



Tasmanian Council of Social Service Inc.

Developing a permanency framework for children and young people in the child safety system

June 2019



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low-income Tasmanians living in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

Thank you for the opportunity to comment on the consultation paper “Developing a Permanency Framework for Children and Young People in the Child Safety System.” We particularly appreciate the extension of the time for comment.

TasCOSS advocates on behalf of low-income Tasmanians who often live in vulnerable and disadvantaged circumstances. Our vision is for one Tasmania, free of poverty and inequality, where everyone has the same opportunity. We advocate for public policy that values and respects the diversity of Tasmanians and makes a real difference to the lives of people who are experiencing vulnerability. We work to ensure that the human rights of all Tasmanians are integrated into government consultation processes, policy approaches and budget allocations.

Our submissions and advocacy are strongly informed by the expertise of our members and the lived experiences of the Tasmanians we represent. For this submission, we have drawn on consultations with the Social Action Research Centre, with members and with the office of the Tasmanian Commissioner for Children and Young People (CCYP), as well as on background research.

In addition, we have been guided by the principles inherent in the following key documents:

- Charter of Rights for Tasmanian children and young people in out-of-home care
- National Standards for Out-of-Home Care
- Outcomes Framework for Children and Young People in Out-of-Home Care
- Royal Commission Into Institutional Responses to Child Sexual Abuse
- Tasmanian Child and Youth Wellbeing Framework
- Tasmanian Child and Student Wellbeing Strategy
- United Nations Convention on the Rights of the Child
- United Nations Convention on the Rights of Persons with Disability

We also note the research of Anglicare’s Social Action Research Centre on the lived experiences of families, children and young people involved in the child safety system in Tasmania.¹

Our goals

The issues raised in this consultation paper resonate with three key TasCOSS goals:

Children. TasCOSS’ goal is that all children in Tasmania grow up in a safe, caring and supportive environment and have the opportunity to thrive and reach their potential. This particularly applies to children who are in contact with the child safety system, who also need the opportunity to heal. For example, in consultations in relation to the discussion paper *A Future Program for Family-Based Care*,

¹ See Hinton 2018a, 2018b, 2013; Fidler 2018; Robinson 2017.

TasCOSS has advocated for a re-designed out-of-home (OOHC) program based on the following principles:

- A truly child-centred approach, with stability and security for children and young people at the forefront
- A strong focus on open communication and respectful involvement of children and young people in decisions involving their lives, as well as open communication and respectful involvement of parents, carers and providers
- A therapeutic, trauma-informed model that takes account of the complexity of factors that result in a child being referred for OOHC
- A model that supports children and young people in maintaining ties to family, community and identity
- A robust accountability framework with measurable standards, outcomes and processes developed in conjunction with children and young people, parents and carers.²

Families. TasCOSS' goal is that Tasmanian families have the support they need to live healthy lives and participate fully in their communities. To this end, TasCOSS has consistently and repeatedly advocated for:

- Affordable housing, energy and transport
- Expanded, affordable health and mental health programs as well as support programs for families experiencing problems with addictive behaviours, alcohol or drug overuse, or family violence
- Education and employment support.

Voice. TasCOSS also has the goal of seeing all Tasmanians able to meaningfully participate in decision-making affecting their lives, whether through involvement in the development of government programs or through involvement in decision-making around their individual circumstances. For example, TasCOSS has advocated to the Australian Guardianship and Administration Council and to the Department of Communities for:

- Equality of opportunity and full and effective participation and inclusion in society of people with disability, based on the UN Convention on the Rights of Persons with Disability's principles of:
 - Non-discrimination, including in relation to age and gender
 - Respect for difference, dignity, independence and individual autonomy, including the freedom to make one's own choices.³
- The respectful, equitable and inclusive engagement of young people in decision-making, in line with the Article 12 of the United Nations Convention on the Rights of the Child, which states

² TasCOSS submission, Discussion paper: a future program for family-based care, December 2018.

³ TasCOSS submission, Australian Guardianship and Administration Council, Draft Guidelines on the participation of the proposed represented person in guardianship proceedings, November 2018; United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol, <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

that children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.⁴

Our commentary on the consultation paper reflects our commitment to all these goals.

Policy context

The Tasmanian Government's development of a Permanency Framework is occurring in the context of a national focus on enhancing placement stability in out-of-home care guided by the Fourth Action Plan for the *National Framework for Protecting Australia's Children 2009-2020*. As a consequence, the Tasmanian framework needs to align with the Permanency Outcomes Statement and Permanency Guiding Principles agreed on by the Community Services Ministers of all states and Territories (see Appendix A). These Guiding Principles, while they lay out a suite of issues to which a Tasmanian framework will need to respond, contain a degree of flexibility, as evidenced by the different approaches taken by different states to, for instance, timeframes (noted in the consultation paper).

The development of a Permanency Framework also is taking place in the context of broader reforms around the Tasmanian child safety and out-of-home care systems, including the *Strong Families Safe Kids* redesign of the Tasmania's child safety system and the *Out-of-Home Care Foundations* project. These reforms have the potential to lead to resourcing changes or cultural changes that will have an impact on how a permanency framework is put into practice.

Permanency in the context of out-of-home care is a multi-dimensional concept, which includes:

- Physical permanency: Stable living arrangements
- Relational permanency: The experience of having positive loving, trusting and nurturing relationships with significant others (parents, siblings, friends and family, carers)
- Legal permanency: The legal arrangement for the child.⁵

While all of these are of importance to providing a sense of stability and security for a child, it is relational permanency that is most frequently mentioned by children and young people responding to surveys by organisations such as the CREATE Foundation.⁶

This focus on providing children with the stability and security that they need to thrive is needed and timely at the national and Tasmanian levels. Placement stability is known to be one of the most important aspects contributing to positive outcomes for children and young people in care.⁷ At the same time, the 'churn' of children through placements in out-of-home care has been one of the key concerns expressed in TasCOSS consultations around the child safety system, with carers, children and young people, and providers expressing concern that for too many children, placements do not result in stability. Indeed, of Tasmanian children on a care and protection order and exiting care in 2017-18, half of those who had been in care for 12 months or more (49.6%) had been in three or more placements. By

⁴ TasCOSS submission, Youth Matter: a draft practical guide to increase youth engagement and participation in Tasmania, March 2019; UNICEF 1996.

⁵ NSW 2017, p. 14

⁶ McDowall 2018.

⁷ AIHW 2016: 2.

contrast, only 5.4% of those who had been in care for less than 12 months had had more than two placements.⁸ A focus on high quality permanency planning can only improve the situation for children who are struggling to find a sense of stability and security in a changeable context.

Nevertheless, TasCOSS believes that the development of a framework is a process that cannot be rushed and that needs to begin with an understanding of underlying risks, as well as benefits, that may accrue from a framework's design.

Key issues

While TasCOSS broadly supports the development and implementation of a permanency framework, we wish to draw attention to two key issues which are relevant to many of the Guiding Principles around which the consultation paper is structured.

1. *An inflexible permanency hierarchy with inflexible timeframes runs the risk of overriding the best interest of the child.*

A child is best off with a carer with whom they can form a genuine bond, even if it takes time to find this match. By the same token, a legally permanent placement such as adoption is not a guarantee of a successful placement, and other permanency options for children may equally facilitate relational permanency.⁹ All options have their place if responsibly matched to child and family needs/circumstances, and may be considered sequentially or concurrently.¹⁰ Assessing a child's best interests is a 'unique activity that should be undertaken in each individual case, in light of the specific circumstances of each child or group of children or children in general'.¹¹

Crucially, the voice of the child must be at the heart of determinations of what is in their best interests. Child-centred research in Tasmania, Australia and internationally documents clearly the extent to which different children have different needs and wishes, as well as the extent to which children often feel that their voices have not been heard.¹² In fact, assessment of a child's best interests must include respect for the child's right to be heard – that is, the child's right to express their views freely and to have their views given due weight in accordance with their age and maturity, in all matters affecting them. This applies to judicial and administrative proceedings affecting a child, including those relating to custody, care and adoption. The fact that a child is very young or in a vulnerable situation does not deprive them of their right to be heard.¹³

⁸ ROGS 2019, Child Protection Services, Table 16A.15.

⁹ Mackieson, Shlonsky and Connolly 2019, p. 2.

¹⁰ Queensland 2018, p. 5.

¹¹ Australian Human Rights Commission 2018, p. 6.

¹² Kennerley, 2017; McDowall 2018; Selwyn, Magnus and Stuijzand 2018.

¹³ Australian Human Rights Commission 2018, p. 7.

A recent review of Victorian child safety practice has noted that although children’s right to be heard is advocated as paramount in child safety services, this right is often subordinated to determinations by others of children’s best interests, as well as parents’ rights.¹⁴ Many factors may contribute to why children are not reunified with their parents across time, including changes in children’s motivations and wishes.¹⁵ A Victorian inquiry into the implementation of permanency amendments found that rigid approaches to permanency objectives hierarchies by departments and child protection workforces can come at the expense of considering the best interests of the child, and may lead to poor outcomes for children.¹⁶ Pursuing legal permanence at the expense of relational or physical permanence may indeed result in further disruption and instability for the child.¹⁷

- 2. A hierarchical, time-limited permanency framework, developed without adequate resourcing and supports for family preservation and for reunification within specified timeframes, runs the risk of resulting in disproportionate permanent removal of children from Tasmania’s most vulnerable parents.*

Preservation. Family support services in Tasmania are not yet able to address the full range of material or interpersonal challenges facing families at risk of child removal. More children in Tasmania enter care through neglect (33.8% in 2017-18) than through active physical abuse (17.2%).¹⁸ This neglect often is associated with external sources of disadvantage such as housing stress and low incomes. However, with Tasmanian social services currently badly stretched—the current wait time to house priority housing applicants, for instance, stands at 56 weeks¹⁹—there are few guarantees that family support services will be able to secure material support for families at risk of child removal. Beyond material needs, the recent University of Tasmania evaluation of the IFES pilot has noted that “current programs do not address the complex nexus of intergenerational violence and disadvantage, current or recent family violence and substance abuse/parental mental health issues as thoroughly as might be required with at least some families.”²⁰ Meanwhile, at the moment, family support services receive less funding per child than out-of-home care, and funding below the national average.²¹

Reunification. Parents who have had children removed face uphill struggles in meeting the material requirements for regaining custody of their children.²² Barriers preventing parents from resuming care of their children have been identified as including issues outside the child protection system—long waiting lists and other difficulties in accessing services to address homelessness, drug and alcohol abuse,

¹⁴ Mackieson, Sholosky and Connolly 2019, p. 4.

¹⁵ Queensland 2018, p. 7.

¹⁶ Victorian Commission for Children and Young People 2017, p. 23.

¹⁷ Mackeison, Shlonsky and Connolly 2019, p. 8.

¹⁸ AIHW 2019, Data Table S9.

¹⁹ https://www.dhhs.tas.gov.au/humanservicesstats/human_services_dashboard

²⁰ University of Tasmania 2019, p. 10.

²¹ ROGS 2019, Child Protection Services, Table 16A.31, 16A.7

²² Fidler 2018.

mental health issues, family violence and parenting skill development – but also barriers within the child safety system, such as minimal contact with child protection officers and lack of completed case plans.²³ Combined with an inflexible timeframe, these barriers mean, as the Victorian Commission for Children and Young People has noted in their inquiry into permanency amendments, “that some children may be placed permanently outside their birth family when this is not in their best interests.”²⁴ The inquiry concluded that while timeframes are imperative to promote safe and timely reunification and to guard against delay in providing children with certainty, “strict and inflexible timeframes, with no capacity to respond to extenuating circumstances that may arise, are not child-focused.”²⁵ Indeed, the inquiry noted that the commencement of permanency amendments had not led to an increase in family reunifications.²⁶

Put together, these issues leave a permanency framework at risk of imposing disproportionate impact on, and compounding the challenges for, Tasmanian children and families already experiencing disadvantage—a point that has been demonstrated through Tasmanian as well as national-level research.²⁷ Anglicare has in fact recommended that the Department of Communities Tasmania “review Tasmanian child safety legislation, policy and guidance to ensure it... compels a support response when income or housing is identified as a barrier to family reunification.”²⁸

Notably, the development and implementation of a permanency framework, although it may lead to better outcomes for children and families, will not necessarily lead to a reduction of costs. Studies that have explored the outcomes of children returned home from care have concluded that families are more likely to sustain positive changes and have better outcomes and stability if they receive ongoing support after reunification.²⁹ Efforts to achieve genuine relational permanency for children will require:

- Sustained support for parents before children are permanently removed
- Longer-term support for children and parents when children are returned home
- Support for birth parents after children are permanently removed
- Availability of long-term support for all carers – in foster care, guardianship and adoptive parents.³⁰

Recommendations

The further development of a permanency framework must not be rushed. In particular, it must hear the voices of:

- Children and young people themselves

²³ Fidler 2018; Victorian Commission for Children and Young People 2017, p. 18-19. In this context, it is notable that only 55.1% of Tasmanian children in the child safety system in 2017-18 had documented case plans – significantly lower than the Australian figure of 83.8% (ROGS 2019, Child Protection Services, Table 16A.22).

²⁴ Victorian Commission for Children and Young People 2017, p. 16.

²⁵ Victorian Commission for Children and Young People 2017, p. 19.

²⁶ Victorian Commission for Children and Young People 2017, p. 19.

²⁷ Fidler 2018; Mackieson, Shlonsky and Connolly 2019.

²⁸ Fidler 2018, p. 17.

²⁹ Conley Wright and Cashmore 2017, p. 2.

³⁰ Conley Wright and Cashmore 2017, p. 2.

- Parents, carers and guardians
- Tasmania's Aboriginal community.

TasCOSS urges the development of a permanency framework that will draw together the national Permanency Guiding Principles in a fashion that is focused on:

1. *A genuinely child-centred approach (Permanency Guiding Principles 1, 5, 7, 9, 10).*

A permanency framework must have the wishes and best interest of children in contact with the child safety system at its heart. To achieve this:

- The prioritisation of various permanency options for any child should reflect both the wishes of that child and assessments of the best interests of that child, rather than a predetermined hierarchy. For example, emotionally stable placements should not be ended only to attain legal permanency.
- Timeframes should retain a degree of discretion to accommodate the wishes and relational connections of the child.
- Best-practice instruments should be developed to gauge the wishes and needs of every child. The best interests of the child are served by ensuring that the voice of the child or young person is heard in decisions made about them.³¹ Consistent best-practice techniques, developmentally appropriate and trauma-informed, must be in place to fully understand, capture and incorporate the voice of the child in every assessment and to assist parents, carers and other family members to participate in a meaningful way.³²

2. *Prevention and early intervention to keep families together (Permanency Guiding Principles 2, 3, 4, 8).*

TasCOSS has advocated for a model of family-based care that outlines potential pathways for children and young people within a continuity of care/permanency framework that should:

- Be complemented by a child safety system focus on prevention, promotion and early intervention.
- Be situated in the context of wrap-around support for children and families across government and the community sector.³³

It is TasCOSS' hope that broader reforms underway around child safety services will continue the shift to a public health approach to the protection of children heralded in the National Framework for Protecting Australia's Children 2009-2020, which acknowledges universal supports and targeted early intervention as the most desirable options for promoting the safety and well-being of children.³⁴ A

³¹ ACT 2018, p. 5.

³² Victoria 2012. For supporting work on participation in decision-making by people who are unable to understand, retain, use or weigh information relevant to a decision, or communicate a decision, see for instance Tasmania Law Reform Institute 2018.

³³ TasCOSS submission, Discussion Paper Series: A future program for family-based care, December 2018.

³⁴ https://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf

public health approach, with its greater emphasis on the causes and impacts of poverty and disadvantage that can lie behind child abuse and neglect, not only emphasises assisting families early enough to prevent abuse and neglect from occurring, but also has the potential to produce better outcomes for families and children through more poverty-sensitive decision-making around family preservation, removal of children, and restoration of children to their families.

Appendix A: Permanency Outcomes Statement and Permanency Guiding Principles³⁵

Permanency Outcomes Statement

Children and young people, including those in out-of-home-care, experience:

- *Safe and stable care*
- *Timely decision-making on permanency that takes into account the views of the child, and*
- *Lifelong relationships and a sense of belonging, identity and connection to culture and community*

to achieve better life outcomes and realise their full potential.

Permanency Guiding Principles

1. *Children's interests are paramount and at the centre of all decisions impacting on their lives.*
2. *Compliance with all five domains of the Aboriginal and Torres Strait Islander Child Placement Principle is supported and measured.*
3. *Prevention and early intervention for all children is a key focus for achieving permanency. Children, families and communities should be supported in order for children to live with their family wherever possible or in the community.*
4. *Families, children and communities are supported to enable family preservation or reunification/restoration.*
5. *Various pathways to permanency are available to children and are considered as soon as statutory involvement occurs and reviewed regularly.*
6. *Timeframes which promote timely permanency decisions including placements and hierarchy of permanency options are reflected in legislation and/or policy and practice, with national public reporting on permanency timeframes that are achieved.*
7. *Every child had a comprehensive and timely permanency assessment, and culturally and trauma-informed permanency planning is in place and regularly reviewed.*
8. *Kinship placements that preserve a child's connection to culture and relationships with their parents, siblings, community and other significant people are prioritised in permanency planning when an out-of-home care placement is required.*
9. *Carers/guardians/parents and the community are supported to provide children with the best practice permanency outcomes that meet their cultural, emotional and psychological therapeutic needs.*
10. *Significant and lifelong relationships are supported and maintained.*

³⁵ Department of Communities (2019) Developing a Permanency Framework for Children and Young People in the Child Safety System; Consultation Paper.

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