrative Department with no oversight. That's always a recipe for disaster in society in my view". The Executive Director, VLA, also objected to the absence of judicial oversight during the period of a CBSO saying,

> I guess I just have a principled objection to that, as well in the sense that these are really significant decisions by the State. And to have no ability, even in limited circumstances, for independent oversight of a significant administrative or executive function. It's very concerning, I think. You don't see lot of areas that really rely on "trust us, we act in the best interests. We won't do anything wrong".

Summary of Results at the Application for Care by Secretary Order Stage

Intended Outcomes Related to the Permanency Amendments

- Greater attention to the possible harmful effects of delay and the desirability of timely decisions about permanency by alternative care.

Unintended Outcomes Related to the Permanency Amendments

- Delays in resolving applications for CBSOs.
- Parents and magistrates avoiding CBSOs.

Systemic Barriers to Timely Decisions About Permanency by Alternative Care

- Belief that the reunification process should be available for more than a maximum of 24 months.
- Emphasis on family reunification over timely enduring alternative care in best interests decision-making.

Systemic Reasons for Bypassing Care by Secretary orders

- Belief that the Court should have judicial oversight over decisions and actions of the Department during CBSOs.
- Belief that the Court should have judicial discretion to order contact and placement conditions on CBSOs.

Care by Secretary Order Stage

The following section describes what happens at the CBSO stage of the permanency pathway, the outcomes expected or intended because of the permanency amendments, events, and patterns at the CBSO stage and an explanation of why events and patterns at the CBSO stage are occurring.

What Happens at the Care by Secretary Order Stage of the Permanency Pathway?

At the CBSO stage, arrangements are made for the permanent or long-term care of the child when reunification is deemed to be no longer possible.[59] For Aboriginal children where a PCO is sought, this includes the recommendation of the VACCA permanent care program and the preparation of a Cultural Plan (s 323(2) CYFA). There are also restrictions on making a PCO for Aboriginal to non-Aboriginal permanent care (s 332(1) CYFA).[60] Specific conditions cannot be attached to a CBSO and decisions relevant to the care of the child are managed through the child protection case planning process. A CBSO is a fixed 24-month order.[61]

Where possible, family or friends are found to care for children permanently (assessed as suitable), and if not, a foster care conversion or a new permanent carer will be sought. The amendments introduced conditions on a PCO so potential permanent carers are not put off by inflexible/conflictual contact arrangements. The Court must have regard to the primacy of the child's relationship with the child's permanent care family and the Court may provide for contact up to four times a year with a parent when the order is first made, with additional contact by agreement (s 321(1)(d) CYFA).[62]

Intended Outcomes

It was expected that the amendments would contribute to

- increased availability of suitable permanent/long-term carers[63] to provide a permanent family for children when reunification is no longer possible; and
- timely transition to permanent/long-term care (shorter periods of uncertainty about future care arrangements).

59 In exceptional circumstances the Department or authorised Aboriginal agency can continue to work towards family reunification.
60 No suitable placement with Aboriginal person/s available, placement accords with the ATICPP and the child is consulted.
61 This does not prevent an application for a PCO or LTCO when ready or changing the order to a FPO if reunification is achieved, during the order.
62 Limit to number of contacts does not apply if order varied after 12 months.
63 Existing foster/kinship carers and new permanent carers.

Events and Patterns Occurring at the Care by Secretary Order Stage

Several results were identified at the CBSO stage

- routine case-planned reduction in the frequency of parent and child contact where the permanency objective is long-term or permanent care;
- more PCOs made;
- pressure on some statutory kinship carers to agree to a PCO;
- lack of availability of suitable permanent carers, especially for older children;
- overall reduction in time from intake to a PCO; and
- Aboriginal children possibly spending longer in OOHC before a permanent/long-term care order compared to non-Aboriginal children.

Case Planned Reduction in the Frequency of Face-To-Face Parent-Child Contact

Participants from diverse sectors and disciplines indicated that parent and child contact is reduced in a routine, rather than a tailored/flexible way once children are subject to a CBSO and the permanency objective is permanent/long-term care. A participant in the legal representative for parents focus group said,

> once the Department goes to a permanent care case plan, and they do that just as routine, once the two years tick over their case plan will say contact four times a year. So, they won't look at necessarily what the contact has been like up to that point. Their default position seems to be four times per year ... .

A magistrate also referred to an automatic, case planned reduction in contact once the permanency objective is permanent/long-term care saying,

> I think one of the consequences is the Department's view that when they re-case plan to care by Secretary – and that might be 18 months in – they automatically cut the parent's contact. The Department just automatically reverts to what they say is the normal arrangement of two, three, four times per year, because that's the normal arrangement ... .

The delegate for the Public Advocate said,

> When custody to the Secretary orders became care by Secretary orders, supervised contact with their children was quickly reduced for many parents. Parents who had been seeing their child every fortnight under a custody to the Secretary order were being told that they'd now only see them four times a year. OPA [Office of the Public Advocate] was told this by parents, disability advocates and lawyers.

A participant in the adoption and permanent care team focus group also indicated that a reduction in parent-child contact is a normal part of a permanent/long-term care case plan saying "… there are some preconditions towards us accepting referral. Those things would be things like … contact down to once a month in line with permanency planning ...".

There was evidence in some post-amendment cases examined in the Court file review of a reduction in parent-child contact when there was an application for a CBSO and/or when the order was made. However, some parents also disengaged and withdrew from contact at this stage in the process.

More Permanent Care Orders Made

The CRIS data analysis showed that pre-amendments, 22.8 PCOs were made, on average, per month. This increased to an average of 41.3 PCOs per month during the transition stage, levelling out to 35.5 PCOs per month, on average, post-transition. The President of the Children's Court also noted the increase in PCOs made following the amendments saying,

> The increase in the number of permanent care orders made by the Court has been one very positive outcome of the permanency amendments. In 2014/15 there were 305 Permanent Care Orders made state-wide. Since that time, the average number of PCOs made has increased to around 450 per year – a particularly significant and beneficial outcome of the permanency amendments.

Pressure on Some Statutory Kinship Carers to Agree to a Permanent Care Order

Participants in the key informant interviews and focus groups indicated that some statutory kinship carers can feel pressure to agree to a PCO, or are "rushed" into permanent care, leaving them underprepared for and under-informed about, permanent care. The Director, Kinship Carers Victoria said, "… in many cases after placement in statutory kinship care many such placements are being very too quickly converted to permanent care".

Lack of Suitable Permanent Carers, Especially for Older Children

Relatives and kin are the largest providers of permanent care for children who are unable to be reunified, so the increase in the monthly average of permanent care orders suggests that more statutory kinship carers are prepared to convert to permanent care. Indeed, some Aboriginal carers prefer to end their involvement with the child protection system via PCOs. A participant in the VACCA focus group said,

> ultimately families often want the Department out of their lives, so permanent care is going to be a more desirable order over a long-term care order because they don't want child protection involved. They want to be the legal guardians, they want to make the decisions and have the ultimate responsibility, but sometimes not always understanding exactly what that means long term, that there aren't going to be those supports necessarily around you.

A participant in the VACCA focus group also said "… sometimes the carers actually coming back to Lakidjeka workers … saying that they're not agreeable [to a long-term care order] because the carer wants permanent care".

However, the availability of suitable permanent carers is still a barrier to permanent care for older children, as it was prior to the amendments. A magistrate said,

> there's nowhere to permanently put them [older children]. It's all fine if you've got a nice, warm family, and which nice, warm family wants a 13-year-old trauma-based adolescent? So, they just sit, and the permanency amendments have done nothing for them.

A participant in the community services practitioner focus group also said there are, "… not many exit opportunities for young people, aged 10 and up. If there's not a kinship option, often there are not many permanent carers interested in providing care for 10-year-olds, so they just grow up in foster care".

Legal stakeholders went on to observe that CBSOs did not offer older children with complex needs stable care away from home. A legal representative for parents said,

> It's not suddenly that there are all these permanent carers who have put up their hands who didn't exist before. I don't think you've seen a surge all of a sudden because of the legislative changes there's all these children now in permanent placements or permanent care. All that's changed is who is the legal guardian and the ability of the Court to intervene in situations.

Another legal representative for parents mentioned the lack of permanent care arrangements for young people subject to CBSOs and associated poor outcomes saying,

> The reality is for a lot of kids being in State care under care by Secretary orders means, and all the indicators about wellbeing and interaction with the criminal justice system and all kinds of stuff, is that it doesn't provide them with any stability or permanency. In fact, often it's the opposite. That kids are moved around from placement to placement and there's no oversight of the Court at all in any of that process.

The President of the Children's Court also underlined the "significant increase in the number of warrants issued for children who are missing from placements under CBSOs, often where children are placed in residential care". The President of the Children's Court went on to say that "These are the State's most vulnerable children. In 2017/18 the Court issued around 6,505 warrants. In 2018/19, the Court issued 7,983 warrants and in 2019/20 that number had increased to 8,439. This is a most concerning trend".

The data on emergency care warrants issued after hours by the Court are consistent with the findings of a recent report by the Australian Federal Police which indicates that these children and young people range in age from 11 to 17 years and are most likely to go missing from group homes/ residential placements (McFarlane, 2021).

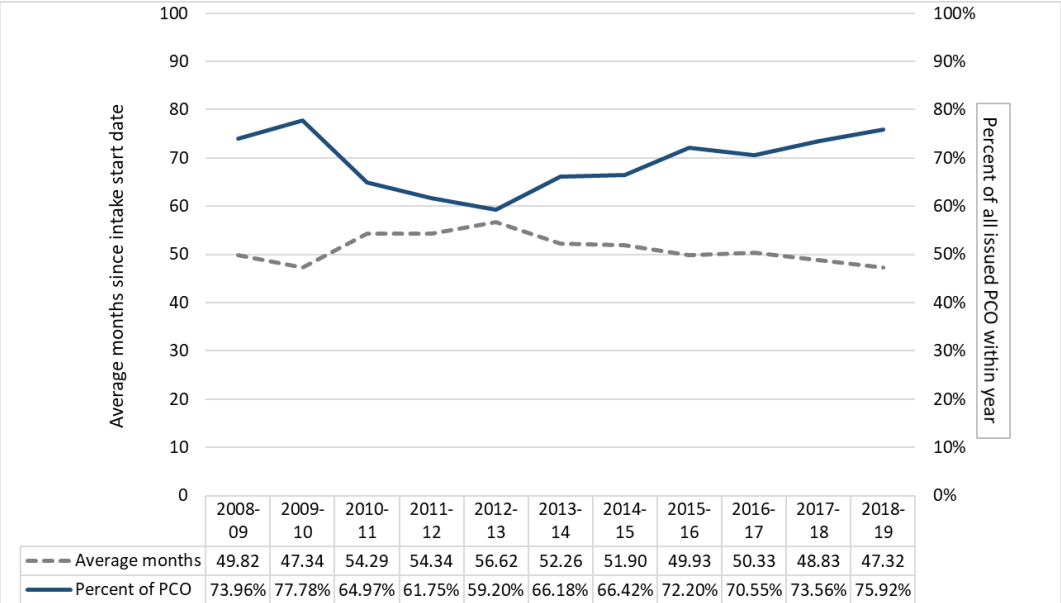
Overall Reduction in Time from Child Protection Intake to a Permanent Care Order

A major driver of the permanency amendments was a finding by the PVVCI (Cummins, Scott & Scales, 2012) which highlighted that the average duration from a report to the making of a PCO was five years, and that this was too long and potentially harmful. The analysis of CRIS data showed that the average duration from intake to PCO reduced from 56.6 months pre-amendments in 2012-13 to 47.3 months post-amendments in 2018-19 (Figure 16). Similarly, in the Court file review, the main difference between the pre- and post-amendment cases was the time from the PA to a permanent care order being made; a median of 29.5 months for the pre- and 23.5 months for the post-amendment cases.

Several intended outcomes from the permanency amendments across different stages of the permanency pathway have contributed to timelier PCOs, including earlier and permanency focused child protection case planning, greater attention to the possible harmful effects of delay and the desirability of early decisions about permanent/ long-term care, timelines on FROs, contact congruent with a permanent/long-term care case plan, and more kinship carers willing to convert to permanent care. There are also cases where magistrates and parents preferred to bypass a CBSO and opt for a PCO as a guarantee of parent-child contact and certainty of placement, which would have reduced the time before a PCO is made.

Figure 16

Average Number of Months from Intake Start Date to PCO Issue Date (Left Axis, Broken Line) and Percent of Cases with Duration of Less than Five Years from Intake Start Date to Order Issue Date (Right Axis, Solid Line), by Financial Year 2008/09–2018/19[64]



	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Average months	49.82	47.34	54.29	54.34	56.62	52.26	51.90	49.93	50.33	48.83	47.32
Percent of PCO	73.96%	77.78%	64.97%	61.75%	59.20%	66.18%	66.42%	72.20%	70.55%	73.56%	75.92%

Aboriginal Children Possibly Spend Longer in Out-Of-Home Care Before Alternative Permanent Care Compared to Non-Aboriginal Children

As discussed in detail below, participants in focus group discussions, key informant interviews and the child protection and contracted case management workforce survey identified factors that delay progress towards alternative permanent care for Aboriginal children. The analysis of CRIS data also explored the probability of achieving alternative permanent care (PCO/LTCO/LTGO) as a first exit from OOHC.[65] While the number of cases of Aboriginal children in the sample for alternative permanent care was small, the data indicated that Aboriginal children were less likely to transition to a PCO/LTCO or LTGO as their first exit from OOHC when compared to non-Aboriginal children.[66] The permanency amendments did not appear to impact progression rates towards alternative permanent care, at least when considering first exits from OOHC.

Why Events and Patterns are Happening at the Care by Secretary Order Stage

Several factors were connected to key outcomes identified above, including case planned reduction in parent-child contact, delays completing a permanent/long-term care case plan, longer transitions to permanent alternative care for Aboriginal children, and lack of suitable permanent carers. The structure of relationships is shown in Figure 17 and discussed below.

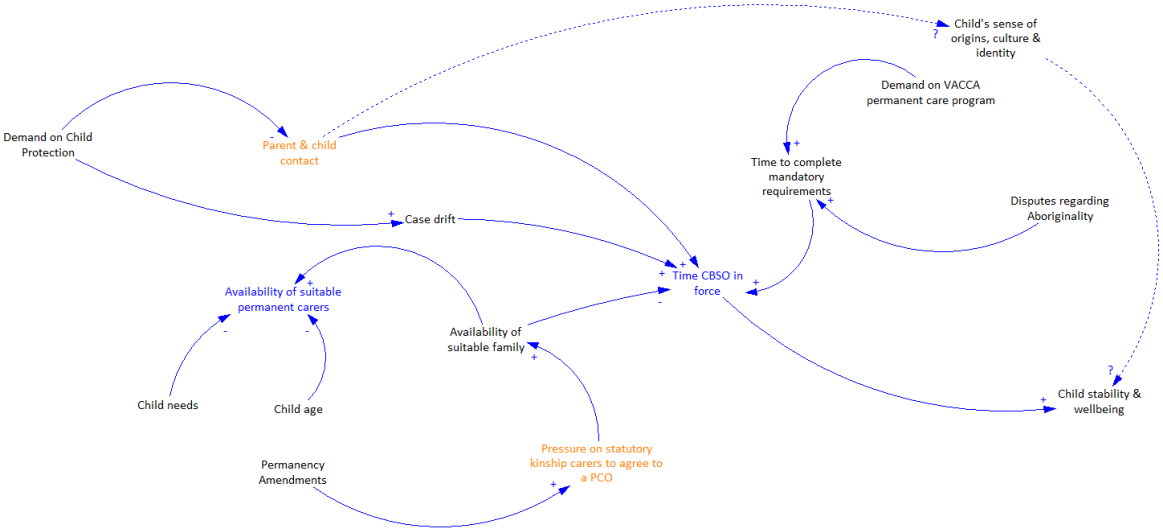
64 This figure shows average time (months) from intake date to date of making of the order for permanent care orders (PCO) as well as the share of made PCO with durations less than five years from intake to making of the order. Implementation stage is based on date of the making of the order. Financial year is based on time of making of the PCO.

65 These findings are based on time-to-event analysis until first exit from OOHC of children's first substantiated cases where children were placed in OOHC. See Appendix 1 for a full description of the limitations of this analysis.

66 The transition rate for Aboriginal children was approximately 35% of that for non-Aboriginal children when considering alternative permanent care as the outcome of first exit from OOHC. When considering reunification as the outcome of first exit from OOHC, the transition rate for Aboriginal children was approximately 89% of that for non-Aboriginal children.

Figure 17

Structure Diagram of Factors that Influence Outcomes at the Care by Secretary Order Stage



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

? A relationship that may not occur

Intended outcome

Unintended/unexpected outcome

Factors Influencing Case Planned Reduction in Parent-Child Contact

A key factor in the case planned reduction in parent-child contact is the intention to align contact with the permanent alternative care case plan objective.

Contact Congruent with Case Plan.

Family contact is about the best interests of the child. Contact may change over time and needs to be reviewed regularly. The purpose of contact also needs to be considered in the context of the child's case plan. Where it is has been determined that the child will not return to live at home, the purpose of parent-child contact is to support a sense of belonging and identity, avoid idealisation of family and, for older children, to maintain existing attachments (see Macaskill, 2002). Contact arrangements for children subject to CBSOs are determined through the child protection case planning process and are intended to be congruent with a case plan for permanent/long-term care.

A permanent care professional who participated in the adoption and permanent care team focus group supported the view that the ability for child protection to scale back contact through case planning had removed a barrier to permanent/long-term care saying,

> I would say there's lots of improvement in that space and that's why when you get a care by Secretary order that you can start to decrease [contact]. We sometimes see delays in enacting it through the case planning process but the fact that it can be done in some cases means that they do get to us faster and that has been really useful. So that care by Secretary order not having access conditions on it has been amazing, absolutely amazing and the four times a year is also something that families[67] are finding manageable because you can do it on the school holidays.

67 When a child is living with their intended permanent family, responsibility for facilitating contact is gradually transferred to the carers.

Factors that Delay Implementation of a Case Plan for Permanent Care for Aboriginal Children

Special requirements for Aboriginal children, disputes surrounding Aboriginality and challenges finding Aboriginal kin, delay Aboriginal children's transition to permanent/long-term care. All these factors were unrelated to the permanency amendments.

Time to Complete Mandatory Requirements for Aboriginal Children.

As discussed in the introduction to this section, the Court requires the recommendation of the VACCA permanent care program and the preparation of a Cultural Plan (s 323(2) CYFA) before it can make a PCO for an Aboriginal child. Legal professionals described lengthy delays with both processes related to lack of capacity. A participant in the CPLO focus group said,

> There's only one person who can do it in the whole state of Victoria through the Victorian Aboriginal Child Care Agency, it's ridiculous. We might do a draft plan and we might … the Department might take a couple of months to do that or there might be information missing that VACCA needs help with … By the time you've done, it can take a long time.

The President of the Children's Court mentioned slow movement towards permanent/long-term care orders relating to the demand on child protection practitioners and the lack of Court oversight of the process saying,

> The challenges around resourcing often results in delays in key events that are critical to progress permanent outcomes for children. For instance, delays in permanency assessments and cases where the endorsement of permanent care case plans have not progressed. As a result, the Department is unable to progress a permanent care application and is only in a position to seek a care by Secretary Order, an order that operates for a fixed period of two years. Nor can the Court oversight the progression of the permanency planning over the two-year period under a CBSO. The result is that although the child may remain in the same placement, no permanent order can be made or progressed due to a lack of resources and the inflexibility of the available orders.

A magistrate made a similar point about process delays while Aboriginal children are on a CBSO with a case plan for a PCO/LTCO saying,

> There are enormous delays in relation to obtaining those sorts of plans [Cultural Plans], and I don't think they are properly resourced, so we find there is a lot of build-up at a point where we just can't move on, because VACCA haven't approved a placement, for example. "Why haven't they?" We might have adjourned it for that to happen, and it still hasn't happened, and that's a delay that shouldn't be happening and is often unexplained. The effect is often that the Court and the Department remain involved in the children's lives for longer than is necessary.

Restrictions on Aboriginal to Non-Aboriginal Permanent Care.

Restrictions on placing Aboriginal children with non-Aboriginal permanent carers (s 323(1) CYFA) can also increase the time Aboriginal children remain on a CBSO with a case plan for PCO/LTCO, either to complete Aboriginal family finding or to endorse a non-Aboriginal permanent care placement. The CEO, PCA families said,

> Aboriginal children as well, in my experience, can be challenging to place. Obviously the first preference is to be able to place those children with their kith and kin, but I know from my experience that non-Indigenous prospective families can be reluctant to take on care of an Aboriginal child in terms of concerns about whether they'll be able to meet the cultural needs of that child.

Disputes Surrounding Aboriginality.

While there was no indication from the interviews and focus groups as to the number of children affected, disputes surrounding Aboriginality, or late identification of Aboriginality, can delay implementation of a permanent/long-term care case plan. Participants in the VACCA focus group and the child protection practitioner focus group indicated that some Aboriginal agencies require specific proof of Aboriginal heritage before they will endorse a Cultural Plan attached to an application for a PCO. A participant in the VACCA focus group said,

> We've got some cases at the moment that are tracking for permanent care, we've got families that have got their confirmation papers and are recognised within their local community, but we've got the local ACCO doing the cultural support plan, refusing to sign-off because they're saying, "No. We don't recognise them".

A participant in the child protection practitioner focus group mentioned a similar issue saying,

> We couldn't progress as permanency because our local Co-op was saying he is not Aboriginal at all. He's been with the same carer for the past 11 years. When I couldn't complete the permanency assessment, we could not do a permanent care because we couldn't get this Aboriginality and then [another] Co-op has involvement with his half-siblings and they find out their Aboriginality and confirm his Aboriginality. Still our Co-op says no, we spent $30,000 for our Anthropologist to find out he's not Aboriginal we don't accept he is Aboriginal … There's a barrier to permanency!

Family Finding.

Delays in family finding,[68] related to the demand on kinship teams and child protection practitioners, as well as the need to search on a wide basis, including interstate, to ensure Aboriginal children maintain connections to culture, can extend the time until a LTCO/PCO is made. A CSO participant in the online survey said,

> a significant issue is the lack of exploration of kinship in a timely manner. The kinship team in our area makes very little difference to the outcome, they are under-resourced, so referrals are waiting for a long time before they are picked up, they identify family, but it is still left up to child protection to complete assessments. Children are left to drift for many months without kinship being explored and resolved.

It was remarked, however, that specialist permanency teams funded to conduct the 2013–14 *Stability Planning and Permanent Care project* and to support the 2016 implementation of the amendments have provided valuable input and support in driving good practice and progressing permanent/long-term care case plans. A participant in the adoption and permanent care team practitioner focus group said,

> Something that we haven't talked about yet is the permanency teams the Department has periodically had since that legislation went through. So … there's been two periods where … they've put out a new program, the stability teams … where they've actually recruited workers from child protection to actually have that deeper lens on permanent care and then they've got rid of the bottleneck, but they've never been funded ongoing and as a consequence you get this shift and then it drifts back and then get a shift and then it drifts back.

Factors Influencing the Availability of Suitable Permanent Carers

The availability of suitable permanent carers is a significant barrier to permanent/long-term care for children who enter OOHC. Participants from diverse professions and sectors identified several factors that influence whether children who enter OOHC will be provided a permanent family, including

- availability of kin;
- post-order support and services; and
- child age and needs.

Availability of Kin.

If there is not a suitable kinship option available, it is very difficult to find a permanent/long-term carer for a child. This is due to the stated legal preference for kinship care placements introduced as part of the amendments (CYF Act s167(2)), and a shortage of foster carers and new carers willing to assume this role. A participant in the community services practitioner/manager focus group said,

> so when there aren't those [family/kin] options, then I think it's just going to get stuck a bit and that's where the child also gets a bit stuck in the foster care system because they're probably doing pretty well in the placement or they're okay, they're safe and they're in a good place but there's no finality.

Participants in the community services practitioner focus group indicated that foster carers and foster care agencies were unenthusiastic about permanent care conversions because the former loses caseworker support, and the latter loses foster carers. One participant said,

> there's obvious positive outcomes for the children and there's one unexpected negative outcome which is that those foster parents are then lost to the system and so we've actually increased our problem in retaining carers even though it's been for a really good reason. It's good for that child but for the next child who needs a placement it's actually become an interesting dilemma.

Another participant said,

> Most of our carers do not want to go for permanent care orders because they want the Department there in the background … I cannot remember the last time we saw a foster carer wanting to assume permanent care for a child. Kinship is different, we really work that space very hard, and we do have some kinship carers willing to become permanent carers, but we've had less [foster care] conversions.

68 A process which seeks to connect children with family who will love and care for them across their lifespan.

Post-Order Support and Services.

Assistance with the challenges of meeting the needs of children with trauma histories and managing relationships with birth families influences the willingness of statutory kinship and foster carers to agree to a PCO. The DHHS, Director, Children and Families Policy said,

> I think undoubtedly, we probably got more permanent care orders than we had previously as a result of being able to say to prospective carers "we will fund you for things that you think you're going to need into the future and there will be funding available after the making of an order". So, I think more permanent care orders were probably obtained and retained as a result of both funding buckets.

The CEO, PCA Families said,

> family contact can be really challenging for families, particularly if they haven't had adequate training or adequate support early on to make sure that the triad between the family, the child, and the permanent care family has good foundations and good bones.

Child's Age and Needs.

Permanent care professionals indicated that it was difficult to find a permanent care family for older children and children displaying trauma symptoms and with other high needs, such as disability. A participant in the adoption and permanent care team focus group said, "many of the placements that break down all the difficulties in finding permanent care placements is because kid's reactivity is very, very high and it's very difficult to find families prepared to take on kids in that reactive state". Likewise, the CEO, PCA families said,

> In my experience children over 12 were really difficult and challenging to place with permanent care families, particularly if they've had a long history of placement instability, and therefore often had complex attachment and trauma needs, not only from their family of origin, but from the bouncing around the system. Children with disabilities can be really challenging to place too, particularly as the support to families is extracted at the point of order or thereafter. It can also be difficult to place children with complex trauma needs.

Factors that Increase Pressure on Statutory Kinship Carers to Agree to a Permanent Care Order

It follows that the lack of availability of non-kin permanent carers, in combination with the legislative preference to find children a permanent family within their own family network, increases pressure on statutory kinship carers to agree to a PCO. As discussed above, magistrates and parents can sometimes prefer to bypass CBSOs and push for a PCO relatively soon after a reunification case plan has changed to a permanent care case plan to provide certainty regarding children's placement and contact.

Summary of Results at the Care by Secretary Order Stage

Intended Outcomes

- More PCOs made.
- Overall reduction in time from child protection intake to a PCO.

Unintended Outcomes Related to the Permanency Amendments

- Routine case planned reduction in the frequency of parent-child contact.
- Pressure on statutory kinship carers to agree to a PCO.

Differential Effects Unrelated to the Permanency Amendments

- Aboriginal children possibly spending longer in OOHC before permanent alternative care compared to non-Aboriginal children.

Systemic Barriers to Achieving Timely Permanent Alternative Care

- Shortage of suitable permanent carers, especially for older children.
- Mandatory requirements for Aboriginal children and restrictions on Aboriginal to non-Aboriginal permanent care.

Permanent/Long-Term Care Order Stage

The following section describes what happens at the PCO/LTCO stage of the permanency pathway, the outcomes expected or intended because of the permanency amendments (and unintended outcomes to be avoided), events and patterns at the PCO/LTCO stage and an explanation of why events and patterns at the PCO/LTCO stage are occurring.

What Happens at the Permanent/Long-Term Care Order Stage?

Under a PCO or LTCO, parental responsibility is conferred on an appropriate person or persons (PCO) or the Secretary (LTCO) until the child turns 18.[69] For PCOs, birth parents require leave of the Court to apply to vary or revoke PCO to avoid unnecessary disruption to the child's permanent care placement (s 326(1)(b) CYFA). Permanent carers continue to receive a care allowance to assist with covering the costs of care. To support implementation of the amendments, a funded helpline and flexible packages were introduced for new and existing permanent carers.

Intended Outcomes

Several outcomes were expected at the permanent/long-term care order stage as a result of the permanency amendments, including

- fewer disruptions to permanent care placements caused by applications by parents to vary or revoke, by requiring parents to seek leave of the Court to make such applications, and guidance for the Court promoting the primacy of the child's permanent care family;
- child and permanent/long-term carer feel more certain about the child's future care arrangements;
- child has more stable living arrangements and fewer behavioural problems; and
- Aboriginal children not placed in inappropriate permanent care placements, and their Aboriginal identify and connection with culture and birth family are supported.

Unintended Outcomes to be Avoided

Increased permanent care placement breakdown was identified as a potential unintended consequence of expedited permanent/long-term care.

What Events and Patterns are Happening at the Permanent/Long-Term Order Stage

Two outcomes were observed at the permanent/long-term care order stage

- permanent carers experiencing parenting stress; and
- permanent care children feeling settled/thriving.

Permanent Carers Experiencing Parenting Stress

There is considerable stress associated with the role of permanent carer. The major sources of permanent carer stress include children's significant emotional, behavioural or health issues, financial strain, lack of preparation for the role, and managing parent contact. These issues are discussed further below.

Permanent Care Children Feeling Settled/Thriving

Despite the challenges, professionals, permanent carers and permanent care children who participated in the PALS indicated that permanent care children generally were living with permanent carers who were loving and reliable, were feeling safe and secure and making gains developmentally. The Victorian Commissioner for Children and Young People said,

> I have absolutely spoken to people … who have found a permanent care home … and it's changed their lives and it's given them all the things that we would hope it would. It's given them a sense of family and a sense of stability and a sense of safety.

69 LTCOs assigns day to day care of the child to a specific carer, who has that responsibility until the child turns 18.

A participant in the adoption and permanent care team focus group mentioned the benefits for children of moving quickly to permanent care saying,

> the legislation has meant that for some kids who have come through and then case planned well and got into their families early and then been able to grow, progress to a permanent care order, those kids are blossoming and just doing so much better than those who have been held back in the system before that.

Permanent carers who took part in an in-depth interview also shared accounts of children feeling settled and secure. One carer said, "There are always some difficulties, but they were good kids. They settled down well, which most of the kids that come here do, though. You learn over the years" while another carer said, "She's – so settled. I mean she's got a good attachment, she's secure".

Crucially, permanent care children themselves who participated in an in-depth interview said they felt settled with their permanent family. One child said,

> Living with [carers' names] and finding them, I think, was the best thing that could have ever happened to me. I was headed down a really bad path. So, I had gone into a few not-so-great foster carers. I had spent three months in one that really wasn't ideal or suitable for me. And, finding [carers names] really saved my life in a way. Got me away from the people who were doing drugs and all that kind of stuff, because that's the path I was leaning towards, you know, and they got me back on track with my mental health and giving me a stable environment, and all the things you'd find in a normal family is what I was able to get from them. They made me feel loved and safe and comfortable, and [carers' names] were really, really good to me.

Another child spoke positively about being in a permanent care arrangement saying,

> Very, very happy. I'm very grateful. It's been a very good placement. As for fostering other kids, I could not imagine being in their position anymore. We've been so lucky to get [carers' names] and have a happy household that's permanent that we know we'll be growing up here.

Another child indicated that permanent care had altered their life trajectory saying,

> Well obviously, I wouldn't be the person I am today without them for very obvious reasons. I was very shapeable as a person from being here at such a young age. I couldn't really do anything … It's just very good to be here. Yeah, so [carers names] are very kind people and it's a lot nicer than other stories you could hear ... .

Revocations and Breakdowns

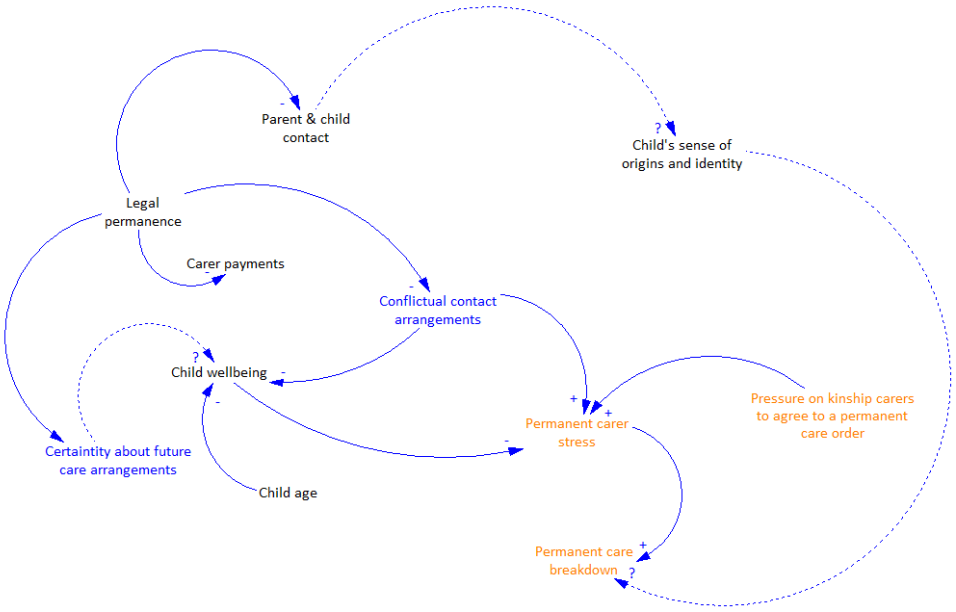
Due to the restricted observation period post-amendments, breakdowns of PCOs and LTCOs were not included in the CRIS data analysis. In terms of revocations, Children's Court data show that, despite the number of PCOs increasing, leave was granted to apply to vary/revoke a PCO in only 20, 11 and 1 case/s in 2017–18, 2018–19 and 2019–20 respectively (Victorian Children's Court, n.d.). It was also not possible to compare PCO breakdowns pre- and post-amendments due to the much shorter follow-up period post-amendments. However, with both revocations and breakdowns, if a child is still in need of protection, the Court may make a further protection order. In only a very small proportion of PCOs issued after March 2013 (2.6%) had another order been recorded in the data (mostly IAOs) following the making of the PCO.

Why Events and Patterns are Happening at the Permanent/Long-Term Care Stage

Connections between key outcomes at the permanent/long-term care stage and causal factors are discussed below and presented in a structure diagram at Figure 18.

Figure 18

Structure Diagram of Factors that Influence Outcomes at the Permanent/Long-term Care Stage



Legend:

\+ Positive relationship (as one factor increases so does the other)

– Negative relationship (as one factor increases the other factor decreases)

? A relationship that may not occur

Intended outcome

Unintended/unexpected outcome

Factors that Increase Permanent Carer Stress

Four factors were identified as causing permanent carer stress

- insufficient post-order support and services;
- children's significant emotional, behavioural or health issues;
- insufficient preparation for permanent care (foster/kinship carer conversions); and
- challenges managing parent contact.

Insufficient Post-Order Support and Services.

Post-order support can take many forms and is designed to promote placement stability and long-term viability. Financial support is key for many carer families who would otherwise be unable to afford to provide for all the child's general needs and any specialist services required.

As discussed earlier, a funded helpline and flexible packages were made available for new and existing permanent carers to assist implementation of the permanency amendments. However, some participants in the interviews and focus groups indicated that the level of post-order support that is currently available is insufficient, and not proportionate to the numbers of children transitioning to PCOs. A permanent carer who participated in an in-depth interview said,

> Probably the biggest thing that we haven't talked about that's probably had the biggest impact on [the child in my care] and I is, when [the child] transitioned from foster care to permanent care, all of the services go away. It's just you and them. That is horrendous.

Another permanent carer said,

> I would say to anyone doing permanent care as in a conversion as opposed to actually just doing straight permanent care, but as a conversion, I would say think long and think hard about it because you lose all the support that you may well need. You don't get that backup; you don't get the expertise behind you ... . So you are definitely left out in the wilderness once you do a permanent care conversion.

Access to a higher level of care allowance to care for children with complex needs is still governed by what can be frustrating bureaucratic processes, as a participant in the adoption and permanent care team focus group said,

> To get the higher level of payment, you have to justify everything, and prove that you actually need that amount of money to care for this particular child. Now that child may have come from foster care and may have been getting that amount for the foster carer, which you turn it into permanent care and – same child – you've suddenly you've got to do it every 12 months to justify.

Many participants in interviews/focus groups appeared not to understand the level of financial support that was available for permanent carers,[70] or indicated that child protection practitioners were not fully aware of what was available. The CEO, VACCA said, "… we found that a lot of Aboriginal families weren't offered the remuneration after they took permanent care". The CEO, PCA Families said,

> I think that the constant challenges of consistency of workers and worker turnover doesn't enable continuity of services to families and timely case planning … There has been work done, but more ongoing work is needed in terms of supporting newer staff and educating the child protection workforce and case planners in terms of how flexible funding works. We frequently hear from families with a newly granted permanent care order who say that there was no plan made around the financial needs of the child post the granting of the order.

Children's Significant Emotional, Behavioural or Health Issues.

Children's significant emotional, behavioural or health issues are a major source of stress and can be particularly challenging for families where parenting demands converge with negative situational or personal circumstances. The CEO, Centre for Excellence in Child and Family Welfare said, "Some of these kids are tiny with serious medical and learning disabilities. I mean, they're going to need lots of care by those permanent carers for a long time and therefore the carers do need support to meet these challenges". The Director, Kinship Carers Victoria said,

> I believe permanent care is meant to be a soft exit from the system for the healthiest of the placements, but it's not. In too many permanent placements both the carers and children have high end needs. We shouldn't be cutting them adrift but neither should we be patching up permanent care whilst ignoring the high-end needs of carers and children in statutory care.

Insufficient Preparation for Permanent Care.

As discussed at the application for CBSO stage (above), in certain cases, magistrates and parents find a PCO more desirable than a CBSO, which can put pressure on kinship carers to agree to a PCO relatively soon after a case plan has changed from reunification to permanent care. When a PCO is granted too early, carers may not be sufficiently prepared for the changed role of becoming a permanent carer. A CSO participant in the online survey indicated that some kinship carers who convert to permanent care do not have the capacity, motivation, or support to provide a secure and beneficial caregiving environment for the period until the child reaches 18 years saying,

> Because of the pressure to move children into permanent care so quickly and to keep them in kinship care to maintain their identity, more children are being rushed into permanent care orders with inappropriate kinship carers, without proper assessment and support. Families are being assumed ready for permanent care as soon as the FRO expires and passed to CSOs with active risk, unwilling carers, aged carers, severe overcrowding, and no support to have established safe contact arrangements with parents.

70 For example, some participants did not understand that the level one care allowance could be adjusted when the child has a particular need for access to services.

During in-depth interviews, some permanent carers said that they should have given more consideration to taking on the role of permanent carer, or that they should have been better informed. One carer said,

> Just different things like formals, and debs, and schoolbooks. They're very expensive each year. I'm not complaining, but it's just hard when you're both on pensions. I should have thought about that a lot more, I think, or been told about it or something.

Another carer said,

> I don't know. I think at the time I loved it because I was, "Let's just go". I'm impatient by nature. Let's get in there and get this stuff happening. But looking back now, I don't feel like we had enough time to process … what was happening in our lives. It was a huge, huge, huge adjustment and we were completely in shock. We had no idea what we were doing. I mean we knew what we were getting into, and we knew what we were doing as parents, but we were shell-shocked I suppose, is a way of saying it. We're going, "What do we do now?"

Some focus group participants indicated that lack of preparation may leave these placements vulnerable to breakdown, especially when children reach early adolescence when developmental tasks to do with identity and autonomy emerge. A participant in the CPLO focus group said, "On permanent care orders carers are saying 'I can't do this anymore'. You're finding behavioural issues with children as they get older that weren't known when the permanent care orders were made". A participant in the legal representative for parents focus group said,

> I'm not sure of the statistics, but at least from my observations in regional areas there are now more protection applications on permanent care. Or relinquishments, breakdowns on permanent care orders. So, there's this push … permanent carers aren't equipped and don't have the skills. Suddenly, the cute little 9-year-old becomes a 13-year-old or 12-year-old and starts, you know, being more difficult like most 12- or 13-year-olds.

During an in-depth interview, one permanent carer spoke explicitly about the deleterious effect trauma has on the development of identity, and the significant challenges they confronted when their child entered adolescence saying,

> It always comes down to trauma, not only attachment. They try to make it look like it's just attachment, it's actually way more than attachment. There is lots of trauma. As soon as kids are in permanent care, they react very differently, they either completely shut down and it looks like everything is completely fine for years and years until they are adolescents or in our case, for example, everything comes out and I don't think anyone currently, nearly in the world, is equipped to deal with trauma, only a very, very few individuals.

During in-depth interviews, permanent carers were also very clear that while the children in their care have developed trust, security, and a sense of belonging, they all have traumatic histories that require ongoing professional support. One carer said,

> I think that the state government needs to actually be more realistic about what supports traumatised children need. They don't just need to be rescued from this bad situation and placed with in good families. They actually need a lot of resources.

Challenges Managing Parent Contact.

The amendments introduced conditions on a PCO so potential permanent carers are not put off by inflexible contact arrangements and/or visits where children and/or carers do not feel comfortable or safe. During in-depth interviews, some permanent carers explained how contact can be challenging for them. One carer said,

> I had concerns because from February, the magistrate had increased the contact and I was to go into [parent's] house and do the accesses and [they were] supposed to come here. [They] came here as well, so [the magistrate] made those decisions that we had to follow through until the next Court hearing, which then violated a lot of my privacy and everything like that. [The parent] knows my phone number, my address and all that sort of thing and I had to physically be present at [their] place as well … There was a lot of things that [the magistrate] put into place that really was support for [the child] and [their dad's] relationship, but it wasn't conducive to our lives and the implications that it had for me to be in, in my profession, to be in a position that's not ideal and really, not ethical.

Another carer said,

> The logistics of getting them when they're six hours away, they're four hours away, you've got people who at various times are talking – not talking to each other, and us driving from [city] with a young child, and we said that, "We can't see that it's going to work". [Another state] holidays don't line up with [their] holidays … Once you then have sporting commitments, school commitments, it's a lot. Happy to see them, we just don't want it written into the order that they have to be at every one, because we think we will fail, and we will get dragged back to Court.

Another carer discussed the challenge of managing contact with parents with behaviours that cause concern saying,

> that's one of the issues for permanent carers. There's four accesses mandated a year, but how do I manage that if one of the parents is violent or has a history of drug abuse or whatever. And so, that's kind of tricky, and indeed in terms of a transition process to permanent care, that was one of the issues that I'd had real concerns about. And there was just no adequate answer for how that would be managed.

The capacity for parental contact to continue to meet the emotional needs of children in permanent/long-term care is largely dependent upon constructive working relationships being established between parents and carers. During in-depth interviews, many carers recognised the benefits of successful family connections for children and spoke about wanting to build a relationship with the parents of the child/ren in their care. However, some carers also said that relationship-building requires professional support, which is not always available. A carer whose child was subject to a CBSO said,

> I came into foster care with a really strong sense of wanting to build a relationship with the child's family and wanting to have a partnership approach, and I think there's not enough support … to build a positive relationship.

Summary of Results at the Permanent/ Long-Term Care Order Stage

Intended Outcomes Related to the Permanency Amendments

- Permanent care children feeling settled and thriving.

Unintended Outcomes Unrelated to the Permanency Amendments

- Permanent carers experiencing stress related to insufficient post-order support and services, children's significant emotional, behavioural and/or health needs, insufficient preparation for permanent care and challenges managing parent contact.

The Culture of the Children's Court and the Voice of the Child

A significant unintended and unexpected outcome following the permanency amendments is more conflict in Court between adult parties. Time limits on FROs and the inability to attach contact conditions to a CBSO and the lack of a specified placement raised the stakes for parents, and matters were more difficult to settle. Further, as indicated in the quotes above, there is a lack of trust among both parents' legal representatives and magistrates that child protection practitioners, given the pressures of their caseloads, can take adequate steps to provide support and services to parents and ensure they have a fair opportunity to maintain a relationship with their child/ren when reunification is not viable. Conversely, child protection practitioners do not believe magistrates consider their assessments of what is in the "best interests" of the child. In an adversarial Court process, this has influenced the "Court culture", particularly how collaborative those working in the Court and interacting with the Court are towards each other during proceedings and outside the Courtroom.[71] A participant in the CPLO focus group said,

> One of the most important things is the behaviour of everyone in Court so it's a respectful arena to get rid of the occupational violence and aggression, and that might be from the bench or between private practitioners, sometimes even barristers, or self-represented litigants. I think that applies to many people including CPLO solicitors. So, I think it's very hard to work in a collaborative way when people are not respectful.

71 Court culture was discussed at length in the report of the PVVCI. The Inquiry noted that "stakeholders acknowledge that the culture between DHS, magistrates, private practitioners and VLA could be more collaborative, informed and respectful" (Cummins, Scott & Scales, 2012, p. 385).

All key players in the Children's Court are adults and the child is often absent from proceedings. While a long-standing problem, participants felt that a more contests-driven culture, and an increased focus on what parents need to do within certain timeframes, meant that the child's needs were being overlooked in the Court. A participant in the CPLO focus group said, "I find that … the legislation is supposed to be for the best interests of the child but a lot of the time the child gets lost". Similarly, a participant in the placement practitioner focus group said,

> you'd be going into Children's Court, my perception when I first came in, I thought, "We could be talking about who's getting the couch or the TV here". The child is totally lost in the process. It's like everybody forgets you're talking about a child. Always been very parent-focussed.

Discussion and a Possible Way Forward

It is widely accepted that extended periods of time in temporary care can adversely impact a child's development and future life chances. It can lead to loss of family connections and sense of identity and poor outcomes after leaving care. For those experiencing multiple placements, there is also evidence of later difficulties in forming attachments with others and of developing long-term emotional and behavioural problems (Simon et al., 2017). Young children can also become closely attached to temporary carers, only to experience further loss when this attachment is disrupted as they move to a permanent home with another carer (Brown & Ward, 2012). The permanency amendments were introduced specifically to address the problem of OOHC drift and provide children who enter OOHC with a permanent family (either their own, or another family) within children's developmental timescales. Overall, the PALS found evidence of some greater certainty for children alongside efforts to ensure fairness for families.

Certainty for Children

Overall, the permanency amendments have achieved much of what they set out to accomplish. Timelier PCOs are a key long-term goal of the permanency amendments when this is the permanency objective. This outcome was observed in the PALS – the average duration from intake to PCO dropped by approximately nine months on average – from 56.6 months pre-amendments (2012-13) to 47.3 months post-amendments (2018-19). The average number of PCOs granted each month also increased from 22.8 pre-amendments to 35.5 post-amendments, demonstrating that more children in OOHC who cannot be reunified within a reasonable timeframe have more certainty about their future care. Younger children, non-Aboriginal children and children already living with their intended permanent carer (typically kin) are more likely progress to permanent care in a timely way.

Several factors contributed to timelier PCOs. Some of these are intended outcomes designed to address identified barriers to permanency and timely decision-making, including

- earlier and permanency focused child protection case planning;
- greater attention to the possible harmful effects of delay and the desirability of early decisions about permanent/long-term care;
- contact congruent with a permanent/long-term care case plan; and
- more kinship carers willing to convert to permanent care.

Timelier PCOs occurred in individual cases because some parents and magistrates are averse[72] to the new CBSO and push for a PCO earlier than the Department plans, and possibly before kinship and foster carers are prepared for the changed role of permanent carer. Some kinship carers who were "rushed" to convert to permanent care were said to lack the capacity, motivation, and support to provide a secure and beneficial caregiving environment until the child reaches 18 years.

72 This relates to the lack of oversight of DHHS actions and decisions while a CBSO is in force as well as the inability to attach conditions to a CBSO.

Aboriginal children spend longer in OOHC before their first exit from care than non-Aboriginal children, and several factors unrelated to the amendments delayed PCOs for Aboriginal children. The Aboriginal child's journey to a PCO was likely prolonged because of the restrictions on making a PCO for Aboriginal children (see s 323(1) CYFA), disputes surrounding Aboriginality, delays and challenges finding a permanent family though Aboriginal family networks and a more extended pursuit of family reunification.

Generally, it was more difficult to find a permanent family for older children, and some adolescents who entered care before the permanency amendments may remain in temporary OOHC subject to a series of two-year CBSOs for their entire childhoods without hope of reunification or finding a permanent alternative family. The risky and disruptive behaviour and uncertain futures of these children, which has its roots in exposure to abuse and neglect and long periods of temporary and unstable care, is problematic for these young people and for those who need to provide costly services to care for them and care about their future and intergenerational disadvantage.

Fairness for Families

Professionals who took part in the study across all sectors and disciplines expressed strong support for the aim of achieving timely permanency for children who enter OOHC. Consistent with the hierarchy of permanency objectives, family preservation and family reunification (permanency at home) are the preferred goals, and Aboriginal participants stressed the importance of cultural and relational permanency for Aboriginal children.

While more children entering OOHC experienced timelier permanent care, unforeseen (and, in one instance, perverse) results were occurring in the Court. Specifically, the PALS observed

- delayed resolution of PAs[73] so the Court can oversee parents' engagement with support and services;
- extensions to FROs without compelling evidence of likely permanent reunification;
- delays in settling applications for CBSOs;
- bypassing CBSOs to provide certainty regarding contact and placement; and
- a more litigious Court culture.

Unforeseen Court decisions and actions extended the reunification timelines and provided windows of opportunity for parents to make and sustain changes in their lives in ways that were not envisaged in the legislation.

Unanticipated results in the Court represent a response to the high stakes involved in timely access to support and services. While parents may have had a better understanding of the purpose of child protection intervention following the permanency amendments, there was no substantial change observed in the timeliness of reunification that could be attributed to the permanency amendments. The PALS revealed real concerns among magistrates and legal representatives for parents about efforts to reunify families where this was the permanency objective. While there is no quantitative evidence available from PALS on the level of support provided to families following substantiation in Victoria, there was a perception that child protection practitioners do not have the capacity to assist parents with access to services and that there is a shortage of family reunification support services and waiting times for these services, especially in regional and rural areas.

Unanticipated results at Court were also a function of long-standing differences between the Department and the Court regarding priorities in applying the best interests principle (CYFA s 10), and who is best placed to determine child protection matters.

Unreconciled Differences Between the Department and the Children's Court

The permanency amendments shifted some decision-making powers of the Court to the statutory child protection service and reduced areas of discretion by the Court in relation to decision-making in the best interests of the child as required under the CYFA. This was intended to remove pre-identified barriers to achieving permanent care within children's developmental timescales.

Fairness for families is an important ethical principle, and parents' lawyers have an obligation to act as advocates for parents. In an adversarial system, the parties are responsible for defining the issues in dispute and for carrying the dispute forward. The permanency amendments raised the stakes in Court decision-making for parents, which helps explain the increase in Court contests and delays. However, all decisions must focus on the best interests of the child, which contain some conflicting aims. What is best for any child or even children in general is often indeterminate and speculative (Mnookin, 1975; Mnookin & Szwed, 1983).

73 Including continuing contests to prolong an IAO.

The PALS revealed different priorities in making decisions in the child's best interests. Unforeseen results occurring in the Court, such as delays resolving PAs and extensions to FROs without compelling evidence of likely permanent reunification, represent the valuing of the biological family as the institution best suited to meeting the child's interests above arranging enduring alternative care in a timely way. By and large, child protection practice reflects a stronger notion of decision-making within children's developmental timescales while the Children's Court broadly reflects an emphasis on the proper limits on State intervention in family life responding to parents' problems and maintaining children's links with their biological family as far as possible. A similar "disjunction" was noted in the report of the PVVCI between the Court and the Department approach to reunification and contact (Cummins, Scott & Scales, 2012, p. 386).

As well as reflecting tensions between child protection and the Court in how to apply the best interests principles, unforeseen results occurring in the Court (above) underline conflict about who should decide on child protection matters or who is more capable of making sound and appropriate judgements that provide better outcomes for children.

Unforeseen results occurring in the Court are a clear sign of disagreement about the change in the role of the Children's Court and express valuing judicial discretion and powers in resolving child protection matters fairly and supervising the way in which the statutory child protection service exercises its duties. As discussed at the beginning of the report, while the (then) DHS undertook stakeholder consultations on the proposed changes before the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill* was introduced to Parliament in August 2014, concerns expressed by the Children's Court relating to the 2014 amendments remained unresolved, namely the reduced role of the Children's Court and the exercise of judicial power as well as the lack of availability of reunification support services. In a very real sense, the results occurring at Court can be interpreted as a *failure of implementation* resulting from a lack of engagement with stakeholders whose support was essential to success. The results also show that the formulation of rules in best interests decision-making is problematic when there is no consensus surrounding the values or principles underlying the rules. As Mnookin (1975) stated in his seminal article on the indeterminacy of best interests,

> Because what is in the best interests of a particular child is indeterminate, there is good reason to be offended by the breadth of power exercised by a trial court judge in the resolution of custody disputes. But the underlying reasons for this indeterminacy – our inability to make predictions and our lack of consensus with regard to values – make the formulation of rules especially problematic. (p. 230)

Potential Unintended Consequences of Efforts to Ensure Fairness for Families

Unresolved differences in how the best interests principle is understood and applied, and, in turn, who should decide which aspects of child protection matters is a longstanding issue in Victoria. However, valuing family and judicial powers and discretion over timely and enduring alternative care is driving results that undermine the aims of the amendments. Further, unforeseen results occurring in the Court may have paradoxical undesirable consequences.

Delayed resolution of PAs so the Court can have some oversight of parents' engagement with services can result in more Court events. While therapeutic jurisprudence approaches such as the Family Drug Treatment Court, have increased resources and procedures to manage the requirements for reports and hearings, more Court events at the PA stage had a dual and adverse impact on both the resources of the Children's Court and on DHHS. The additional demand placed on DHHS to prepare for and attend Court for mentions and other hearings, diverts resources from direct casework with families,[74] while the additional demand on the Court compounds scheduling problems and creates further delays in processing cases and making decisions.

Numerous participants in the PALS mentioned that both child protection and the Court are experiencing very substantial increases in demand and are under enormous pressure. In this context, judicial case management through IAOs may be viewed as an inefficient use of resources and could be contributing to the perverse outcome of diminishing child protection casework capacity to support reunification.

74 Numerous Court events may also mean that practitioners produce poor quality, repeat version Court reports. These events may also not be meaningful to parents or children.

As indicated above, s 262(5A) of the CYFA was amended in 2014, requiring that an IAO must not be made if the Court is satisfied that a protection order can be made. The intention was to foster timely work with families to achieve reunification within children's developmental timescales. However, the PALS found more disputes between parents and DHHS at the PA stage, specifically parents not agreeing to a FRO. Protracted disputes between parents and DHHS undermine trust and rapport necessary for parental engagement and take the focus away from the fulfilment of goals and actions to address protective concerns. During this time, parents may feel, or be advised, that any engagement with the case plan undermines their position in the contest, by implying acceptance of the problems and actions needed to address them. It is also the case that parents with children subject to IAOs are not eligible for certain services. In these cases, the Court could retain its oversight but remove some key areas of dispute by proving the PA and issuing a short FRO. Realistic scheduling of court hearings, taking into account the expected timeframes for parents to be able to access and engage with services and for reports to be produced is also important.

The Court's inability to attach conditions to a CBSO and oversee DHHS decisions and actions during this fixed 24-month order, was of serious concern to legal stakeholders. While the Court is required to consider the desirability of making a PCO if the child is placed with the intended permanent carer, some children are bypassing CBSOs so that parents have greater certainty about their placement and contact arrangements. While the permanency amendments were intended to expedite alternative permanent care when reunification is not viable, PALS participants, including advocates for kinship carers, indicated that some statutory kinship carers are progressing to a permanent care arrangement too quickly, and may feel "rushed" and ill-prepared for their changed role as permanent carers. Hasty kinship care conversions were associated with carer stress and other vulnerabilities in the permanent family that constitute risk of placement breakdown.

Outcomes for Children

As indicated above, the permanency amendments have expedited permanent alternative care when reunification is not viable. Children's transition to permanent care or long-term care within a developmentally appropriate timeframe is intended to lead to stable caregiving, a sense of security and certainty with associated developmental benefits. However, given the short follow-up period, it is unclear what the future holds for the growing number of children who achieve timely PCOs. The PALS was unable to reliably assess from the administrative data to date whether placements in permanent alternative families are more or less stable than pre-amendments. Professionals, carers and children themselves suggested that permanent/long-term care contributes to children's sense of belonging, safety, and wellbeing. There is, however, evidence that some kin are struggling with a quick transition to permanent care and the lack of support of their new role of permanent carer.

The average age of children when a PCO is made is 7.2 years (post-amendments), so it is unclear how permanent care children cope (and permanent carers manage) when developmental tasks to do with identity and autonomy emerge in adolescence for these children with traumatic histories. For Aboriginal children, their family, community, clan, traditions, and customs are integral to the development of their sense of identity. While Cultural Plans that accompany applications for PCOs are detailed and thorough, and s 321(1) CYFA specifies that a permanent carer must preserve the child's connection to their culture, questions remain about the implementation of Cultural Plans and their appropriateness as children grow through different developmental stages.

Just as there are many unknowns about the longer-term outcomes for children who transition to a PCO within developmental timescales, the impact on children of unanticipated results occurring at Court to extend the reunification timelines, preserve families and avoid the perceived uncertainty of a CBSO are largely unknown. Specifically, whether these decisions and actions expose children to unsafe family situations,[75] further abuse and neglect, unstable placements at home or in care and prolonged uncertainty about their future, or whether they preserve families and family relationships to children's ultimate benefit, is currently unclear.

75 Under informal supervision when the child is subject to an IAO and DHHS supervision if a FRO is in force.

Outcomes for children who enter OOHC are the result of interactions of multiple factors, many of which are unrelated to the permanency amendments. This includes factors at the system level, which are constantly changing. Even with a longer follow-up period, understanding the influence of the permanency amendments on child outcomes such as behaviour and identity represents an enormously challenging exercise in research design, method, and interpretation.[76]

A Possible Way Forward

The amendments are promoting more certainty for children about their future care, suggesting that it is essentially effective legislation. However, the amendments have simultaneously created unease about the potential unfairness for families regarding reunification and parent-child contact when reunification has been ruled out. These concerns are contributing to unforeseen outcomes at Court and placing additional burden on child protection and the Court without clear benefits for children. Further, while the number of PCOs has increased following the amendments, kinship carers can feel pressure to agree to a PCO shortly after a case plan has changed from reunification to permanent care. Kinship carers may also not fully appreciate that children subject to PCOs are not considered to be in OOHC and do not receive ongoing case management, including assistance with contact arrangements. As a result, they may struggle to adjust to their new role as a permanent carer, and/or may lack capacity, motivation, or support to provide a secure and beneficial caregiving environment for the period until the child reaches 18 years. Permanent carers also experience stress related to children's significant emotional, behavioural and/or health needs, and challenges managing parent contact.

There are three questions drawn from the PALS that target systemic issues driving unintended results and warnings about the post-order support needs of permanent carers. These questions could productively form the basis of a whole-system dialogue, drawing on perspectives and knowledges from the Court, legal representatives, child protection, mainstream community services and Aboriginal agencies regarding actions and strategies for change. Acknowledging concerns about the impact of the permanency amendments on family life and family connections and taking steps to better support these principles in practice in the child's best interests, will create a more harmonious and better performing system. Responding to warning signs about the lack of preparedness and post-order support available to permanent carers will also help prevent future PCO breakdowns, ensuring the amendments achieve their long-term goal of ensuring children who enter OOHC are raised in a permanent family.

Questions for Change

The permanency amendments were introduced as a step forward in promoting children's welfare by supporting timely permanency resolution. S 167(1) of the CYFA provides a clear hierarchy of permanency options to be considered for children and young people: family preservation; family reunification; adoption; permanent care; and long term OOHC. The permanency hierarchy reflects the principle that permanency with family is the strongest guarantee of children's wellbeing. Yet, the PALS found that only 36.9% of children who commenced a FRO in the observation period,[77] exited OOHC within 24 months of OOHC.[78]

Complexity is a reality of child protection cases, and reunification is a process that does not necessarily end with the child returning home. However, the PALS is clear that unmanageable caseloads and workloads inhibit child protection practitioners from undertaking robust reunification casework. There is also a shortage of reunification services. As several stakeholders said, parents and their advocates are more willing to accept permanent/long-term orders if the attempted but unsuccessful reunification process has been managed well.

The first systemic question is about change that can bring about a fair reunification process that can support successful reunifications:

Question 1.

How might we better support successful reunifications and confidence in the reunification process when this is the permanency objective?

76 Similarly, attribution of system results, such as OOHC re-entries and PCO breakdowns can be difficult given the multiple factors at play, including OOHC entry patterns (e.g., children's age and complex needs).

77 Between 1 March 2017 and 31 August 2017.

78 It should be noted that a high proportion (67.4%) of all exits of children aged 0-17 years from OOHC observed during the post-transition period are from an IAO.

PALS identified several issues within the system that inhibits permanency with family, that might productively form a focus for dialogue and change. These were

- contests at the PA stage that undermine practitioner-parent working relationships and receptivity to change;
- tension between practitioners' dual responsibility of child protection and family support;
- unmanageable caseloads and workloads that do not allow child protection practitioners time to engage parents, link them to services and supports and sustain a sense of urgency in the process of change;
- child protection practitioner turnover;
- lack of Court oversight of the timeliness of service provision as required by a reunification case plan;
- lack of respect among the Court and child protection for each other's roles;
- a shortage of services to support reunification;
- timescales for accessing services and support that are inconsistent with children's developmental needs; and
- lack of judicial discretion to deal with significant delays in service provision[79] when parents are likely to overcome their difficulties with extra time.

When reunification is not viable, children have the right to maintain a sense of belonging and connectedness with their family and family group, and successful family connections help children adapt, overcome attachment difficulties, and come to terms with their separation from parents.[80] Cultural connection has an important influence on the child's sense of self and long-term outcomes.

When case plans change from reunification to permanent/long-term care, PALS found that parent-child contact also changes to reflect the purpose of ensuring family connectedness, as opposed to contact aimed at children's return home. While this appears to be helping to transition children to permanent/long-term care orders, PALS found that child protection case planning is not always a trusted process for parents, and that case planned reductions in parent-child contact are happening in a routine, rather than a tailored/flexible way. Permanent carers also indicated that contact can be very challenging, and that little or no support is available to help them build quality relationships with parents and manage contact. Finally, it is unclear whether Cultural Plans that accompany applications for PCOs for Aboriginal children will ensure cultural connections as children grow through different developmental stages.

The second systemic issue is about change that can address barriers to successful family and cultural connections when permanent care or long-term care is the permanency objective (or outcome):

Question 2.

How might we ensure successful family and cultural connections for children when permanency with parents is not deemed to be viable?

PALS identified the following system barriers to successful family connections, which might be appropriate targets for dialogue and change

- routine case-planned reductions in parental contact when case plans change from reunification to long-term/permanent care;
- inability to attach specific conditions on CBSOs; and
- lack of ongoing support for permanent carers (and prospective permanent carers) to build quality relationships with parents and manage contact.

While PALS was not able to identify any evidence of an increase in PCO breakdown in the relatively short observation period, in some cases the provisions of a CBSO are contributing to PCOs before kinship carers are ready for the transition to a permanent care arrangement. Permanent carers are also experiencing stress due to the cessation of case management support, children's high needs and the challenges of managing contact, placing these care arrangements at risk of breakdown. As a large and increasing proportion of children subject to Court orders are on PCOs, many of whom have significant emotional, behavioural and/or health issues, it is important that carers are ready to assume the role of permanent carer and receive a level of post-order support that matches children's needs and the demands of the role.

79 Such as parents with intellectual difficulties, parents requiring residential treatment, parents in regional areas with long waiting lists for services and Aboriginal parents who require Aboriginal specific services.

80 United Nations General Assembly, 1989.

The third systemic issue is about change that can enhance carer preparedness and capacity to respond to the child's needs in permanent care over time:

Question 3.

How might we ensure prospective permanent carers are ready to transition to a permanent care arrangement and receive a level of post-order support that enables them to meet children's developmental needs over time?

PALS identified the following system barriers, which might be appropriate targets for change

- pressure on kinship carers from the Court and parents to agree to a PCO soon after a reunification case plan has changed to a permanent care case plan;
- lack of information and understanding about permanent care among prospective permanent carers and potentially a lack of understanding of the LTCO alternative;
- insufficient financial support available to permanent carers;
- lack of awareness among child protection practitioners and permanent carers of the post-order financial support available; and
- level of bureaucratic processes involved in accessing a higher level of care allowance.

Permanency Performance Monitoring Framework

PALS was conducted a relatively short time after the permanency amendments came into effect. Since human service systems are open and dynamic, it is uncertain what the child protection system will look like in the future. It is therefore important that the impact of the permanency amendments and permanency performance more generally, are routinely monitored. A permanency performance reporting framework will also help to evaluate the results of any actions or changes that come about as the result of inquiry into the three systemic issues outlined above, as well as provide ongoing monitoring.

The national Permanency Outcomes Performance Framework, reported for the first time in the AIHW publication *Child Protection Australia 2018–19* (AIHW, 2020), will be reported nationally each year and will therefore form a key part of monitoring performance in Victoria. The 2016 permanency amendments to Victoria's *Children Youth and Families Act 2005* have some key features which are not reflected in the national indicators.

A proposed framework for reporting and accountability regarding permanency performance within Victoria is presented in Table 4 below. Proposed measures are cross-referenced to the national framework and the measures used in the PALS analysis of CRIS data.

Table 4

Proposed Permanency Performance Monitoring Framework[81]

DIMENSION	Primary indicators[82]	Other indicators	Other measures (if data are, or become, available)
Timeliness	1. Proportion of post-substantiation case plans endorsed within 21 days [PALS][83] 2. Average time from OOHC entry to first protection order issued [AIHW 2.1][84] [PALS] 3. Average time from OOHC entry to: a. Making of a CBSO b. Making of a PCO [PALS] c. Making of LTCO [PALS] d. Reunification from CBSO, FRO or IAO[85] e. Case closure with child placed at home[86] [AIHW 2.2] [PALS]	• Proportion of open post-substantiation cases with case plan made or reviewed within the preceding 12 months • Number and proportion of children in OOHC who have been in OOHC for more than 2 years [AIHW 1.1b] • Proportion of children in OOHC with a permanency objective of permanent or long-term care made within 24 months of OOHC entry	• Proportion of children subject to a family reunification order with an allocated CPP • Proportion of children subject to a family preservation order with an allocated CPP • Timeliness of service provision as required by case plan.
Relational and cultural permanence	4. Proportion of investigated and/or substantiated cases placed in OOHC [PALS] 5. Proportion of children in OOHC placed with kin 6. Proportion of Aboriginal children in OOHC for 19+ weeks provided with a Cultural Plan [PALS] 7. ACPP compliance rate (AIHW proxy measure or, if systems are developed, actual measure) 8. Proportion of children subject to LTCOs and PCOs who have siblings in OOHC, who are placed with at least one of those siblings	• Average number of allocated CPPs experienced by children post-substantiation, by time case open • Proportion of children in OOHC who have siblings placed elsewhere who have contact with those siblings • Proportion of children in OOHC who have siblings in OOHC who are placed with at least one of those siblings • Proportion of Aboriginal children subject to a protection order who have had an AFLDM in the preceding 12 months	• Average number of case planners endorsing case plans by number of years case open
Physical permanence	9. Average number of placements experienced by children in OOHC, by time in OOHC [AIHW 1.7b] 10. Proportion of children in OOHC placed in same area as family home address		• Average number of schools attended by children in OOHC, by time in OOHC • Average distance of child's placement in OOHC from child's family home

81 It is important to note that the counting rules and analytical approaches to individual indicators differ between AIHW and PALS due to the different objectives, specifically the focus of the PALS in understanding changes pre- and post-amendments.

82 Any of these measures could be reported separately for specific cohorts (e.g., Aboriginal children, children under 12, operational area or division etc).

83 These references are to equivalent, or closely related data provided by PALS.

84 These references refer to equivalent or closely related measures in the national framework (see page 4).

85 Deemed to be family preservation order date.

86 It is suggested that, while actual reunification occurs on or near to the deeming date, intended/assessed permanent reunification occurs when the case is closed. The logic is similar for long-term and permanent care. The relevant date is not when the child was placed with the ultimate long-term or permanent carers, but when the LTCO or PCO was made.

DIMENSION	Primary indicators	Other indicators	Other measures (if data are, or become, available)
Legal permanence	11. *Family Preservation*: Proportion of substantiated children not admitted to OOHC within 12 months [AIHW 1.2] 12. *Family Reunification*: Proportion of children in OOHC who were reunified during the year[87] [AIHW 1.3] 13. *Long-term and permanent care*: Number and relative proportions of LTCOs and PCOs issued each year [PALS] 14. *All permanency from OOHC*: Proportion of children in OOHC on IAO, FRO or CBSO who were reunified or made the subject of a PCO or LTCO during the year. [AIHW 1.4]	• Proportions of each outcome (permanent care order, long-term care order, closure at home) • Number and rate of children in OOHC [AIHW 1.1a] • Number and proportion of children in OOHC and permanent care who are: - subject to a permanent care order; - subject to a long-term care order; - in OOHC and subject to a CBSO; - in OOHC and subject to a FRO; - in OOHC and subject to a PA/IAO. [AIHW 1.7a]	• Number of placement breakdowns where LTCOs and PCOs in force [AIHW 1.6b]
Permanency outcomes (provisional)	15. *Proportion of children entering OOHC who had been the subject of a previous substantiation with no OOHC entry in the previous 12 months/2 years/ever* 16. *Proportion of children entering OOHC who had been the subject of a previous OOHC episode followed by reunification within the previous 12 months/two years/ever.*		• *Proportion of children subject to LTCO or PCO who leave care having:* - *completed year 12* - *progressed to a tertiary course* - *entered the workforce within 6 months* - *at least one of the three preceding* - *become homeless* - *become youth justice/ corrections clients* - *received a mental health service* - *become a parent within 12 months* - *become a parent of a reported child* • *As above for children turning 18 who had been reunified after at least 6 months in OOHC when younger (if data can be linked)*

87 This measure could either use the reunification (deeming) date, or the permanent reunification (closure) date – or both.

Conclusion

There are high stakes involved in making child protection decisions and applying the best interests principle is a difficult balancing act between ensuring the child's safety and wellbeing and providing support and assistance to parents. The permanency amendments were introduced to ensure children who enter OOHC have a permanent family (either their own or an alternate family) within developmental timescales. While more children in OOHC who cannot be reunified within a reasonable timeframe achieve timelier enduring alternative care, a permanent family may never be found for a substantial number of children subject to CBSOs. The PALS also did not detect any change in the timeliness of reunification following the amendments.

The amendments are also causing unease among some stakeholders about fairness for families regarding reunification as well as parent contact when reunification is not viable. These concerns are connected to unintended outcomes at Court that undermine the aims of the amendments and sap child protection and Court resources without clear benefits for children. While fairness for families is an important ethical principle, Court decisions must focus on the best interests of the child, and unintended outcomes at Court reflect the priority given to family reunification over enduring alternative care within developmental timescales. They also represent an effort to hold on to judicial discretion and powers that the permanency amendments weakened and express the valuing of the Children's Court in resolving child protection matters fairly and overseeing the way in which the statutory child protection service exercises its powers and duties.

While the impact on children of Court decisions and actions that undermine the aims of the amendments are currently unknown, conflicting aims regarding family reunification and timely alternative care, and disagreements regarding the allocation of power in child protection decision-making, must be reconciled. Addressing genuine concerns about the impact of the permanency amendments on family life and family connectedness and the role of the Children's Court in OOHC case management, will improve the way in which the Children's Court and child protection interrelate. A more harmonious interconnection between these two sectors will further improve the effectiveness and efficiency of the whole system and the experience of those who operate in the system, and the children, families and carers who encounter the system.

The PALS also revealed concern among diverse stakeholders about the preparedness of some kinship carers for the role of permanent carer, and the level of post-order support available to support permanent carers to meet children's developmental needs and manage parent contact. Paying attention to early warning signs about the vulnerability of some permanent care placements will help prevent PCO breakdowns and ensure the rising number of children subject to PCOs have an enduring and well-functioning family to grow up in.

Real improvements can be made if representatives from all parts of the system come together in cooperation to find solutions to three key questions that target tensions or systemic issues driving unintended results and concerns about the fragility of some permanent care arrangements. These questions are about increasing permanency with family when this is the permanency objective, creating successful family and cultural connections when permanency with family is not viable, and preparing and supporting permanent carers to meet children's developmental needs until the child turns 18 years.

When solutions are found that everyone can live with, the current culture of conflict will have a chance to abate, and the arguments of adults will cease to drown out the voice of the child. An environment may then emerge where complex and consequential child protection decisions can be made, rooted in trust and mutually respectful interactions.

References

Australian Institute of Health and Welfare (AIHW) (2020). *Child Protection Australia 2018–19. Canberra.*

Australian Institute of Health and Welfare (AIHW) (2016). *Permanency Planning in Child Protection.* Child welfare series no. 64. Cat. no. CWS 58. Canberra: AIHW. Available at: https://www.aihw.gov.au/getmedia/792f5576-eeca-48f5-9e64-0155f537d5f1/20156.pdf.aspx?inline=true

Bennett, K. (2015). Cultural Permanence for Indigenous Children and Youth: Reflections from a Delegated Aboriginal Agency in British Columbia. *First Peoples Child & Family Review*, 10(1), 99–115.

Brown, R. & Ward, H. (2013). *Decision Making within a Child's Timeframe*. Loughborough: Childhood Wellbeing Research Centre. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200471/Decisionmaking_within_a_child_s_timeframe.pdf

Children's Court of Victoria (no date). *Children's Court of Victoria Annual Report 2016-17*. Available at: Annual Report 2016 2017 (web).pdf (childrenscourt.vic.gov.au)

Children's Court of Victoria (no date). *Children's Court of Victoria Annual Report 2018-19*. Available at: https://childrenscourt.vic.gov.au/sites/default/files/191114%20Childrens%20Court%20of%20Victoria%20Annual%20Report%20A4%202018_19_WEB.pdf

Children's Court of Victoria (no date). *Children's Court of Victoria Annual Report 2019-20*. Available at: ChCV_Annual_Report_2019-20.pdf (childrenscourt.vic.gov.au)

Commission for Children and Young People (2017). *… Safe and wanted …: Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, Melbourne: Commission for Children and Young People. Available at: Department of Health and Human Services Victoria | Safe and wanted - An inquiry into the implementation of permanency arrangements (dhhs.vic.gov.au)

Commission for Children and Young People (2016). *Always Was, Always Will be Koori Children: Systemic Inquiry Into Services Provided to Aboriginal Children and Young People in Out-of-home Care in Victoria*. Commission for Children and Young People, always-was-always-will-be-koori-children-inquiry-report-oct16.pdf (ccyp.vic.gov.au)

Cummins, P., Scott, D., & Scales, B. (2012). *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne: Department of Premier and Cabinet. Available at http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html

Department of Health and Human Services (DHHS) (2014). *The Stability Planning and Permanent Care Project 2013–14. Final Report*. Melbourne: Department of Health and Human Services. Available at: https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Children_Youth_Familes_Bill/Stability-planning-and-permanent-care-project-2013-14.pdf

Fernandez, E. (2013). A*ccomplishing Permanency: Reunification Pathways and Outcomes for Foster Children*. Dordrecht: Springer.

Fernandez, E., & Lee, J. (2013). Accomplishing family reunification for children in care: An Australian study. *Children and Youth Services Review*, 35(9), 1374–1384.

Fernandez, E., & Atwool, N. (2013). Child protection and out of home care: Policy, practice and research connections Australia and New Zealand. *Psychosocial Intervention*, 22(3), 175–184.

Hartley, E.K. (1984). Government leadership to protect children from foster care "drift". *Child Abuse and Neglect*, 8(3), 337–42.

Legal and Social Issues Committee (2014). *Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*, https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Children_Youth_Familes_Bill/LSIC_58-01.pdf

Maani, K.E., & Cavana, R.Y. (2007). *Systems Thinking, System Dynamics: Managing Change and Complexity*, 2nd ed. Prentice Hall: Auckland, NZ, USA.

Macaskill, C. (2002). *Safe Contact? Children in permanent placement and contact with their birth relatives*. Lyme Regis: Russell House Publishing.

McFarlane, K. (2021). *Children and youth reported missing from out-of-home-care in Australia: A review of the literature and analysis of Australian police data*. A report prepared for the Australian Federal Police Missing Persons Coordination Centre. https://www.missingpersons.gov.au/sites/default/files/Children__Youth_Missing_From_OOHC%20%28002%29.pdf

Mnookin, R. H. (1975). Child-custody adjudication: Judicial functions in the face of indeterminacy, *Law and Contemporary Problems, 39*, 226–293.

Mnookin, R. H., & Szwed, E. (1983). The best interest syndrome as the allocation of power in child care. *Providing Civil Justice for the Child*, 7–20.

Morse, J. M. (2003). Principles of mixed methods and multi-method research design. In C. Teddlie, & A. Tashakkori (Eds.), *Handbook of Mixed Methods in Social and Behavioral Research* (pp. 189-208). Thousand Oaks, CA: Sage Publication.

Roth, L. (2013). Permanency planning and adoption of children in out-of-home care. *Briefing Paper No 03/2013*. NSW Parliamentary Research Service. NSW Parliament, Permanency planning and adoptionbriefing paper.pdf (nsw.gov.au)

Secretariat of National Aboriginal and Islander Child Care (SNAICC) (2016). Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care. Melbourne: SNAICC. Available at: https://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving_stability.pdf

Simon, R. I. C. E., Cotton, S., Moeller-Saxone, K., Mihalopoulos, C., Magnus, A., Harvey, C., ... & Herrman, H. (2017). Placement instability among young people removed from their original family and the likely mental health implications. *Shanghai Archives of Psychiatry, 29*(2), 85.

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

UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at: https://www.refworld.org/docid/3ae6b38f0.html [accessed 6 September 2021]

Ward, H., Brown, R., & Westlake, D. (2012). *Safeguarding babies and very young children from abuse and neglect*. Jessica Kingsley Publishers.

Wright, A.C., Luu, B., & Cashmore, J. (2021). Adoption in Australia: Past, present and considerations for the future. *Australian Law Journal, 95*, 67–80.

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