INQUIRY

INTO THE IMPLEMENTATION OF THE CHILDREN, YOUTH AND FAMILIES AMENDMENT (PERMANENT CARE AND OTHER MATTERS) ACT 2014 (PERMANENCY AMENDMENTS INQUIRY)

CONSULTATION PAPER

OCTOBER 2016
FREQUENTLY ASKED QUESTIONS

WHAT IS A SUBMISSION?

A submission is an opportunity to provide information, make comments or raise issues relevant to the Inquiry’s terms of reference. There is no set format for making a submission. You are welcome to provide a submission, even if you only have one or two points to make.

This consultation paper has been developed by the Commission for Children and Young People (the Commission) to help people prepare their submission. People may wish to respond to some or all of the questions in the consultation paper, make specific recommendations or suggest solutions to the issues that the Commission is considering.

WHO CAN MAKE A SUBMISSION?

Any person or organisation is able to make a submission to the Inquiry.

The Commission especially welcomes and encourages information from children, young people, carers and families who have had recent experiences with the Victorian child protection system. Aboriginal children, young people, their families and carers are encouraged to participate in the Inquiry and culturally appropriate support will be provided.

The Commission is also interested in hearing from people working in the broader service system about whether the changes have had any positive or negative impacts for children and young people.

SUBMISSIONS FROM CHILDREN AND YOUNG PEOPLE

The Commission particularly seeks and welcomes the involvement of children and young people in this Inquiry.

If you are a child or young person who has experienced the child protection system, you can be involved in making a submission by:
- making a short video
- providing a drawing or artwork
- writing a letter or email
- meeting with staff from the Commission to make your submission in person (you can bring a support person with you).

All children and young people taking part in the Inquiry will be provided with support and assistance. The Commission will make sure that you have access to a skilled counsellor.
FREQUENTLY ASKED QUESTIONS

HOW WILL INFORMATION IN MY SUBMISSION BE USED?

Submissions are being sought to inform the Inquiry’s evidence base and give additional context to the data.

Following the completion of this Inquiry, the Commission will prepare a written report that contains findings and recommendations that may refer to information received in submissions. The Commission will provide the report to the Minister for Families and Children.

Please indicate clearly at the beginning of your submission if you do not consent to the information from your submission being used by the Commission in the Inquiry report. If you want some of your submission to be confidential, please put that part on a separate page.

The Commission will not include in the Inquiry report any material which has been accepted on a confidential basis.

If you have concerns about confidentiality, please discuss this with the Commission before you make a submission.

HOW TO MAKE A SUBMISSION

Submissions can be made in writing to submissions@ccyp.vic.gov.au or in person to the Commission.

For more information or for help in making a submission, please contact:

Fiona Fyffe  
Principal Policy Adviser  
03 9032 3224

or

Megan Pearce  
Principal Policy Adviser  
03 9032 3214

SUBMISSIONS CLOSE ON MONDAY 14 NOVEMBER 2016
INTRODUCTION

The Hon Jenny Mikakos, Minister for Families and Children, has recommended the Commission for Children and Young People conduct an inquiry into the implementation of amendments made by the Children, Youth and Families Amendment (Permanency Care and Other Matters) Act 2014 (Permanency Amendments Inquiry). It was recommended that the Inquiry commence on 1 September 2016, six months after the amendments took effect.

The amendments made significant changes to the Children, Youth and Families Act 2005 (CYFA). These changes affect the way Victoria’s child protection system operates. In particular, the changes seek to ensure that decisions about the care of vulnerable children are made in a timely way, and promote permanency of care arrangements.¹

Permanency of care is defined in the Inquiry’s terms of reference as an enduring care arrangement for a child that promotes the child’s safety, development and sense of belonging. For most children, this will be in the care of one or both parents. However, for some children, a permanent or ongoing out-of-home care placement is required to ensure their safety and wellbeing.

Throughout this consultation paper, these changes will be referred to as the permanency amendments.

The Commission for Children and Young People

The Commission for Children and Young People (the Commission) comprises the Principal Commissioner for Children and Young People, Ms Liana Buchanan, and the Commissioner for Aboriginal Children and Young People, Mr Andrew Jackomos PSM.

The Commission is an independent statutory body established to promote improvement and innovation in policies and practices relating to the safety and wellbeing of Victorian children and young people, with a particular focus on vulnerable children and young people.

The Commission achieves this mandate through:

- providing independent oversight of services for children and young people, particularly those in out-of-home care, child protection and youth justice
- advocating for improved policy, program and service responses to children and young people
- supporting organisations that work with children and young people to prevent abuse and ensuring those organisations have child safe practices
- bringing the experiences of children and young people to the attention of government and the community
- promoting the rights, safety and wellbeing of children and young people.

¹ Victoria, Parliamentary Debates, Legislative Assembly, 7 August 2014, 2658 (Mary Wooldridge).
INTRODUCTION

TERMS OF REFERENCE

The Inquiry’s terms of reference ask it to examine the evidence to determine how well the permanency amendments are meeting their objectives, including early indications about the impact of the changes on outcomes achieved for children and their families and any unintended consequences.

The Inquiry will consider:

- the impact of the permanency amendments on vulnerable children and their families
- whether the permanency amendments are leading to more timely permanent outcomes, including family preservation and family reunification for vulnerable children, and more timely outcomes for children for whom it is unsafe to return to the care of a parent
- whether the permanency amendments have strengthened cultural supports and planning for Aboriginal children in out-of-home care
- the impact of the permanency amendments on child protection and other services
- whether any unintended consequences can be directly attributed to the permanency amendments
- barriers that prevent permanent care orders being made.

The Inquiry’s full terms of reference are at Appendix 1.

THE INQUIRY PROCESS

In conducting the Inquiry, the Commission will analyse relevant data and information, review a sample of cases, consult with key stakeholders in both metropolitan and regional Victoria, and consider submissions from stakeholders, including members of the public.

This consultation paper provides a background to the permanency amendments and a description of the main changes that have occurred. Questions appear throughout, and a full list of questions can be found at Appendix 2. This consultation paper is designed to guide submissions and formal consultations. The Commission also welcomes general comments on the impacts of the permanency amendments.

Submissions will be open until 14 November 2016.

The Inquiry is expected to provide a report to the Minister for Families and Children by March 2017.

LEGAL FRAMEWORK FOR THE INQUIRY

Permanency of care and the best interests of the child

The focus of the Commission’s Inquiry will be the outcomes for children. The best interests of the child should be the paramount consideration for all decisions about children. This principle is well established in Australian and international law.²

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The CYFA states that, when determining whether a decision or action is in a child’s best interests, the following must always be considered:

- the need to protect the child from harm
- the need to protect the child’s rights
- the need to promote the child’s development.  

The CYFA also includes a detailed list of additional factors to be taken into account, such as:

- the need, in relation to Aboriginal children, to protect and promote their Aboriginal cultural and spiritual identity and development by maintaining and building their connections to their Aboriginal family and community
- the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society
- that intervention into the relationship between a child and parent should be limited to the extent necessary to secure the safety and wellbeing of the child
- giving appropriate weight to the child’s wishes
- that a child should only be removed from their parents where there is an unacceptable risk of harm to the child
- contact arrangements between the child, their parents, siblings and other significant people.

Notably, the permanency amendments changed the best interests principle to reflect a greater emphasis on permanency and timely decision making. In particular, the requirement to take into account the desirability of ‘continuity and stability’ was changed to ‘continuity and permanency’.  

In addition, another factor was added: the desirability of making decisions as quickly as possible and the possible harmful effect of delay.  

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3 CYFA s 10(2).
4 CYFA s 10(3). This is not a complete list; there are 18 factors in total.
5 CYFA s 10(3)(f).
6 CYFA s 10(3)(fa).

Protecting and promoting children’s human rights

The best interests principle requires the rights of the child to be protected. Therefore, the Commission will be also guided by human rights instruments, in particular the Convention on the Rights of the Child and the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter).  

The Convention on the Rights of the Child states, relevantly, that:

- children have the right to be protected from physical and mental violence, injury or abuse, neglect or exploitation
- children have a right, as far as possible, to know and be cared for by their parents
- children should not be separated from their parents against their will, unless this decision has been made by the appropriate authorities and subject to review by a court
- children separated from their parents have a right to maintain a relationship and contact with their parents, unless it is not in their best interests
- children have the right to express their views about matters affecting them and for those views to be taken into account, in particular in court proceedings
- Aboriginal children have the right, in community with other members of their group, to enjoy their culture
- children have the right to preserve their identity, including their nationality, name and family identity.

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8 Ibid. art 19. Protective measures should provide for social programs to support children and those who care for them, as well as other forms of prevention through reporting and investigation and court involvement, art 19(2).
9 Ibid. art 7(1).
10 Ibid. art 9(1).
11 Ibid. art 9(3).
12 Ibid. art 12.
13 Ibid. art 30.
14 Ibid. art 8.
All of the human rights in the Charter apply to children and their families. Several are particularly relevant to this Inquiry:

- everyone has the right to enjoy their human rights without discrimination
- families are a fundamental unit in society and are entitled to be protected by society and the state
- children have the right, without discrimination, to the protection that is necessary and that is in their best interests
- Aboriginal people must not be denied the right, with members of their community, to enjoy their identity and culture, and to maintain their kinship ties, their language and their distinctive relationship with land, waters and other resources.\textsuperscript{15}

\textsuperscript{15} Charter, ss 8, 17(1), 17(2) and 19(2) respectively.
The permanency amendments were a response to some of the findings and recommendations made by the Protecting Victoria’s Vulnerable Children Inquiry (PVVCI). The PVVCI commenced in January 2011, following reviews of aspects of Victoria’s child protection system by the Victorian Ombudsman, the Victorian Law Reform Commission and the Victorian Auditor-General. The PVVCI found that, despite these reviews and increased investment in child protection, there was no discernible improvement in outcomes for children in out-of-home care.¹⁶

A key finding of the PVVCI was that too many children were exposed to additional trauma caused by uncertainty in their care arrangements:

‘the current average time taken for permanent care orders to be granted, when this is necessary to ensure a child’s safety and wellbeing, is too long. On average, it is five years between a child’s first report and a permanent care order’.¹⁷

The PVVCI made 90 recommendations, aimed at generating a ‘transformational shift’ in the role of statutory child protection services.¹⁸ Of these recommendations, four are particularly relevant to the permanency amendments:

- the simplification of Children’s Court orders
- focusing the Children’s Court’s role on a narrower range of matters
- simplifying case planning processes
- examining delays in achieving permanency for children.¹⁹

Subsequently, the Department of Health and Human Services (the department) commenced the Stability Planning and Permanent Care Project, which examined barriers in achieving permanency for children in out-of-home care.²⁰ This project also informed the permanency amendments. Identified barriers to achieving permanency included:

- inadequate case planning processes, unmet timeframes and a lack of clarity about intended outcomes
- problems with the child protection workforce (high case loads, multiple changes of workers, practitioner skills and knowledge) resulting in delays in service provision
- a lack of services available to support carers responding to the complex level of need of children in permanent care placements
- poor compliance with legislative requirements for cultural support planning for Aboriginal children
- deficits in the Aboriginal Family-Led Decision-Making (AFLDM) model leading to delayed outcomes for Aboriginal children
- disparate views about the appropriateness of permanent care case plans for Aboriginal children
- delays encountered by contested cases in the Children’s Court

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¹⁷ Ibid. Finding 4.
¹⁸ Ibid. p. xxviii.
¹⁹ Victoria, Parliamentary Debates, Legislative Assembly, 7 August 2014, 2657 (Mary Wooldridge).
REDUCING BARRIERS TO PERMANENCY

- a number of deterrents to prospective permanent carers, such as:
  - perceived deficits in the amount of support available to existing permanent carers
  - the perception that contact conditions on permanent care were inflexible, potentially expensive to resolve through future applications to the court.

Against this background, the permanency amendments aim to achieve their objective of ensuring timely permanent care arrangements by:

- requiring case planning to commence when the child’s need for protection is substantiated, and for case plans to contain a clear permanency objective at this early stage

- introducing timeframes for family reunification. Children must be reunified with their family within 12 months of being in out-of-home care, with the possibility of a 12-month extension if there is compelling evidence that permanent reunification is likely to be achieved in that time.

Where reunification cannot be achieved in that timeframe, the permanency objective is changed by the department to permanent or long-term out-of-home care and another order must be made by the Children’s Court, such as a care by Secretary order, a permanent care order, a long-term care order, or an order for adoption.

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27 JAN 2012
The report of the Protecting Victoria’s Vulnerable Children Inquiry (PVCCI) is presented to the then Minister for Community Services. It is tabled in parliament on 28 February 2012.

AUG 2012
The department commences the Stability Planning and Permanent Care Project, in response to recommendations made by the PVCCI.

6 AUG 2014
The former government introduced the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill.

SEP 2014
The Stability Planning and Permanent Care Project is completed.

2 SEP 2014
The Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014 is passed.

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21 According to the department’s Child Protection manual, in exceptional circumstances a family reunification permanency objective may be possible for some children on care by Secretary orders, in situations where the department assesses that successful reunification can be achieved in a timely way and is in the child’s best interests. Such an assessment does not involve Children’s Court oversight.
• simplifying the range of Children’s Court orders and putting in place restrictions on the length of certain orders
• changing the provisions regarding contact conditions
• expanding the range of matters to be taken into account by the Children’s Court, in order to ensure timely decisions and a focus on permanency
• requiring all Aboriginal children placed in out-of-home care to have a cultural support plan prepared when they are first placed in care.22

Not all of the permanency amendments appear to have originated from the recommendations made by the PVCCI or the Stability Planning and Permanent Care Project. A timeline of the development of the permanency amendments is above.

22 Victoria, Parliamentary Debates, Legislative Assembly, 7 August 2014, 2658-60 (Mary Wooldridge).
CASE PLANNING

A case plan must be prepared for all children identified as being in need of protection. Case plans include all significant decisions that are made by the department about the care and wellbeing of the child. The permanency amendments aim to encourage timelier case planning and a greater emphasis on permanency in the case planning phase.

TIMELINESS

The permanency amendments require case planning to start at the time the child is identified as being in need of protection (known as ‘substantiation’). Before the permanency amendments were introduced, the CYFA did not require a case plan to be prepared until after a final order was made.

CULTURAL SUPPORT REQUIREMENTS

All Aboriginal children placed in out-of-home care must have a case plan that addresses their cultural support needs. Case plans must:

- reflect and be consistent with the child’s cultural support needs
- maintain and develop the child’s Aboriginal identity and encourage the child’s connection to their Aboriginal community and culture.

In addition, the department must provide each Aboriginal child in out-of-home care with a cultural plan that aligns with their case plan.

Before the permanency amendments, the department was only required to prepare a cultural plan for an Aboriginal child placed on a guardianship to Secretary order or a long-term guardianship to Secretary order. Both of these orders gave the department parental responsibility for children, including Aboriginal children.

PERMANENCY OBJECTIVES HIERARCHY

Under the permanency amendments, all case plans must include a permanency objective. These objectives are to be considered in the following order, depending on the best interests of the child:

- family preservation – aims to ensure that a child who is in the care of a parent remains in the care of a parent
- family reunification – aims to return a child who is in out-of-home care to the care of their parent
- adoption – aims to place the child for adoption under the Adoption Act 1984 (Vic), preferably with a suitable family member or other person of significance to the child
- permanent care – aims to arrange a permanent placement for the child with a permanent carer or carers, preferably a suitable family member or other person of significance to the child

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23 CYFA s 168(1).
24 CYFA s 166.
25 CYFA s 176(1).
26 CYFA s 176(3).
27 CYFA s 176(2).
28 CYFA s 167(3).
• long-term out-of-home care – aims to place the child in a long-term care arrangement with a specified carer or carers, preferably a suitable family member or other person of significance to the child.²⁹

There are restrictions on when family reunification can be pursued as a permanency objective. Case plans should not aim for family reunification if the child has been in out-of-home care for more than 12 months and is unlikely to be reunified with their family in the next 12 months.³⁰ For these children, case plans should aim for, in order of preference as determined to be appropriate in the best interests of the child, adoption, permanent care, or long-term out-of-home care.

There have been no adoption orders made since the permanency amendments have been introduced.³¹

CONSULTATION QUESTION 1
Please provide any information about the impact of the permanency amendments that will help the Commission undertake its Inquiry. The Commission encourages you, wherever possible, to refer to examples or case studies in your responses.

Have there been any positive impacts as a result of changes to case planning processes? If so, what are they?

Have there been any negative impacts? If so, what are they?

In responding, please consider addressing:
• the capacity of the child protection workforce to develop and implement case plans
• the capacity of the AFLDM model in supporting decision making for Aboriginal children
• who, in practice, is preparing the case plan
• how case plans are prepared and whether families and children contribute to their development
• the timeliness of decisions made as part of case planning
• the practical operation of the hierarchy of the permanency objectives
• the adequacy of cultural support plans for Aboriginal children, and how those plans are evaluated and implemented
• the role of Aboriginal Community Controlled Organisations in the development and implementation of cultural support plans for Aboriginal children
• the nature and adequacy of oversight of the process for reviewing case plans, including its timeliness and effectiveness.

²⁹ CYFA s 167(1) (2).
³⁰ CYFA s 167(4).
³¹ Data provided to the Commission from the department, September 2016.
KEY CHANGES TO PROTECTION ORDERS

The permanency amendments introduced a different set of protection orders. They were intended to simplify the range of protection orders available, and align them with the permanency objectives identified in the case planning phase. Table 1 sets out the new protection orders and how they relate to the previous orders. Key changes shown in this table are discussed in more detail below.

PARENTAL RESPONSIBILITY

Before the permanency amendments, the CYFA distinguished between custody and guardianship. Custody was defined as the right to have, and make decisions about, the daily care and control of the child. Guardianship was defined as being responsible for the long-term welfare of the child, excluding matters relating to the daily care and control of the child.

The permanency amendments removed this distinction and replaced it with the concept of parental responsibility. Parental responsibility means the duties, powers and responsibilities that parents generally have in relation to their children. It does not distinguish between day-to-day care and long-term welfare.

Of the five final protection orders now available, only family preservation orders (which do not involve the removal of the child) allow parents to retain parental responsibility.

Family reunification orders allow parents responsibility for ‘major long-term issues’, although this term is not defined in the CYFA. Before the permanency amendments, five of the seven final protection orders allowed parents to retain guardianship (that is, make decisions affecting the long-term welfare of the child).

CONSISTENCY BETWEEN CASE PLANNING OBJECTIVES AND PROTECTION ORDERS

The new orders align with the case planning permanency objectives and are named to reflect the intention of this objective. This change was aimed at addressing situations where the conditions attached to protection orders were inconsistent with the case plan.

32 CYFA sch 5, ss 3–4. See also Department of Health and Human Services, Child Protection Manual, ‘What changes have been made to court orders?’ (last updated 1 April 2016). Table 1 captures the key changes relevant to this review. It is not an exhaustive outline of all the changes.

33 CYFA s 5 (repealed by Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 s 5).

34 CYFA s 6 (now repealed).

35 CYFA s 3 (definitions).


37 Victoria, Parliamentary Debates, Legislative Assembly, 7 August 2014, 2658 (Mary Wooldridge). See also Department of Health and Human Services, Stability Planning and Permanent Care Project 2013–14: Final Report, p. 72, finding that one barrier to timely permanency resolution was ‘protection orders and conditions that were inconsistent with the case plan direction, and which left families and professionals unclear as to what was required of them’.
<table>
<thead>
<tr>
<th>TABLE 1: CHANGES TO PROTECTION ORDERS</th>
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<tbody>
<tr>
<td><strong>BEFORE PERMANENCY AMENDMENTS</strong></td>
</tr>
<tr>
<td><strong>INTERIM ACCOMMODATION ORDER</strong></td>
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<tr>
<td>• an order of up to 21 days in duration that specifies where a child will live</td>
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<tr>
<td>• may include conditions.</td>
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<tr>
<td><strong>INTERIM PROTECTION ORDER</strong></td>
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<tr>
<td>• three-month orders that allow a proposed care arrangement to be tested.</td>
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<tr>
<td><strong>SUPERVISION ORDER</strong></td>
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<tr>
<td>• the department has responsibility for supervising the child</td>
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<tr>
<td>• custody and guardianship remain with the parents</td>
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<td>• may include conditions</td>
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<tr>
<td>• may be for 12 months, or, in special circumstances, up to two years</td>
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<tr>
<td>• extensions allowed for up to two years.</td>
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<tr>
<td><strong>AFTER PERMANENCY AMENDMENTS</strong></td>
</tr>
<tr>
<td><strong>INTERIM ACCOMMODATION ORDER</strong></td>
</tr>
<tr>
<td>• essentially unchanged; however, the Children’s Court cannot make an interim accommodation order if a protection order or a permanent care order could be made instead.</td>
</tr>
<tr>
<td><strong>FAMILY PRESERVATION ORDER</strong></td>
</tr>
<tr>
<td>• has the same key features as the supervision order</td>
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<tr>
<td>• may include conditions.</td>
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</tbody>
</table>
### Key Changes to Protection Orders

**Before Permanency Amendments**

- **Custody to Third Party Order**
  - Custody is with a third party, who cannot be the department or a community service.
  - Guardianship remains with the parents.
  - May include conditions, except conditions that involve the Secretary.
  - May be for up to 12 months.
  - Extensions allowed (no guidance provided).

- **Supervised Custody Order**
  - Same key features as a custody to third party order, except that it must provide that, while in force, the Secretary can direct that the child be returned to their parents.
  - Extensions allowed for up to two years; however, the Children’s Court must be satisfied that family reunification is still achievable.

- **Custody to Secretary Order**
  - With family reunification case planning objective and where the child has been in out-of-home care for less than two years.
  - Custody is with the department.
  - Guardianship remains with the parents.
  - May include conditions.
  - May be for up to 12 months.
  - Restrictions:
    - If order is in place for more than 12 months and the Children’s Court is satisfied that there is no likelihood of family reunification, the court may extend the order for 12 months and direct the department to find someone to have custody, or custody and guardianship of the child.
    - Extensions allowed, having regard to the appropriateness of making a permanent care order, and the benefits of the child remaining in the custody of the department.
      - For orders in place for less than 12 months, a further 12 months is permitted.
      - For orders in place for more than 12 months, a further two years is permitted.

**After Permanency Amendments**

- **Family Reunification**
  - The department has parental responsibility, although parents retain responsibility for decisions about major long-term issues.
  - May include conditions.
  - Restrictions:
    - If the child has been in out-of-home care for less than 12 months, the initial order must not mean the child is in out-of-home care for more than 12 months in total.
    - If the child has been in out-of-home care for more than 12 months, the initial order must not mean the child is in out-of-home care for more than 24 months in total.
  - Extensions allowed, only if the Children’s Court is satisfied that:
    - There is compelling evidence that it is likely the parent will resume care during the period of the extension.
    - The extension will not mean the child is in out-of-home care for more than 24 months in total.

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**Table 1: Changes to Protection Orders continued**

<table>
<thead>
<tr>
<th>Before Permanency Amendments</th>
<th>After Permanency Amendments</th>
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</thead>
<tbody>
<tr>
<td>Custody to Third Party Order</td>
<td>Family Reunification</td>
</tr>
<tr>
<td>• Custody is with a third party, who cannot be the department or a community service.</td>
<td>• The department has parental responsibility, although parents retain responsibility for decisions about major long-term issues.</td>
</tr>
<tr>
<td>• Guardianship remains with the parents.</td>
<td>• May include conditions.</td>
</tr>
<tr>
<td>• May include conditions, except conditions that involve the Secretary.</td>
<td>• Restrictions:</td>
</tr>
<tr>
<td>• May be for up to 12 months.</td>
<td>- If the child has been in out-of-home care for less than 12 months, the initial order must not mean the child is in out-of-home care for more than 12 months in total.</td>
</tr>
<tr>
<td>• Extensions allowed (no guidance provided).</td>
<td>- If the child has been in out-of-home care for more than 12 months, the initial order must not mean the child is in out-of-home care for more than 24 months in total.</td>
</tr>
<tr>
<td>Supervised Custody Order</td>
<td>• Extensions allowed, only if the Children’s Court is satisfied that:</td>
</tr>
<tr>
<td>• Same key features as a custody to third party order, except that it must provide that, while in force, the Secretary can direct that the child be returned to their parents.</td>
<td>- There is compelling evidence that it is likely the parent will resume care during the period of the extension.</td>
</tr>
<tr>
<td>• Extensions allowed for up to two years; however, the Children’s Court must be satisfied that family reunification is still achievable.</td>
<td>- The extension will not mean the child is in out-of-home care for more than 24 months in total.</td>
</tr>
<tr>
<td>Custody to Secretary Order</td>
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### Before Permanency Amendments

<table>
<thead>
<tr>
<th>Custody to Secretary Order</th>
<th>Guardianship to Secretary Order</th>
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</thead>
</table>
| (where ongoing out-of-home care is required or the child has been in out-of-home care for two years or more) | • custody and guardianship are with the department  
• no conditions  
• may be for up to two years  
• restrictions:  
  – if order is in place for more than 12 months and the Children’s Court is satisfied that there is no likelihood of family reunification, the court can extend for 12 months and direct the department to find someone to have custody, or custody and guardianship of the child  
  • extensions allowed, having regard to the appropriateness of making a permanent care order, and the benefits of the child remaining in the custody and guardianship of the department  
  – for orders in place for less than 12 months, a further 12 months is permitted  
  – for orders in place for more than 12 months, a further two years is permitted. |

### After Permanency Amendments

<table>
<thead>
<tr>
<th>Care by Secretary Order</th>
<th>Long-Term Guardianship to Secretary Order</th>
<th>Long-Term Care Order</th>
</tr>
</thead>
</table>
| parental responsibility with the department  
• no conditions  
• may be for up to two years, and cease when the child turns 18  
• extensions allowed, but only if the Children’s Court is satisfied that first, a permanent care order is not appropriate, or second, a long-term care order is not appropriate. No time limit is specified. | • can only be made for a child over 12 years of age  
• custody and guardianship are with the department  
• no conditions  
• may be in place until the child turns 18  
• extensions unnecessary. | • can be made for all children  
• parental responsibility with the department  
• no conditions  
• remains in place until the child turns 18  
• extensions unnecessary. |
KEY CHANGES TO PROTECTION ORDERS

ABOLITION OF INTERIM PROTECTION ORDERS

Interim protection orders are no longer available. When the permanency amendments were introduced, this change was described as necessary because, in practice, these orders were not effective in testing a course of action and resolving how to proceed. Rather, they contributed to delays and did not help contested proceedings settle.

TIMEFRAMES ON FAMILY REUNIFICATION

There are restrictions on when the Children’s Court can make a family reunification order and the duration of the order.

For children who have been in out-of-home care for less than 12 months, the Children’s Court cannot make a family reunification order that results in the child being in out-of-home care for more than 12 months in total. For example, if a child has been in out-of-home care for a period of eight months, then the Children’s Court can only make a family reunification order for a period of four months or less.

Similarly, if a child has been in out-of-home care for more than 12 months but less than two years, the Children’s Court cannot make a family reunification order that means the child is in out-of-home care for more than two years.

In addition, family reunification orders can only be extended when the Children’s Court is satisfied there is compelling evidence that the child will return to their parent’s care during the period of the extension, and the child will not be out-of-home care for more than two years in total.

It is worth noting that, before the permanency amendments, the CYFA provided guidance about extending protection orders when there was no likelihood of the child being reunited with their parents. In these circumstances, the Children’s Court could extend a custody to Secretary order or a guardianship to Secretary order by 12 months and direct the department to find someone willing to care for the child in that period.

This section has been repealed.

CONDITIONS

There are now fewer circumstances in which the court can impose conditions on protection orders. The ability of the Children’s Court to impose conditions on orders is discussed in the next section.

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38 Victoria, Parliamentary Debates, Legislative Assembly, 7 August 2014, 2659 (Mary Wooldridge).
39 op. cit.
40 CYFA s 287A(2). For the purposes of calculating this timeframe, a child is in out-of-home care if they are subject to an interim accommodation order, a family reunification order, a care by Secretary order, a long-term care order, or a therapeutic treatment order: s 287A(1). Children in out-of-home care as a result of a child care agreement, a family preservation order or any period that the child is being cared for by a parent under an interim accommodation order are expressly excluded: s 287A(4).
41 CYFA s 294A(1).
42 CYFA s 297 (now repealed).
CONSULTATION QUESTION 2

Please provide any information about the impact of the permanency amendments that will help the Commission undertake its Inquiry. The Commission encourages you, wherever possible, to refer to examples or case studies in your responses.

Have there been any positive impacts as a result of changes to the simplification of, and timeframes for, making protection orders? If so, what are they?

Have there been any negative consequences? If so, what are they?

In responding, please consider addressing:

• whether the new set of protection orders are leading to more timely permanent outcomes for children
• the impact of the change from guardianship and custody to parental responsibility
• the impact of the removal of interim protection orders
• the timeframes imposed on family reunification and any barriers to meeting these timeframes
• the provision of child protection and other services to children and families.
As noted previously, the permanency amendments have reduced the number of orders available. They have also resulted in fewer orders that allow the Children’s Court to attach conditions, and greater restrictions on the types of conditions that can be imposed.

**PROTECTION ORDERS**

**Transition to care by Secretary orders**

The permanency amendments provided that, from 1 March 2016, children on custody to Secretary orders who had been in out-of-home care for two years or more were automatically transferred to a care by Secretary order. There are no conditions attached to a care by Secretary order. This differs from the former custody to the Secretary order that allowed for the provision of conditions that the Children’s Court considered to be in the best interests of the child, such as contact between the child and their parents.

Children on former custody to Secretary orders who had been in out-of-home care for less than two years with a permanency objective to be reunited with their parents were transitioned to a family reunification order. Family reunification orders do allow conditions to be imposed.

**Naming of carers**

Family reunification orders and care by Secretary orders do not require the Children’s Court to name the child’s carer on the order. This differs from the situation before the permanency amendments, where custody to third party orders and supervised custody orders allowed the Children’s Court to specify on the order who would care for the child while they were in out-of-home care.

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43 This was achieved by part 2 of schedule 5 of the CYFA.

44 CYFA s. 300A.

45 CYFA s 321(1)(d), (1A).

**Varying conditions on family reunification orders without notice**

The department can now apply to vary the conditions of a family reunification order without notifying the child or the parents, if it is satisfied that:

- there has been an unexpected change in circumstances
- the application is necessary for the safety and wellbeing of the child.

This was not possible before the permanency amendments.

**PERMANENT CARE ORDERS**

**Contact with parents**

Before the permanency amendments, permanent care orders had to include conditions that the Children’s Court considered were in the child’s best interest about a child’s contact with their parents. However, the frequency of such contact was at the discretion of the court.

Following the permanency amendments, conditions about a child’s contact with their parents are no longer required. If conditions are included about contact, they can provide for contact up to four times each year. Additional contact can be ‘…arranged from time to time by agreement in the child’s best interests’.
Parents cannot apply to vary the contact conditions in the first 12 months of the permanent care order, except ‘on the basis that a contact condition in the order has not been complied with’. However, after the first 12 months of the order, parents can seek the court’s permission to apply to vary the condition concerning contact.

**Aboriginal children**

A permanent care order can be made for an Aboriginal child to be placed with a non-Aboriginal person in situations where:

- no suitable placement can be found with an Aboriginal person
- the decision to seek the order has been made in consultation with the child (where appropriate)
- the Secretary is satisfied that the order will accord with the Aboriginal Child Placement Principle
- the Children’s Court has received a report from an Aboriginal agency recommending that the order be made.

These requirements have not changed from the earlier version of the CYFA.

The CYFA now more clearly specifies that a permanent care order for an Aboriginal child cannot be made unless a cultural plan has been prepared. The earlier version of the CYFA permitted discretion about the provision of a cultural plan.

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46 CYFA s 326(1B).
47 CYFA s 327(2).
48 CYFA s 323(2)(b).

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**CONSULTATION QUESTION 3**

Please provide any information about the impact of the permanency amendments that will help the Commission undertake its Inquiry. The Commission encourages you, wherever possible, to refer to examples or case studies in your responses.

Have there been any positive outcomes as a result of changes to conditions that can be attached to protection orders and permanent care orders? If so, what are they?

Have there been any negative consequences? If so, what are they?

In responding, please consider addressing:

- how conditions about contact are operating, and/or how they should operate
- the effect of carers no longer being named in orders
- whether and when family reunification orders are being varied without notice
- the adequacy and implementation of conditions to support Aboriginal children on permanent care orders.
THE ROLE OF THE CHILDREN’S COURT

Changes brought in by the permanency amendments have limited what matters the Children’s Court can consider when determining whether to make a protection order, and its powers in making orders and attaching conditions. Some of these changes have already been discussed, in particular, the limits on when the court can make a family reunification order and the ability of the court to attach conditions to protection orders. In addition, in certain circumstances, the CYFA specifies or restricts what the Children’s Court must take into account before making protection orders.

ADVICE FROM THE SECRETARY
Section 276A was inserted into the CYFA by the permanency amendments. It requires the Children’s Court to consider ‘advice from the Secretary’ about the following matters when deciding to make a protection order:
- the objectives of the case plan
- if the child has siblings aged under 18, the arrangements for those siblings
- the age of the child and the period of time the child has spent in out-of-home care.

When deciding whether to make a protection order that gives the department parental responsibility for the child, the Children’s Court must consider ‘advice from the Secretary’ about:
- the likelihood that the parent will permanently resume care of the child during the term of the protection order
- the outcome of any earlier attempts to reunify any child with the parent of the child
- whether the parent of the child has previously had another child permanently removed
- the benefits to the child of making a care by Secretary order ‘to facilitate alternative arrangements for the permanent care of the child’ if:
  - the child has been in out-of-home care for 12 months
  - it is not realistic for the child to be safely returned to the parent’s care within the next 12 months
  - the child is not already in a permanent care arrangement
- the desirability of making a permanent care order.

RESTRICTIONS ON PROTECTION ORDERS
All reasonable steps to provide services
Section 276 of the CYFA prohibits the Children’s Court from making a protection order unless it is satisfied ‘that all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the care of the child’s parent’. 49

This provision was initially repealed by the permanency amendments, but was reinstated in November 2015. 50

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49 CYFA s 276.
Interim accommodation orders

The permanency amendments have also restricted when the Children’s Court can make an interim accommodation order. Interim accommodation orders:

- set out where a child lives until a final protection order is made
- cannot be longer than 21 days (although a new interim accommodation order can be made after the expiration of a previous one)
- can contain conditions about contact with a child’s parents.\(^{51}\)

An interim accommodation order must not be made if the court considers that a protection order or a permanent care order ‘could be made’.\(^{52}\) There is no additional legislative guidance about what factors might be relevant to this determination.

CONSULTATION QUESTION 4

Please provide any information about the impact of the permanency amendments that will help the Commission undertake its Inquiry. The Commission encourages you, wherever possible, to refer to examples or case studies in your responses.

Have there been any positive impacts as a result of changes to matters that the Children’s Court can consider when making protection orders?
If so, what are they?

Have there been any negative consequences? If so, what are they?

In responding, please consider addressing:

- whether the permanency amendments have reduced delays in the Children’s Court, leading to more timely outcomes for children
- whether more timely permanent outcomes for children are resulting from the requirement that the Children’s Court:
  - consider advice from the Secretary
  - is satisfied that all reasonable steps have been taken to provide services to allow a child to remain in the care of their parent
- the restrictions on making interim accommodation orders when a protection order or permanent care order could be made
- barriers, if any, that prevent the Children’s Court from making permanent care orders.

\(^{51}\) CYFA ss 262–3.
\(^{52}\) CYFA s 262(5A).
Some barriers to achieving more timely permanent outcomes for children that were identified by the department’s Stability Planning and Permanent Care Project have not been specifically addressed by the permanency amendments.53

These barriers include:

- the lack of resources and support provided to equip permanent carers to meet the complex needs of children in out-of-home care
- shortfalls in the capacity, skills and knowledge within the child protection and service sector workforce and inconsistency of staffing practices to deliver timely and appropriate interventions and services
- different opinions about the appropriateness of pursuing permanent care case plans for Aboriginal children.

This final barrier is particularly large, given the disproportionately longer period that Aboriginal children spend in out-of-home care, and the fact that Aboriginal children are over-represented in out-of-home care.

The Victorian Government has taken some steps to address these concerns. For example, funding has been announced to support cultural planning for Aboriginal children in out-of-home care, to assist Aboriginal organisations to manage more kinship care placements, and to recruit Aboriginal foster carers.54 In addition, the government’s Roadmap for Reform involves investments in Victoria’s child protection system, such as funding for additional support to kinship, foster and permanent care placements.55 Resources have also been allocated for permanency teams for 12 months to support implementation across the child protection program, with a position also located at the Victorian Aboriginal Child Care Agency.

The Commission is keen to understand how remaining policy and practice issues are being addressed to overcome delays in achieving permanency for children.

55 Department of Health and Human Services, Roadmap for Reform (Melbourne: Victorian Government Department of Health and Human Services, 2016), p. 34.
CONSULTATION QUESTION 5

Please provide any comments about the impact of the permanency amendments that will help the Commission in its Inquiry. The Commission encourages you, wherever possible, to refer to examples or case studies in your responses.

To what extent do practical barriers to achieving timely, permanent outcomes for children still exist?

In responding, please consider the following:

- if any of the barriers identified above have been or are being addressed
- any new or additional barriers that contribute to delays in achieving permanency for children
- any observable improvements in service provision and support for children, families and carers since 1 March 2016
- whether kinship carers and foster carers are more inclined to consider permanent care of a child following the permanency amendments, and any factors that influenced this decision
- any steps taken to resolve the differing views about the appropriateness of permanent care case plans and permanent care orders for Aboriginal children.
APPENDIX 1:

TERMS OF REFERENCE

Inquiry into the permanency amendments
Proposed scope

Purpose

An independent inquiry into the permanency changes arising from the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (the Amendment Act) will commence on 1 September 2016, six months after the amendments came into effect.

The inquiry will be undertaken by the Commission for Children and Young People on the recommendation of the Minister for Families and Children pursuant to section 38 of the Commission for Children and Young People Act 2012.

The inquiry will specifically examine the evidence at this early stage and consider whether the legislated amendments are improving permanency for children and young people involved with child protection who are the subject of this inquiry. The inquiry will consider whether there have been any unintended consequences directly attributable to these changes.

The views of stakeholders on how the changes have impacted on children and their families will be sought to inform the evidence base and give additional context to the data.

Background

The Amendment Act provides the foundation for a new approach to the policies, practices and procedures governing child protection and other services to vulnerable children and families (permanency changes). The objectives of the permanency changes are:

- to drive improved focus on providing children subject to child protection intervention with timely and secure outcomes;
- to embed permanency planning principles in decision making for children in need of protection;
- to improve services to Aboriginal children and families through enhancing cultural support for all Aboriginal children in out of home care.

The changes arose from the findings and recommendations of the Protecting Victoria’s Vulnerable Children Inquiry (PVCLI) 2012. Key findings of the PVCLI relevant to the Amendment Act included:

- it takes, on average, over five years from a report being received to a child being placed on a permanent care order and that this is too long and harmful to children;
- the range of Children’s Court orders should be simplified and their purpose clarified.

The PVCLI recommended identifying and addressing the barriers to achieving more timely permanency. In response, the Department of Health and Human Services undertook the Stability Planning and Permanent Care Project 2013-14. Key findings included:

- there is inconsistency between Children’s Court orders and department case plans leading to uncertainty and delays in decision making;
- the existing stability planning framework in the Act failed to achieve the timely decision-making intended;
- drift in case planning contributes to the longer periods of time taken to reach a decision that alternative permanent care is required, despite evidence that enduring reunification is unlikely to be achieved;
- lengthy delays accompanying contested court cases contribute to poor outcomes in children.

The inquiry will focus on using evidence and data to determine how effective the permanency changes have been in addressing these, and other barriers to achieving permanency for children and, in particular, improving timely decision making. Permanency refers to the achievement of an enduring care arrangement for a child that promotes the child’s safety, development, and sense of belonging. For most children this will be in the care of a parent.
However, for a smaller group of children a permanent or ongoing out-of-home care placement will be required to ensure their safety and wellbeing and sense of belonging. The permanency changes are intended to ensure these decisions are made as early as possible and within a timeframe that minimises the harm to a child’s development that may arise from lengthy periods in out of home care with uncertainty about future care arrangements.

The inquiry, committed to by Government in 2015, recognises the significance of these changes and the importance of ensuring they work in practice to improve outcomes for children and their parents.

Scope

The inquiry will examine the evidence to determine how well the permanency changes are meeting their objectives, including early indications about the impact of the changes on outcomes achieved for children and their families and any unintended consequences.

The inquiry will identify intended and unintended outcomes that are directly attributable to the permanency changes, and making recommendations based on those findings.

Proposed terms of reference

It is proposed the inquiry consider:

- Whether the amendments have had any direct impact on outcomes for vulnerable children families
- Whether the permanency amendments are leading to timelier permanent outcomes, including family preservation and family reunification for vulnerable children and for children for whom it is unsafe to return to the care of a parent
- Whether the permanency amendments have strengthened cultural supports and planning for Aboriginal children in out of home care
- What impact, if any, have the permanency amendments had on child protection and other services
- Whether there have been any unintended consequences directly attributable to the permanency amendments
- Barriers that prevent permanent care orders being made.

Timing and Content

The inquiry will commence on 1 September 2016 with a report delivered by 1 March 2017.

The inquiry will be informed by evidence and data and involve a number of components, allowing for stakeholder participation.


The following activities will inform the inquiry:

1. Collection and analysis of aggregate data, including but not limited to:

   - the time taken pre and post the amendments to achieve the permanency objective.
   - the number and types of child protection orders and permanent care orders made pre and post implementation of the amendments, including the number of revocations of orders
   - the number of new protection applications made on or after 1 March 2016, to address any issues associated with the transition to new orders
   - length of time taken for protection orders to be made pre and post implementation (time from protection application first hearing to protection order being made).
   - number and type of Children’s Court decisions appealed, applications for review by VCAT and internal case plan reviews requested of child protection pertaining to the permanency changes
   - any decisions made by the Children’s Court where reference is made to section 27(6)
   - number of cases adjourned for mention and the rationale for seeking the adjournment as well as the length of the adjournment
   - number of conciliation conferences held and the number adjourned pre and post implementation
   - number of children placed in out-of-home care who have been reunited with a parent(s)
APPENDIX 1: TERMS OF REFERENCE

- initial evidence about the duration of court processes and the proportion of cases contested or settled
- length of time children spend on interim orders in out-of-home care
- waiting lists for service provision to children and their parents intended to promote family preservation or family reunification, and how this impacts on achieving the permanency objective in a timely way
- number of changes in placements for children in out of home care pre and post implementation
- number of adoptions pre and post placement as a result of child protection intervention
- sample of case plans and court orders to examine alignment with legislative provisions
- compliance with the cultural support requirements in section 176 and number of Aboriginal children in out of home care with a cultural plan
- evidence of compliance with the AFLDM requirements as part of permanency planning.

All of the above data, apart from the last, will be provided for both Aboriginal children and non-Aboriginal children.

2. Consultation with critical stakeholders and collection of case examples that identify early indications of positive and negative impacts for children and their families, including:
   - children and their parents
   - the Children’s Court and legal professionals
   - carers including permanent carers
   - community service staff
   - Aboriginal community controlled organisations
   - DHHS child protection (divisional and central)
   - other stakeholders

3. Stakeholder submissions that examine the impact of the permanency changes, focusing on:
   - evidence of progress and positive outcomes achieved
   - evidence of obstacles to progress and any poor outcomes
   - identification of practice and policy changes that would support the permanency changes to function more effectively

The report

The report will focus on:
- findings about the effectiveness of the permanency changes since 1 March 2016 in achieving their objectives
- identified operational and implementation issues that have diminished the potential impact of the permanency changes
- identifying, and making recommendations to enhance the achievement of the objectives of the permanency changes and address any significant unintended consequences
- recommendations to support the department to monitor, measure and report on the effectiveness of the changes into the future.

Consistent with the provisions of the Commission for Children and Young People Act 2012, the report will be provided to the Minister and the Secretary to the Department of Health and Human Services. The Minister has indicated that the outcomes of the report will be made public.
APPENDIX 2: CONSULTATION QUESTIONS

Please provide any information about the impact of the permanency amendments that will help the Commission undertake its Inquiry. The Commission encourages you, wherever possible, to refer to examples or case studies in your responses.

CONSULTATION QUESTION 1

Have there been any positive impacts as a result of changes to case planning processes? If so, what are they?

Have there been any negative impacts? If so, what are they?

In responding, please consider addressing:
- the capacity of the child protection workforce to develop and implement case plans
- the capacity of the AFLDM model in supporting decision making for Aboriginal children
- who, in practice, is preparing the case plan
- how case plans are prepared and whether families and children contribute to their development
- the timeliness of decisions made as part of case planning
- the practical operation of the hierarchy of the permanency objectives
- the adequacy of cultural support plans for Aboriginal children, and how those plans are evaluated and implemented
- the role of Aboriginal community-controlled organisations in the development and implementation of cultural support plans for Aboriginal children
- the nature and adequacy of oversight of the process for reviewing case plans, including its timeliness and effectiveness.

CONSULTATION QUESTION 2

Have there been any positive impacts as a result of changes to the simplification of, and timeframes for, making protection orders? If so, what are they?

Have there been any negative consequences? If so, what are they?

In responding, please consider addressing:
- whether the new set of protection orders are leading to more timely permanent outcomes for children
- the impact of the change from guardianship and custody to parental responsibility
- the impact of the removal of interim protection orders
- the timeframes imposed on family reunification and any barriers to meeting these timeframes
- the provision of child protection and other services to children and families.
CONSULTATION QUESTION 3

Have there been any positive outcomes as a result of changes to conditions that can be attached to protection orders and permanent care orders? If so, what are they?

Have there been any negative consequences? If so, what are they?

In responding, please consider addressing:
- how conditions about contact are operating, and/or how they should operate
- the effect of carers no longer being named in orders
- whether and when family reunification orders are being varied without notice
- the adequacy and implementation of conditions to support Aboriginal children on permanent care orders.

CONSULTATION QUESTION 4

Have there been any positive impacts as a result of changes to matters that the Children’s Court can consider when making protection orders? If so, what are they?

Have there been any negative consequences? If so, what are they?

In responding, please consider addressing:
- whether the permanency amendments have reduced delays in the Children’s Court, leading to more timely outcomes for children
- whether more timely permanent outcomes for children are resulting from the requirement that the Children’s Court:
  - consider advice from the Secretary
  - is satisfied that all reasonable steps have been taken to provide services to allow a child to remain in the care of their parent
- the restrictions on making interim accommodation orders when a protection order or permanent care order could be made
- barriers, if any, that prevent the Children’s Court from making permanent care orders.

CONSULTATION QUESTION 5

To what extent do practical barriers to achieving timely, permanent outcomes for children still exist?

In responding, please consider the following:
- if any of the barriers identified above have been, or are being addressed
- any new or additional barriers that contribute to delays in achieving permanency for children
- any observable improvements in service provision and support for children, families and carers since 1 March 2016
- whether kinship carers and foster carers are more inclined to consider permanent care of a child following the permanency amendments, and any factors that influenced this decision
- any steps taken to resolve the differing views about the appropriateness of permanent care case plans and permanent care orders for Aboriginal children.
REFERENCES


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