



NSW Department of  
Community Services

## Permanency Planning Policy Executive Summary

This policy describes DoCS' approach to case planning to achieve stability and a sense of permanency for children and young people for whom DoCS has care responsibility.

The policy is based on extensive research on permanency planning for children and young people in out-of-home care, and emphasises the importance of a permanent and stable home for every child. If this cannot be achieved with the birth family, decisions about alternative long-term placements for such children must occur as early as possible. This is in line with the permanency planning sections of the *Children and Young Persons (Care and Protection) Act 1998*. A key aim is to avoid the detrimental impact on children of failed attempts at restoration with birth parents, unplanned multiple placements and drift in the care system. The current principles outlined in section 9 of the Act are currently being reviewed to ensure an appropriate focus on achieving permanency for children and young persons. A particular emphasis is under consideration indicating early consideration of restoration and where this is not possible or desirable, the provision of a long term, stable placement, including adoption.

The policy is based on early and informed decision making with regard to permanency and states that following removal of a child from their parents, **a decision about whether restoration of the child to their birth family is a realistic possibility (where appropriate) must not take longer than six (6) months for children under two years of age, and not longer than twelve (12) months for all other children and young persons.** Where restoration is the goal, appropriate resources should be directed to its achievement. If restoration is not considered a viable option for the child or young person, a permanency plan that identifies other suitable long-term placement options for the child or young person must be developed within these timeframes. This decision is based on assessment which takes into account the family's strengths, needs, culture, history, and the needs of the child. The assessment should be conducted openly and honestly with the birth family, the child and any other involved parties. Information collected in the assessment should be documented in a child's Care Plan when recommendations are made to the Children's Court regarding permanent care options.

The policy also emphasises the importance of contact between a child or young person and members of their family regardless of the permanent care option selected, and provides guidelines for determining levels of contact and reviews of contact arrangements.

In addition to the timeframes in relation to restoration of the child or young person to the birth family, the policy also reinforces the timeframes for placement reviews as set out in Section 150 of the *Children and Young Persons (Care and Protection) Act 1998* and the content of reviews as described in The Office of the Children's Guardian *Guidelines for a review of a child or young person pursuant to a court order*. For interim placements of four months or more, a placement review must be undertaken no later than four months after the making of the order. For final orders placing children and young people in out-of-home care, placement reviews must occur within two months of the order being made for children under two years of age, and within four months of the order being made for children over two years of age.

The importance of culture and religious ties are emphasised in the policy, particularly with regard to adherence to the Aboriginal placement principles. Where an Indigenous child or young person is to be placed in out-of-home care, all options within the child or young person's family (as defined in Aboriginal culture) should be explored. The policy also emphasises the importance of taking account of culture, language and religion and to preserve these as far as possible when considering the placement of children from culturally and linguistically diverse communities.



## Permanency Planning Policy

### 1. PURPOSE

This document describes DoCS' approach to case planning that will maximise achievement of stability and a sense of permanency for children and young persons for whom DoCS has care responsibility.

### 2. INTRODUCTION

#### 2.1 Why permanency planning is important

Permanency planning is based on the philosophy that every child has the right to a permanent and stable home, preferably with his or her own family. The primary focus of permanency planning is to prevent children drifting in care (Brydon, 2004).

Children and young people require a stable foundation from which their relationships, identity, values, and cultural awareness can develop. In most cases this should occur with their birth family. A stable foundation can also be provided to children and young people by way of a continuous and long-term placement including adoption. Stable long-term placements also allow children and young people to feel a sense of belonging and stability which provides for continuity of relationships in the family, school and other settings, and promotes attachments to caregivers (Emlen 1977).

Helping children to form secure attachments to caregivers through permanent placement helps fulfil their need for a relationship in which they are considered to be special and worthwhile. Research demonstrates that continuity of attachment ties is essential to the overall development of a young child, and that when children and young people are separated from their birth families, stable foundations must be re-established as soon as possible either with their birth family or with an alternative long-term family. A rupture of attachment ties is a traumatic event in a child's life, with major short-term and long-term consequences such as cognitive problems, psychological and behavioural problems, and delays in development (Gauthier et al, 2004, Fahlberg, 1982).

#### 2.2 Trends in numbers in out-of-home care

As at June 2004, there were 10,337 children and young people in care. The 2003/04 data is limited to the numbers of children and young people *in care*; no data are available on the numbers *entering care* during that period.

In 2002/2003, 4,382 children and young people entered care<sup>1</sup>, 571 of these children were babies less than one year of age, and approximately 45% were 0-5 years of age. During this same period, 1630 children and young people exited care (Taplin, 2005).

Of the 1630 children and young people who exited care during 2002/03, 17.4% had been in care for 2-4 years and 14.2% had been in care for 5 years or more. Of the children who had been in care for 2-4 years, 30.7% had 1 placement during this time, and 20.8% had 4 or more placements during this time. Of the children who had been in care for 5 years or more, 65.8% had 1 placement during this time and 14.3% had 4 or more placements (Department of Community Services, 2003).

### **2.3 Early decision making and permanency planning**

The trends in out-of-home care show that a number of children and young people experience short-term and multiple placements that can be disruptive and damaging to them.

There is considerable evidence to suggest early decision making about long-term placement, including restoration to family, results in better outcomes for children and young people, both in immediate terms and for life after care. Research shows that the timeframe for decision making is critical to the success of the stability of placements. This timeframe is particularly important for young children, as the first two years of a child's life have been identified as the most critical for the development of attachment relationships (Marvin & Britner, 1999).

Expert opinion is that for younger children, in particular, a decision about restoration should not take longer than six months. Similar timeframes have been recommended and or implemented in other jurisdictions in Australia<sup>2</sup>, the United Kingdom<sup>3</sup> and the United States<sup>4</sup>.

### **2.4 Intended outcomes of a stable, permanent placement**

Within a permanent placement, a child or young person should be able to:

- develop reciprocal strong relationships with the people who are providing their day to day care
- feel a sense of belonging as a member of the family/household
- develop trust in their relationships with others
- feel a part of a wider family, friendship and community network
- feel loved and valued for who they are
- experience continuity of culture, language and religion

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<sup>1</sup> Of the 4,382 children and young people who entered care during the year, these children entered care on 7,173 occasions (DoCS Annual Report 2002-2003).

<sup>2</sup> The Victorian Department of Human Services proposed policy on "*Concurrent and Permanency Planning for Children in Out-of-Home Care*" states that a decision about the likelihood of restoration of the child to the birth family should be made within 6 months of the child entering out-of-home care. The child must be permanently placed with either their birth family or a permanent care family by within 12 months of entering out-of-home care. Regular four-monthly reviews are held thereafter (Rodda, 2001).

<sup>3</sup> The United Kingdom's National Adoption Standards 2003 state that "*a plan for permanence should be made for each child within six months of being continuously looked after, and delivered promptly*".

<sup>4</sup> In the United States it is required by Federal legislation under *The Adoption and Safe Families Act of 1997* that a definitive permanency plan for the child must be made within a 12 month timeframe. Barbell, K. & Freundlich, M. (2001). *Foster Care Today*. Casey Family Programs, Washington D.C.

[www.casey.org/Resources/Archive/Publications/FosterCareToday.htm](http://www.casey.org/Resources/Archive/Publications/FosterCareToday.htm). – page 16. Accessed 17 February 2005.

- develop a knowledge and acceptance of their birth family and their personal life history
- expect that the placement will continue
- be supported as they grow up towards increasing independence
- have contact with the people who are significant to them
- understand and exercise their rights and responsibilities as a member of the family/household and in the community.

### **3. LEGISLATION**

The *Children and Young Persons (Care and Protection) Act 1998* requires that when a child or young person is unable to remain in the care of their parents, case planning must *actively* consider whether there is a realistic possibility of restoration to the child's birth parents, as a basis for making decisions about a child's future care arrangements to ensure permanence for the child or young person (Section 78(2)(b)(i)). This is to avoid the detrimental impact on children of failed attempts at restoration with birth parents, a drift in the care system and unplanned multiple placements. The emphasis of the legislation is on ensuring that children in out-of-home care are placed in a safe, nurturing and stable home environment, which is able to meet their long-term needs.

While the current principles outlined in section 9 of the Act refer to the need for children in out-of-home care to have a permanent placement, the principles generally do not provide specific focus on permanency planning (described in section 78A). The principles are currently being reworked to focus on the importance of early decision making and the provision of placement stability in a timely manner.

#### **3.1 Definition of permanency planning**

Section 78A of the Act defines permanency planning as 'the making of a plan that aims to provide a child or young person with a stable placement that offers long-term security and that:

- (a) meets the needs of the child or young person, and
- (b) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements, and
- (c) aims to make arrangements in a timely manner, recognising the child or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement'.

#### **3.2 Permanent placement options**

Permanency planning recognises that long term security for children and young people will be assisted by a permanent placement<sup>5</sup> which is defined in the Act as "...a long term placement...which provides a safe, nurturing and secure environment for the child or young person"<sup>6</sup>.

A permanent placement may be achieved by:

- restoration to the care of a parent or parents, or
- placement with a member or members of the same kinship group as the child or young person, or

<sup>5</sup> Section 78A(2) *Children and Young Persons (Care and Protection) Act 1998*.

<sup>6</sup> Section 3 *Children and Young Persons (Care and Protection) Act 1998*.

- long-term placement with an authorised carer, or
- placement under an order for sole parental responsibility under section 149, or
- adoption.

(See Appendix 1 for detailed definitions of permanent placement options)

Once restoration of the child or young person to their birth family is ruled out, alternative long-term placement options must be considered.

Section 13 of the Act makes specific provisions for the placement of Aboriginal and Torres Strait Islander children and young people, and the principles of the Act in Section 9 must be considered in all decisions. A number of other sections of the Act specifically address the application of permanency planning to assessment, case planning and review. See Appendix 2 for details.

## 4. PERMANENCY PLANNING IN PRACTICE

As soon as child protection intervention commences with a child or young person and their family, consideration must be given in case planning to the issues of stability and permanency. The safety, welfare and well-being of the child or young person is paramount over the rights of the parents<sup>7</sup>.

DoCS staff should implement the following practice principles in developing plans for children and young people:

### 4.1 Early decision making

#### 4.1.1 Timeframes

Following removal of a child or young person from their birth family, a decision must be made about the realistic possibility of restoration (where appropriate) of that child or young person to their birth family, or a move to permanent care outside of the family. It is essential to the best interests of the child or young person, and a requirement of s.9(f) of the Act, that a decision on the possibility of restoration or alternative arrangements be made as early as possible.

**Following removal of a child or young person from their family, a decision about whether restoration of that child or young person to their birth family is a realistic possibility (where appropriate) must not take longer than six (6) months for children under 2 years of age, and not longer than twelve (12) months for all other children and young people.**

At times, there may be circumstances that affect DoCS' ability to comply with these timeframes. The timeframes are provided as a target for best practice and staff should make all reasonable attempts to make decisions within the timeframe.

#### 4.1.2 Strengths based assessment

A focus on family strengths is an important consideration in any child protection intervention. When strengths are identified, they can become the foundation for continued growth and positive change in a family. The purpose of identifying strengths in families is to provide balance against the focus on problems and to provide a platform from which protection may be

<sup>7</sup> As per s9(a) of the *Children and Young Persons (Care and Protection) Act 1998*.

developed or enhanced. An assessment of the family's strengths will often take place within the Secondary risk of harm assessment process. Identified strengths act to support, enhance or develop capacity, motivation or competence to protect and care. The strengths of the child or young person, parent or carer and other significant people should all be considered<sup>8</sup>.

Assessment of family strengths assists caseworkers to make decisions about the realistic possibility of restoration and other permanent options. Decisions about the realistic possibility of restoration of a child or young person in care to the birth family should be made based on comprehensive, culturally respectful assessment of the family's strengths, needs, current care issues, history and the needs of the child or young person.

Strengths of a parent are manifested by the parents' willingness and ability to prevent harm to the child, and to promote the social, emotional, cognitive and educational development of the child. This includes using supports such as extended family and available services. The strengths within a family and the parents' ability and willingness to draw on these are the key to successful restoration (Katz et al, 2000).

Examples of parent or carer strengths are:

- Demonstrated appropriate parental concern
- High empathy with the child or young person
- Good impulse control
- Reasonable understanding of physical, emotional, cognitive and social developmental needs of the child or young person
- Expressed and displayed affection for the child or young person
- Not engaged in violence with other parent or carer
- Not used physical discipline, or where used it is age appropriate and proportionate to the misbehaviour
- Regular care routine for babies and children
- Inter-generational functional families
- Supportive extended family and friends
- No long term poverty
- Demonstrated commitment to using formal and informal support services
- No alcohol or other drug problems<sup>9</sup>

When making an assessment about the realistic possibility of restoration (where appropriate), the following parent/carer 'pointers to risk' should be considered:

- Prior abuse or neglect of child/ren
- Current or past hazardous use of alcohol or other drugs, including prolonged substance abuse
- Current or past domestic violence
- Parent or carer history of childhood abuse/neglect/state care
- Other child removed or died
- History of mental health issues
- Intellectual disability / developmental delay coupled with social isolation
- History of unstable relationships

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<sup>8</sup> DeFrain, 1999 – cited in Department of Community Services Business Help Topic, *Secondary Risk of harm assessment*. Pages 6-7, 32

<sup>9</sup> From DoCS Business Help Topic, *Secondary risk of harm assessment – Risk Analysis Practice tool: Strengths and protective factors list*, page 2.

- Poor understanding and capacity to care for a baby or young child
- History of violent behaviour
- History of criminal activity, including a history of perpetrating sexual assault on children, young people and/or adults
- Evidence of poor impulse control, low tolerance thresholds or anger management difficulties
- Major life stressors such as serious illness, relationship breakdown, loss
- Lack of capacity to prioritise needs of child
- Unmotivated or unrealistic about improving parenting skills<sup>10</sup>

If an assessment determines that restoration of the child or young person to their birth family is not a viable option, decisions about long-term placement and stability of that child or young person must be made. If restoration is determined as the case plan goal, supports must be provided to achieve this outcome and in some cases this will involve intensive casework.

#### 4.1.3 Case planning and Care Plans

Case planning is a decision-making process and directs DoCS' work with children, young people, their families and/or their carers. The case planning process is informed by ongoing assessment of the circumstances and needs of the child or young person in the context of the family and/or carers and is documented in the child or young person's case plan on KiDS. Case plans ensure that all parties are clear about the purpose, intent and direction of DoCS' involvement and the roles and responsibilities of everyone involved.

Case Planning follows Initial Assessment. If Initial Assessment determines that no further action is required, the case plan is closed. If a need for further action is identified, the case plan may set a goal of 'Assessment' which focuses on the tasks and actions required to develop a more comprehensive case plan.

Case plans should be developed from the start of the child protection intervention and reviewed and refined at regular intervals. When developing the case plan the Caseworker must consider what is to be achieved through DoCS intervention and the intended outcome for the child or young person and their family. The case plan goal relates directly to the assessment of safety, welfare and well-being of the child or young person and should be achievable.

Currently case plan goals represent a mix of placement options as well as options for referral and further assessment.

At present, practice in the field on early case planning that focuses on issues of permanency is variable. This policy provides a clear practice emphasis on achieving permanency and stability for children and young people to ensure that their physical, emotional, educational, social and cultural needs are met.

Once the case plan goal has been decided, the Caseworker must decide on the case plan objectives. Objectives must be specific, timeframed, achievable and result-oriented. Caseworkers should then identify tasks to meet the objectives. There are usually several tasks associated with each objective and the responsibility for tasks must be negotiated and agreed to. Tasks cannot be assigned to persons, other Community Service Centres or agencies without agreement.

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<sup>10</sup> From DoCS Business Help Topic, *Secondary risk of harm assessment – Information gathering practice tool: Pointers to risk*, pp.4-5. This section in the topic lists additional pointers to risk which are not on this list.

The case plan needs to be approved by the Manager Casework or Team Leader (Helpline).

If the case plan determines that restoration of the child or young person to the birth family is not a viable option, a Care Plan which outlines the permanency plan for the long-term care of the child or young person must be prepared for the Children's Court.

A Care Plan is a separate legal document which is based on the child or young person's case plan and is submitted to the Children's Court where, during care proceedings, a final order is being sought for the allocation of parental responsibility or aspects of parental responsibility. These Care Plans must include details of how the proposed placement(s) will address permanency. Where there is a realistic possibility of the child or young person being restored to their parents, the Care Plan must also detail:

- the process, including minimum outcomes to be achieved before restoration
- the services required to facilitate restoration
- the proposed timeframe for restoration
- a statement of the length of time that restoration should be actively pursued.

Care Plans can also include information from relevant reports such as Secondary Assessment (Stage 2), Alcohol and other Drug Assessment, Parenting Capacity Assessment, and/or Psychological or Psychiatric Assessment.

The Manager Casework is to approve and sign the Care Plan, and the child or young person and their family should read and be assisted to understand the Care Plan (if required).

#### 4.1.4 Communication

Full, open and honest communication with all parties is essential for successful assessment and permanency planning.

Parents and children and young people who are given definite timeframes for decision making and receive accurate information are more likely to develop a clearer understanding of the case plan and permanency issues.

#### 4.1.5 Participation

As early as possible, the child or young person, their family, carers, relatives and all other parties involved must be given opportunity to participate in respectful, open discussion to clarify and inform them about processes, expectations, opinions, rights and responsibilities.

Maximising age-appropriate participation of the child/ young person and their family enables clearer judgement during assessment about what is in the best interests of the child. Research has shown that a 'critical way to enhance children's mental health while they are in out-of-home care is to inform them, as much as is appropriate and possible, of the reasons for placement and what is going to happen to them (Murphy, 2000). Berry (2004) states that, "children who feel more appraised of their situation show greater emotional and behavioural adjustment".

The child or young person's responses should be constantly monitored and an appropriate support person made available to the child or young person and their family in formal settings such as case meetings.

#### 4.1.6 Maintaining Records

Maintaining accurate and up to date records is an essential component of effective casework practice. Good record keeping provides the history of DoCS involvement in any particular case. This information is needed for a variety of reasons including:

- informing staff about previous history, needs and circumstances of the family;
- informing clients about current situation and history; and
- providing information as requested by the Act, Courts and tribunals.

Information kept on client files helps staff to understand the child or young person's history and records case management decisions. In order to facilitate decisions that will enhance permanency and stability it is essential to keep accurate records on past experiences, family strengths and risks, and any agreements that have been reached by families and children.

Client file information provides children and young people with a recorded history of significant events and relationships in their lives. Information must be recorded that assists children and young people to access and understand their history with regard to DoCS involvement<sup>11</sup>.

Throughout the assessment process, thorough records should be maintained with regard to:

- information gained through assessment on which decisions and judgements about permanency are made
- details of how decisions were reached including all parties involved
- the case plan goal, case plan tasks and timeframes
- referrals to services, services provided and the outcomes
- agreements with parents, community partners and others that aim to progress the case plan
- any information relevant to the child's identity, culture and religion that will inform decisions about contact and life story work<sup>12</sup>.

This information should be documented in a child or young person's Care Plan when recommendations are made to the Children's Court regarding permanent care options for children and young people.

## 4.2 Contact arrangements

### 4.2.1 Definition of contact

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<sup>11</sup> Docs Business Help Topic (unpublished) *DoCS Client File Procedures*.

<sup>12</sup> Life story work is a record of a child or young person's life in words, pictures, photos and documents made by the child with help from a trusted adult or other person having a meaningful relationship with the child or young person. It is a chronological account of the child or young person's history, and is begun when the child or young person enters out-of-home care. Life story work can include anything that helps children or young people make sense of their world, both past and present. The process can help, when they are ready, to understand why they came into care and to express their feelings about this issue. It is a vital element in helping children and young people to formulate their own identities and self-worth.

Contact is a term that describes an exchange of information and meetings between children and young people in out-of-home care and their parents, family members or other persons significant to them.

Contact ranges from exchange of letters, video, e-mail, swapping photographs, infrequent supervised visits to frequent or infrequent meetings, which can be either supervised or informal, and should be individually tailored to ensure the ongoing safety, security and wellbeing of the child or young person.

Contact planning is based on the assumption that all children and young people have a right to the opportunity to maintain relationships with family and significant people in their lives.

If the case plan goal is restoration of the child or young person to the birth family, contact can assist to promote and prepare the child and family for this (See Section 4.1).

If the case plan goal is alternative long-term care for the child or young person, contact can assist to preserve family ties and develop the child or young person's sense of identity.

#### 4.2.2 Contact and permanency planning

Contact between a child or young person in out-of-home care and members of their family plays an important role in the process of permanency planning and provides opportunities for obtaining information about how the family is progressing during assessment and review.

Contact between a child or young person in out-of-home care and their family and significant others will vary over time and according to the needs, age, and views of the child or young person. Contact levels must be considered in every case plan and reviewed regularly to reflect changes in circumstances. Caution should be exercised when including specific contact arrangements in Court orders as this may not allow for the arrangements to be changed as the need arises.

The frequency and relative success of contact visits between parents and children can provide information that supports restoration of the child or young person to the birth family, or for movement towards an alternative permanent care arrangement (Jordan Institute for Families, 2000).

The frequency and type of contact between a child or young person and significant people in their lives may be different if the case plan goal is restoration, than where the case plan goal is long-term care or adoption.

### 4.3 Timely, planned reviews

Regular case and placement reviews are vital to minimise drift in care and to reduce delays in permanency planning for children and young people. Case and placement reviews occur within the context of case planning, and monitor case plan progress and help determine future objectives and timeframes. The younger the age of the child, the greater the need for regular review.

#### 4.3.1 Placement review timeframes (s.150 of the Act)

A placement review is to be conducted as follows:

- in respect of an **interim order** placing a child or young person in out-of-home care for four months or more, no later than four months after the making of the interim order
- in respect of a **final order** placing a child or young person in out-of-home care:
- for a child of less than 2 years of age, within two months of the final order being made; and
- for a child or young person over two years of age, within four months of the final order being made.
- In addition, a placement review must occur on the anniversary of the final order being made (an annual review).

#### 4.3.2 Purpose of placement reviews

Placement reviews are undertaken for children and young people placed in out-of-home care by order of the Children's Court. Their purpose is to:

- to determine whether placements are promoting the safety, welfare and well-being of children and young people in out-of-home care;
- to ensure that the goals and objectives of case plans continue to be relevant to the needs of the child or young person.

#### 4.3.3 Content of placement reviews

Placement reviews assess the following:

- the needs of the child or young person and whether they are being met in the placement
- what supports/strategies are required to meet the needs of the child or young person
- the need for other resources/information/supports needed to assist carer(s) in caring for the child or young person
- the need for services needed to assist the parent(s) in accordance with the case plan
- whether the carer and child or young person wish to continue with the placement
- whether the carer wish to make an application for a sole parental responsibility order and whether the child or young person and their parent(s) agree
- whether the carer interested in adoption. If so, whether the child or young person and their parent(s) are likely to agree to and support an adoption order application<sup>13</sup>

## 5. PERMANENCY PLANNING FOR INDIGENOUS CHILDREN AND YOUNG PEOPLE

When permanency planning for Indigenous children and young people, the following principles must be actively taken into account. In addition to these principles, non-Indigenous DoCS Caseworkers must consult with Indigenous staff when working with Indigenous children and young people and their families and community<sup>14</sup>. Should an Indigenous Caseworker not be available within the local Community Services Centre, consultation must take place with the

<sup>13</sup> Under certain circumstances an application can be made to the Supreme Court for the dispensation of the consent of a birth parent. Refer to Division 3 Dispensing with consent, Adoption Act 2000.

<sup>14</sup> The DoCS Aboriginal Services Branch is drafting an *Aboriginal and Torres Strait Islander Communication Protocol* to provide culturally sensitive guidelines for respectful, participatory communication with Aboriginal children, young people, their families and relevant members of their communities. This document is in draft form and unpublished as at 6.5.04.

nearest available Indigenous Caseworker either from the closest Community Services Centre or from within the Region. This consultation process must be documented and placed on file<sup>15</sup>.

In the context of the historic removal of children from Indigenous communities, and the subsequent dislocation of families and loss of cultural identity, permanency planning for Indigenous children and young people brings special considerations. The permanency planning provisions of the Act need to be sensitively handled with regard given to the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles. Section 78A (3) of the Act clearly states:

*“A permanency plan for an Aboriginal or Torres Strait Islander child or young person must address how the plan has complied with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13”<sup>16</sup>.*

The particular nature of Indigenous families and kinship networks is also relevant. Under the Act, every effort must be made to ensure Indigenous children and young people maintain existing connections and cultural identity.

Indigenous children and young people have a right to maintain their links with their community and country and grow up with a strong sense of their Aboriginality. It is imperative that Indigenous children and young people who are removed from their birth family and community experience a similar upbringing in order to sustain their cultural heritage and identity (NSW Office of the Children’s Guardian, 2003).

Section 78A (4) states that where a permanency plan for an Aboriginal or Torres Strait Islander child or young person indicates an intention to provide permanent placement through a sole parental responsibility order or adoption, and no suitable placement can be found in accordance with the principles set out in Section 13 of the Act, the approval of the Minister for Community Services **and** the Minister for Aboriginal Affairs is required.

The Act emphasises that self determination be promoted for Indigenous people, and that the child, their family, kinship group, representative groups and community be given the opportunity to participate in decisions made concerning the child or young person’s future.

Self-determination for Indigenous people means that Indigenous communities are able to take charge of their own lives and make important decisions about their futures. This includes making decisions about Indigenous children and young people who are entering or are at risk of entering out-of-home care. It is possible to facilitate self-determination by seeking the support and assistance of community elders, Indigenous foster care groups and Aboriginal Land Councils in situations where decisions are being considered about the future of an Aboriginal child or young person<sup>17</sup>. In addition, the use of Family Group Conferencing<sup>18</sup> may be considered to assist the family to work with DoCS to find a carer for the child or young person if he/she cannot remain in the care of the birth parents.

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<sup>15</sup> This information forms part of the Aboriginal Services Branch draft *Aboriginal and Torres Strait Islander Communication Protocol* (see footnote 13), page 6.

<sup>16</sup> From NSW Office of the Children’s Guardian, *Permanency Planning Issues Paper*, Version 1.0 28/5/04.

<sup>17</sup> From NSW Office of the Children’s Guardian *Aboriginal Policy Statement*. Version 1.0 26/5/03, pages 3-4

<sup>18</sup> Family Group Conferencing focuses on the inclusion of the family in the solutions, empowering the family and renewing and strengthening the family. The family participates in a conference and issues are discussed, a plan is developed and implemented. (From DRAFT PAPER – *The NSW Department of Community Services Aboriginal and Torres Strait Islander Communication Protocol*, DoCS Aboriginal Services Branch, page 20.

## 6. PERMANENCY PLANNING FOR CHILDREN AND YOUNG PEOPLE FROM CULTURALLY AND LINGUISTICALLY DIVERSE<sup>19</sup> COMMUNITIES

When permanency planning for children and young people from culturally and linguistically diverse communities, caseworkers should incorporate the following strategies into assessment and casework practice:

- Acknowledge the language preferred by the child or young person and their family. If service delivery in the preferred language is not feasible, where possible and appropriate, caseworkers should make a referral to a bi-lingual caseworker or use interpreters
- Use qualified interpreters for assessments, investigations and casework. In order to engage the correct source of help, staff need to identify the client's cultural background and linguistic skills and establish whether religious beliefs, or other factors such as age and gender require consideration when seeking an interpreter
- Build rapport with the client through engaging in a culturally relevant manner such as learning to use basic, common greetings in the client's own language, and pronouncing the client's name correctly
- Acquire information about the common cultural structures and roles within the client's family and organisations of relevance to the client's cultural background
- Educate the client in the process of casework intervention about issues such as goals, expectations and case plans
- Provide information whenever possible in writing together with verbal explanations
- Provide information whenever possible in the language preferred or best understood by the client<sup>20</sup>.

The relevant cultural and linguistic experiences of children and young people from culturally and linguistically diverse communities should also be considered in initial assessment, referral and intake processes, as well as in case planning, permanency planning and restoration plans. Active efforts to maintain the cultural and linguistic aspects of the life history of the child or young person in care should be incorporated into their care plans within the context of their best interests<sup>21</sup>

The Act makes specific provision for the need to take account of culture, language and religion and to preserve these as far as possible when considering the placement (temporary or permanent) of children from culturally and linguistically diverse communities<sup>22</sup>.

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<sup>19</sup> Culturally and linguistically diverse communities are defined as those speaking a Language other than English at home, and/or with a non-English speaking Cultural Identity/ Ancestry. This information was gained from the Multicultural Services Unit on 6.4.05.

<sup>20</sup> Information adapted from the DoCS Multicultural Services *Good Practice Guide: Working with culturally and linguistically diverse (CALD) people and communities*, January 2005.

<sup>21</sup> From the NSW Office of the Children's Guardian, *Adapting programs to meet the needs of children and young persons from culturally and linguistically diverse (CALD) communities policy statement*. Version 1.0 31/3/03.

<sup>22</sup> See Sections 9(c) and (e) – What principles are to be applied in the administration of this Act, and Section 10 – The Principle of Participation. *Children and Young Persons (Care and Protection) Act 1998*.

Specifically, in all decisions and decisions made in relation to a child or young person from a culturally and linguistically diverse community, account must be taken of the culture, language and religion of the child or young person, and if relevant, those with parental responsibility for the child or young person. In addition, if a child or young person is temporarily or permanently placed in out-of-home care, every effort must be made to maintain their cultural, linguistic and religious backgrounds<sup>23</sup>.

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<sup>23</sup> NSW Department of Community Services (1999). *The Right to Better Service: Ethnic Affairs Policy Directions*.

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## APPENDIX 1

### Definition of Sole Parental Responsibility and Adoption orders

(from section 3.2 of Policy)

DoCS policy is that all children need a stable foundation from which their identity, values, relationships and cultural awareness can be developed throughout childhood. For those children who are unable to live with their own parents, having another permanent place to live gives them the best possibility of growing up with a secure sense of identity. Permanent placement options range from care within the birth family to adoption, depending on the individual circumstances of the child and the family (Wise, 2000).

Definitions of Sole Parental Responsibility orders and Adoption orders are below:

#### 1. **SOLE PARENTAL RESPONSIBILITY ORDERS<sup>24</sup> (s149)**

- A long-term legal order that endorses their carer's commitment to them can increase a child or young person's sense of stability. It offers an alternative to adoption, as it reduces the involvement of DoCS and the designated agency, but does not involve the lifelong cutting of legal ties to birth parents and other family members. An order for sole parental responsibility under section 149 is such an order.
- The key features of a Sole Parental Responsibility Order are:
  - It is a long term order, intended to last until the child or young person is 18 years old
  - It allows carers to exercise full parental responsibility
  - It is made with the consent of all key people, including the birth parents, and the child if they are aged over 12 years
  - Foster carers (not caseworkers) apply to the Court for a s149 order
  - There are very limited circumstances under which the order can be varied or cancelled by the Court.
- For Indigenous children and young people, granting sole parental responsibility to a non-Indigenous carer can only be considered if it is consistent with the Aboriginal and Torres Strait Islander placement principles in the Act, and if no suitable long-term placement can be found with an Indigenous carer. In these cases, in addition to the approval of the child's family and community, the consent of both the Minister for Community Services and the Minister for Aboriginal Affairs is a mandatory requirement in these situations as detailed in s78A (4) of the Act.

#### 2. **ADOPTION**

- Adoption is one of a range of options used to provide care for children who can't live with their birth families. It is a legal process, is long-term and permanent. All legal rights and

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<sup>24</sup> Additional information on Sole parental responsibility orders can be found in Section 149 of the *Children and Young Persons (Care and Protection) Act 1998*.

responsibilities of parents are transferred from the birth parents to the adoptive parents<sup>25</sup>. Adoption, as the most permanent legal option in the spectrum of out-of-home care services, can ensure children have stability and continuity of relationships<sup>26</sup>.

- A successful adoptive placement provides a child with continuity of relationships with nurturing parents and the opportunity to establish positive lifetime relationships. It is essential for all children and young person's development that they experience a sense of permanence in their lives. Where the return of the child or young person to his/her family is not a possibility, adoption is one of a range of case planning options<sup>27</sup>.
- As a permanent plan, adoption provides a child or young person with the opportunity for:
  - A foundation to develop their identity, values and relationships, not only in childhood but also into adulthood,
  - Integral equal membership of the adoptive family,
  - An unambiguous legal status,
  - A family of resource past the age of independence
- With the current practice of open adoption arrangements, the child or young person may retain their links with significant prior relationships, including family
- There are three main parties in adoption, the parents, child and adoptive parents, with each having distinct needs and interests. However, the best interests of the child must be the paramount consideration in all decisions related to the adoption of a child<sup>28</sup>.
- Current adoption practice recognises that although adoption ends a child's legal relationship with birth parents, the emotional and genetic relationships remain. Adoption today embraces issues of identity, openness and the value of a child's cultural and racial heritage<sup>29</sup>.
- The *Adoption Act 2000* prescribes particular roles for DoCS having statutory responsibility for:
  - Assessing the suitability of a person to adopt a child
  - Deciding to place a child for adoption
  - Transferring the child to the adoptive family's care
  - Giving consent to the adoption of a child of whom s/he has guardianship
  - Accrediting adoption service providers
  - Providing financial and other assistance to adopted children and their birth and adoptive families
  - Providing post adoption services, including the provision of information and arrangements that facilitate contact between the parties to an adoption<sup>30</sup>

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<sup>25</sup> From DoCS website at [www.community.nsw.gov.au/html/adoption/adoption.htm](http://www.community.nsw.gov.au/html/adoption/adoption.htm)

<sup>26</sup> From The NSW Office of the Children's Guardian *Statement of Contemporary Adoption Practice*. Version 1.0 1/12/04, page 1.

<sup>27</sup> From Adoption and Permanent Care Services Branch DRAFT document, *Adoption Philosophy*. (Undated and unpublished). Accessed from Director, Adoption and Permanent Care Services Branch on 6.4.05.

<sup>28</sup> From The NSW Office of the Children's Guardian *Statement of Contemporary Adoption Practice*. Version 1.0 1/12/04, page 2.

<sup>29</sup> From DoCS website at [www.community.nsw.gov.au/html/adoption/adoption.htm](http://www.community.nsw.gov.au/html/adoption/adoption.htm)

<sup>30</sup> From Section 10 of the *Adoption Act 2000*.

- The DoCS Adoption and Permanent Care Services Branch provides a wide range of services in NSW for people who are adopted and want to find out about their birth family, for birth parents who are making an adoption decision or who want to be in contact with their child, and for adoptive parents.
- Caseworkers who are considering adoption as a permanent placement option for a child or young person in out-of-home care should contact Adoption and Permanent Care Services Branch for more information on 02 8855 4900 or email [adoption@community.nsw.gov.au](mailto:adoption@community.nsw.gov.au).
- There are also other accredited adoption agencies that provide adoption services in NSW. These are: Centacare Adoption Services, Anglicare Adoption Services, and Barnardos Australia Adoptions.

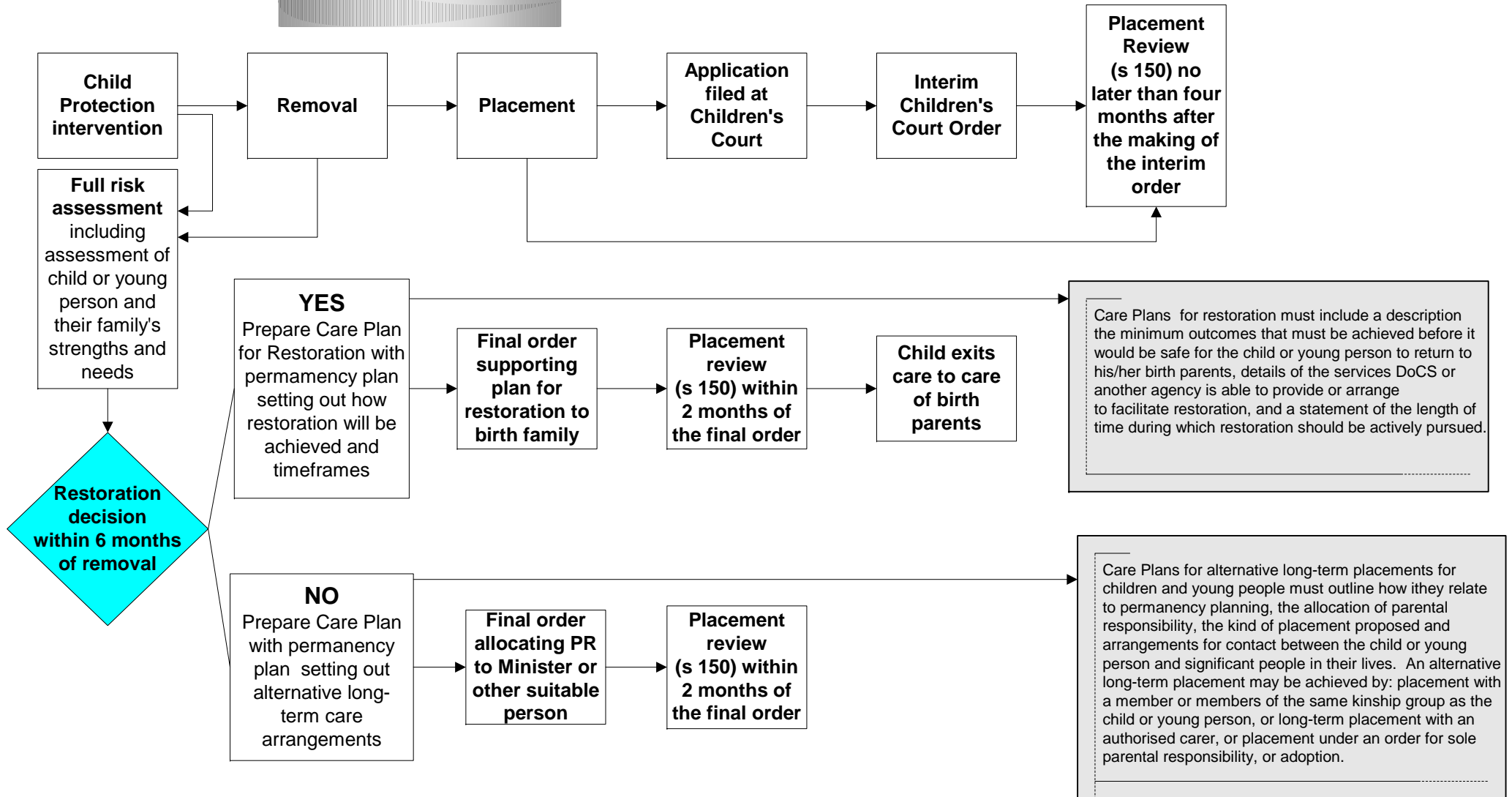
## APPENDIX 2

### Sections of the *Children and Young Persons (Care and Protection) Act, 1998* that relate to permanency planning.

In addition to Section 78A of the Act, the following sections of the Act specifically address the application of permanency planning to assessment, case planning and review. These are:

- **Section 3** – Definition of ‘permanent placement’.
- **Section 9(f)** describes the need for early decision making. If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child or young person’s circumstances and that, the younger the age of the child, the greater the need for early decisions to be made with regard to a permanent placement.
- **Section 12** – Aboriginal and Torres Strait Islander participation in decision-making
- **Section 13** – Aboriginal and Torres Strait Islander Child and Young Person Placement Principles
- **Section 78** - Care Plans
- **Section 78A** - Permanency Planning
- **Section 81(2)** - Parental Responsibility of the Minister
- **Section 82 (1A)** - Monitoring by Children’s Court of order concerning parental responsibility
- **Section 83** - Preparation of Permanency Plan requires that an assessment of the child’s circumstances be made as to whether there is a *realistic possibility* that the child can be restored to his or her parents
- **Section 83 (7)** requires that permanency planning for children and young people be adequately addressed
- **Section 84** - Requirements of Permanency Plans involving restoration
- **Section 85A** - Review of Permanency Plans involving restoration
- **Section 150** – Review of placements effected by order of Children’s Court
- **Section 160** – Maintenance of Records

# Permanency planning in practice for children 2 years and under



# Permanency planning in practice for children and young people 2 years and over

