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1. BACKGROUND TO ADOPTION PRACTICE

Adoption and permanent care services
Adoption and permanent care services are provided across the state by nine regionally based Permanent Care Teams and one statewide service. There are six non-government teams and four teams managed by the DHS Regions.

Adoption and permanent care central resource exchange
The primary role of the central resource exchange is to facilitate placement of children across regions. Information about children available for placement and approved families is made available on a statewide basis, and is circulated to all teams. This process is intended to maximise placement opportunities for children, particularly those who are difficult to place. It is also intended to address inequities between regions with respect to availability of applicant families.

Legislation and policy
The Adoption Act 1984 and the Adoption Regulations 1998
The Adoption Act 1984 was the outcome of a review of existing adoption legislation which commenced in the late 1970s. The Act reflects changing community and professional attitudes towards adoption, and includes provisions for ongoing access between birth family and adopted children and for access to information by parties to adoption. The Adoption Act 1984 and the Adoption Regulations 1998 provide the legislative framework for adoption practice in Victoria and specific provisions of the legislation are quoted in the relevant sections of this manual.

Standards in Adoption 1986
The Standards in Adoption document was developed by a working group which consisted of representatives of all the major parties in the adoption arena. The Standards in Adoption define and describe an accepted level of practice and establish expectations around agency procedures. The standards document considers the major aspects of adoption practice by detailing the assumptions underlying practice and the objectives of each area of practice and procedural principles. Reference is made to the relevant sections of the Standards in Adoption throughout this manual.

Legal Status Options
Traditionally, adoption was the only order by which guardianship could be transferred in substitute family situations. Where adoption had not been possible or appropriate, children were placed in permanent foster care placements.

In these situations the child remained under the guardianship of the Director-General of DHS and guardianship was reviewed annually.

The introduction or provisions for guardianship and custody increase the range and flexibility of available options.

The Family Law Act 1975
Orders governing the care of children are able to be granted in the Family Court as the result of the Family Law Amendment Act 1987. This legislation gave the Family
Court in Victoria and several other Australian states exclusive jurisdiction in respect of guardianship, custody, access and maintenance concerning all children, whether nuptial or ex-nuptial. However, the Family Court’s powers exclude children under state guardianship and orders can only be granted in these circumstances if conditional to discharge of state guardianship.

The Family Court has jurisdiction to make parenting orders in relation to children and can be used to legalise the placement of a child with an alternative family. Parenting orders deal with residence, contact and specific issue provisions. This manual does not deal with these orders.

**Children and Young Persons Act 1989**

The Permanent Care Order provisions of the Children and Young Persons Act 1989 grant custody and guardianship to persons approved as suitable to assume responsibility for the permanent care of a child. A Permanent Care Order is granted by the Family Division of the Children’s Court.
2. REFERRAL OF CHILDREN TO THE PERMANENT CARE TEAM

This section details referral procedures for children who have been admitted to the guardianship of DHS through the Children’s Court, where DHS regions have responsibility for case planning. It also relates to children with intellectual disabilities who may be referred for placement. These children may, or may not, be under DHS guardianship. The process by which parents relinquish children for adoption is discussed in the following chapter.

Permanency planning: aims and responsibilities

The primary aim of permanency planning programs is to provide security and lasting relationships for children when placement away from home has occurred or is likely to occur. Permanency planning may be regarded as encompassing a range of options which enable children to live in situations which offer the opportunity to develop continuous relationships with nurturing parents or caregivers. It also includes the provision of preventative services, the restoration of children admitted to the care of DHS to their birth families, and the placement of children unable to return to their birth families with alternate permanent caregivers. Different service providers have responsibility for different aspects of the permanent care process.

At times a caseplan of permanency may be made, but there may be more appropriate placement options for the child than permanent family placement through the Permanent Care Team. Examples of such options may include placement with relatives or a permanent residential placement.

What is permanent family placement?

The Permanent Care Team’s area of responsibility and expertise relates to permanent family placement, which is one placement option within the permanency planning framework for children who are unable to return to the care of their birth parents. The responsibility of DHS protective services relates to working with the birth family to prevent the unnecessary separation of children from their families and wherever possible to restore to their families children who have been removed. The decision that home release is no longer viable is currently the responsibility of the caseplanning chairperson, in consultation with other parties who have a knowledge of and an interest in the child’s situation. The Children’s Court is able to direct the Director-General to take steps leading to an application for a permanent care order when the child has been under the Director-General’s custody for between 23 months and two years, and the Court is satisfied that there is no likelihood of reunion with the child’s biological parents.

The Permanent Care Team’s primary consultative role relates to the appropriateness of referral to locate a permanent family placement. The Permanent Care Team can provide advice regarding the viability of recruiting a family for a particular child, and the probable timelines involved.

The primary aim of permanent care is to provide security and lasting relationships for children. A permanent family placement is intended to continue indefinitely although it is not guaranteed to last forever.

The composition of the families involved reflects that of families in the general community. For example, applicants for permanent placement may include couples
with children, childless couples and single people. The emphasis in decision making is on the extent to which applicants are able to meet the needs of the children concerned.

The Referral Process

It is essential when planning for permanency that consideration is given to whether permanent family-placement is a realistic and viable option for a particular child.

Research and practice experience have given an indication of the types of children who can be placed with varying degrees of success. There is considerable variation in the length of time taken to place children, the intensiveness and type of placement supports required, and the likelihood of placement breakdown.

It is not possible, or desirable, to develop a prescriptive formula for decision making in this area. There is, however, general acceptance that the factors outlined below must be taken into account when evaluating the appropriateness of permanent family placement for a child. The following discussion is not intended to imply that a child with any of the characteristics outlined is regarded as unplaceable, or that the Permanent Care Team will not endeavour to find homes for any children who may be ‘difficult to place’. However, it is important for fieldworkers and caseplanners to be aware of factors which are likely to affect the viability of referral to the Permanent Care Team in particular situations. These issues require full exploration with the Permanent Care Team during the consultation process.

Factors affecting referral

Age

Research clearly indicates that children aged over eight years of age are more difficult to place than younger children, particularly if they have an intellectual disability or have experienced lengthy periods of institutional care. The difficulty lies both in the recruitment of interested families and in maintaining the placements, which have a higher rate of breakdown than placements of younger children. These research findings are consistent with the permanent care program’s experience.

Research also indicates that the likelihood of successful permanent family placement of adolescents is limited as they are often moving towards separating from family ties and living independently. An exception may be where a teenager expresses a strong wish to be part of a new family.

Programs which are successful in placing adolescents with families focus on recruiting applicants who are prepared to accept that the child will integrate into the family to a very limited extent. The permanent families recruited by the Permanent Care Teams in general have been interested in children who will not move to independence in the near future.

Attachment potential:

This is a complex area and there are many unresolved questions regarding the significance of bonding and its relationship to attachment and separation.
The two main concepts referred to in the literature with relation to attachment are 'privation', where the child has lacked any opportunity to form affectional bonds, and 'deprivation', where some early bonds have been formed but have been disrupted and not satisfactorily replaced. Research suggests that deprivation can be reversed either wholly or partially by later positive experiences but that privation is more difficult to counteract. The responses of individual children to experiences of separation and loss are influenced by factors such as age, gender and temperamental characteristics as well as the quality of relationships prior to separation.

In assessing a child’s attachment potential it is essential to consider in detail the child's past life experiences, in particular the number of caregivers and placements the child has experienced, and the quality of relationships with caregivers. The child's past and current behaviour requires assessment as there are a number of behavioural indicators of attachment difficulties. These primarily relate to the child's lack of trust in adults and low self esteem. Behavioural indicators of attachment difficulties include:

- withdrawal from interactions, either physically or emotionally.
- aggressive or hyperactive behaviour, which serves to keep adults at a distance.
- indiscriminate affection, which indicate that no one is of special importance to the child.
- over-competency and self-parenting behaviour, which children have learned through the necessity of taking care of themselves.
- lack of self awareness, in particular, lack of awareness of bodily sensation, which may be apparent in terms of lack of reaction to pain, extreme over eating and wetting and soiling.
- issues of control, where reasonable requests from caregivers may result in major confrontations and power struggles. This underlying need to control everything results from the child's feeling of not being in control of any aspect of his/her life.
- delayed conscience development, involving lying and stealing.

Major attachment difficulties have significant implications for the viability of family placements.

Although research indicates that such difficulties may, at least to some extent, be reversible in a positive environment, such placements are likely to be extremely stressful and have a high likelihood of breaking down.

**Child's attitude:**
The extent to which the child's attitude needs to be taken into account obviously depends on the child's age and developmental stage. It is clear from research that the attitude of the child has a bearing on the outcome of placement, and it would generally be inappropriate to look for a family placement for an older child who was opposed to such a move.

**Parents' attitude:**
There are challenges in considering permanent family placement of a child where a parent is strongly opposed to a caseplan of permanency and where there is a distinct likelihood of frequent appeals against the caseplan. It is difficult to recruit families who are willing to accept placements which are legally very insecure, and the threat of constant appeals may destabilise the placement.
**Child's behaviour:**
Some behaviour may be difficult to manage in a family situation. Examples are physically violent or aggressive behaviour or suicidal tendencies.

It is important to consider behaviour which has been evident at different stages of the child's development and the different circumstances which surround it. A child’s behaviour in a controlled setting such as congregate care is often not indicative of their behaviour in a family situation, where expectations are quite different. In some instances it may be appropriate to undertake a behaviour management program prior to referral.

**Child's physical/intellectual needs:**
Placement within a family setting provides the opportunity for children with physical and/or intellectual disabilities to develop to their maximum potential and facilitates integration into the wider community. In most cases the needs of children with disabilities can be appropriately met within a family situation.

Some severe physical/and or intellectual disabilities however, are so taxing that it may be difficult to meet the needs of the child within a family setting. Examples include children with significant physical problems which require ongoing nursing care and children with severe intellectual disabilities who are unlikely to attain a minimal capacity for self-care. In common with all placement agencies, the Permanent Care Teams experience difficulty in recruiting families for older children with major disabilities. However, there is an additional focus on these children as a result of the DS funded permanent care initiative.

**Access:**
It is difficult to recruit families for children where a caseplan involves a high level of difficult access which occurs in a conflictual environment, and which is anticipated to continue to present difficulties.

**Genetic risk:**
There are some difficulties in recruiting families for children whose background involves a significant genetic risk, and there is a possibility of the child developing a particular condition in the future. The extent of the difficulty in placement depends on the nature and extent of the particular risk. For example, a child with schizophrenic parents possesses a 40 - 50% chance of developing schizophrenia at some stage during their life.

**Sibling groups:**
When considering placement of siblings the needs of each child must be considered individually, but the combination of needs must also be taken into account. Sibling placements involve a very high level of demand for the caregiver; sibling groups where one or more of the children is aged over eight are particularly difficult to place. These placements are also generally very resource intensive, and require considerable support from Team staff and community services.
To ensure that decision making is based on adequate information and takes place within an appropriate timeframe, consultation with the Permanent Care Team must occur early in the process of planning for permanency for a particular child. It is essential that this consultation process be undertaken whenever a referral to the Permanent Care Team is under formal consideration.

Circumstances which result in a decision of permanent family placement vary greatly, as do the processes leading up to that decision. In many situations, several case planning meetings are held over a period of time prior to a decision of permanency being made. In other situations, the decision may be made relatively soon after the child is admitted to the care of DHS.

**Initial consultation**

The consultation process must commence at least 3 weeks prior to a case planning meeting where a decision regarding permanency and referral to the Permanent Care Team is under consideration. It may often be appropriate for regional staff to begin initial consultations with the Permanent Care Team earlier in the planning process. There may be situations where a fieldworker wishes to begin preliminary exploration of issues related to permanency and referral to the Permanent Care Team, although a case planning decision regarding permanency may not be envisaged for some time.

Initial consultation generally involves discussions between the regional fieldworker and the team leader from the Permanent Care Team responsible for that particular region.

At the time of initial consultation, the permanent care team worker completes the proforma ‘Permanent Care Team Consultation’ (Appendix 1).

**Provision of written information**

For the consultation process to be effective, it is essential that adequate information is provided to the Permanent Care Team. The ‘Information required for referral to the Permanent Care Team’ (Appendix 2), has been developed to ensure that the Permanent Care Team has relevant information on which to base consultation regarding specific cases. This written information must be submitted to the Permanent Care Team at least 2 weeks prior to the date of the case planning meeting where referral to the Permanent Care Team will be considered. This information is required in addition to the case planning report, as it focuses on issues related specifically to the feasibility of permanent family placement which are often not covered in detail in case planning reports. These requirements will be discussed during the initial consultation.

After the information outlined is forwarded, the Permanent Care Team worker may further explore specific issues with the regional worker. Where a residential, foster care or other professional service has knowledge of the child’s situation, it may be appropriate for that worker to directly contribute to consultation process.
Attendance at caseplanning meetings:

The Permanent Care Team leader or delegate must be present at all caseplanning meetings where a referral to the Permanent Care Team is under consideration. Adequate consultation, as described above, must take place prior to the meeting.

It is not usually appropriate for the Permanent Care Team to attend caseplanning meetings where home release is still being actively pursued although it may be appropriate for preliminary consultations to take place at this stage.

Acceptance of a referral:

Following the caseplanning decision to seek a permanent family placement by the Permanent Care Team the regional team leader or delegate accepts the referral at the caseplanning meeting. The team leader informs the case planning chairperson of the current workload capacity of the team. If it is evident that there is likely to be considerable delay in allocation, the case planning chairperson may decide to defer referral or to explore other options for placement. The Permanent Care Team leader maintains records of those cases whose referral does not occur for these reasons.

Once a referral is accepted, the Resource Exchange is notified of the referral and receives a copy of the child referral to CRE (Appendix 3a) and child profile (Appendix 3b) from the regional team. The CRE advises all regions of all referrals. Where adequate consultation has not taken place according to these guidelines, the Permanent Care Team may formally approach the caseplanning chairperson and request that an additional caseplanning meeting be held to further explore issues around the decision.

If a referral is made which is inappropriate and contrary to the recommendations of the team, the PCT Manager may negotiate an agreement with the Manager, Child and Family Care.

Case Management

Where a child is referred for placement, the Permanent Care Team assumes case management responsibility and the region maintains caseplanning responsibility. This differs from referrals for Foster Care Conversions where case management is not accepted by the Permanent Care Team (see foster care conversions and specific applications).

In some situations, consideration may be given during the case planning process to the existing DHS worker maintaining the role of the child’s primary worker.

Factors which should be taken into account include existing relationship with the child and geographic location. Ongoing consultation with the team leader or delegate regarding the case is then required.
Written agreement between relevant parties at the time of referral

There will usually be a number of significant parties involved with a child who is referred to the Permanent Care Team. These may include birth family, DHS protective service staff, and residential agency or foster care staff.

It is important that the roles and responsibilities of the various agencies and individuals are clarified and that expectations are made explicit by use of a written agreement.

At the time of referral to the Permanent Care Team the written agreement should be completed by the relevant professionals (Appendix 4). The birth parents are given the opportunity to complete the agreement if they wish. Once completed, all parties should have a copy of the agreement.

The written agreement should be reviewed and amended if necessary at annual reviews of guardianship, and also at any time when circumstances change significantly. If agreement cannot be reached regarding significant variations of the agreement, it may be necessary for a case planning meeting to be convened.

Referrals of Children With Intellectual Disabilities

The Permanent Care Teams have expanded their role in placing children with intellectual disabilities as the result of a DS funded initiative. The children must be eligible for DS registration, although registration is not mandatory. If children are considered ‘eligible’ for DS registration but they have been assessed or serviced by other workers or agencies, they may be referred directly to the Permanent Care Team.

In situations where the child is under the guardianship of the Director General of Community Services, the procedures with relation to consultation and referral outlined previously, will apply.

If the child is not under DHS guardianship, designated workers from DS, Early Childhood Teams or other agencies may consult directly with the appropriate regional Permanent Care Team. When permanent care is under consideration as a placement option, detailed written material must be provided to the team using Appendix 2.

Where a General Service Plan (GSP) is being prepared and permanent care is under consideration, consultation should take place with the Permanent Care Team and it may be appropriate for the team leader or delegate to attend the GSP meeting. The Permanent Care Team leader makes the decision regarding acceptance of the referral and this may be done at the GSP meeting or after detailed consultation with the allocated worker. A written agreement should be completed as outlined previously. Ongoing involvement or case management by the DS worker may be appropriate and this must be negotiated and agreed at the time of acceptance of the referral.
Workload management and priority of referrals

It is the responsibility of the Permanent Care Team leader, in consultation with line management, to monitor the placement capacity of the team. It may be necessary to establish priorities for the acceptance of referrals and allocations when demand exceeds the team's workload capacity. Where workload capacity will preclude the allocation of new referrals for at least one month, consideration should be given to closing the program to new referrals for a specified period. During this period, referrals which cannot be accepted should be placed on a waiting list and reviewed when the program re-opens.

In establishing priorities for allocation is necessary to take into consideration standards and guidelines which will have implications for the allocation of certain aspects of the team's work.

Relinquishment counselling

The Standards in Adoption provide that there must be a response to a referral or request for relinquishment counselling within 48 hours, or 24 hours if a direct request is received from a parent who has a child in his/her care. The contact may be in the form of direct or telephone contact to arrange an interview, or in the latter situation to ascertain whether emergency placement is required.

Relative and step-parent applications for adoption

The Supreme Court (Adoption, Guardianship and Custody) Rules provide that once documents have been served on DHS a report should be provided to the court within 30 days. An extension of time may be sought where there are particular difficulties, for example, the whereabouts of the birth parents are unknown.

Re-allocation of existing work

The re-allocation of existing work for example, when staff leave may at times take precedence over the allocation of new work.

Conversion of legal status

In general new referrals which involve the conversion of existing placements to a different legal status (adoption or guardianship and custody) will be considered of a lesser priority than referral of children requiring placement. The exception is where a response is required by the court during a particular period as outlined previously.

Priority of referrals

The team leader will at times be required to establish priorities from within a number of children requiring placement. This may involve the consideration of a range of factors. Regional teams may develop additional mechanisms for screening referrals, for example, a referral committee which considers the relative priority of referrals for allocation.

• The child

Given adequate consultation, it is assumed that all children accepted as referrals are considered appropriate for family placement. However the age and the needs of the child require consideration in determining priority for allocation. In general, younger
children require priority as there are relatively more serious implications for the child's emotional development in delaying placement.

Children aged eight or older or children with physical and/or intellectual disabilities may however, be considered as a high priority if they have recently been targeted in a publicity and recruitment campaign.

- **The child's current placement**
  Issues related to the child's current placement may contribute to that child being given a high priority for placement eg.:
  - the placement may be of time limited duration;
  - the child may have a history of multiple placements, and further disruption or short term placement should be avoided;
  - the present placement may be unsatisfactory and for various reasons may not be meeting the child's needs, for example, a poor relationship may exist between the child, the caregivers and/or other residents.

**Maximising the team's placement capacity**

Team leaders may utilise the following options to maximise the teams' placement capacity:

- **Contracting of preparatory work**
  If the referral is considered appropriate but the team is unable to allocate the child, the preparation work with the child and the birth family may be contracted to other relevant workers.

  These may include DHS regional staff or foster care staff. In this situation the Permanent Care Team act largely in a consultancy role prior to linking and placement.

  The child can then be featured in the teams, recruitment programs and have access to the Central Resource Exchange.

- **Direct referral across the region via the Resource Exchange**
  Where it has been assessed at the time of that referral that little preparation work is required, the Resource Exchange may be advised of the team’s acceptance of the referral without allocation of the referral to a team member. Allocation could occur either in the region of origin or the approved applicants' region once a potential link has been identified.

**Review of referrals**

At the time of referral to the Permanent Care Team, a date is set when a review of the referral will take place in the region of origin. If the case has not been allocated or if a placement has not yet been found the referral will usually be reviewed at a case planning meeting. This review includes all relevant parties, and considers whether the period of referral should be extended, and the implications for the child's current placement. Referrals which have remained on the waiting list while others have been regarded as a higher priority also require review.
Appendix 1: Permanent care team consultation

Appendix 2: Information required for referral to the permanent care team

Appendix 3a: Referral to adoption & permanent care resource exchange APCRE

Appendix 3b: Child profile, confidential to permanent care team

Appendix 4: Community services Victoria written agreement regarding referral to the permanent care team
3. PREPARATION OF CHILDREN

Practice experience and research evidence indicate that there is a relationship between the outcome of permanent family placement and the extent to which the child has been prepared prior to placement. The exact nature of the preparation process varies according to the age and specific needs of the child. In general the concept of preparation may be regarded as encompassing two major elements: formal assessment of the child and direct work with the child to assist in resolving his/her past.

The primary objectives of the preparation process are therefore as follows:

- To become familiar with the child and his/her needs by meeting with the child and by discussing the child's needs with other relevant parties.
- To develop a comprehensive assessment of the child to assist in determining the type of family who would best meet the child's needs.
- To learn about the child's view of him/herself and his/her experiences so that this knowledge can be shared with prospective permanent caregivers.
- Where appropriate, to develop a relationship with the child which will assist him/her in working through past experiences so that he/she is sufficiently prepared to move to a new family.
- To enable the child to participate actively in decision making regarding his/her future to the extent that age and development allows.

Assessing the child's situation

A major task of the Permanent Care Team worker involves undertaking a comprehensive assessment of the child's situation. This assessment builds on information obtained during the consultation process and focuses on the child's needs in terms of preparation for placement and the type of family which would be most appropriate for the child.

It is important for the Permanent Care Team worker to develop an assessment which is as comprehensive as possible, and the sources of information include case notes and reports on the child's file, as well as discussions with birth family members, relevant professionals, and past and present caregivers. The initial task for workers is to read the child's file in detail.

Workers should document the child’s family background, placement history, and a chronological summary of the child's development. This involves the preparation of a genogram, detailed flow chart and a chronological chart of the child's physical and emotional development. The assessment should summarise the child's developmental needs, the attributes of the required placement and the preparatory work required prior to placement.

If there are particular concerns regarding aspects of the child's development, a specialist assessment may be organised by the Permanent Care Team worker. A referral may be made to a paediatrician, if the concerns are medical or relate to physical or intellectual development, or to a child psychiatric service if there are concerns regarding emotional development. Referrals may also be made to services within DHS, such as early intervention staff or early childhood teams.
A paediatric assessment of all infants is arranged prior to placement.

**Direct work with children**

The importance of direct work with children in care is emphasised in the literature. It is considered that a child must have sufficiently resolved feelings about the past to be motivated to return to his/her birth family or to make an investment in a new family. It is important for the development of a child's identity that painful experiences from the past are brought into the open, and that the child is able to communicate what he/she feels.

It is important that each child's needs in terms of preparation are considered and that the approach taken reflects this. Direct work with the child should not commence until a detailed assessment has been developed and the goals of the work considered. The complexity of the issues involved also needs to be recognised. It is not a matter of 'working through' issues which are clearly apparent. The child's past experiences may be integral to his/her personality and identity. Considerable skill may be required in developing a relationship and undertaking direct work with the child. The Permanent Care Team worker may need considerable supervision and support in undertaking this work.

The life story book is a mechanism frequently used by Permanent Care Team workers in direct work with children. By working on a book which describes his/her life, the child is encouraged to express at his/her own pace some feelings about the past. Some older children may require a period of some months of preparation prior to moving to live with a permanent family.

It is important to formalise the preparation process with the child by discussing with them the purpose and frequency of the visits and the nature of the activities which will take place. Workers should use clear, simple language with the child. It is desirable for the child's caregiver or another significant person to be present when the worker initially meets with the child.

It is essential that the objectives of the work undertaken with children are regularly reviewed, particularly in situations where there are difficulties in locating a permanent family for the child. It may be appropriate to defer direct work with the child until there is a potential link with a family.

It is often appropriate for direct work with children to occur post placement rather than solely in the preparatory period. Many children are unable to focus on sensitive issues in their background until placed in a secure environment.

In some situations it is appropriate for professionals other than the Permanent Care Team worker to take an active role in preparing the child.

Where a regional, foster care or residential worker has a significant relationship with the child, it may be appropriate for them to undertake direct work with the child in consultation with the Permanent Care Team worker. The current caregiver may also help prepare the child.
If an assessment has indicated concerns about the child's emotional development which are considered to require intensive therapy a referral to a specialist child psychiatric facility may be arranged.
4. COUNSELLING OF PARENTS CONSIDERING ADOPTION OF THEIR CHILD

DHS and non government agency adoption and permanent care workers are approved as adoption counsellors under section 5 of the Adoption Act 1984 which provides that:

i) Subject to subsection (ii) the Director-General may, by notice published in the Government Gazette, approve a person as a counsellor for the purposes of this Act and may by notice so published revoke such approval.

ii) The Director-General shall not approve a counsellor under subsection (i) unless the person is:
   a) an officer or employee of the Department of Community Services;
   b) employed by an approved agency; or
   c) a person who is not such an officer or employee or so employed but is a person who in the opinion of the Director-General has such qualifications and experience as is appropriate for a counsellor for the purposes of this Act.

Section 35 provides that before consent is given by a person they shall receive counselling from a person approved for the purpose by the Director-General or Principal Officer of an approved agency.

The role of the counsellor

The primary aim of counselling is to assist parents in making an informed decision about options for the care of their child by providing support and information, and by assisting in exploring relevant issues. Counselling may take place both pre or post birth, depending on when the parent(s) approach the service.

Counselling is often complex and the approach to counselling should be flexible, utilising the skills of relevant community agencies where possible. Relevant agencies or services may include hospital social workers, child welfare agencies, general counselling agencies, DHS regional staff and self-help/support groups. The counsellor's role has a strong educative and coordinating function. If intense individual counselling is required referrals may be arranged to specialist counselling services.

All stages of the counselling process must be carefully documented to ensure all procedures of the Act have been complied with. At the time of the initial contact regarding a request for relinquishment counselling the intake worker completes the Referral for Relinquishment Counselling form (Appendix 5).

Pre-birth counselling

The Standards in Adoption require that a request for pre-birth counselling be responded to within forty-eight hours of the referral being received. Referrals for pre-birth counselling are allocated to a worker from the appropriate geographic team. Tasks undertaken in the initial intake interview include the following:

- Provide the information booklet and discuss the content (this booklet gives details about the effect of an adoption order, the alternatives to adoption and information about organisations which provide family support services).
Discuss the extent and nature of counselling already received and identify relevant local supports and services.

Discuss the range of options for care of the child.

Discuss the provisions of the Adoption Act 1984, in particular provisions related to access and information exchange.

Establish which other parties are to be included in the counselling process, in particular the birth father and the extended family.

If the parent(s) wish to pursue the option of adoption, the worker continues the counselling process. The 'Information Obtained from Birth Parents' (Appendix 6) is completed as part of the counselling process.

The extent and nature of the service provided by the Permanent Care Team relates to a number of factors, including the complexity of the specific situation, the level and type of involvement of other services, the point during the pregnancy when the parent approaches the Permanent Care Team and the wishes of the parent.

It is essential that the parents have the opportunity to explore all relevant issues including the range of feelings associated with relinquishment of a child, in particular the grief process, and the options for care of the child. It is also important for the parents to be prepared physically and emotionally for the birth of the child.

Where the parents are already involved with relevant community or professional services it is generally appropriate for that agency to take an active role in exploring these issues with the parents. The worker’s role in these situations will primarily be one of liaison with these services. In other situations it may be necessary for the worker to assist the parents in identifying appropriate community services and to act as an advocate to assist the parents in linking in with services.

In all situations the Permanent Care Team also undertakes individual interviews with the parent. The Standards in Adoption indicates that the approved adoption agency must have at least one interview with the parent, providing appropriate counselling has been carried out already by other parties, and where this is not the case, three to four interviews are required. The number of interviews undertaken depends on the particular situation.

Post-birth counselling

Referral

Where the Permanent Care Team has had prior contact with the birth parent, and a worker has been allocated, counselling should continue.

If there has been no prior contact with the Permanent Care Team counselling will focus on many of the issues discussed under the previous section, for example, options for the care of the child and procedures associated with adoption.

If the date of birth is considered day one, then consent cannot be given until day sixteen. The parents must be given information in writing at least seven days prior to signing consent, although this requirement may be waived in exceptional circumstances. Such circumstances may include situations where a parent has definite plans to travel interstate before the seven days elapse, and there are concerns about being able to re-establish contact with him/her after the move.
**Child care agreement:**
If a parent intends to give consent to the adoption of their child, a Child Care Agreement is usually signed (Schedule 19). The delegation for the signing of Child Care Agreement rests with the Permanent Care Team leader. The parent of the child authorises the Director-General or Principal Officer to exercise rights of custody in respect of the child.

The Permanent Care Team then has the authority to move the child from hospital to a foster care placement during the period prior to a consent being signed, or where one parent has signed consent but the consent of the other is required.

It is not appropriate for a Child Care Agreement to be signed unless there is a clear indication that the parent(s) intend to give adoption consents. In situations where there is a high degree of uncertainty, it may be more appropriate for the parent(s) to sign a voluntary agreement with a foster care agency while they further consider their decision. The Child Care Agreement expires after six months, but may be extended for periods of no longer than six months, in total not exceeding 18 months.

**Persons eligible to consent to adoption**
During the counselling process it is essential to establish which parties are eligible to give consent.

- **Married couples**
  Both consents are required where the mother and father of a child were married to each other either:
  - at the time of the child’s birth
    OR
  - at or after the time of the child’s conception but before its birth.

- This applies only to a child who has not been previously adopted. Where a child has been previously adopted the adoptive parents of the child must sign consent.

- **Note that the Status of Children Act 1974 presumes that the husband is the father in the absence of evidence to the contrary where a child is born:**
  - during a woman’s marriage
    OR
  - within 10 months after dissolution of the marriage by death or otherwise.

- Where there is evidence to suggest that a man other than the husband may be the father, legal advice should be sought to clarify from whom consent is required.

- **Unmarried couples**
  - Consents are required from:
    - the mother of the child;
    - a man whose paternity has been established in accordance with Section 33(3) of the adoption act 1984.
This applies only when a child has not previously been adopted. As with married couples, the parents of a child previously adopted must sign adoption consents.

**The role of the putative father in adoption counselling**

The Adoption Act 1984 provides that wherever possible putative fathers should be given the opportunity to be involved in decision making and to give consent for their child.

It is necessary to read Sections 33 and 49 of the Act together. Section 33 outlines which parties are required to consent to adoption, and Section 49 details provisions regarding the putative father.

**General principles**

- It is important to take steps to locate the whereabouts of the birth father at the earliest appropriate time in the counselling process to conform with the intention of the Act that fathers be given a right to relinquishment counselling and to sign consent.

- Where counselling takes place post birth, it is essential for the counsellor to establish early in the counselling process whether the father's name is on the birth certificate. A man whose name appears on the birth certificate is eligible to sign consent under Section 33(3)(a), that is, his paternity is automatically established.

- It is important that the relinquishment counselling process is clearly documented on file including discussion regarding the father's identity occurring over time. In particular, attempts to contact the birth father should be detailed, and factors which contribute to decision making should be fully discussed.

- Establishing eligibility of the father to give consent is also necessary if the father wants access or information conditions on an adoption order.

- In discussing the requirement with a birth mother, emphasis should be placed on the importance to the child of knowing that both parents have had the opportunity to participate in planning the adoptive placement. A strong emphasis should be placed on the long term rights and interests of the child in having knowledge of their origins. The mother should be encouraged to recognise the importance of the child's future rights as separate from her own immediate needs and rights. She should also be encouraged to disclose as much information as possible to give to the child.

- If the mother is unwilling to disclose details identifying the father, she should be requested to sign a written statement indicating her reasons for this. This statement should be attached to the file.

- While the mother may initially be reluctant to disclose details regarding the father, her attitude may change as she further considers within counselling the issues confronting her. She may require assistance to dealing with her own feelings, her feelings about the father, her reaction to rejection of herself and/or for the child, her future financial supports and lifestyle changes.
Contacting the putative father

• In order that the birth father has the opportunity to establish paternity it is obviously necessary that he be aware of the child’s existence and of the birth mother’s plans to sign consent.

In many instances both parents are involved in the counselling process from the start. In other situations the birth mother attends counselling alone. It is essential that in all situations the counsellor discusses the birth father’s situation at the earliest appropriate stage of the relinquishment counselling process, and continues to discuss the benefits and issues associated with his involvement as counselling progresses.

• Section 49 (1)(b) of the Adoption Act 1984 provides that, where the putative father has not been contacted, the court is unable to make an adoption order unless satisfied that the adoption agency does not know the name or address of a man who may on ‘reasonable grounds’ be the father of the child. The legislation therefore places the responsibility on the agency worker to attempt to contact the man concerned where either the name or address is known.

The definition of ‘reasonable grounds’

• It is unclear what is considered ‘reasonable grounds, for the purposes of the Act. This would obviously refer to a man identified by the mother, but other parties, for example professionals or family members, may also identify men they reliably believe to be the father of the child. This would appear to constitute ‘reasonable grounds’ for belief that the man concerned may be the father of the child. The basis of this belief should be documented on file.

• It is also important that the allocated worker is familiar with the file as the father may have been identified in writing, for example on the original referral.

• In situations where the mother has withheld this information and it is supplied by another source, the mother must be informed that attempts will be made to contact the man concerned.

• Questions arise regarding the extent of efforts the worker should make to gain information about the birth father when the mother is unwilling to disclose these details. The attitude of the courts to the worker’s role in this area is unclear. In general, if the worker has contact with others who may know the identity of the father as part of the counselling process, the legislative provisions along with the potential long term benefits to all parties should be explained. They should be informed of the mother’s attitude towards contacting the father, a step which would of necessity follow from their providing his name and the future benefits for the child from knowing the father’s identity. It is then the decision of that person as to whether they wish to disclose identifying information.

Search procedures

• It is necessary to attempt to contact the putative father if his name or address is known. Clearly there are practical difficulties in attempting to contact someone
regarding a sensitive matter when incomplete details are available. It is also unclear from the legislation the extent of efforts required to contact someone whose name or address is given. While each situation must be considered on an individual basis, some general guidelines apply.

- Wherever possible, attempts should be made to contact the father as early as possible in the counselling process. Within two days of consent being accepted, notice must be sent by certified mail to any person that the counsellor believes on reasonable grounds may be the father of the child. This is intended to allow him to take steps to establish paternity prior to the end of the period during which consent can be withdrawn. It is preferable, however, to attempt to clarify the father’s situation prior to accepting consent so that he may be involved in the counselling process if he wishes.

- Where a name and address are known, a letter should be sent by certified mail to that person. Where consent has been signed, the content of the letter is specified in Section 49 (2). That is, the letter must inform the man that it is believed he may be the father of the child and that unless he commences proceedings to obtain a declaration of paternity before the end of the period during which the consent of the mother may be withdrawn, the consent of the father to the adoption will not be required.

- Where a name only is known, attempts should be made to ascertain the address of the man concerned. The Act does not make clear the extent of attempts which are required to establish the putative father's address. However, Section 43 (2) refers to processes which must be undertaken to attempt to contact a parent in order to dispense with their consent to adoption. In general these procedures should be carried out in an attempt to locate the putative father. If the counsellor becomes aware of a number of men with the same name at differing addresses, discussion should take place with the mother as to whether she believes any of these men may be the father. It may be necessary to write to more than one man regarding the possibility that he is the father of the child. However, in this situation a general letter should be sent initially requesting the man concerned to contact the worker.

- In a small number of situations only the address of a putative father may be known. This is an extremely sensitive area which raises issues of confidentiality and presents an ethical dilemma for workers. In these circumstances it may be appropriate to forward a general letter to that household outlining the situation and requesting that any person who has an interest in the matter contact the counsellor. However, given the sensitivity and confidentiality of the issue, the letter would obviously require careful wording and must be signed by the team leader.

**Dispensation of the need to make contact**

- If it is considered inappropriate to contact someone who has been identified as the father, the worker may apply to the court to dispense with the need to comply with this provision of the Act. This must take place within two business days after the mother signed consent (Section 49 (1)(b)(ii)).
• This action would usually be taken in situations where there are major concerns about the father’s situation and it is considered inappropriate for him to be involved in decisions regarding the child. The following are examples of situations where consideration could be given to utilising this Section of the Act:
- A child conceived of rape or incest.
- A substantial history of violence by the father towards the child, the mother of the child or other children.
- An extensive violent criminal history.
- A history of sexual abuse.

In other cases a combination of circumstances may warrant an application to dispense with consent. For example, a case where there is considerable doubt about the identity or location of a father and a lengthy history of lack of contact in the case of an older child may also warrant such an application.

Where this provision may be used, the case should be discussed with the worker’s supervisor and legal advice should be sought as early as possible in the counselling process.

**Establishing paternity**

The consent of the putative father is not required unless the man concerned commences proceedings to obtain a declaration of paternity before the end of the period during which the consent of the mother may be revoked. His right to establish paternity is forfeited at the expiry of the period and his consent to adoption is then not required. (Section 49 (3)).

Where a man commences proceedings to obtain a declaration of paternity prior to the end of the period during which the mother may revoke consent, any proceedings for the adoption of the child shall be suspended until the outcome of the proceedings with relation to paternity is established. (Section 49 (3)).

The ways in which paternity may be established are outlined in the Status of Children Act 1974. These include:
- The signing of an instrument acknowledging paternity by the mother and father of a child in the presence of a solicitor (Section 8 (2)).
- An order against a person under Section 10 or 12 of the Maintenance Act 1965 (Section 8 (3)).
- A declaration of paternity from the Supreme Court for a child under Section 10 of the Status of Children Act 1974. Anyone contemplating this should be advised to seek legal advice.

A possible alternative, where the mother agrees, involves the father’s name being included retrospectively on the birth certificate (this automatically establishes paternity). The parents must notify the Registry of Births, Deaths and Marriages, sign a declaration and pay a fee. This can only occur within 60 days of the original birth certificate being made out.
Once paternity is established

- If paternity is established, the child cannot be adopted unless the father signs consent or his consent is dispensed with under Section 43 of the Adoption Act 1984.

- In arriving at an informed decision regarding his child’s future, the father should be offered counselling to address issues confronting him in the pregnancy crisis, and a separate counsellor from the mother’s counsellor may be appropriate in some instances. The father may have little bonding with the child and unresolved issues regarding the birth mother. It is important that he be given the opportunity to address his feelings, fully explore issues involved in rearing a child, develop a relationship with his child, and explore his family supports. He should also be assisted to link with and utilise relevant professional and community supports.

It is the father’s legal right to request custody of the child and, where the mother is not in agreement, an application may be made to the Family Court. If the counsellor believes there are significant protective concerns, consultation should take place with the Protective Service Unit as would apply to similar concerns about the mother retaining care and custody of the child.

Procedures for giving consent

Consent to adoption must be given in the presence of the Permanent Care Team worker who has provided the counselling, and a prescribed Court Official. In the metropolitan area this generally takes place at the County Court, while in rural areas local Magistrates Courts are used.

The Permanent Care Team worker ensures that the Certificate of Compliance (Schedule 12) is completed and signed by the delegated officer. Delegated officers include the team leader. This form must be presented to the Court Officers at the time consent is signed. The Permanent Care Team worker also completes the following forms:

- Consent to Adoption of a Child (Schedule 9, Form 1),
- Extension of Period for Withdrawing Consent (Schedule 17),
- Notice for Withdrawing Consent (Schedule 18).

The consent form is signed in the presence of the Court Official and a copy is given to the parent(s). The unsigned Schedule 17 and Schedule 18 are given to the parents by the Court Official with an explanation of how to extend or withdraw consent.

The parent is given the opportunity to complete Schedule 7, Form 1: ‘Wishes of the Natural Parent - Religion, Race and Ethnic Background’ and Form 2: ‘Wishes of the Natural Parent after Consent is Given - Information about a child - Access to a child’. Form 1 may be completed at any time before or after consent is given, while Form 2 must be completed after consent is given.

Parents are also given the opportunity to complete Schedule 8: ‘Wishes of Natural Parent - Receipt of Information about Events Occurring after Consent is Given’. Parents must be advised that their wishes with respect to Schedule 8 can be changed at any time by notifying the Director-General. Where any of the following
events occurs, the parent must be notified in writing unless they have indicated they do not wish to be given notice.

- The expiration of the period during which consent may be revoked.
- The placement of the child to whom the consent relates with a proposed adoptive parent or parents.
- The termination of such a placement.
- The renunciation by the Director-General or Principal Officer of guardianship of the child.
- The death of a child to whom the consent relates if death occurs before an adoptive order is made.
- The making of an order for the adoption of the child.

The counsellor and birth parents complete a comprehensive background history which provides material to assist in selecting an adoptive family, and provides the adoptive family and child with comprehensive information to assist in the child’s understanding of his/her biological origins and birth family.

The Role of the Birth Parent in Placement of Infants for Adoption
At the time of signing adoption consent, birth parents are asked if they wish to be actively involved in selecting an adoptive family. Birth parents are encouraged to consider profile information on 2 to 3 approved adoption applicants who have been assessed as suitable for the child, and to indicate the couple with whom they would prefer the child the child to be placed.

It is important to recognise that the Secretary or principal officer of an approved agency is actually legally entrusted to make placement nominations which are then considered by the Court. Decisions made by birth parents must be seen within this context.

Selection Process
The linking process should include the following steps.

a) The worker prepares a link report which sets out the needs of the child, the wishes of the birth parent(s), and the pros and cons of the approved applicants to be presented.

b) Team Leader/Principal Officer adds a notation to the report/file, to the effect that they have approved each family member as appropriate for the child to be placed.

c) The worker presents the profiles to birth parents(s), who indicate which family they prefer.

d) The Team Leader/Principal Officer makes the final placement decision, taking into account the preference of the birth parent(s), and records this in writing on the report/file.

Impact of the DHS Privacy Principles
The profiles and photos shown to birth parents are considered to be identifying information about the applicants. Primarily this is because if photos of the applicants are used, they will identify them even though birth parents may not recognise them.

The DHS information Privacy Principles set a standard of privacy that protects people when the Department collects, uses and discloses identifying information about them.
As part of the selection process, applicants are informed that the information they provide is to be used by the Department/agency to decide which applicant is chosen to be the adoptive parents for the child, and is shared with the birth parents during this process. Because the provision of the information takes place within this context and with this safeguard in place, it is consistent with the DHS Information Privacy Principles. If this information is not provided, it would be contrary to Principles 3 and 10 of the DHS Information Privacy Principles.

Birth parents should be required to return the profiles, if they have taken them out of the DHS/agency office. Photocopying of the profiles by other than DHS or agency staff must be disallowed. If they prefer, birth parents may request that the PCT selects an appropriate family.

The completed consent forms are given to the administration officer for filing.

**Contact after a consent is signed**

A consent to adoption may be withdrawn within 28 days of it being signed. The procedures for doing so are explained at the time consent is signed, and involve sending a notice in writing to the Registrar of the County Court. Also at this time the option of extending the period for withdrawing consent is explained. The 28 day period may be extended for up to 14 days if the parent signs the appropriate schedule in the presence of a person qualified to witness affidavits.

The Permanent Care Team worker has at least one contact with the parent during this period to discuss the parent’s attitude towards proceeding with an adoptive placement and the availability of the provision to extend the period by 14 days.

The wishes and needs of the parent for post relinquishment services are also discussed. Services may be required for grief resolution and ongoing support. Where a parent is not already linked with relevant community services, the Permanent Care Team worker assists in organising referrals.

If the plan for adoption does not proceed or an appropriate family cannot be located, contact is made with the birth parent to discuss the future role they are able to undertake with relation to the child. If no suitable family who agree with the birth parent’s requests regarding access is located, or meets the birth parent’s wishes regarding race, religion and ethnic background, the Permanent Care Team then returns to the birth parent and discusses the families that are available. The birth parent may choose to modify their requests, but if they do not wish to do so, the Permanent Care Team may need to consider discharging guardianship, taking into account the best interests of the child. It is generally considered inappropriate for guardianship under the Adoption Act 1984 to be retained where placement for adoption does not appear viable.

Section 46(1)(c) provides that the Director-General or Principal Officer may release the child to the parents or one of the parents of the child. Section 46(2) provides that a release in writing revokes any consent given by the parent(s) to the adoption of the child, except where the child is on placement with a view to adoption. This provision is most likely to be used when a parent changes his/her mind regarding adoption following the end of the period during which they are able to withdraw consent but prior to placement of the child. It is usually appropriate to consider releasing the
consent during this time if requested by the parent as adoption should, in general, be a plan of consensus. If there are concerns regarding the parent(’s) capacity to care for the child, consultation should take place with protective service staff.

**Children beyond Infancy**

- At times the referrals are received from parents who are considering adoption of children beyond infancy. These situations are often particularly complex. They may involve a child who is in the care of a parent who experiences ongoing difficulties with parenting and considerable ambivalence regarding the child. On occasions the child may currently be placed in foster care on a temporary or respite basis or have a history of foster care placements.

- Such cases often involve protective concerns and, if so, are generally more appropriately dealt with by protective services than by a referral to specifically explore adoption. Some of these situations may then involve admission to DHS guardianship, and a referral through the caseplanning system to the Permanent Care Team may then be appropriate.

**Children with disabilities**

- The Permanent Care Teams receive a number of referrals each year where parents are considering adoption of an infant with a disability. In the majority of these situations there has been no consideration of relinquishing the child prior to birth, and the decision to consider adoption relates specifically to the child’s disability.

- It is necessary in these situations for the counsellor to take into account the particularly complex grief reaction which results from the birth of a child with a disability. The parents are grieving the loss of their expected ‘perfect’ child as well as coming to terms with the birth of a child with a disability. The responses of each parent may differ; one parent may express grief more intensely than the other.

- The counsellor’s role in these situations is to assist the family in working through their feelings of grief so an informed decision may be made regarding the child’s future.

It is important that the parents are given a realistic interpretation of the child’s condition and prospects and are made aware of the services available to assist with the child’s care.

- The worker’s primary role involves assisting the parent in establishing contact with medical professionals, DS staff, and self help or support groups. The parents need to consider the options for the child’s care and the implications of these options for the child’s future, for themselves and for other members of the family.

- If the parents wish to pursue permanent family placement, the worker discusses likely timelines for placement of the child in a permanent family. This will depend on the timing of recruitment and educative programs related to children with disabilities, and the severity and nature of the child’s disability.
In situations where the disability is particularly severe it may be extremely difficult to place the child. Consideration must be given to whether adoption is an appropriate option, even if the parents indicate they wish to sign adoption consents. In these situations it is important to liaise with DHS protective services to discuss other options regarding the child’s legal status and placement.

Relinquishment of a child whose parents are not Australian citizens

In situations where non-citizen parents wish to relinquish a child born to them in Victoria, and residing in Victoria, the child is neither an Australian citizen nor does the child have permanent resident status when the child is born.

The Adoption Act 1984 does not refer to citizenship at all in relation to the requirements for a valid adoption. The Act does not refer to the citizenship status of the relinquishing parents and allows for the birth parents to give consent to adoption without any other restrictions. The Act requires only that a child to be adopted must be present in Victoria or under the guardianship of the Secretary or principal officer of an approved adoption agency, at the time of the filing of the adoption application.

The fact that neither the child nor the child’s birth parents are Australian citizens does not make the child a ‘non-citizen’ child. A ‘non-citizen’ child is defined in the Immigration (Guardianship of Children) Act 1946, as a ‘...a person under the age of 18 years who enters Australia...', amongst other things.

Children who are born in Australia do not meet the definition of ‘non-citizen’. The Immigration (Guardianship of Children) Act 1946 Section 23 deals with the adoption of non-citizen children. Once the child is relinquished by the birth parents, the Secretary or Principal Officer of an approved adoption agency becomes the child's guardian under section 46 of the Adoption Act. The Commonwealth is not the guardian of children born in Australia and has no role in adoption arrangements for these children, nor is there any requirement to advise the parent’s birth country of the adoption.

Citizenship is not relevant to adoption orders made under the Adoption Act. The fact that a child relinquished in Victoria was born without Australian citizenship does not cause any impediment to the adoption of that child under Victorian law.

In order to ensure that the child can become an Australian citizen after the granting of an adoption order, it is important to ensure that at least one of the adoptive parents is an Australian citizen. In addition, adoptive parents should be advised not to travel with the child outside Australia until the child becomes an Australian citizen.

Australian Citizenship

With regard to the process of ensuring the child becomes an Australian citizen, there are two ways to achieve this.

1. Section 10A of the Australian Citizenship Act 1985 provides that a child born in Australia of non-citizen parents and subsequently adopted acquires Australian citizenship at the time of adoption. However, this can occur only if the child is present in Australia as a permanent resident at the time of the adoption. In
addition, at least one adoptive parent must be an Australian citizen. Section 10A only applies to adoption orders made after 22 November 1984. As it is not usually possible for permanent residency to be granted prior to adoption, in most cases citizenship is not acquired at the time of the adoption.

Applications for permanent residence may be made by the adoptive parents on behalf of the child after the adoption order is granted. This is done via the usual residence procedures, using Form 887. Evidence must be provided of the granting of the adoption order, and the child is required to undergo a health check by the Commonwealth Medical Officer. There is a fee of $1,570.

The adoptive parents must then make a separate application for citizenship for the child once permanent residence is granted.

2. Section 13 (9)(a) of the Australian Citizenship Act gives the delegate of the Minister for Immigration and Multicultural Affairs power to grant citizenship to a child under the age of 18 years. In considering the application, the Department of Immigration and Ethnic Affairs requires that the child must have been adopted in Victoria, have a ‘responsible parent’ who is an Australian citizen and with whom the child is living, and that the child is a permanent resident.

The Australian Citizenship Instructions, Section 4.7.5, dated August 1997, allows for the granting of citizenship to a child if the child has a responsible parent who is an Australian citizen, and there are exceptional circumstances which would make it unreasonable to require that the child apply for permanent residence. The requirement that the child is a permanent resident can therefore be waived. The application may be argued as causing financial or other hardship or disadvantage to the family.

The adoptive parent’s worker will inform the adoptive parents of these matters and assist them to resolve the most appropriate way to achieve citizenship for their child.

Aboriginal Parents
In addition to signing the usual consent forms, the parent of an Aboriginal child may complete Form 4 of Schedule 9, ‘Wishes and Conditions of Parents - Adoption within the Aboriginal Community’. This form must be completed at the time consent is given.

The effect of signing the form is that the agency must place the child:
- in a placement where both parents are of Koori descent,
- where one adoptive parent is Koori, or
- with parents who are not of Koori descent but are approved by an Aboriginal agency.

The consent may be made conditional to access being provided to the parent, relatives and members of the Aboriginal community. The agency is required to contact the parent if conditions for access cannot be met, or if no suitable parents are available within the Aboriginal community. The parent then has 28 days to withdraw consent or change conditions for access. The prescribed terms of access to an Aboriginal child are discussed in the chapter concerning access arrangements.
Where interstate departments are involved

Permanent Care Teams may be approached by interstate services to undertake counselling of a parent who is living in Victoria. The consent will usually be taken in accordance with the legislation of the other state and contact should be made with the interstate service to discuss the appropriate procedures.

Where the parent of a child resident in Victoria lives in another state, the relevant interstate department should be contacted. Consent may be given in accordance with the law of another state or territory and will be recognised in Victoria under Section 40 of the Adoption Act. However, other states may not have the provisions regarding access and information exchange. It is therefore usually appropriate for consents to be taken using the Victorian schedules.

Section 35 (4) provides that, where the consent is given in a place outside Victoria, it is not necessary for the interstate counsellor to be authorised under the Adoption Act. The counsellor should however be provided with information regarding the counselling procedures and encouraged to comply with these as closely as possible.

[Appendix 5: Referral relinquishment counseling] [Appendix 6: Information obtained from birth parents seeking adoption of their child] [Appendix 7(a): HIV/AIDS Risk assessment] [Appendix 8: Neonatal report on child] [Schedule 6: Notice to parent considering placing a child for adoption] [Schedule 7: Record of wishes of a parent] [Schedule 9: Section 34 (1), Regulations 20 & 29 Forms of consent to the adoption of a child] [Schedule 10: Section 34, Regulation 20 Prescribed statements of persons present when consent is given to an adoption within Australia] [Schedule 9: Section 34 & 37, Regulations 20 & 29 Forms of consent to the adoption of a child] [Schedule 12: Section 35 (3), Regulation 26 Certificate of compliance with procedures required before consent to adoption] [Schedule 17: Section 41 (1), Regulation 32 Extension of period for revoking/withdrawing consent to adoption] [Schedule 18: Notice revoking/withdrawing consent to adoption] [Schedule 19: Section 34 (2), Regulation 34 Child care agreement - child awaiting adoption] [Schedule 20: Section 45 (2), Regulation 34 Extension of child care agreement - child awaiting adoption] [Schedule 8: Wishes of parent with respect to receipt of information after consent is given] [Schedule 14: Notice to parent that an adoptive placement cannot be found for a child] [Schedule 15: Notice to parent of an Aboriginal child of inability to place a child under parent's condition] [Schedule 16: Notice varying a condition of consent to adoption of an Aboriginal child]
5. DISPENSATION OF CONSENT

Dispensation refers to a legal process by which the Court may dispense with the consent of a person to the adoption of a child. This enables a child to be adopted when this is considered to be in the child’s best interests, even where the birth parents refuse to sign consents, are incapable of signing consents or where their whereabouts is unknown. The relevant sections of the Standards in Adoption are 23.1 to 23.3.

Referrals for dispensation

An application for dispensation is only made when the child has been placed with a permanent family. There are very few situations where it is considered in the child’s best interests for consent to be dispensed with, so the child can be legally adopted by his/her permanent caregivers. A permanent care order must be considered before a decision to apply for dispensation is made.

Decisions for dispensation are made through the caseplanning mechanisms of DHS and fall into the following categories:

- Children who are referred to the Permanent Care Team for permanent placement, where the caseplan includes a recommendation to pursue adoption through dispensation;
- Children who have been referred to the Permanent Care Team for permanent placement where dispensation is included in the caseplan at a later stage;
- Foster care conversions, where the child has been placed by a foster care agency with approved foster parents. A caseplan may be made for dispensation of parental consent so that the placement may be converted to adoption.

In making a caseplan for dispensation of parental consent to adoption, the following issues should be considered:

- Why a permanent care order is not sufficient;
- Whether there is any contact between the child and birth parents;
- The wishes of the child, noting that an older child may have strong views;
- Whether grounds for dispensation exist.

Grounds for dispensation

The grounds for dispensation are set out in Section 43 of the Adoption Act 1984 as follows:

43.(1) The Court may dispense with the consent of a person (other than a guardian under Section 33(6)) to the adoption of a child where the Court is satisfied:
   a) that the person cannot, after reasonable inquiry, be found;
   b) on evidence given in accordance with sub-section (3) that the person is, and is unlikely to cease to be, in such a physical or mental condition as not to be capable of properly considering the question whether the person should give consent;
   c) that the person has abandoned, deserted, persistently neglected or ill-treated the child;
   d) that the person has seriously ill-treated the child to the extent that it is unlikely that the child would accept, or be accepted by the person, within the family of that person;
e) that the person has, for a period of not less than one year, failed, without reasonabe cause, to discharge the obligations of a parent of the child;
f) that the person has such a physical or mental disability or is otherwise so impaired that the person would be unable to meet the needs of the child;
g) that for any reason the child is unlikely to be accepted into, or to accept, a family relationship with the person;
or
a) that there are any other special circumstances by reason of which, in the interests of the welfare of the child, the consent may properly be dispensed with.

A combination of grounds may be warranted, for example (e) is often combined with (a) or (c).

**Procedures for obtaining dispensation**

**Referral to the Permanent Care Team**

It is essential that adequate consultation occurs when a caseplan involving dispensation is under consideration. The team leader of the relevant regional team attends the caseplanning meeting to provide advice regarding whether an application is likely to satisfy the grounds of the Act.

When a referral is accepted, the Permanent Care Team requires the original file and the child’s birth certificate. If the child is on a custody or guardianship to the secretary order, the application must be made by DHS. This is made in cooperation with the agency supervising the child’s permanent placement.

**Seeking consent**

Prior to commencing dispensation procedures, contact must be made wherever possible with the birth parent(s) in order to discuss the plans for the children.

If the parents whereabouts is unknown, routine procedures for searching are undertaken. On occasions a parent may decide to give consent at this stage. In this situation the usual relinquishment counselling procedures apply, and the process must be undertaken by an approved counsellor.

If the parent cannot be found, or consent is not signed, the dispensation process will continue.

**Legal representation**

The birth parent is advised to seek legal assistance if they wish to oppose the application for dispensation.

The child must be separately represented in all dispensation applications, pursuant to S.106 (1) (b) of the Adoption Act 1984. Representation is arranged by contacting the Legal Aid Commission.

**Grounds for dispensation**

The procedures involved in establishing particular grounds are outlined below:

- Section 43 (1) (a): ‘That the person cannot, after reasonable enquiry, be found’.
- Section 43 (2) details the steps which must be taken to find the person.
The affidavit incorporates details from the search. Any documentation relating to the individual case (eg: press advertisements, letters) is exhibited.

Section 43 (1) (b): ‘That the person is, and is unlikely to cease to be, in such a physical or mental condition as not to be capable of properly considering the question whether the person should give consent.’

- This ground is generally combined with Section 43 (f) (see below).
- Section 43 (3) requires as evidence ‘a certificate signed by not less than two duly qualified medical practitioners’. A medical affidavit is sought in writing from two relevant doctors who are familiar with the birth parents situation.

The letter to the doctors refers to Section 43 (3) and quotes verbatim Section 43 (1) (b).

- The affidavit to court details the medical and social history of the parent and the impact this has had on the parents relationship with the child.

- A referral is made to the Office of the Public Advocate when a party to the dispensation action is a patient in a psychiatric hospital in Victoria. A referral to the office of the Public Advocate means that the office is being asked to determine whether the rights of the party are being protected adequately and if not, what the appropriate level of intervention is in order to protect such rights. Telephone contact takes place with the intake worker at the office of the Public Advocate as early as possible in the dispensation process.

Section 43 (1) (c) ‘That the person has abandoned, deserted or persistently neglected or ill-treated the child’.

- This ground is very rarely used on its own but tends to be combined with Section 43 (1) (d)

Section 43 (1) (d) ‘That the person has seriously ill-treated the child to the extent that it is unlikely that the child would accept or be accepted by the person within, the family of that person’.

- May be combined with Section 43 (1) (c).
- Evidence from medical and other professionals is detailed with supporting affidavits from those professionals where appropriate.

Section 43 (1) (c) ‘That the person has for a period of not less than 12 months, failed without reasonable cause to discharge the obligations of a parent of the child’

- This ground is often combined with Section 43 (1) (a) or (c).
- ‘Without reasonable cause’ may be defined as the parent not being prevented from carrying out parenting obligations by being ill, a committed patient or in gaol.
- The affidavit sets out the periods of absence and the reasons for the absence. Detailed data regarding contact between the birth parent and child is required, including letters. The support provided to the family is also documented to indicate that reasonable attempts were made to recruit the family.
- It is preferable that the period of 12 months is continuous. However the ground may also be met if there have been considerable periods of lack of contact (interspersed with occasional contact) if these total at least 12 months.
Section 43 (1) (f) ‘That the person has such a physical or mental disability or is otherwise so impaired that the person would be unable to meet the needs of the child’.

- The involvement of the office of the Public Advocate is often required (see Section 4.2.(iv)1).
- Factual evidence regarding the parents disability and its implications for parenting is required. This may involve material from medical practitioners, social workers, other relevant professionals and from the parents family.

Section 43 (1) (9) ‘That for any reason the child is unlikely to be accepted into, or to accept, a family relationship with the person’.

- This ground is very broad and would generally be combined with Section 43 (1) (d). Reports are required from parties who are familiar with the child’s current situation, for example the supervising social worker, caregivers, the child him/herself if appropriate.

Section 43 (1) (h) ‘That there are any other special circumstances by reason of which, in the interests of the child, the consent may properly be dispensed with’.

- An application is unlikely to be granted on this ground alone. It is usually combined with Section 43 (1) (d) but may be used to refer to other situations for example, the inability to live with a rejected or disabled child.
- Affidavits which provides supporting professional opinion are required.

Lodgement of application

Documentation is lodged at the County Court.

The dispensation application is written in affidavit form and contains:
- a chronicled history of the child and his/her relationships with birth family; and
- dates of case planning and wardship reviews and decisions made.

Exhibits

Exhibits are used to support the affidavit and the number varies from case to case. Two documents are always exhibited:
- the child’s birth certificate; and
- the order admitting the child to DHS guardianship.

Other exhibits could include:
- Psychiatric reports
- Missing persons advertisements
- Results of searches where whereabouts are unknown

Form of summons to dispense with consent

- This is completed in triplicate. The original plus one copy are filed at court along with the affidavit and exhibits.
- The Court will send a copy back to the region when a hearing date has been sent.

Form of order dispensing with consent

- This is also completed in triplicate. The original plus one are included in the application to Court.
• The judge will sign this document when granting a dispensation application.

**Court hearing**
The County Court will issue the summons on DHS with detail of the hearing date.

DHS serves summons on the birth parent/s either personally or through a process server. The summons must be served as soon as possible after it is issued by the court, but at least five days prior to the hearing. A proforma is attached advising the birth parent to see Legal Aid if they wish to oppose the application.

If the whereabouts of the birth parent is unknown, and the procedures detailed in Section 43 (2) have been carried out, the need to serve summons may be dispensed with.

When the summons has been served an affidavit of service is lodged at the court. If it is not possible to serve the summons, an affidavit detailing attempts is lodged.

Where the birth parent is a committed psychiatric patient, the Office of the Public Advocate is informed of the hearing date.

If the birth parents indicate intention to oppose the application, legal representation is sought through the Attorney-General’s Department. In general, a barrister is briefed by the Attorney-General’s Department.
6. RECRUITMENT OF APPLICANTS

Infants
The Infant Adoption List is open to new applications and statewide information sessions are held three times a year. Due to the limited number of infants available for adoption, the optimal number of approved infant adoption applicants is about 60 couples. The number of approved infant applicants on the waiting list is monitored centrally.

All applications are initially received by the CRE. Inquirers are invited to write to the Infant Adoption List, PO Box 4057, Melbourne 3000, giving their names and address, dates of birth and date of marriage or commencement of the de facto relationship. They will be provided with written material and invited to the next Information Session.

Special needs applicants
Details on enquirers who are interested in providing permanent care are recorded on the Permanent Care Team enquiry form (Appendix 9). The enquirers are then sent a covering letter (Appendix 10), information and an ‘Expression of Interest in Attendance at Group Sessions’ (Appendix 11).

On return of the completed form, their names are added to the regional waiting list for this category of children.

Publicity
It is necessary to actively recruit applicants for children with special needs by the use of publicity.

A number of different approaches have been used, including the use of television, newspaper, radio and community education.

Publicity is a sensitive area due to the possibility of difficulties arising. For example, there are concerns regarding breach of confidentiality, emotional upset to children featured and community criticism regarding ‘marketing’ of children. The experience of local and overseas permanent care programs is that careful preparation for publicity will minimise the likelihood of major difficulties arising.

The recruitment of applicants for special needs children occurs at both the local level and in statewide campaigns. The development of regional teams provides further opportunity for the development of local networks and community based recruitment.

The CRE plays a significant role in monitoring local publicity and has responsibility for organising and coordinating statewide publicity.

Local recruitment
The regional team leader in consultation with line management, has responsibility for organising the publicity within each region.
The team leader monitors referrals and children requiring placement to determine which children should be targeted for specific recruitment.

Team leaders may also decide to publicise the program generally without focusing on specific children, for example, by publicising successful placement families.

**Publicity at the local level should incorporate the following steps:**
- Advising and obtaining permission from the C & FC Manager.
- Decision making regarding the proposed format of the publicity and the methods to be used. Options which can be considered for local recruitment include use of local media outlets, newspaper, radio, news letters, church papers, posters, notices on community notice boards and auction boards or circulated through other services and promotion by local personalities.
- In general local recruitment will focus on the use of local channels only. However there may be some situations where broader or state-wide exposure may result from local publicity. In situations where this occurs it is important that the CRE notifies all regions of the wider publicity as there can be a flow-over effect.
- The team leader should advise the CRE of the proposed publicity, including the format, and the specific children or focus of the publicity. The CRE will then comment on the advisability of proceeding at that time.
- There should be co-ordination with other local agencies to ensure there is not an overlap in recruitment programs. This may range from advice only to an approach involving broader recruitment across all agencies with specific tasks being taken on by the various agencies.
- It should be ensured that legal requirements are met and the appropriate preparation of all relevant parties occurs prior to proceeding.
- It should be ensured that mechanisms are in place to cope with the response (eg regional duty systems may need to be modified). All responses to local publicity should be picked up by the relevant region.

**Statewide recruitment**
A coordinated approach to publicity avoids local and statewide publicity programs occurring simultaneously and targets the children who would most benefit from central recruitment. These children are most likely to include those over eight years, sibling groups and children with significant disabilities.

Publicity at the statewide level should incorporate the following processes.

The CRE:
- Obtains permission from the appropriate head office staff;
- Advises the regions of the timing, format and children to be publicised;
- Ensures the C & FC Managers in the host regions are informed of the proposed publicity via the regional team leaders;
- Liaises with the worker involved with the child and/or family and ensures all the legal requirements are met and the appropriate preparation occurs;
- Arranges the publicity and negotiates with the media with the assistance of the DHS media unit;
- and
- Negotiates with the teams to ensure that staff will be available to manage the response.
Statewide publicity by non-government agencies
There may be situations where general media publicity by a non government agency includes particular reference to the permanent care service provided by that agency.

This publicity may also contain a recruitment element. Where this occurs the principal officer in the non government agency advises the CRE which in turn ensures all team leaders are aware of the publicity.

Responses to the publicity from outside the non government agency’s region should be directed to the appropriate region.

Legal framework for publicity
The legal framework for publicity of children where there are adoption consents is provided by the Adoption Act 1984 and the Children and Young Persons Act 1989. The Adoption Act Section 120 states:

i) Subject to this Section, any person who publishes or causes to be published in a newspaper or periodical or by means of broadcasting, television or public exhibition, any advertisement, news item or other matter indirectly (whether or not in relation to a particular child, born or unborn) that:
   a) a parent or guardian of a child wishes to have the child adopted,
   b) a person wishes to adopt a child,
   c) a person is willing to make arrangements with a view to the adoption of a child, shall be guilty of an offence.

ii) Sub-section (1) shall not apply in relation to an advertisement or other matter that has been approved by the Director-General or by the principal officer of an approved agency.

The Children and Young Persons Act 1989 Section 26 (i) (c) provides that it is an offence to publish any matter that contains any particulars likely to lead to the identification of a child as being subject to an order except in special circumstances, with the permission of the Secretary.

Preparation of parties for publicity
The possibility of publicity and general issues related to publicity are discussed with relevant parties at the time of referral to the Permanent Care Team. When there is a specific proposal for publicity featuring a particular child the details are discussed with:

- The child (depending on age and developmental level);
- The child’s current caregivers;
- The DHS region with caseplanning responsibility (if the child is under DHS guardianship);
- The child’s birth parents and relatives (if whereabouts are known);
- The child’s school (if considered necessary);
- Relevant professionals;
- DHS’s media unit.

Written permission is obtained from the C & FC Manager in the child’s region of origin.
The possibility of publicity is discussed with regional staff at the time referral is made to the Permanent Care Team.

In the situation where a NGO is providing the permanent care service, the principal officer, as the delegated officer, must give permission where adoption consents are held. Where the child is under the DHS guardianship, the NGO must obtain written permission from the C & FC Manager of the region with case planning responsibility.

Written consent is also obtained from the child’s birth parents, whenever possible. Verbal consent is obtained from all other parties.

If any party refuses to consent to publicity regarding a specific child the decision about whether to proceed is made by the regional director in the region with case planning responsibility. This applies to both non-ward guardianship (where adoption consents are held) and guardianship as a result of a Children’s Court Order. The regional director in the region with case planning responsibility will also make this decision where a NGO is providing the permanent care service.

The child’s surname is not used in publicity. Use of the child’s real first name is preferred. However, if relevant parties are not in agreement with this, a pseudonym may be used.

Appropriate standards for publicity are discussed with the relevant media representative prior to the Permanent Care Team agreeing to undertake publicity. Where there is direct exposure of a child to the media a Permanent Care Team worker must be in attendance at all times.

The Permanent Care Team worker may terminate the process where there has been a breach of the guidelines by media representatives.

Management of statewide publicity
When it is agreed that statewide publicity will occur regarding specific children, all regions should agree that these children will be given priority in placement. A central telephone number will be given and the response will be managed by rostered regional workers with back-up from the Resource Exchange.

A central information night for all appropriate enquirers will be held within two weeks of the publicity.

Applicants who wish to proceed following the information night are invited to attend group sessions. Where the applicants’ region is running an appropriate series of group sessions at that time, they will attend group sessions within that region. Other applicants will attend education groups managed by the region(s) of origin of the child(ren) featured in the publicity, with assistance from other regions.

Assessment of relevant applicants will be undertaken jointly by the applicants’ region and the child’s region. Where there are large numbers of prospective caregivers, the child’s region and applicants’ region establish priorities for assessment.
Decision-making regarding all applicants takes place at the applicants’ region. Linking with children who have been featured in the publicity should be treated as a priority. No other links for these families should be explored until the link with the publicised child has been explored. The linking meeting is held at the child’s region and any cross-regional link is confirmed by the applicants’ region. A plan of introduction is developed jointly and the placement supervision is assumed by the applicants’ region.

**Evaluation of publicity**

An evaluation of process and outcome is required following publicity. This is undertaken for local publicity by the regional team leader and for statewide publicity by the manager CRE.

The evaluation may also include relevant team workers and involves consideration of the management of the process, the content of the item, the impact on the child, the response, and any difficulties experienced.

[Appendix 9: Enquiry from prospective applicants]  [Appendix 10: Response letter from a permanent care team leader]  [Appendix 11: Community services Victoria-Permanent care team expression of interest in attendance at group session]
7. PREPARATION AND EDUCATION OF APPLICANTS

Special needs program
Research evidence has supported the positive relationship between preparation of families prior to placement with placement stability, and the effectiveness of group methods for preparing applicants. The Permanent Care Teams hold a series of educative group sessions followed by a formal assessment and decision making process.

Objectives of special needs group sessions

Self assessment objectives
- To provide prospective permanent caregivers with sufficient information to decide whether they want to further explore the option of parenting a child with special needs.
- To ensure this decision is made on the basis of a reasonable level of understanding of the needs of the children involved and of what the process is likely to involve for them and their families.
- To assist prospective permanent caregivers in considering the type of child they want to parent, and the needs they feel best able to meet.
- To assist the prospective parents in exploring their commitment to parenting a child with special needs.

Education and preparation objectives
- To provide prospective parents with a basic framework for understanding family interactions and relationships, and child development.
- To explore with prospective caregivers the influence of their own experiences of being parented, in particular the way in which values are acquired and transmitted to children.
- To increase participants’ self awareness.
- To assist prospective caregivers in understanding issues associated with parenting a non-biological child, in particular issues related to the development of identity and access with the child’s birth family.
- To assist participants in developing parenting techniques which may be in particularly appropriate for parenting children with special needs.
- To assist families to assess the adequacy of their current support systems, and to develop other supports they may need.
- To strengthen the support network of prospective caregivers through working with each other prior to placement, and meeting with experienced permanent caregivers.

Content and structure of the special needs group

Sessions
The Permanent Care Teams differ to some extent in the structure and format of their group sessions. All cover a number of basic areas. The presentation of the groups involves a combination of information giving and experiential material. Guest speakers may include adoptive parents, relinquishing parents and adoptees.

The group sessions are generally attended only by the prospective parents, as the material is geared to adults, and attendance by other family members can make the
group size unwieldy. Group sessions are intended to assist the parents to prepare their own families for placement. When appropriate, a separate group session may be held for the children in the families covering relevant issues.

Throughout the year the Permanent Care Teams run groups for families interested in pre-school children, school age children, sibling groups or children with disabilities.

These groups may focus on specific categories of children or may adopt a more general approach covering the range of children waiting placement within the region. Publicity and recruitment campaigns within the region may also determine the focus of the groups. The core material is presented at all of the groups. Although there may be some changes in focus to ensure prospective applicants have sufficient information regarding the particular type of child they are interested in. Elective material is provided regarding children with disabilities.

There is considerable emphasis on participation by relevant parties, in particular birth parents, experienced caregivers, and where possible, adult adoptees. These parties share their experiences with the prospective caregivers.

**Information night**

The teams may hold regular information nights for applicants who have registered general interest in children. Information nights may also be held as a result of particular publicity either regional or statewide and may then focus on a particular group of children.

**Areas covered**

- The children available for placement;
- The placement process;
- An overview of significant issues including legal issues, access, implications of placement for the caregiving family.

**Areas covered in educative group sessions:**

**Parenting a non-biological child**

- Overview of the educative program;
- Issues relating to parenting a non-biological child;
- Presentation by experienced caregivers and discussion of issues.

**Motivation and commitment**

- The needs of the children available for placement;
- Participants’ motivation;
- Problematic motivations and expectations;
- Commitment.

**The physical and emotional needs of children**

- Normal child development;
- Consequences of unmet developmental needs;
- Development of attachment ability;
- Issues for permanent caregivers in parenting a child whose development differs from the norm.
Grief and loss
- Participants’ experience of loss;
- Grief process - stages of grief;
- Concept of loads or unresolved losses;
- Children’s experience of grief and loss;
- How children can be helped to deal with grief;
- Birth parents’ experience of grief.

Applicant’s parenting experience
- The process of learning to parent;
- Applicant’s family background - development of a genogram;
- Family influences on identity;
- The concept of parent tapes;
- Influence of parent tapes on parenting a non biological child;
- The role of family background in writing a life story.

Identity and the role of the birth parent
- The process of identity development;
- Implications of adoption and permanent care on identity development;
- Hereditary versus environment;
- The reasons for difficulties in parenting;
- Overview of issues relating to identity development.

Access
- Role of access and information exchange in identity development;
- Management of access arrangements.

Impact of placement on the caregiving family
- Consideration of how past changes have affected the family;
- Areas of family life which may be affected by a significant change;
- Preparing your existing children for placement;
- First time parenting - issues for those who have not previously parented;
- Implications of placement for time available for other areas of life;
- Support available/required;
- Detailed consideration of likely impact on family of placement.

Children with disabilities
Changing attitudes towards the disabled
- Brief historical overview of changes in the disability field;
- Discussion of concepts of normalisation and integration and their implication for people with disabilities.

Using professional services
- Discussion of the respective roles of different services eg DS, early intervention, specialist services;
- Discussion of particular role of early intervention;
- Difficulties which may arise in use of services;
- Participants’ homework: contact with relevant services.
Infant adoption program

A series of group sessions is held as a preparation before an individual assessment is carried out. The preparation sessions for prospective applicants for healthy babies tend to focus more specifically on information giving and have a more limited experiential component than the groups for special needs applicants.

As with the special needs groups, there is considerable emphasis on participation by relevant parties, in particular birth parents, experienced caregivers and adult adoptees.

Content of group sessions: infant program

*Information session*
- Historical overview outlining changes in the adoption field;
- Children available for placement: issues regarding development and family background;
- The adoption/permanent care process.

*Parenting the non-biological child*
- Issues in parenting the non-biological child;
- Applicants’ motivation for placement;
- Concept of grief and loss;
- Impact of infertility;
- Understanding relinquishment.

*Development of identity*
- How we learn to parent - concept of parent tapes;
- Identity development - what makes up our identity;
- The impact of adoption on the development of identity;
- Hereditary versus environment.

*The role of access and information exchange*
- The role of access/info exchange in the development of identity;
- The management of access arrangements;
- Role play;
- Impact of placement - supports, stresses, ability to adapt to a new situation.
8. ASSESSMENT OF APPLICANTS

Assessment of applicants is discussed in sections 4.1 and 4.2 of the Standards in Adoption. According to the Standards in Adoption there are ‘important differences between adoptive and biological parenthood that justify a process of preparation and selection for adoptive parenthood’ (4.1.1). This equally applies to permanent caregivers.

The Adoption Regulations 1998 require that adoptive parents be assessed on the basis of, among other matters, their age, health, marital and family relationships, financial circumstances, general stability of character, and emotional maturity, so to demonstrate the capacity of each parent to create a secure and nurturing emotional and physical environment for the child until the child achieves social and emotional independence (Regulation 35).

The Adoption Regulations also require that ‘if any applicant has had the care of a child before applying for approval as suitable to adopt a child, that the applicant has shown an ability to provide such an environment for the child’.

Legislative requirements
This section deals with the requirements of the Adoption Act 1984 and the Children and Young Persons Act 1989.

Some requirements of adoptive parents are regulated by the Adoption Act 1984. The implementation of the Permanent Care Order provisions of the Children and Young Persons Act 1989 has involved the development of additional guidelines around the use of these orders.

The prescribed arrangements relating to the suitability of permanent care-givers to have custody and guardianship of a child are set out in the Children and Young Persons (Custody and Guardianship) Regulations 1991. These are consistent with the Adoption Regulations.

The relationship of the applicants
Section 11 (1) of the Adoption Act 1984 as amended, provides that:
‘An adoption order may be made in favour of a man and a woman -
a) who are married to each other and have been so married for not less than two years; or
b) whose relationship is recognised as a traditional marriage by an Aboriginal community or an Aboriginal group to which they belong and has been so recognised for not less than two years; or
c) who are living in a de facto relationship; or
d) whose relationship with each other is a combination of any of the relationships referred to in paragraphs (a) to (c) and has so been for not less than 2 years; before the date on which the order is made.’

Section 20A of the Act determines that an application to either DHS or an approved adoption agency to determine suitability to adopt a child cannot be made until applicants have been married or in a de facto relationship of at least two years’ duration.
The Adoption Act 1984 as amended defines ‘de facto relationship’ as the relationship of a man and a woman who are living together as husband and wife on a genuine domestic basis, although not married to each other (section 4(1)).

The Children and Young Persons Act 1989 does not specify the length of time the couple’s relationship must have existed, but requires that applicants are assessed as to the stability of the relationship. Generally, the same requirement as for adoption shall therefore apply.

**Single applicants**

Section 11 (3) of the Adoption Act 1984 provides that:

‘Subject to this section, where the Court is satisfied that special circumstances exist in relation to the child which make it desirable so to do, the Court may make an adoption order in favour of one person.’

**Age**

Neither the Adoption Act 1984 nor the Children and Young Persons Act 1989 specify mandatory age requirements. Age is included in the factors to be considered by the Court when making an order, and must therefore form part of the assessment process. When considering an application, the age of the applicants is clearly relevant to the ability of both applicants to provide a secure environment until the child reaches ‘social and emotional independence’, and must be taken into account. This is especially the case with infant adoption, where the child to be placed is aged less than twelve months. Age may be associated with health issues, and with a couple’s flexibility and ability to incorporate a child into their particular family situation and lifestyle. These matters require professional judgement within the context of the overall strengths and weaknesses of an application.

With applicants where there is a large age difference between the partners, the assessment must consider the likelihood that both applicants will live long enough and maintain a level of health and fitness consistent with providing a secure and nurturing environment until the child reaches social and emotional independence.

Other factors require discretionary judgement and involve complex assessment and decision making by the Permanent Care Teams. While this chapter outlines factors which may in general be considered strengths and risk factors in an application, the situation of each applicant family is assessed individually by the Permanent Care Team. The Permanent Care Team aims to be consistent in the application of general principles while maintaining flexibility in considering the particular balance of factors in each application.

**Initial contact with the permanent care program**

The duty worker manages telephone inquiries, and informs prospective applicants of the Permanent Care Team’s procedures and requirements.

Applicants may be screened out at this stage if they are clearly requiring a service which the program does not provide such as holiday hosting or temporary foster care, and are referred to relevant agencies. Issues such as the applicants’ age, age of their children, and major medical problems would be discussed at this stage. A
pamphlet detailing Permanent Care Team procedures and requirements is sent to enquirers.

Prospective applicants for the infant adoption program are advised whether the program is currently accepting applicants. If the program is closed, applicants are advised of future plans for opening the program, if known, or referred to the Inter-country Adoption Service, where appropriate, or to permanent care or foster care. Enquirers will be invited to attend an information session.

In discussing the placement of children with special needs, the duty worker informs enquirers in general terms about requirements, and discusses any concerns about their particular situation which may preclude placement. In particular, these include the need to have terminated infertility treatment (if relevant). Inquirers will be invited to attend an information session. When attending the information night, applicants are requested to discuss with the team any issues which may be of concern, such as health related issues or criminal record.

People who wish to pursue their interest fill out the form ‘Expression of Interest in Attending Group Sessions’ (Appendix 11) outlining their family situation, health, fertility issues and experience with children, attitude towards ongoing contact with the birth family and preference for age and type of child.

**Data required prior to formal assessment**

Prior to a formal assessment being undertaken, the permanent care program requires the following material to be on file:

- Completed application forms which include basic data related to family’s situation, including occupation, income, education, experience with children, birth date, marriage date, or date they commenced a de facto relationship. (Appendix 12b for assessment as permanent care giver and 12a for approval as suitable to adopt a child).
- Completed forms regarding: Commitment Regarding Spacing of Children and Infertility Treatment (Appendix 13a).
- Undertaking to Advise Permanent Care Team of Change of Circumstances (Appendix 13b).
- Medical reports. (Appendices 13-14 including covering letters), (Appendix 17a where appropriate). Note doctors also receive a copy of the policy on Fertility, Spacing of Children and Pregnancy (Appendix 18). If required further information on infertility is obtained from the specialist doctor (Appendix 19a and 19b).
- Three personal references plus references from schools, kindergartens, etc., if there are already children in the family. (Appendix 20).
- Police checks on all adults living in the permanent care family. Originals must be obtained from the Regional Resource Manager, (RRM) (Appendix 21) and for DHS teams the completed forms are held by the RRM.
- Personal histories, which are prepared by the applicants and cover a range of areas including personality, background, relationship with partner, development of own children, general experience with children, motivation for placement and perceptions of the impact placement is likely to have on the family. Assistance with this task is given during educative group sessions.
Further screening takes place when all the information detailed above is available.

If, following consideration of the application, there are major concerns about an applicant, senior staff should review the material. If the concerns remain, the applicants are advised of these objections and given the opportunity of an oral hearing to answer them. The applicants must be given sufficient time to enable them to prepare the hearing. If the concerns regarding the application persist after an oral hearing, a decision may be made not to proceed to a formal assessment. Where this occurs, the applicant is given detailed reasons for a decision not to proceed.

Examples of situations where this may occur include those where there are severe medical problems, a lengthy or recent police record or negative reports from referees.

**Assessment procedures**

The assessment may be undertaken by one, or by two workers if appropriate, depending on the complexity of the particular situation. For example, assessment of second applications for infants and foster care conversions to adoption/permanent placement is undertaken by one worker due to the amount of material already available from previous assessments. In these situations it is essential that the worker is familiar with material already on file and incorporates it in their assessment. The decision regarding the appropriateness of the allocation of two or one workers for particular assessments is a line management responsibility.

Prior to the home study interview, the relevant workers prepare an outline of areas to be covered. Included under headings the relevant information is drawn from the background material already obtained. The headings used closely relate to those areas discussed in this section.

Discussion during the assessment focuses on the information obtained from applicants, with further exploration and clarification taking place. There is an emphasis on communicating openly with applicants about issues which may be regarded as positives or concerns, and all participants are able to comment in writing.

The assessment is usually completed over a number of interviews, with the applicants seen both together and separately.

**Assessment report**

Following the assessment, the Permanent Care Team workers complete the Checklist on Applicants (Appendix 22), collate the available information, and write a report according to the pro forma (see Appendix 23). This report is circulated to the members of the Applicant Assessment Committee (AAC) and the applicant family. The report includes an analysis of the application, as well as details of the particular qualities the family has to offer with relation to the needs of children requiring placement. The primary purpose of the assessment report is to provide information to the AAC in order that members can adequately consider the relevant issues and advise the chairperson accordingly.
The following areas are covered in all family assessments undertaken by the Permanent Care Teams.

**General eligibility**

**Criminality**

- The Adoption Act 1984 and the Children and Young Persons Act 1989 require that applicants demonstrate ‘stability of character’. To ensure the security and well-being of a child, a check of applicant’s criminal record is undertaken.
- According to the Standards in Adoption ‘a police check which indicates that an applicant has a conviction does not in itself preclude an applicant from adoption. Certain offences, such as rape, incest and drug related offences, will preclude acceptance. In addition, it is considered that assault, firearms infringements and child abuse also preclude acceptance. The outcome of a police check should be discussed with the applicant in the context of their past experience and current circumstances.’ (4.1.4).
- Where an applicant has lived interstate or worked in the armed forces, it is appropriate to undertake interstate and armed forces criminal record checks.
- DHS procedures require that the RRM processes all police checks and the Regional Director is informed of all positive police checks.

**Health**

- According to the Standards in Adoption (Section 4.1.3):
  ‘Applicants need to be of such physical and emotional health that they are able to provide for the needs of the child at least until the child achieves social and emotional independence. This excludes an applicant with a condition that is considered to be terminal before such independence is reached and applicants who have a substantial risk of genetic disorder which may reduce their capacity to care for a child.’
- Examples of conditions which may require further consideration include: Those which affect day to day coping such as limitations of mobility; conditions which affect life span such as kidney disease, HIV/AIDS, cancer and diabetes; psychiatric histories including depression and anxiety; and any history of alcoholism or drug abuse.
- Any health related issues raised by the applicant or the medical examination are discussed with the applicant.
- Further reports may be requested from the applicants’ medical specialist, and, where appropriate, independent advice may be sought by the Permanent Care Team from the Department of Human Services Principal Medical Officer and/or other medical specialists.
- All situations involving medical issues are considered on an individual basis. The factors considered in making a decision regarding the significance of a medical condition for parenthood include the nature, severity, history and prognosis of the condition and its implications for parenting on a day-to-day and long term basis.

**References**

Applicants are required to nominate three personal referees who are requested by the Permanent Care Team to provide written references. The purpose of the references is to provide the Permanent Care Teams with additional information regarding the applicants’ character, the applicants’ relationships with each other and
family background. Referees should be able to comment on the applicants’ day-to-day life and relationships.

Each reference is reviewed as part of the assessment process. Where concerns are raised by a referee, the assessing worker/s should discuss with their supervisor the appropriate management of the situation. This may involve direct discussion with the referee to obtain greater clarification of the concerns.

Complexity may arise as the result of the confidential nature of the information provided by referees. The practice of discussing concerns with applicants may at times conflict with the protection of referee’s confidentiality. In deciding the appropriate approach it is necessary to consider the significance of the information. According to the Standards in Adoption (Applicant Appeal and Review Processes, Section 4.4) where a decision for rejection is likely to be based on the references of a third person, this information should ideally be made known in the context of the discussion and interview process with the permission of the person who has provided the information.

**Personality of applicants**

A general description of the applicants personality taking into account:

- The way in which they describe themselves in their life stories;
- The workers’ observations during the educative process and home study.

The workers should gain an impression of the following areas and be able to give examples to illustrate their assessment of the applicants:

- Capacity for insight into self and others;
- Capacity for openness and intimacy;
- Means of resolving conflict and dealing with stress;
- Level of self esteem and assertiveness;
- Means of expressing different emotions.

**Applicants’ background/family of origin**

Considerable emphasis is placed on this area as research evidence and practice experience highlights the importance of people’s experiences as children as significant indicators of their qualities as parents. The way an individual was parented is a reliable indicator of their future parenting approach. A background characterised by stability, sensitivity and emotional warmth is a positive indicator of potential to nurture a child. It is likely that applicants who have experienced the giving and receiving of affection during childhood will model positive behavioural patterns of parenting.

There is substantial evidence to indicate that a strong association exists between abnormal parenting and adverse childhood experience. In particular, research evidence indicates that the majority of parents who abuse their children have been subject to serious abuse or neglect as children.

Discussion focuses on the applicants’ experiences of being parented, in particular, whether their perceptions of their childhood are positive or whether there appear to have been difficulties. Where concerns exist, it is important to discuss and assess the
couple's ability to identify negative patterns and their strategies of action if these develop in the future.

A genogram is completed by each applicant to clarify family relationships and stimulate discussion. The relationship between the applicants’ childhood experiences and the development of their values is also discussed.

Issues of concern, which would require further exploration, include:
- Continuous unresolved marital discord between the applicants parents,
- A high level of discord in the extended family;
- Perceptions of being rejected by either parent;
- Criminality;
- Substance abuse;
- Periods out of parent/s care as a child or changes of caregiver;
- Disturbed parent/child relationships, for example, a lack of sensitive parenting, detached or enmeshed relationships;
- An inability, difficulty or resistance to recalling childhood;
- Institutional care as a child;
- Routine severe punishment, physical or sexual abuse.

Where such concerns exist it is important that they are discussed in detail to gain an understanding of the extent of the difficulties, their impact on the applicants’ emotional development, the extent to which they have been resolved and the potential implications for parenthood. This is often difficult to predict, particularly where the applicants have no previous children.

Relationship of the couple
A stable relationship is a basic requirement in considering a family’s appropriateness for placement. Placement of a child is often referred to in the literature as a ‘time of family crisis’. If the couple’s relationship is unstable prior to placement, it is likely that the introduction of a child will create further pressure on that relationship. A stable and committed relationship strengthens the parenting capacity of the applicants.

As many of the children placed by the Permanent Care Team have experienced considerable instability during their lives, further disruption due to discord within the applicants’ relationship is likely to be detrimental. Research evidence indicates that discord is a distressing experience for children, and that family relationships which are positive and stable are best able to meet the needs of children.

The Adoption Act 1984 allows both married and de facto couples to be considered as suitable applicants. The Permanent Care Order provisions of the Children and Young Persons Act 1989 do not contain any specific requirements concerning the length and type of relationship of the applicants. The relationship of the applicants is central to their ability to provide the ‘secure and nurturing emotional and physical environment’ necessary to the growth and development of the child, and requires careful assessment. When assessing the quality of a relationship it is important for the worker/s to focus on the stability and commitment of the couple’s relationship, rather than to focus solely on whether the couple are legally married.

Issues to be considered include:
- The history of the relationship, in particular periods of stress and how they were dealt with,
- The history of decisions regarding entering into marriage or into a de facto relationship,
- The attitude of family and friends regarding the decision not to marry, for those in a de facto relationship,
- Roles of the couple,
- The couple’s values regarding relationships and family life,
- Impact of infertility where relevant,
- Quality of sexual relationship,
- Communication,
- Decision-making and ways in which conflict is resolved.

Length of relationship

The Adoption Act 1984 states that couples wishing to adopt must have been married or living in a de facto relationship for ‘.....not less than 2 years.’ Section 20A of the Adoption Act 1984 states that an application to DHS or an approved adoption agency cannot be made until applicants have been married, or in a de facto relationship, for a period of at least two years. For couples who have married after a period of living together in a de facto relationship, the two years can include the time they lived together, if this is continuous.

Where there is no marriage certificate to provide a commencement date, the worker/s must refer to other indicators to determine both whether there is a committed relationship between the couple and the commencement date of a de facto relationship. Determination of whether the couple are living together on ‘a genuine domestic basis’ involves a consideration of factors such as an expectation of permanence, emotional support and commitment to each other, financial inter-dependence and support, and the presentation of themselves to the world at large as a couple.

It is expected that the couple would share a common residence, and jointly participate in the performance of household duties. Joint ownership of property, bank accounts, health insurance, etc, are factors which add support to the existence of a committed relationship.

Financial arrangements characterised by trust, generosity and intermingling, provide strong evidence of a common household.

It would need to be established that a sexual relationship existed between the parties, as without this it would be difficult to characterise the relationship as like a marriage. Sensitivity is required in establish this, as is the case in discussing sexual matters within the context of a marriage.

Where the couple have children, the procreation and joint care of the children in itself provides strong evidence that a de facto relationship exists.

Factors which can be taken into account to establish the length of a relationship include date of:
- Establishing joint bank accounts
• Joint investments and/or property
• Joint purchase of the home
• Applying for joint loans, or other forms of debt.
• Entering into arrangements which name the other partner as a beneficiary, eg health insurance, superannuation, life insurance, subscriptions, such as ambulance service, societies or interest groups, and the naming of each other partner in their wills.

Applicants living in a de facto relationship will be required to provide at least three dated documents to enable the length of the relationship to be established. In addition, the references from friends/relatives of the couple must confirm that the couple are living in a de facto relationship.

The Adoption Act 1984, as amended, states that the Court must not make an adoption order in favour of a couple living in a de facto relationship if either partner is married to another person at the time the order is made.

Assessment of the stability and commitment of the couple's relationship, whether married or de facto, requires a consideration that any previous relationships have been resolved. It is therefore required that applicants produce evidence of a decree absolute if there has been a previous marriage.

Children in the family

It is crucial to gain adequate information regarding children who are already in the family, as this assists in assessing the applicants' parenting capacity and also gives an indication of the type of child who may be most appropriate for the family.

Information regarding the children is obtained from their parents, and with older children, from discussion with the child. In any case, the home visit will include observation of the children. It is expected that the Permanent Care Team worker will meet all children in the family. This includes older children who may no longer live at home where this is feasible.

Issues which would be considered include:
• Personality and development of each child, giving attention to any age inappropriate development;
• Progress at school (where relevant) and relationships with peers;
• Child’s relationship with each parent, including areas of conflict;
• Child’s relationship with other siblings in the family;
• Child’s understanding of the implications of placement and attitude towards placement;
• Child’s likely vulnerabilities if placement occurs.

The extent of ‘space’ in the family for another child to be placed needs to be considered with regard to the ages and developmental needs of existing children. There should be at least two years between an existing child and a new child.

Other than in exceptional circumstances, it is not appropriate to place a child between existing children in the family. Placements are less likely to disrupt where the child is placed as the youngest in the family rather than as the older or between children.
**Motivation for placement**
Research evidence indicates that ‘unusual motivations’ may be related to placement breakdown. In general, unusual motivations would be considered to be those which deviate from basic motives such as ‘a desire for a child for his or her own sake’ or ‘a wish to have children but an inability to have biological children’. Examples of unusual motivations which are identified in the literature include:
- Replacement of a child who has died;
- Strong humanitarian reasons (‘saving a child from a bad life’);
- A strong requirement for a child of a particular sex;
- An over-riding need to secure a companion for an existing biological child;
- A need to ‘prop up’ a relationship;
- Looking for a child to provide closeness missed elsewhere.

**Fertility issues**
Many couples who apply to the permanent care program have fertility problems. It is important to assess the couple’s attitude to their infertility and the extent to which they have come to terms with the difference between adoption/permanent care and parenting biological children. Research indicates that adoptive parents who have not adequately adjusted to infertility may experience difficulties in fully accepting the adopted child and his/her biological background. The adoptive parents’ grief is likely to be reactivated at various stages during the placement, and it is important that they are aware of this. Assessing adjustment with relation to infertility involves consideration of the grief process adults usually experience as a result of their failure to conceive. This involves consideration of the following areas whether:
- An emotional reaction to the initial confirmation of infertility is acknowledged;
- The couple were able to acknowledge their difficulties with fertility eg discuss them with each other and with people with whom they are close;
- A reasonable length of time has passed between confirmation of infertility and application to the Permanent Care Team;
- The couple has realistically appraised the positives and negatives of permanent care as opposed to parenting biological children;
- The applicants seem to be ‘stuck’ at a particular stage, for example, anger or depression.

**Infertility treatment**
According to the Standards in Adoption ‘active infertility investigation and treatment and adoption assessment are not compatible’ (Section 4.1 Assumptions). The Permanent Care Program requires all applicants to sign an undertaking prior to the commencement of the education and assessment phases of the Permanent Care Team program that they are not receiving infertility treatment. Applicants also make a formal written statement of their understanding of the need for commitment to adoption as the way children will enter the family, to the exclusion of other methods, for 2 years after placement. Each couple’s willingness to use family planning measures, even if pregnancy seems medically unlikely, are further discussed during the assessment phase and couples are strongly advised to take steps to avoid pregnancy (see Appendix 28). The reasons for seeking these commitments should be discussed with the applicants and their understanding of the issues and attitude towards making this undertaking should be documented.
Lifestyle
It is important that consideration is given to the likely impact of placement on the family’s lifestyle, in particular the extent to which current commitments will need to be reorganised. To clarify current demands and consider future implications, the assessing worker may ask the applicants to complete two pie-diagrams, one which refers to their current situation and the other how they plan to use their time once a child is placed, if this is considered relevant by the assessing worker.

Particular issues for discussion:
- Current demands of employment/parenting/hobbies and interests;
- The extent to which placement will require some readjustment of these;
- Extent to which applicants have thought through the likely impact of placement: how would time be reorganised?

Supports
It is necessary to consider the extent of family, friendship and community networks to ensure that the family is not likely to be socially isolated in times of stress. To stimulate discussion, the family completes an ecomap, which includes important people, and organisations in the families support networks. The ecomap should include linkages, which are stressful or problematic as well as positive supports and resources. Concerns, which would require further exploration include:

- Lack of supports: social isolation
- A network where there are considerable stressful or problematic elements.
- High mobility, which may prevent the formation of ongoing support networks.

Ability to cope with stress:

The family’s capacity to deal with stress needs to be evaluated particularly when placement of a special needs child is under consideration. Discussion focuses on previous experiences of stress and the way in which these were dealt with, individually and as a family. Evidence that the family had coped effectively with previous periods of stress is regarded as a strength in an application.

Further exploration should be required where:

- Families experience difficulty in acknowledging the emotional impact of stressful situations.
- Previous stressful situations resulted in significant marital discord or emotional difficulties.

Applicant’s expectations:

The expectations of applicants in a range of areas need to be considered to ensure that they are realistic and consistent with the needs of children available for placement.

Child Behaviour
- Understanding of normal development and behaviour.
- Understanding of the causes of behavioural difficulties.
- Experience with and ability to manage difficult behaviour
- Approach to discipline- flexibility regarding types of discipline utilised.
- Attitude towards behaviour problems, which may be evident outside the family situation eg: stealing, problems at school.

**Relationship expectations:**

- Understanding the implications of a child’s experiences for attachment potential.
- Ability to accept limited attachment potential.
- Ability to “claim” a non-biological child as part of the family while acknowledging the child’s links with the birth family.
- Ability to accept differences between relationships with new child and other children in the family, that is, the realisation that developing a relationship is likely to take considerable time.

**Academic/Achievement**

- Ability to accept limited achievements
- Attitude towards academic performance
- Attitude towards other areas, i.e. sports

**Nature and extent of relevant experience with children:**

The permanent care program has generally found that couples that have had considerable experience with children are best able to understand and meet the needs of older children from difficult backgrounds. This includes people who have biological children, and also those who have other extensive experience, for example through fostering, holiday hosting or through very frequent contact with relative’s children.

It is valuable for families interested in placement of a child with a disability to have had some experience with children with disabilities. This may include professional experience, fostering or contact with the children of relatives and friends.

Applicants for infants are not expected to have the same level of experience with children given the needs of the children concerned are more straightforward. However it is important that applicants have had sufficient contact with children to be aware of children’s general needs and potential impact of child-rearing on their lifestyle.
Attitude towards and understanding of issues related to the child’s identity and background.

Access with members of the biological family is part of the majority of permanent care placements. It is important to ascertain the extent to which applicants have thought through issues related to the development of the child’s identity and the ongoing role of the biological family in the child’s life. This area obviously related to several other areas of discussion, including Motivation and Expectations. Issues to be explored include:

- Understanding of reasons parents may relinquish or be unable to care for a child. It is important that families are accepting of birth parents.
- Ability to deal positively with identity issues with a child for example “telling” a child adopted as a baby of his/her origins or discussing parents difficulties with an older child. It is important that families are comfortable with being open about the child’s origins and can present information in a way which enhances the child’s self esteem.
- Attitude towards access and information exchange and perception of the benefits for the child. Families who have given considerable thought to the child’s needs for knowledge of their origins and for continuity of relationships are more likely to have a positive attitude towards access.
- Attitude towards difficulties in the child’s background for example, incest, abuse, genetic risk. If families are inflexible about the characteristics of children they are willing to parent there will be difficulties in placing an appropriate child with them.

Disability Issues:

Where a family is interested in a child with a disability, the assessment interview will include discussion of the family’s understanding of issues related to disability. These would include:

- Applicant’s ability to provide a stimulating environment for the child. Including ability to work with relevant professionals.
- Applicant’s knowledge of services available.
- Applicants ability to accept that development may be limited, and the need for realistic expectations
- Applicant’s level of appreciation of the impact of a sibling with a disability on other children in the family.
- The extent to which applicants have considered their ability to deal with negative attitudes they may encounter regarding disability.

Evaluation of factors in assessment and decision-making:

When consideration is given to the range of relevant factors involved in applicants assessment it is evident that all applications involve both strengths and weakness. It is the role of the assessing workers and the Applicants Assessment Committee (ACC) to evaluate the particular strengths and weakness of the specific family situation and to make decisions about the appropriateness of permanent placement for the family concerned. In most situations the family strengths outweigh their
weakness, and their applications is approved by the ACC. With some applications however, the weaknesses on balance outweigh the strengths and placement is considered inappropriate. All applications are considered individually and many of those which are not approved, involve a combination of concerns or weakness rather than one or two major difficulties.

**Second and Subsequent applications:**

Second applicants have previously had a child placed with them through a permanent care program and have made further application. As a detailed assessment has already been undertaken, the assessment focuses on updating the previous assessment report. In particular the following areas should be covered:

- The progress of the previous placement
- The child’s emotional and physical development
- The applicant’s management of permanent care issues, in particular those associated with identity.
- A review of the applicants’ strengths and weaknesses identified by the previous assessment.
- Implications for the child and applicants of an additional placement.

[Appendix 12a: Community services Victoria—Permanent Care Team/Services] [Schedule 4: Application for Approval as fit and proper to adopt a child] [Schedule 5: Regulation 13, Statement of personal details required to be submitted with an application for approval as a person suitable to adopt a child][Appendix 13a: Commitment regarding spacing of children and infertility treatment][Appendix 13b: Undertaking to advise permanent care of change of circumstances][Appendix 14: Response letter from clerical officer of permanent care team][Appendix 15: Response letter from clerical officer of permanent care team][Appendix 16: Response letter from clerical officer of permanent care team][Appendix 17: Confidential medical report for applicants to be permanent caregivers][Appendix 17b: Results of testing for HIV antibodies][Appendix 18: Infertility, spacing of children and pregnancy][Appendix 19a: Standard letter completed by Doctor for adoption & permanent care][Appendix 19b: Medical officer’s report][Appendix 20: Reference letter from permanent care team][Appendix 21: Victoria police consent to check & release criminal record][Appendix 22: Checklist re. applicants][Appendix 23: Assessment report proforma][Appendix 24a: Confidential to permanent care team approved applicants referral to the resource exchange][Appendix 24b: Release of ACC report applicant permission form][Appendix: Assessment Report Proforma]
9. LINKING OF CHILDREN AND APPLICANTS

Introduction
Linking refers to the process by which a decision is made to place a particular child with a particular family. The decentralisation of the permanent care program has resulted in additional complexities in this area as linking takes place on an intra-regional and cross regional basis. Linking is a particularly challenging aspect of the placement process for permanent care workers. It is essential that workers seek adequate consultation with their supervisor regarding the proposed link and the necessary process. It is also important that a high level of communication occurs with workers from other regions who are involved with the link.

Linking of infants
Linking of infants and families is based on criteria such as the birth parents’ wishes regarding religion, race and ethnic background, any developmental or genetic difficulties, and the level and type of ongoing parental access requested. The emphasis is on attaining a balance between the specific needs of the child and the capacity of the applicant family to meet those needs.

The role of the birth parent in placement of infants
At the time of signing adoption consent, birth parents are asked if they wish to be actively involved in selecting an adoptive family. Birth parents are encouraged to consider profile information on two to three approved adoption applicants who have been assessed as suitable for the child, and to indicate the couple with whom they would prefer the child to be placed. If they prefer, birth parents may request that the Permanent Care Team select an appropriate family, which will then be discussed with them. In this case a decision will be made by the AAC.

If the parent(s) decide to pursue the first option the team leader selects a small number of approved infant applicants for discussion with the birth parents. This may include families from other regions. The team leader documents the reason for selection of the particular families for discussion with the birth parent(s). The CRE is advised of the exploration of these potential links. The CRE then advises all regions of the links being explored and the child and family are withdrawn from the list of approved families for one week. The families are then discussed with the birth parent, using the profiles prepared at the time of approval.

At times there may only be one appropriate family available. This family’s profile is discussed with the parent(s). If strongly opposed to the proposed link the parent(s) may request deferral of placement until further families are available. Any decision to defer placement would need to take into account the child’s needs, but it is unlikely that a link would be pursued where a birth parent was opposed to that link.

This approach is based on the assumption that it is important for birth parents to participate in planning for their child’s future wherever possible. It is envisaged that birth parents are likely to select a family with whom they feel some compatibility exists, and that this will assist the parties in feeling comfortable during future contacts.
Linking children with special needs

The general approach to linking of children with special needs involves joint decision making, where the caregiver families may nominate specific children, but a final decision is made by the AAC. The primary rationale behind the approach is that permanent caregivers who are actively involved in the linking process would have a higher level of commitment to a child they have selected than they would if the child was selected by a third party.

Families become aware of different children through the educative process as posters are displayed and videos are shown. To maximise placement options for older children and children with disabilities, this information should include children from all regions. Families are encouraged to discuss the needs of specific children with Permanent Care Team workers.

No detailed discussion concerning a specific child or children takes place during the initial home study. Only after an application has been approved and a potential link identified and explored at a linking meeting should a particular link be explored in detail with the approved applicants.

With relation to older children, applicants are asked to formally indicate children from the program whose needs they feel able to meet following their approval at AAC. Some families may nominate a specific child, others a number of possibilities and others may give a more general indication of age or sex of children they are interested in. This information is taken into account when considering potential links for a child at AAC. With respect to pre-school age children it is generally considered appropriate for families to give a general indication of the age and background of children they may be interested in rather than nominate a specific child.

It is clearly important that an older child has the opportunity to express his/her views about the prospective family. Details of the family are discussed with the child before the link is confirmed.

Consultation with the child’s current caregivers, foster care workers and other relevant parties is also important. The Permanent Care Team worker discusses the proposed link with relevant parties in order that their views can be presented at the linking AAC.

Linking processes

The CRE is notified of all referrals of children accepted by each region. The CRE advise all regions of referrals as they are received. The aim of the cross-regional exchange is to maximise placement options for all children. With many children there will be a preference for them to remain in their local community. However, this may restrict placement options. The preference for placement location should be noted on the profile which is sent to the CRE.

The CRE is advised of all approved families. However, the applicants’ region may initially wish to consider the family for a potential link which has been identified within that region. The region may advise the CRE they wish to place the family on hold for up to one month whilst a specific potential link within that region is explored.
Prior to proceeding with a link, the applicants’ region should consider children waiting placement from other regions. This is to ensure the needs of all children waiting placement are also considered. Factors which should be considered in examining the priority of potential links within the region compared to those from outside the region include:

- The applicants’ capacity to cope with a ‘more difficult child’,
- The length of time the respective children have been waiting placement,
- Pressures on the current placement which may result in priority for placement.

If a link within the region has not occurred within one month of the applicants’ approval, the CRE will automatically circulate the profile of the applicants to all regions.

**Respective roles of the regions**

- The child’s region of origin has responsibility for approval of links with prospective applicants. This is consistent with the permanent care approach which focuses on finding families for children rather than children for families. Other than in circumstances where more than one child is identified as a link for a particular family, the child’s region of origin will therefore auspice any linking meeting with relation to that child. Where a linking meeting is to be held, the relevant material must be circulated to all participants at least one week prior to the meeting.

- **Intra-regional links**
  
  If a potential link between a child and applicants within the same region is apparent, and no potential cross regional links have been identified, a meeting will be organised by the team leader to examine the link in detail. The meeting will be attended by the workers involved with the child and the home study workers. The CRE is advised immediately of any link.

- **Cross-regional links**
  
  A potential cross regional link may be identified from the books kept by each region featuring ‘approved applicants’ and ‘the children waiting placement’. The CRE is informed of the link under consideration and advises the team of any other expressions of interest in the child or family. The team leaders of the child’s region and applicants’ region should initially discuss the viability of the link by telephone and exchange any additional relevant information. If the prospective link is considered by both teams to have potential, a worker from the applicants' region is invited to the linking meeting auspiced by the child’s region.

- As the applicants’ region will be responsible for supervising the placement, and case planning responsibility will be transferred to the region of placement, it is essential that the applicants’ region is closely involved with the linking process.

- If a link appears extremely straightforward, for example an infant placement, it may be appropriate for a worker from the applicants' region to provide comments in writing or by telephone rather than attending the meeting. However, the applicants’ region must always be informed of any prospective link and the outcome of the linking meeting confirmed as soon as possible.
While the child's region of origin has formal decision making authority, it would rarely be appropriate to approve a link which was not supported by the applicant’s region.

It is essential that any concerns raised by the applicants’ region are fully considered during the linking process. Any disputes which arise regarding the appropriateness of a link should be managed by the C & FC managers of the relevant host regions.

**Introductions**

The respective roles of the regional workers during the introduction process should be negotiated at the linking meeting. It is usually appropriate for a joint introduction to be undertaken and for the applicants’ region to assume responsibility for supervision of the placement following a period of joint supervision where appropriate. The introduction plans and post placement support are discussed in more detail in the relevant chapters.

**Protocols for complex cross regional links**

- If more than one family is identified as a potential link for a particular child. The child’s region auspices a linking meeting with appropriate input from the applicants’ region(s).
- If there is a high level of interest in a particular family.

At times more than one region may identify a child as a potential link with one particular family. It will then be necessary to select the most appropriate link from the children identified. Decisions regarding which child would be most appropriately placed with a particular family should be guided by consideration of the factors outlined in this chapter, relating to linking of families and children.

It is also appropriate to consider the length of time the children have been awaiting placement, whether there are any issues associated with the children’s current placements for may warrant a particular child being given priority for placement, and the preferred geographic location of placement for each child.

**Processes for managing decision making:**

- The team leader of the applicants’ region should review the potential links and consider whether a particular link should be explored in detail. This decision is based on consideration of written material and telephone discussion with relevant workers.
- If one potential link is identified as clearly having the most potential, the child’s region should auspice a meeting to explore the link in detail.
- If there are several potential links, none of which is clearly the most appropriate, an initial linking meeting may be auspiced by the applicants’ region and attended by workers from the children’s regions. This meeting may then identify a particular link to be considered in detail by a meeting at the child’s region.
- Alternatively, if there is a small number of potential links, the meeting may explore these in detail and decide the most appropriate. Any link decided in this manner would require formal ratification by the child’s region of origin, but would not require a further detailed linking meeting.
The CRE should be advised of all links made once the decision has been formalised at the linking meeting.

The CRE can then advise all regions regarding the current availability of families and the children needing placement.

**Exploration with the approved family**
The link is explored with the family by the appropriate worker or workers following confirmation by the AAC. In some instances it may be appropriate to undertake some initial exploration with the applicants prior to a final decision at AAC. In the situation of cross regional linking this exploration would be undertaken jointly by the child’s worker and the applicant’s worker. If either or both workers do not believe it is appropriate to proceed, the issue is discussed at the AAC. The decision not to proceed and reasons for it are discussed with the family.

**Ensuring families have a realistic understanding of the child’s needs**
It is important that families make decisions regarding placement on the basis of a realistic understanding of the child’s needs. Placement disruption is often attributed to the family not receiving an accurate impression of the child prior to placement. It is essential that the family is provided with detailed information regarding the child’s history, physical and emotional development, behaviour, and relationship with birth family and caregivers. At times, particularly with relation to older children, it may be appropriate for the family and child to meet before a final decision is made regarding placement.

Some practitioners do not believe it is appropriate for children and families to meet until a definite decision has been made about placement as it can be very stressful for the child to be put in a position of being ‘looked over’ by potential families. Other practitioners claim it is preferable to be honest and that if children have been adequately prepared and given appropriate support they are able to cope with the stress involved in a situation where they are aware of the purpose of the meeting.

**Factors to take into account in linking**

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<td><strong>Family</strong></td>
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<tr>
<td>· Any concerns regarding milestones</td>
<td>· Family’s capacity to deal with developmental difficulties</td>
</tr>
<tr>
<td>· Any concerns regarding prenatal and other history</td>
<td>· Family’s expectations of development</td>
</tr>
<tr>
<td>· Any concerns regarding routine - feeding, sleeping etc</td>
<td>· Family’s support network</td>
</tr>
<tr>
<td></td>
<td>· Family’s experience in dealing with children</td>
</tr>
</tbody>
</table>

**Genetic risks**
- Background of schizophrenia
- Any natural family history of significant developmental difficulties or health problems
- Family’s ability to accept degree of risk involved

**Ongoing contact with natural family**
- Frequency of access requested
- Frequency of information exchange requested
- Issues in background eg incest, drug/alcohol abuse
- Attitude towards frequency of access
- Attitude towards specific issues in child’s background
- Any concerns relating to these

**Linking children with special needs with families**
<table>
<thead>
<tr>
<th><strong>Child</strong></th>
<th><strong>Family</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personality</strong></td>
<td><strong>Personality of each member</strong></td>
</tr>
<tr>
<td>· Child’s personality eg outgoing, withdrawn</td>
<td>· What sort of personality are family looking for in a child?</td>
</tr>
<tr>
<td>· Likely effect of personality on relationship with different family members</td>
<td></td>
</tr>
</tbody>
</table>

**Background**
- Major issues - maltreatment, rejection, deprivation
- Any issues in parent's own background which may result in difficulty in dealing with child's particular situation, over-identification

**Marital relationship**
- Any tendency to ‘split’ the couple: to play one off against the other
- Experience with male and female figures in the past and perceptions of these figures
- Ability to withstand manipulation
- Roles with the relationship and likely impact of placement of child with these particular perceptions

**Other children in the family**
- Child’s previous experiences in family situations
- Tendency to manipulate or bully
- Extent of demands this child will place on the parents
- Vulnerabilities of the particular children in relation to this child, his/her behaviour and time which he/she will demand from the parents when in placement

**Lifestyle**
- Child’s interests
- Family interests and recreation
- Child’s demands - behavioural, educational, services required, employment, other family commitments
- Demands currently on the family
<table>
<thead>
<tr>
<th><strong>Child</strong></th>
<th><strong>Family</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supports</strong></td>
<td></td>
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<tr>
<td>• Level of supports required including informal and formal supports</td>
<td>• Availability of relevant community and professional supports</td>
</tr>
<tr>
<td>• Particular areas of needs eg emotional difficulties, physical or intellectual disabilities</td>
<td>• Attitude of family, friends etc to child’s particular area of need</td>
</tr>
<tr>
<td>• Level of supports required including formal and informal supports</td>
<td>• Availability of relevant community and professional supports</td>
</tr>
<tr>
<td>• Particular areas of needs eg emotional difficulties, physical or intellectual disabilities</td>
<td>• Attitude of family, friends etc to child’s particular areas of need</td>
</tr>
<tr>
<td><strong>Behavioural expectations</strong></td>
<td></td>
</tr>
<tr>
<td>• Child’s current behaviour problems and history of difficulties</td>
<td>• Family’s ability to accept and understand behaviour</td>
</tr>
<tr>
<td>• Child’s likely behaviour on moving to a family placement</td>
<td>• Family’s approach to discipline and its appropriateness in particular situations</td>
</tr>
<tr>
<td><strong>Relationship expectations</strong></td>
<td></td>
</tr>
<tr>
<td>• Assessment of child’s capacity to attach to caregivers</td>
<td>• Parent’s ability to accept limited bond</td>
</tr>
<tr>
<td></td>
<td>• Parent’s ability to ‘claim’ the child</td>
</tr>
<tr>
<td><strong>Academic/Developmental expectations</strong></td>
<td></td>
</tr>
<tr>
<td>• Child’s level of intelligence</td>
<td>• Family’s ability to accept level of intelligence</td>
</tr>
<tr>
<td>• Any learning difficulties, intellectual disability, physical disability</td>
<td>• Family’s ability to ‘normalise’ child while encouraging child to reach full potential</td>
</tr>
<tr>
<td><strong>Nature and extent of experience with children</strong></td>
<td></td>
</tr>
<tr>
<td>• Nature and child’s particular needs</td>
<td>• Extent of family’s relevant experience</td>
</tr>
<tr>
<td><strong>Identity issues</strong></td>
<td></td>
</tr>
<tr>
<td>• Difficulties in child’s past eg maltreatment, sexual abuse, alcohol/drug abuse</td>
<td>• Family’s acceptance and understanding of difficulties</td>
</tr>
<tr>
<td>• Any genetic risk eg schizophrenic parents</td>
<td>• Family’s acceptance of any risk</td>
</tr>
<tr>
<td>• Extent of resolution of past experiences</td>
<td>• Family’s attitude and ability to accept and talk about the child’s background and past experiences</td>
</tr>
<tr>
<td><strong>Level of access</strong></td>
<td></td>
</tr>
<tr>
<td>• Difficulty of arrangements - whether they occur in a conflictual environment</td>
<td>• Family attitude towards access and ability to relate to birth family</td>
</tr>
</tbody>
</table>
10. THE DECISION MAKING PROCESS WITH RELATION TO APPLICANTS

Objectives of the decision making process
- To ensure that assessment and decision making with relation to applicants and children is equitable and objective.
- To ensure accountability for the decision making procedures.
- To ensure that decisions are based on adequate consideration of all relevant issues and facts.

The Applicant Assessment Committee (AAC)
All decision making regarding approval of applicants and most decisions with respect to linking of children and applicants takes place at the AAC.

AACs in DHS regions are chaired by senior staff. The AAC functions as an advisory committee to the chairperson. All committee members provide advice regarding the application, however, the chairperson has final decision making responsibility.

With the non-government agencies, the AACs are chaired by the principal officer of the agency, but should include representation from DHS and other relevant agencies.

The composition of the AAC
It is the responsibility of each region to determine the specific composition of that region’s AAC. However, in general the membership of the AAC is as follows:

- the chairperson, a regional unit manager or Protective Services manager, or the principal officer;
- the Permanent Care Team leader;
- an external representative from a relevant child welfare agency.

The Permanent Care Team workers attend AAC when presenting families or children for assessment or linking. The workers attend the section of the meeting where their cases are under consideration. Representation from child welfare agencies is generally on a rotating basis. Regional representatives may attend on a regular rotating basis regardless of cases scheduled or cases from the relevant region may be scheduled to ensure attendance of a regional representative. It is preferable if the regional and external representatives are consistent to enable development of expertise in the area.

External representation
Representation on DHS AACs from outside DHS is particularly important due to the need to have an open, accountable process, and for decision making to be based on input from individuals with a broad range of knowledge and skills.

Written report for AAC
The written assessment report is forwarded by the administrative officer to the members of the AAC and the applicants at least two weeks prior to the scheduled meeting. This allows members sufficient time to consider the content and issues raised. The report involves a synthesis and interpretation of the information collected.
during the home study, and also outlines the positives aspects and concerns of the application. The report should contain a conclusion which summarises the worker’s evaluation of the strengths and weaknesses of the application and where appropriate, a recommendation regarding the outcome of the application. The AAC report is countersigned by the team leader as the workers’ supervisor and ensures appropriate accountability. The proforma for the report is attached as Appendix 23.

**Applicant involvement**

Applicant involvement in decision making is consistent with the general DHS philosophy of citizen participation.

Applicants are invited to provide the AAC with feedback about the assessment report. This feedback may be provided either in writing or in person. This allows applicants to clarify any inaccuracies in the report and to present their own point of view regarding particular issues to the AAC if this differs from that of the assessing workers. It also provides an opportunity for applicants to provide additional information they consider relevant to decision making.

Where the report raises a large number of concerns or where the recommendation is not to approve the application, applicants are offered the opportunity to meet with the assessing workers to discuss these concerns. It is not appropriate to allow any appeal against a recommendation.

If applicants choose to attend the AAC they are invited to attend subsequent to some initial discussion regarding their application. While present, they have the opportunity to comment on the report which is being presented to the committee, to correct any inaccuracies and to request any additions. The committee members may ask brief clarifying questions of the applicants, however, it is not appropriate for applicants to be questioned in detail or at length. Further discussion of the application then occurs after the applicants have left.

It is essential in terms of natural justice that applicants have a knowledge of issues which are to be discussed at the AAC and which are to be the basis of decision making regarding their application. It is also essential that they have the opportunity to respond to the assessment report. It is then the role of the AAC to evaluate the information which it has before it, and to come to a decision based on professional consideration of the relevant factors. It is necessary for the committee members to consider the appropriate weighting to be given to the positives and concerns of the application.

The applicants are initially informed by telephone of the decision of the AAC. The decision is then confirmed in writing. (Appendix 27 Approval Letter). Details of appeal procedures are provided in writing.

**Possible decisions**

When all relevant issues have been adequately explored a decision is made by the AAC chairperson regarding the appropriateness of the family concerned for permanent placement of a child. The chairperson should seek the views of all members prior to making a decision. There are three options available to the AAC chairperson when making decisions regarding the approval of families.
Approval: families are approved with relation to a specific age range and category of child.

Deferral: an application may be deferred for a range of reasons but most commonly these relate to the timing of the application. For example, this may occur when there has recently been a major change of family lifestyle or situation, or where further medical tests or explorations are required. The deferral is for a specified time period, with a clear statement of the issues requiring resolution during that period.

Non approval: the AAC may decide not to proceed with an application if there are considered to be significant risk factors.

Minutes of AAC
The chairperson appoints a minute taker who summarises issues which arise in the discussion, any additional positives or concerns which are identified, and the recommendation of the committee.

The chairperson records his/her decision, and the detailed reasons for that decision. All this information is recorded using the proforma in Appendix 26.

The minutes and the decision are attached to the applicants’ file. A copy of the minutes and a formal letter outlining the decision is forwarded to the applicants (Appendices 26 and 27). Where a decision has been for non-approval, the home study workers usually meet with the family to discuss this rather than informing them of the decision by mail. A letter confirming the decision would however be forwarded.

Undertaking by applicants
On approval, applicants sign an undertaking regarding spacing of Children and Pregnancy (Appendix 28). This undertaking must be signed prior to the commencement of any introduction.

Preparation of profile
A profile of the family is prepared following approval (see Appendices 24a and 24b and 25) and this profile is circulated to all regions via the CRE.

Linking
Where linking of a child and applicants is under consideration at an AAC, decision making should be based on consideration of the factors outlined in the Section on linking.

Procedures around the review of approval of adoption and permanent care applicants
The approval for both local infant adoption and permanent care applicants will normally be for two years. At the end of the first year, if there has not been a placement made an informal review will be conducted. Applicants will be contacted to confirm that they wish to remain on the approval list and asked whether there has been any change in their circumstances.
Formal review at the end of two years

If applicants have not had a child placed with them at the end of two years, a formal review will be undertaken. Applicants will be asked if they wish to remain on the approval list and if so, requested to provide up to date documentation, involving a medical report, and information regarding current occupation and income. They are also offered the opportunity to provide information regarding any change in their circumstances relevant to their application. A new police check will be required.

The case will be allocated to an Adoption and Permanent Care worker to undertake a face to face interview with both parties, either in the office or at the applicants home, as decided by the principal officer/team leader.

The worker will prepare a short report to be used as the basis of the decision regarding continuing or varying the applicants’ approval status. Teams may decide to present the matter at a formal Applicant Assessment Committee, but this is required only if the recommendation is to vary the approval. This may be a result of a change in the family’s circumstances, or significant changes in the characteristics of the child for whom the family were approved. Most cases will not require presentation at an AAC.

If approval is to continue, this will be for a further two years, unless there are any reasons specific to the application which warrant approval for a shorter period. A further informal review will occur each intervening year.

[Appendix 25: Profile on applicants] [Appendix 26: Applicant assessment committee minutes and decisions] [Appendix 27: Response for approved application from applicant assessment committee]
11. APPEALS FROM APPLICANTS

Definitions

Review procedures are those designed to safeguard the rights of consumers by providing an internal re-examination of the issues leading to an administrative decision. Examples of relevant administrative decisions are refusal to approve, or deferral of a decision to approve, applicants for adoption. Appeal procedures are designed to safeguard the rights of consumers by providing external adjudication of an administrative decision by a judicial or semi judicial body with the authority to overturn the original decision.

It is useful to further distinguish between appeals and complaints. A complaint relates to situations where an applicant wishes to raise concerns about the management of their application, performance of a staff member, undue delays in the processing of their application or other issues concerned with the service provided. Where applicants raise a complaint about the service received from the permanent care service they should be encouraged to discuss this directly with the staff member concerned. Where the complaint cannot be resolved with the staff member, it should be directed to the staff member’s supervisor. In exceptional circumstances it may be referred to a more senior staff member.

Review procedures

Applicants should be encouraged to utilise established review procedures before taking up an external appeal. Applicants may request review of a decision of non-approval, deferral or withdrawal of approval of their application. Applicants are notified in writing of the process of review and appeal when they are informed of the AAC decision. If applicants have not attended the AAC, they are given the opportunity of either attendance at an AAC meeting or discussion with the chairperson regarding the outcome of their application.

Review by the Child and Family Care (C & FC) Manager

Applicants to DHS teams may request a review by the C & FC Manager, who is the Director-General’s delegate. Grounds for review of a decision should be based on the following criteria:

i) the agency process not being conducted in a manner which was equitable;
ii) relevant factors in the assessment not having been taken into account;
iii) proper weighting not having been given to relevant factors in the assessment;
iv) irrelevant factors were taken into account;
v) applicants did not have a reasonable opportunity to present their case.

In response to a request for a review, the C & FC Manager may decide to request a reassessment or deal with the appeal personally by reading the file, seeing the family and speaking with the relevant workers.

The C & FC Manager may affirm, vary or set aside the decision and should give full consideration to the grounds for review listed above.

The decision of the review is conveyed to the applicants in writing.
Review by non-government agencies

The AAC of a non-government agency is usually chaired by the principal officer. Requests for a review of a decision should therefore be made to the executive director. With adoption applications, the executive director may recommend to the principal officer that the decision be affirmed, varied or set aside. However, the decision of the principal officer is final.

Review of specific application

Decision making at times involves a specific application from prospective permanent caregivers who have an existing relationship with a particular child. As with other applications, the decision regarding approval is made by the AAC and the applicants may seek review of that decision by using the procedures outlined above. A decision regarding a specific application is likely to result in a caseplanning meeting in the child’s region of origin to consider placement options for the child. This will apply in particular where the AAC does not approve an application from the child’s current caregivers and it is necessary to consider alternate placement options for the child. It is not the role of the caseplanning meeting to review the decision of the AAC regarding the application. However, the chairperson of the caseplanning meeting must consider the range of available options for the child. Where a party disagrees with the decision of the caseplanning chairperson he/she may seek a review of that decision through the usual regional mechanisms.

Appeals to the Victorian Civil and Administrative Tribunal (VCAT)

Appeals to the VCAT became available for applicants for adoption with the proclamation of the Adoption Act 1984. Appeals to the VCAT should be lodged within 28 days of the decision not to approve the family. If internal review procedures are not completed within this time it may be necessary for the applicants to seek an extension of time within which they can lodge the application. Applicants should be encouraged to utilise the established review procedures before taking up an appeal to the VCAT.

Section 129A of the Adoption Act 1984 provides that an application may be made to the VCAT for a review of a decision of the Director-General or a principal officer of an approved agency for:

- refusing to approve a person as a fit and proper person to adopt a child;
- deferring the making of a decision to refuse or approve a person as a fit and proper person to adopt a child;
- revoking the approval of a person to adopt a child.

Applications to the VCAT are ‘de novo’ hearings, therefore the whole case is assessed again. The Tribunal has the power to affirm, vary or set aside the decision. If the decision is set aside, the VCAT may substitute a decision.

Only applicants who have applied specifically for adoption and completed the required schedule for approval as an applicant for adoption may appeal to the VCAT. Applicants for permanent care who have not completed this schedule are not eligible to apply to the VCAT for review.
**Appeals to the Ombudsman**

Appeals to the Ombudsman can be made on the basis of ‘administrative action’ which may be defined as:

- ‘a decision and an act’, or
- ‘the refusal or failure to take a decision or to perform an act’, or
- ‘the formulation of a proposal or intention’, or
- ‘the making of a recommendation’.

The Ombudsman can take action where the administrative action:

- appears to have been contrary to the law, or
- was unreasonable, unjust, oppressive or improperly discriminating, or
- was in accordance with a rule of law or a provision of an enactment of practice that is or may be unreasonable, unjust, oppressive, or improperly discriminating, or
- was taken in the exercise of a power or discretion and was so taken to an improper purpose or on relevant grounds or on taking into account of irrelevant consideration, or
- was a decision that was made in the exercise of a power or discretion and the reason for the decision were not but should have been given (Section 2 Ombudsman Act 1973).

According to the Ombudsman Act, where an appeal is possible to the VCAT, it is unlikely that the Ombudsman will conduct an investigation.

**Placement disruption**

Procedures associated with placement disruption are outlined in the relevant chapter. The decision to remove a child from the care of prospective adoptive parents prior to legalisation may only be made by the Director-General of DHS or the principal officer of an NGO. Where the prospective adoptive parents appeal against this decision to the VCAT the child should be separately represented. The permanent care service should arrange separate representation through the Legal Aid Commission. In this situation prospective adoptive parents may apply to the VCAT to vary the decision to revoke approval to adopt a child. Where the child is placed for permanent care, the permanent caregivers may request a review of the decision through the caseplanning process.
12. INTRODUCTION OF PERMANENT FAMILY AND CHILD

The introduction refers to the period during which the child and family meet and begin to establish a relationship prior to the commencement of the placement. The relevant section of the Standards in Adoptions is Section 6.2.

Responsibility for management of the introduction

In determining which worker(s) should have responsibility for management of the introduction process, it is necessary to consider responsibility for the ongoing supervision of the placement.

Ideally the worker who is responsible for supervision of a placement should have assessed the caregiving family and should also be the child's allocated worker. The worker would then be familiar with all parties involved. This is clearly not possible in cross-regional links, where the applicant's region will assume responsibility for supervision of the placement. Even where the link occurs within a region, there may be more than one worker involved.

Where the link of an infant or pre-school child takes place within a region, and different workers have been involved in assessing the family and preparing the child, the placement will generally be supervised by a worker who has assessed the applicants. The relationship already developed with the family and the knowledge of their situation provide a useful basis for supervision. This approach may be varied in unusual circumstances, for example, where complex access is involved and the child's worker has an established relationship with the birth family. With placement of an older child, consideration needs to be given to the implications of the worker's relationship with the child and birth family members. This may require a period of joint supervision prior to assumption of responsibility by the applicant's worker. In some situations it may be appropriate for the child's worker to become the supervising worker.

Wherever more than one worker is involved there will be a need for a joint introduction process. Joint introductions should take place according to the general guidelines outlined below.

Cross regional links

These processes refer to introductions following a cross regional link (see the chapter on linking). A cross regional link will involve a joint introduction process involving a worker from the child's region and a worker from the applicants' region. Emphasis however is placed on the role of the applicants' worker as the applicants' region will assume responsibility for supervision of the placement.

Plan of introduction

The roles of the individual workers in the introduction process and the timelines for the introduction are discussed at the time of the cross regional linking meeting in order to gain broad agreement. These are then detailed in the introduction plan. Where there is more than one permanent care worker involved, the child's worker and approved family's worker jointly develop the plan of introduction. The workers may decide to divide the tasks associated with the introduction. If so, it is essential
that roles are clearly delineated to avoid confusion or duplication. It may be more appropriate for one worker to take primary responsibility and the other to act on a consultancy basis.

The introduction plan should involve initial meetings with relevant parties. The relevant parties will vary according to the particular situation and will usually include:

- The child;
- The proposed caregivers;
- Birth family members;
- Current caregivers;
- Other significant professionals.

The purpose of the meeting is to discuss the proposed plan and, where there will be a joint introduction, to introduce the other worker involved.

The length and format of the introduction is based on the needs of the particular child. An introduction of a baby or young child usually involves contact between the permanent family and child over a number of consecutive days. The process for a school age child generally involves a period of several weeks and includes outings, telephone contact and overnight or weekend stays with the permanent care family. The written plan will clarify the timelines for the introduction, specific dates for meetings and outings, and involvement of the permanent care worker.

**Preparation of the caregiving family**

Prior to meeting the child, the prospective family meets with the following parties to gain a comprehensive understanding of the child's needs:

- Child's current caregiver and supervising worker;
- Birth family members, particularly those with whom there will be ongoing contact;
- Relevant professionals.

One or both of the Permanent Care Team workers is present at these meetings and in the case of cross regional links this should be detailed as part of the plan of introduction.

**The child's role in the introduction**

The active involvement of the child in decision making is essential, taking into account the age and understanding of the child. However, it is also important that the child is not informed of the link prematurely, to protect the child from unnecessary disappointment.

The proposed family is discussed with the child by the PCT worker(s). The child is given an album of photographs, prepared by the family which includes information about themselves. The plan of introduction is discussed with the child at this time.

The initial meeting between the child and the family should occur as soon as possible after this. This meeting occurs in a place familiar to the child, with the PCT worker(s), and with the current caregiver present.
Monitoring of the introduction
The PCT worker(s) maintain contact with all relevant parties to gain feedback regarding the progress of the introduction. It is important that the roles of the individual workers are clearly defined as part of the introduction plan to ensure there is not an overlap in contact with the parties involved. Where appropriate according to age, the child's worker has direct contact with the child during the introduction to discuss his/her perceptions of the progress of the introduction.

It is important to be aware of children's difficulties in expressing their feelings verbally, and attention should be given to the child's behaviour to determine whether he/she may be under particular stress.

Any proposed alterations to the written plan are discussed between the parties concerned, including the PCT worker(s).

Any concerns which become apparent are discussed between the relevant parties. If there are major concerns about the progress of the introduction these must be discussed with the team leader of the PCT. In a very small number of situations the introduction may not continue. In the case of cross regional placements the decision not to continue should be made in agreement by team leaders in both regions. In a situation where there is not agreement between the team leaders over the introduction proceeding, the final decision rests with the C & FC Manager of the host region of the child's region.

Placement
Prior to the child moving to live with the family, the PCT worker(s) consult with all relevant parties regarding the child's readiness to move.

A small celebration is usually held on the day of the move.

The permanent family is given written information regarding procedures associated with school enrolment, government benefits, financial assistance, and requirements related to the child's guardianship (Appendix 29 (a) Special Needs and Appendix 29 (b) Infant).

Access arrangements are confirmed with the permanent family and birth family, and a written agreement is formulated.

The worker completes the notification of the placement forms to notify the region with caseplanning responsibility (Appendices 30 (a) and (b)).

Withdrawal of the non-supervising PCT worker
In general this will involve withdrawal of the child's worker. Initially there may be a short period of joint supervision of the placement if there is a particularly close or long term involvement between the child and worker. In situations of joint supervision, a clear delineation of roles is required. In general it is appropriate for the child's worker to fulfil a consultative role rather than undertake direct supervision.

The non-supervising worker should withdraw from active involvement within three months. Any ongoing involvement by the non-supervising worker beyond this period
must be approved by the team leader or in cross regional placements joint agreement must be reached by the team leaders in both regions.

**Transfer of caseplanning responsibility**
A transfer of caseplanning responsibility to the region where the child is placed generally occurs within twelve months of placement.

[Appendix 29a: Acceptance letter from team leader for Permanent Care Team]  
[Appendix 29b: Acceptance letter from team leader for Permanent Care Team]  
[Appendix 30a: Community Services Victoria Permanent Care Team notification of placement]  
[Appendix 30b: Community Services Victoria Permanent Care Team notification of placement to region with case planning responsibility]
13. SUPERVISION OF PLACEMENTS

This section discusses supervision and support during the period following placement and prior to legalisation where a legal order will be obtained. See the appropriate section for details on post legislation support. The relevant section in the Standards in Adoptions is Section 6.3.

Objectives of post placement supervision

- To carry out statutory guardianship responsibilities by ensuring the child's development is promoted within the caregiving family.
- To assess the adjustment of the family and the child, and of the level and type of support required.
- To provide support to the family in meeting the needs of the child.
- To identify local support services and provision of assistance to the family in forming linkages with these services where appropriate.
- To enhance the family's appreciation of adoption/permanent care issues.

Level of contact

The level of contact between the family and the Permanent Care Team is flexible, and depends on the needs of the particular placement. At the beginning of the placement the supervising worker should, in consultation with his/her supervisor, develop a written plan of supervision. The plan should include an assessment of the issues relevant to the placement, the Permanent Care Team worker's tasks and the proposed level of frequency of contact.

The progress of the plan should be regularly monitored with the worker's supervisor and revised where appropriate.

Infant placements

The allocated PCT worker visits on at least three occasions. The Standards in Adoptions provides that one first visit should take place within two weeks of placement.

Legalisation procedures should commence within 12 months of placement.

Children with special needs

The level of supervision is flexible and depends on the individual situation. Generally for the first three months of placement the worker would have contact at least fortnightly, although on occasions this would be by telephone rather than direct contact.

Contact may then decrease if the placement is progressing without difficulty. Many placements will require a higher level of support during periods of stress, which may occur some time after placement.

Responsibility for supervision

Cross regional placements

A period of joint supervision by workers from two Permanent Care Teams may occur where a child is placed outside his/her region of origin (see the chapter on
Introductions). This joint supervision is time limited and the Permanent Care Team from the region of placement should assume total responsibility for supervision within three months of placement.

**Adoptive placements**
Where adoption consents are available, and adoption is the intended plan, the primary responsibility for supervision of the placement remains with the PCT until legalisation. Families are encouraged to utilise community agencies as appropriate.

**Permanent placements and caseplanning responsibility**
It is appropriate for the region in which the child is permanently placed to have caseplanning responsibility for the child. Children will frequently be placed out of region and a transfer of caseplanning responsibility is then necessary.

Transfer of caseplanning responsibility should be negotiated at the first annual review following placement, and would be expected to take place soon after.

Where there are major concerns about the stability of the placement it may be preferable to delay transfer, and with particularly straightforward placements where a ward review is not scheduled for some months, transfer could be considered earlier.

**Case management responsibility**
The Permanent Care Team will usually be responsible for case management following placement.
14. ACCESS ARRANGEMENTS

Definition
The following definition was formulated by the Watson Committee when considering matters related to family law.

Access means the contact of a child with a person, other than the person having custody, whether by way of a visit by or to that person, including attendance for a period of time at a place other than the child’s habitual residence, or by way of communication by way of a letter, telephone or other means with that person.

There were no provisions under the Adoption Act 1964 for access between the relinquishing parents and child. Until the mid 1980s only a minority of placements arranged by Victorian adoption programs involved ongoing contact between the child and his/her family of origin.

Most current literature and practice supports the idea that, in most situations, ongoing contact assists with the development of a child’s identity by ensuring that the images of the birth family are based on reality rather than fantasy. With older children in particular it appears that the rejection experienced when contact is terminated tends to be more traumatic than trying to balance relationships with both permanent caregivers and birth family.

The PCTs recognise that in general ongoing contact between the child and birth family has benefits for the child and the placement. The primary objectives of contact relate to:
- The child’s need for knowledge of his/her background to assist with the development of identity;
- The benefits to the child of maintaining positive relationships with members of the birth family;
- The birth parent’s need for knowledge of the child to assist with resolution of long term grief, and to help accept the changed circumstances of both the parent and child;
- the importance of the permanent family accepting the role of the birth family in the development of the child’s identity and the value for the child in maintaining positive relationships.

Decision making: adoptive placements
The Adoption Act 1984 includes provisions for ongoing access and information exchange between the birth parents and child.

Schedule 7 ‘Wishes of Natural Parent after Consent Given - Information about a Child - Access to a Child’ is completed after a consent is signed.

The parent may request access and/or information exchange. Access may also be requested with other nominated relatives. The required frequency of access is nominated by the birth parent.

The birth parents also indicate-whether they want their wishes for access to be included in the adoption order. It is important to note inclusion of access conditions in
the adoption order provide a legal basis to deal with any disputes or conflict which may arise over access.

It is essential that the purpose of access/information exchange are discussed with the parent. If a parent does not wish to pursue any access/information exchange the implications for the development of the child’s identity and resolution of the parent’s grief require discussion.

If the level of contact requested is likely to create difficulties in locating a placement, for example, if a very high level with a variety of parties is requested, the implications are discussed with the birth parent, who may modify their request. Requests for a very high level of access may indicate the birth parent is very ambivalent about adoption, and this would need to be explored. Once the level of access requested by the parent is established, a family is then sought who is able to fulfil the wishes expressed by the birth parent. If this is not possible, the situation would be further discussed with the birth parents and consideration given to discharging guardianship.

**Where the child is aboriginal**

Where conditions have been specified in an adoption consent of a parent of an aboriginal child, the prescribed terms of access are set out in Regulation 20. Conditions may relate to access by a parent, relative or members of the aboriginal community. Regulation 20 makes provision for an aboriginal agency to arrange a conference to resolve difficulties about access occurring or to establish the basis for future access to the adopted child by a relative or member of the aboriginal community.

In Victoria, the Victorian Aboriginal Child Care Agency (VACCA) is the relevant agency. The Regulations provide that VACCA must not arrange a conference if the arrangements are satisfactory to the person seeking access, the adoptive parents and the child.

In addition, if access by members of the aboriginal community is a condition of the order, VACCA may visit the child and adoptive parents once each year to assess the extent of contact. VACCA may assist and support the adoptive parents in arranging contact between the child and the Aboriginal community.

**Decision making: children under DHS guardianship**

Decision making with relation to access provisions for children referred through the caseplanning mechanisms of DHS is more complex as there are a broad range of factors which need to be taken into consideration. The PCTs favour an approach which is flexible and takes into account the characteristics of the particular situation rather than relying on formula approach. The over-riding factor which should guide decision making is that of the best interests of the child. However, given the complexity of the issues involved it is often difficult to determine what is in the best interests of the child, particularly in the long term.

**Access considerations**

*Purpose of access*

The purpose of ongoing contact in permanent placement needs to be taken into account. That is, the aim is not to assist the birth parent in resuming the primary
caregiving role. The intention is to maintain links for the purpose of clarifying identity and to assure each party of the other’s continued existence and well-being, as well as maintaining existing positive relationships.

Factors which require consideration

The following are a number of inter-related factors which research evidence and practice experience indicate need to be taken into account when determining access arrangements in permanent placements. These factors are not intended to be barriers to placement. They are areas which need to be addressed when a caseplan of permanency is being planned or when reviewing access arrangements.

History and quality of relationship

This refers to the level and quality of the attachment between the child and the parties involved in the contact. Where the relationship has been positive and supportive, ongoing contact is likely to have considerable benefits to the child. Where a relationship has been characterised by major difficulties the benefits to the child of continued contact may be less clear. Continued contact may however assist the child in resolving issues associated with identity. It may also assist the child in developing relationships in a less stressful context. Contacts will need to be closely monitored and supported, particularly if the child is fearful of or rejecting of the parent.

Many children referred to the PCTs have contact with wider family members other than birth parents, for example grandparents, aunts and uncles and siblings. The continuity of these relationships is often of particular benefit to the child.

Such access is often more straightforward than access which occurs with birth parents. These relatives may be more able to accept the child’s need for a substitute family, and the permanent caregivers feel less threatened by their involvement.

Attitude to caseplan and placement

Ongoing contact is likely to serve a positive function when the parent (or other party involved) is supportive of the placement and passes this message to the child. This assists the child in settling in the placement, and in accepting the roles of both the permanent and biological families. It is particularly important for the child’s emotional security that the biological and permanent families relate to each other positively.

Ongoing contact with a parent who actively opposes the placement is likely to result in a conflict of loyalties for the child and is potentially very stressful. It is evident however that many parents who initially express opposition to a caseplan may become more positive if they are given support, and are assured of ongoing opportunities for contact with the child.

Age, needs and wishes of the child

Any decision-making regarding access obviously needs to take into account the age and developmental level of the child. This area requires careful assessment and often the weighing up of short term and longer term needs. For example, it may be difficult to determine when a child is unsettled following a visit whether this is detrimental to the child, or part of the process of resolving issues associated with
identity. Such situations need to be monitored to assess the nature and extent of difficulties.

Permanent caregivers may require assistance in dealing with issues around access visits and the child. In a small number of situations, however, the child’s difficulties may be so great that reduction or supervision of access may need to be considered. With older children in particular it is important to consider the child’s wishes when making decisions regarding ongoing contact. In some situations children may request more frequent contact, while in others the child may request that contact be decreased. The child should not, however, be encouraged to believe that his/her views will be the decisive factor as this would burden him/her with excessive responsibility. Also, the child’s wishes may not necessarily coincide with his/her best interests, particularly in the longer term.

Wishes of natural family members
It is important to consider both the family member’s stated wishes, and also the actual history of contact. It is important the arrangements which are made are adhered to as closely as possible, so that children’s expectations are not raised falsely.

In other words, consideration must be given to the regularity of contact in the past and any prolonged periods when contact has ceased. If a pattern exists of access arrangements not being adhered to, consideration needs to be given to whether this pattern is likely to continue. Repeated missed or late visits do not benefit the child but provide him/her with an experience of repeated rejection. It is preferable to plan a frequency of contact which has some possibility of being achieved than a frequency which is unlikely to occur.

Quality of contact
Contact visits can be relaxed, enjoyable experiences. An aim of the PCT worker in monitoring access is to assist the parties in managing the arrangements independently, and this is often successful. Some situations require the ongoing support of a worker, and may be difficult to manage positively even when closely supervised. These include situations where the parent becomes physically or verbally aggressive to other parties, or where the parent ignores or relates inappropriately to the child. Visits with parents who are unable to contain their own distress are likely to be very stressful for the child. Access may need to be reviewed and arrangements altered if any of these difficulties arise.

Management of access
Access arrangement should be included in the caseplan for permanency and in the written agreement which is formulated at that time. The possibility of some variation at the time of placement should be built in to the written agreement. Access should not be suspended for an extended period when placement occurs, but that there should be some flexibility of arrangements according to the specific situation.

The PCTs aim to encourage permanent caregivers and birth family to manage access and information exchange independently where possible. In reality, this is not always viable, and ongoing supervision and support may be required on an ongoing basis.
Practice experience indicates that parties are more likely to be comfortable with establishing independent arrangements if their initial meeting takes place early in the placement process (preferably prior to placement). It is also important that there is considerable encouragement and support from professionals for the parties in assuming independent management of access.

Access may take place in a range of settings depending on the particular situations. This includes the neutral settings such as parks or restaurants, the home of the birth parent or caregivers if all parties feel comfortable with this or the PCT office if visits need to be closely supervised. The intention is that access should result in as little disruption to the child as possible, so the child’s age and needs must be taken into consideration. A young child in particular may benefit from visits being held at the permanent caregiver’s home.

Ongoing management of access is generally the responsibility of the worker with case management.

Management of post legalisation access is covered under the chapter on post legislation.

**Review of access**

*Adoption consents*

Where adoption consents have been signed access and information exchange arrangements may be varied if there is agreement between the parties. The PCT may assist parties with negotiations regarding a variation of arrangements.

**Post finalisation**

Where access and information exchange conditions are included in an adoption order, arrangements may be varied by mutual agreement or the adoptive or birth parents may apply to Court to vary the conditions or withdraw them following legalisation. If the arrangements are not included in the order, conditions cannot be varied by the Court after legalisation, but can be altered by private agreement between the parties.

**Where a child is under DHS guardianship**

If there is consensus regarding the change of access arrangements, the arrangements may be varied. If there is a dispute regarding the arrangements this should be dealt with in a caseplanning meeting.
15. PLACEMENT DISRUPTION

Disruption refers to the breakdown of a placement, so that the child is no longer able to remain with the permanent caregivers concerned. Disruption may result from the permanent caregiver’s request for the child to be placed elsewhere. In a small number of situations, a decision may be made by the Permanent Care Team that it is not in the child’s best interests to remain in the placement.

A disrupted placement is extremely stressful for all concerned. The general aim of the PCT’s work with applicants is to maximise the effectiveness of the pre-placement applicant assessment and education process to reduce the likelihood of disruption occurring. The focus of work with the family post placement is on providing support and ensuring that families have access to relevant community supports. However, in a small number of situations, even a high level of support will not be adequate to prevent disruption.

Disrupted placements are inevitable with child placement programs. Placements of older children from difficult backgrounds are particularly vulnerable to disruption. It is important that disruptions are used as an opportunity to learn about the child and family involved and to examine practice methods.

Management of pre-legalisation disruption

Pre-legalisation disruption refers to a situation where a placement breaks down prior to the granting of a legal order. In these situations, the child is under the guardianship of DHS, either as a result of adoption consents being signed or of a Children’s Court Order.

Situations where removal of the child is against the permanent caregiver’s wishes

Unforeseen circumstances can and do occur following a placement which could be deemed to impair the child’s security in the family and jeopardise the child’s current and long term physical and emotional development.

The Standards in Adoption refer to the circumstances under which disruption of a placement could occur:

‘The agency should consider removal of a child placed for adoption if circumstances impair the child’s security in the family and jeopardise the child’s physical and emotional development. Such circumstances may involve a seriously incapacitating physical or mental illness of an adoptive parent, death of an adoptive parent, separation of the adoptive parents, neglect, ill-treatment of or rejection of or by the child... These circumstances need to be considered in the context of what the home has to offer the child in the long term and how the agency can assist the adoptive family to deal with the situation constructively. A decision about removal needs to be discussed with the family and include the child in placement where appropriate. There are instances where a family may request removal.’ (Section 6.3.3 Adoption Standards).

Management of placement disruption will be different, depending on whether the situation does or does not warrant protective intervention. Protective intervention is warranted if there is a risk of significant harm to the child from abuse or neglect. If
there is any doubt concerning the appropriate type of intervention, the Permanent Care Service should consult with the Protective Service.

In either case, adoptive or permanent care applicants/parents must be actively involved in the assessment and decision making process. They will be offered the opportunity to put forward their views in defining the key problems and in planning appropriate solutions. They will be made aware of any allegations regarding their care of the child and be given the opportunity to respond to these.

The Protective Services Manual sets out useful guidelines for involving parents in all stages of the protective assessment. These principles provide guidance for all situations which may lead to placement disruption.

**Situations which warrant protective intervention**

In the event of alleged neglect or abuse in an adoptive or permanent care placement, the situation is complicated by the fact that the initial allegations may be made directly to the police or to the DHS Protective Service and further they may be made without the permanent care worker being informed beforehand.

In the event that the protective concerns come from the permanent care worker, consultation should be sought with the Senior Child Protection Officer in the relevant local office.

If the situation is deemed sufficiently serious to merit a process of formal risk assessment, then Protective Services will be actively involved.

The Protective Services Practice Manual provides useful information about both the legal and practice definitions of child maltreatment, along with descriptions of the categories of physical abuse, emotional abuse, sexual abuse and neglect.

There are clear advantages in maximising the role of the permanent care worker, as this worker knows, and may have a good working relationship, with the child and family. Issues around expertise and skill in the process and procedures of risk assessment, and the use of statutory authority also need to be considered. In some cases, it may be appropriate for the Protective Service to assist the permanent care worker on a consultancy basis with the investigation, where the issues are not complex.

In most cases, however, joint investigation will be required, with the permanent care worker and the Protective worker carrying out necessary tasks on the basis of joint work.

In this case, an early decision regarding the identification of the primary worker will need to be made. The primary worker is responsible for taking the lead in the investigation, for running the interview and making key decisions regarding appropriate action, and for writing the report. The primary worker is responsible for any decision that immediate removal of the child is warranted. In cases of alleged sexual abuse, the protective worker will always be expected to take responsibility for the investigation, given the inherent complexities. In other cases, this decision may be made by the team leader following consultation with senior staff from Protective
Services. The C & FC manager will make the decision if there is any uncertainty or disagreement.

Protective assessment refers to the process of obtaining information through interview, observation, report and discussion, and evaluating that information so that informed decisions can be made about the child/young person’s needs and the factors effecting the family’s ability to provide a secure environment for the child/young person. (Protective Services Manual).

The Protective Services Manual sets out clear guidelines for the assessment and these should be followed. In brief, the assessment will focus on establishing the nature and level of risk to the child within the context of evaluating the child’s protective and developmental needs and on determining the extent to which the parents can meet these needs.

**Situations which warrant immediate removal of the child**

If, during the process of protective assessment, it is decided that the child should be removed immediately from the adoptive or permanent care placement because of urgent or serious risk concerns, the Children and Young Persons Act 1989 Sections 123 and 124 empowers the protective worker to remove the child. If necessary a warrant can be obtained from a magistrate in order to remove the child.

Consultation with the regional Director should occur whenever possible prior to the disruption of the placement.

**Situations which do not warrant immediate removal of the child**

After the protective assessment is completed, the decision may be that the level of risk does not require urgent removal of the child, or the protective concerns may not satisfy the legal definition of child maltreatment.

Where the child has been placed for adoption, an Applicant Assessment Committee must be convened to consider the future of the placement. The Committee will consider the identified areas of concern and, in view of the risks to the child, may reach a decision that removal of the child is warranted.

The Committee should be chaired by an independent regional chairperson and should contain people with relevant expertise in adoption, permanent care and child welfare.

Representation from outside DHS is important to ensure an open and accountable decision making process based on input from individuals with a broad range of knowledge and skills, and in recognition of the significant nature of any potential decision to disrupt an adoptive placement.

The AAC then makes a recommendation, which the chairperson may confirm. The Committee’s view will be transmitted promptly, via the C & FC Manager to the Regional Director.

The regional director may reach a decision at this stage, given all the information available or he may seek further advice from an independent panel. If he seeks to
convene an independent panel this should occur promptly and its deliberations should be commenced within seven days of being convened or earlier if the level of urgency is high. The independent panel will be required to advise the regional director whether the removal of the child is warranted in the circumstances, given that the interests of the child are paramount.

If the child is to be removed this can then be done under the provisions of the Adoption Act 1984.

Where the child is placed for permanent care, a case planning meeting should be convened to consider the future of the placement. A placement for permanent care is made within the case planning process after a child has entered the DHS Protective Services system and has been placed under the guardianship of the Director-General. As with the AAC the meeting should be chaired by an independent regional chairperson and contain an adequate level of skill and expertise regarding permanent care, and risk assessment. The permanent caregivers will be invited to participate in the meeting, as described above.

The case planning chairperson will consider the recommendation of the meeting, and relay this, without undue delay, to the regional director. The regional director may reach a decision at this stage, or may decide to convene an independent panel, as described above.

Responsibility for decision making regarding the disruption of either an adoptive or permanent care placement is with the regional director.

**Situations which do not warrant protective intervention**

Wherever possible and appropriate the applicants/parents should be offered counselling and support services with the aim of resolving the issues of concern or minimising their impact and enabling the child to remain in the placement. There can be many reasons why a family may be experiencing stress or difficulties in a placement where it is more appropriate to marshal support than to move to disrupt the placement.

If it becomes apparent that the child’s emotional, physical or developmental progress is in jeopardy, notwithstanding these supports, removal of the child needs to be considered.

The decision making process should replicate that described above. Protective Services will not be directly involved in the assessment if there are no protective concerns, ie if the child is not at risk because of abuse or neglect.

With adoptive placements an Applicant Assessment Committee (AAC) should be convened. The Committee will consider the identified areas of concern and, in view of the risks to the child, may reach a decision that investigation with a view to removal is warranted. In such a situation the committee should also provide advice on the degree of urgency.

A recommendation of the AAC chairperson to remove the child from the placement will be transmitted promptly, via the C & FC manager in the host region, to the
The regional director may reach a decision at that stage, given all the information available or he may seek further advice from an independent panel.

If he/she seeks to convene an independent panel this should occur promptly and its deliberations should be commenced within seven days of being convened or earlier if the level of urgency is high in the opinion of AAC.

The independent panel will be required to advise the regional director whether the removal of the child is warranted in the circumstances, given that the interests of the child are paramount.

Where the child is placed for permanent care and is under the guardianship of the Director-General as the result of a Children’s Court order, a case planning meeting is the most appropriate forum for consideration of removal of a child from placement.

This reflects the fact that the case planning process has been integral to the way decisions have been made from the first instance. The decision making process replicates that outlined above.

**The role of the applicants**

Involvement of the adoptive parents or permanent caregivers in decision making is essential, and is consistent with the general DHS philosophy of citizen participation and commitment to natural justice. The adoptive parents will be invited to attend the AAC or case planning meeting which considers their case, to present their own views regarding the concerns and to provide additional information they consider relevant to decision making. Although adoptive parents and permanent caregivers will attend only part of the meeting, they must be offered adequate time to respond to the assessment.

**Non government agencies**

Where the child is placed for adoption, the appropriate forum for decision making regarding placement disruption is the AAC. Under the Adoption Act, the principal officer is the guardian of children where adoption consents have been signed and therefore has decision making responsibility for adoptive placements. With a permanent placement, where the child is under the guardianship of the Director-General of DHS, any decision regarding removal of the child from placement should be made by the chairperson of a case planning meeting. From these points onwards, the decision making processes replicate those outlined above.

**Informing the applicants**

The applicants will be informed of the decision to remove the child from their care. The decision as to the timing of the removal will be taken in the light of the circumstances presented at the time by the particular case.

Information regarding the applicants’ right to, and procedures for, appeal will be provided.
Alternative arrangements to be made for the child once removal has occurred

Unless there are exceptional circumstances the child is to be placed in a neutral foster care placement following removal. Exceptional circumstances will be determined at the discretion of the C & FC manager in the host region for all situations other than where the child is under the guardianship of a principal officer of an NGO. Exceptional circumstances might include when the initial applicants have asked for the child to be replaced, or where there is a high degree of confidence that they will not challenge the decision.

The decision regarding temporary care will have regard to the child’s best interests. The duration of temporary care should take account of the child’s need to adjust to the recent unsettling experiences and will need to be carefully assessed for each child.

Other than in cases where exceptional circumstances have been established, sufficient time to allow the permanent caregivers to appeal should always be allowed prior to replacement with alternative applicants. The 28 days allowable under the Victorian Civil and Administrative Tribunal legislation provides a useful yardstick. The final discretion should rest with the C & FC manager in the host region, or, with the principal officer of the relevant NGO.

The question of access between the child and the initial applicants will be discussed. Arrangements for access will be made, if appropriate, depending on matters such as the child’s age, the length of the placement and the wishes of the parties. These arrangements would normally be at the discretion of the relevant permanent care service.

Situations where the permanent caregivers request that the child be moved

In some situations, the permanent caregivers may indicate to the PCT that they do not wish to continue with the child’s placement. This situation usually arises with placement of older children, and there is often a lengthy period of difficulties prior to the placement breaking down.

In general, it will be necessary for an interim foster care or residential placement to be organised. However, some situations may be determined by the C & FC manager in the host region or the principal officer of the relevant NGO to represent exceptional circumstances, and in those situations it may be possible for the child to be moved directly to another permanent placement. The viability of this option depends to a large extent on whether the child is able to remain with the caregiving family while options for his/her future are considered. This option has the benefit of minimising the number of moves the child experiences, however, it is not always possible as prolonging the original placement may be extremely difficult and stressful, and there may be no appropriate approved families available for placement.

Management of post legalisation disruption

Responsibility for decision making

Post legalisation disruption refers to a situation where a placement breaks down after an adoption or guardianship and custody order had been granted to the permanent caregivers. In such situations, the placement caregivers are the legal guardians of
the child and therefore, have decision making responsibility for the child. The PCT generally become involved only if approached by the permanent caregivers for assistance or support. Families often approach the PCT due to the team’s familiarity with relevant issues and with the family’s particular situations. The PCT may provide direct support to the family, and also arrange for referrals to community based support services where appropriate.

In situations where it is necessary to readmit the child to DHS guardianship, an application to the Children’s Court is necessary. Occasionally, adoptive parents may decide to relinquish a child by signing adoption consents.

**Situations where there are protective concerns**

DHS Regional Protective Services has the responsibility for investigating protective concerns and initiating Court action where necessary. The PCT’s involvement in such situations would generally be on a consultative basis. The organisation of interim foster care or residential placements is the responsibility of DHS Protective Services although the PCT may act in a consultancy role.

If a child is admitted to DHS guardianship, case management becomes the responsibility of the relevant regional Protective Services. If a case planning decision is made for permanent family placement, a referral to the PCT may be made, where appropriate.

**Situations where the permanent caregivers request the child to be moved**

In situations where the permanent caregivers request that the child be moved, the PCT’s role primarily involves providing support and assistance to the family concerned, when requested, and assisting with referrals to community based support agencies. If a placement breaks down to the extent the child requires an alternate placement, it is generally necessary for DHS Protective Services to become involved to consider readmittance to DHS guardianship. In some situations, it may be possible to consider a private placement, with the child remaining under the permanent caregiver’s guardianship. Such an arrangement is only possible if the family intends to maintain a high level of contact and it is regarded as being in the child’s best interest.

**Role of the birth family**

In accordance with Sections 44 (1) and 44 (2) of the Adoption Act 1984, the PCT must notify a birth parent who has signed adoption consent of the termination of a placement, unless the parent has expressed in writing that they do not wish to be given notice.

When a permanent placement disrupts, contact is made with birth family members who have maintained an interest in the child’s situation to discuss future plans for the child. In some situations it may be appropriate to review the role of the birth family with relation to the child in view of placement disruption.

**Review of factors leading to disruption**

It is essential that a comprehensive review of the factors which contributed to the disruption is undertaken in order to make appropriate plans for the child’s future and
to consider the implications for practice. Where a decision is made to move the child urgently, it is generally not possible to consider appropriate alternate long term placements for the child until the child is in an interim placement. In less urgent situations it may be possible to do so before the child moves from the placement. It is also important to determine whether it is appropriate for a further placement to be made with the family concerned, and whether particular practice methods may require review.

Among the factors requiring consideration are the following:
- factors related to the permanent family, such as information not previously identified or misinterpreted in earlier assessments of the family;
- the emergence of unpredictable circumstances which have affected the progress of the placement, such as serious illness or external stress on the family situation;
- factors related to the child are also included, in particular, a review of the child’s readiness for placement and capacity to attach and bond;
- factors relating to practice methods, in particular with relation to preparation and supervision.

A review of all placement disruptions should be undertaken annually.
16. LEGALISATION PROCEDURES

Background

Permanent care placements should be supported by court orders which transfer some or all parental rights and responsibilities.

The legal context for the custody and guardianship of children who need to live away from the care of their birth parents on a permanent basis is set out below.

i) The Family Law Act 1975 under which the Family Court of Australia can make parenting orders for residence, contact and specific issues;
ii) The Children and Young Person's Act 1989, under which the Family Division of the Children’s Court can make a Permanent Care Order;
iii) The Adoption Act 1984 which provides for adoptions, including ongoing access and information exchange.

The above options provide flexibility in meeting the different needs of children requiring permanent care, their birth families and caregiving families. They define the legal rights and responsibilities of the parties involved. They aim to offer the child the opportunity to maintain ties with the birth family as well as promoting the security of the relationship between the child and his/her permanent caregivers.

The broad range of options is the result of legislative and policy developments over time. The traditional reliance on adoption as the only way to finalize a placement is no longer appropriate. Each option needs to be considered to determine which is the most appropriate in the particular circumstances. It is important to reach decisions by collaboration and consensus as far as possible.

The process of selecting the most appropriate option which is in the best interests of the child is complex. The different aspects of each option need to be considered to determine the optimal match with the particular circumstances of the child, the birth family and the permanent caregivers.

In some circumstances, children are placed with a view to finalizing the placement with a particular legal order, while at other times this decision will be made after the placement has been in existence for some time.

The child’s wishes, feeling of identity and sense of belonging need to be considered as the paramount consideration, along with the wishes of the birth parents. The wishes of caregivers must also be considered.

The following guide compares the effect of the available options against a common set of criteria.

Adoptive placements

Timing of legalisation

Where there are adoption consents, legalisation procedures are generally commenced 9 - 12 months after placement of a baby, and 12 - 24 months after placement of a child with special needs. Legalisation may be delayed where there
are major concerns regarding placement stability or at times as a result of the need for ongoing financial assistance.

**Stages in the legalisation process**
The PCT worker completes a report outlining the progress of the placement and clarifying access and information exchange procedures and also completes the form ‘Details Required on Finalisation’ (Appendix 31).

The team leader of the PCT reads the report and either approves the file for legalisation or requests further clarification.

The file is forwarded to the relevant administrative officer who sends the family a form requesting the up to date information required for the preparation of the affidavit to be lodged at court.

The family are also asked to pay a fee which covers stamp duty and obtaining the original birth certificate. When all the information is available, the administrative officer prepares the affidavits for Court, and these are signed by the relevant parties.

The papers are then lodged with the County Court. It may take some weeks for a hearing date to be set.

The Court hearing is attended by the family, the child (where appropriate) and the PCT worker. Where the child has been under DHS guardianship, the administrative officer notifies the region with caseplanning responsibility that an order has been granted thereby terminating DHS guardianship (Appendix 35).

The birth parent is notified of the legalisation of the placement unless they have indicated at the time of signing consent that they do not wish to be notified.

**Family Court Parenting Orders**

*Children under DHS guardianship*

The Family Court has the power to make parenting orders covering residence, contact and specific issues related to the care of the child to persons other than the child’s birth parents. The Family Court’s powers exclude children under state guardianship or wardship (60 H of the Family Law Act). An order can, however, be granted with respect to a child under DHS guardianship if the order is made conditional to discharge of state guardianship. That is, DHS guarantees that discharge will occur if an order is granted and the Family Court Order comes into effect once DHS guardianship is discharged.

**Procedures in seeking a Parenting Order for children under DHS guardianship from the Family Court.**

A caseplan of permanent care is established, the birth parents are consulted and their agreement is required for the plan to proceed (see the chapter on foster-care conversions/specific applications).
The Act requires that the family seeking the order make application to the Family Court and that the Director-General is a party to the application. The applicants therefore initiate the application using their own solicitor.

The applicants may apply to Legal Aid for assistance in meeting the legal costs involved. (Eligibility for assistance is determined by Legal Aid.)

The DHS region with caseplanning responsibility is responsible for submitting affidavit material indicating that DHS would relinquish guardianship if an order was granted and would formally discharge guardianship when the order was granted.

**Permanent Care orders**

Section 112 of the Children and Young Persons Act provides that the Children’s Court may make a permanent care order in respect of a child thus granting custody and/or guardianship to persons approved by the Director-General.

The Sections of the Act pertaining to permanent care orders were proclaimed on 16 April 1982. The Children and Young Persons (Amendment Act (Clause 14) amends these provisions, so that the Director-General is the applicant for the order, rather than the proposed “suitable” persons.

**Definitions**

A Permanent Care Order is a custody and guardianship order. It grants custody and guardianship to persons who have been approved as suitable to accept responsibility for the permanent care of a child. It applies to "third parties", i.e. persons other than the birth parents or the Director-General.

**Custody** is defined as:

"a) the right to have the daily care and control of the child, and

b) the right and responsibility to make decisions concerning the daily care and control of the child" (C & YP Act S 51)

Decisions made by those with custody concern, eg. accommodation, attendance at school, feeding, clothing, behaviour, urgent or routine health needs.

**Guardianship** is defined as:

"...responsibility for the long term welfare of the child"

and include all the powers, rights and duties that are, apart from this Act, vested by law or custom in the guardian of a child other than

a) the right to have the daily care and control of the child, and

b) the right and responsibility to make decisions concerning the daily care and control of the child. (C & YP Act S.4)
Decisions made by those with guardianship include decisions about education, changes in residence, religion, employment and health needs other than those of an urgent or routine nature.

A **Permanent Care Order** granted by the Children's Court equivalent to Parenting and Guardianship Orders granted by the Family Court of Australia.

Although the orders are equivalent in their impact on establishing legal rights and responsibilities, they are obtained in different Courts, and therefore involve different procedures for the parties.

Procedural guidelines for Family Court applications have been developed, and should be followed when Caregivers make an application to the Family Court.

An application to the Family Court can be made on the basis of agreement between the applicants (the child's caregiver) and the birth parents.

An application to the Children's Court for a Permanent Care Order is usually made after a period of protective intervention has occurred, and usually after a previous Protection Order has been made.

**Permanent Care Order**

A Permanent Care Order obtained in the Children's Court has the following characteristics.

- The order entails the judicial vesting of custody and guardianship of the child with specific alternative permanent caregivers.
- The granting of the order entails the discharge of the child from the guardianship of the Director-General of DHS.
- The order is able to be varied or challenged at a later time after application by the child, the parent or the permanent caregivers to the Children's Court. There is however, no automatic 'review' of the placement.
- The order does not involve the total change of the child's legal status as Adoption does.
- The order expires when the child turns 18. Under the provisions of the Adoption Act 1984 the child may apply to be adopted by the permanent caregivers, when the child turns 18 years.
- The order expires if the child marries before the age of 18.
- The child's Registration of Birth is not altered. The child's name is not automatically changed, the child's birth parents remain the child's legal parents and the extended birth family's legal rights are unaltered.
- The child's name is able to be changed if there is agreement among the parties. In Family Court applications, this can be done by a separate action by the Court. With Permanent Care Orders, an application can be made to the Register of Births, Deaths and Marriages.
- There is provision for custody and guardianship to be shared by the caregivers and the birth parents where agreed to by all parties, including the D/G, and in the best interests of the child.
The orders must contain appropriate access arrangements for the birth parents.

**Permanent Family Care**

- Obtaining a legal order formalising custody and guardianship arrangements is a final step in the process of permanent family placement.

- Permanent family care is where a child is cared for on a permanent basis by caregivers other than the birth parents. The primary aim of Permanent Care is to provide security and to enable children to develop stable caring relationships with nurturing caregivers. A permanent family placement is intended to continue indefinitely.

- The decision to create a permanent alternative family for a child through a guardianship order is a serious and significant decision. It is made through the case planning process.

**Case Planning**

Case planning is defined by the Children & Young Persons Act as a "process". This process begins when a protective intervener receives a notification about a child and includes decisions relating to investigations, assessments, the preparation of reports, and decisions relating to the placement and supervision of the child.

The process used in making decisions and the decisions made in planning for permanent family placement must be consistent with the case planning principles stated in the Children & Young Persons Act.

- The case planning principles are stated in the Children & Young Persons Act S. 119. They are:

119. (i) Decisions made by the Director-General as part of the case planning process must, as far as possible be made according to the following principles:

   a) The welfare and interests of the child must be given paramount importance;

   b) If the child is not living with his or her family, a primary goal is to reunite the child with his or her family if that is for the welfare and in the interests of the child;

   c) When considering the welfare and interests of the child, due consideration must be given to immediate and long-term effects of decisions on the welfare and interests of the child and on the maintenance of the family relationships of the child.
d) Any decisions made to protect the safety and well-being of the child must not be more than sufficient to achieve this:

e) The child (except if his or her participation would be detrimental to his or her safety or well-being) and the family of the child except where its participation would be detrimental to the safety or well being of the child) must be encouraged and (through consultation and discussion) given adequate opportunity to participate fully in the case planning process and must be given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held;

f) The child and the family of the child must be provided with the opportunity and assistance to involve other persons to assist them to participate fully in the case planning process in accordance with paragraph (e);

g) The case planning process must be conducted in such a way that the persons involved are able to understand it:

h) The case planning process must take into account the views of all persons who are directly involved;

i) Decisions are to be reached by collaboration and consensus:

j) Decisions are to be made with as much speed as a proper consideration of the case permits;

k) If a person attending meetings occurring as part of the case planning process has difficulty in communicating in the English language, an interpreter must be present;

l) If meetings are held as part of the case planning process and the child comes from an ethnic background, a member of the appropriate ethnic community who is chosen or agreed to by the child or by his or her parent may attend;

m) In the case of an Aboriginal child -
I. decision-making should involve relevant members of the Aboriginal community to which the child belongs; and

II. in recognition of the principle of Aboriginal self-management and self-determination, arrangements concerning the child, and his or her care, supervision, custody or guardianship, or access to the child, must be made in accordance with the principles listed in subsection (2).

For the purpose of subsection (1) (m) (ii) the principles are:

a) Persons involved in the arrangements mentioned in subsection (i) (m) (ii) must be, or at least one of them must be, a member of the Aboriginal community to which the child belongs; or

b) If a person or persons of the class mentioned in paragraph (a) is or are not reasonably available for that purpose, the persons involved in those arrangements must be members of, or at least one of them must be a member of, an Aboriginal community; or

c) If a person or persons of the classes mentioned in paragraphs (a) and (b) is or are reasonably available for that purpose, the persons involved in those arrangements must be persons approved by the Director General and by an Aboriginal agency as suitable persons for that purpose.

The Case Planning Context

These case planning principles continue to operate when a decision for permanent family care is made. They will impact on a decision about permanent care in the following ways.

A permanent care decision should only be made when the following conditions have been met:

- that the decision has been preceded by a rigorous consideration of the goal of reuniting the child and the family, and the decision that the family unit cannot be preserved without serious risk to the child.
that a decision that a permanent care arrangement best protects the welfare and interests of the child is made based on a comprehensive assessment of the child's needs.

that the child has been given opportunity and encouragement to participate in the decision working process. The child's age, developmental stage, or situation, will impact on the extent to which the child can participate and on how this goal can be achieved. In general, a child is usually only placed in a permanent family placement with the child's consent. A Permanent Care Order cannot be made until the Court is satisfied that the child's wishes have been considered. In addition, good practice demands that the child's wishes play a crucial part in determining the outcome of future placement plans.

the family should have been given the opportunity to participate in a positive way towards the goal of achieving permanency for the child.

At an appropriate time early in the process of working with the family, the family will have been informed of the need for time limits in working towards reuniting the child and the family, and that DHS has a responsibility to ensure secure and stable long term care arrangements for the child.

that the implications of a decision for permanent care have been explained to the family. This includes the types of legal orders available, and their implications for the parties' rights and responsibilities, including access arrangements.

that the decision has been reached by collaboration and consensus as far as possible. While many permanent care placements are made without the parents' consent, and a Permanent Care Order is likely to be a contested order, it may be possible to reach agreement on at least some issues. Increasing the level of agreement and commitment among all parties to achieving the best option for the child, maximises the outcome for the child and for the placement.

that appropriate arrangements for input from an appropriate ethnic community have been made. As different ethnic communities may present a range of views about the transfer of custody and guardianship rights and responsibilities from parents to permanent caregivers, such input can be very valuable and should be sought.

The decision regarding the appropriate placement for the child must always consider whether there is compatibility of race, ethnic background and religion between the background of the child and the caregivers.

Parents will have been given the opportunity to express their wishes regarding the caregivers' race, ethnic background and religion.

that, in the case of an Aboriginal child, the principle of Aboriginal self-management and self-determination has been recognised by the involvement of the Aboriginal community in decision-making.
Timing of Decisions

The Children & Young Persons Act highlights the importance of timely decision making. The goal following protective intervention which has led to the child's removal from the family is to reunite the child and family.

When it is clear that, despite intensive intervention, this goal is not achievable, DHS is responsible to determine secure long-term care arrangements for the child.

Within the context of the case planning principles, and a rigorous process of decision making, the decision that return home is not a viable option for a child may be made at any appropriate time. It is not necessary to wait two years before making this decision.

In some cases, for example, where severe abuse has occurred, or the child is totally rejected by the parents, this decision may be made early in the case.

The age of the child is another relevant dynamic, and decision making must consider the developmental needs of very young children.

In most cases, however, a period of intervention of up to 2 years may have occurred. The Protective Services Practice Manual states that it is essential that DHS staff consider the applicability of a Permanent Care arrangement when a child has been out of the parents' care for two years, and return home is not an immediate caseplanning option. Consultation should be sought with the relevant Permanent Care Team, who can provide expert advice on the opportunities permanent family placement may offer for the child, and on the feasibility of recruiting an appropriate family.

Section 101 (5) and S. 108 of the Children & Young Persons Act give the Children's Court power to direct the Director-General to take steps to ensure that an application is made to a court for an order relating to custody and/or guardianship of the child by a third party.

This will apply in circumstances where the child has been under the D/G's custody or guardianship for between 23 months and 2 years, and the Court is considering an application to extend a custody or guardianship to the D/G Order, and the Court is satisfied that there is no likelihood of reunion with the child's birth parents.

An application to the Children's Court for a Permanent Care Order can only be made if the child has been out of the care of the birth parents for at least 2 years, or at least 2 out of the last 3 years.

As stated above, it is not necessary to wait two years before making a permanent care decision, or placing a child in permanent care.

The decision that the child's welfare and interests will best be met by placement with a permanent alternative family can be made at any appropriate time.
There may be some instances where the decision for permanent care will be made within the two year period, and the child may in fact be placed with the permanent care family within two years.

An application to the Family Court for a guardianship and custody order can be made at any time, i.e. it does not assume the child has been out of the birth parents' care for any minimum period.

**Factors to be Considered in making a Permanent Care Decision**

The Standards and Procedures for Protective Workers (p203) sets out a list of factors to be considered during the case planning process in making a decision for permanent care.

These are:

- **the child's/young person's needs**
  - do the parents have the capacity to fulfil the responsibilities and duties of parenthood to the minimal level necessary to provide basic care and development?
  - would the welfare and interests of the child/young person be promoted by creating a permanent alternative family for the child/young person?

- **who needs permanency?**
  - is it the child/young person or alternative guardian needs which are being met?

- **the child's/young person's wishes**
  - This may vary depending on the age of the child/young person, it is also important that this is handled sensitively with the child/young person and that unrealistic expectations are not raised.
  - has he/she indicated any desire to be placed in an alternative family?
  - does the child/young person wish to be moved from their current placement?

- **the parents wishes**
  - what are the parent's attitudes to permanent care?
  - how will their attitude effect the placement?
• **length of time child/young person has been separated from his/her family**
  
  - how long has the child/young person been cared for by alternative caregivers?
  
  - what impact will the length of separation have on the child's/young person's capacity to accept permanent caregivers?

• **relationship and contact between the child/young person and family**
  
  - what positive aspects of the relationship need to be maintained?
  
  - what steps are necessary to maintain this relationship?

• **capacity to attach**
  
  - does the child have the capacity to attach to parent figures?

• **the child/young person's current placement**
  
  - is this the optimum placement to meet the child's/young person's current and future needs?
  
  - is it the most appropriate option for long term care? are there pressures to remove the child?
  
  - do the current caregivers feel permanent care is appropriate and in the child's best interests?

• **support to the placement**
  
  - would added support systems be needed to facilitate and maintain the placement of the child/young person?
  
  - what services would be required?
  
  - can these supports be easily accessed in the child's/young person's region, out of region?
Referral of Children To The Permanent Care Team p6 sets out a range of factors to be taken into account in deciding whether permanent family placement is a realistic and viable option for a particular child for whom a case plan for permanent care has been made.

**Making an Application for a Permanent Care Order**

The application for a Permanent Care Order is made to the Family Division of the Children's Court by the Director-General.

Section 112 (2) states:

"An application for a permanent care order may be made by the Director-General in relation to a person who is, or persons who are, approved by the Director-General as suitable to have custody and guardianship of the child ."

The application is made by completing Form 25 and lodging this with the Children's Court. This is the responsibility of Regional Protective Services.

Other parties to the application are the proposed permanent caregivers, the child, and the child's parents. The Court must allow full participation by all parties who have a direct interest in the proceeding (S. 18(1)(c)).

Section 112 (2A) states:

"With the leave of the Court, the persons or persons named in the application as suitable to have custody and guardianship of the child may appear, and be legally represented at the hearing of the application and may call and examine or cross-examine witnesses and make submissions."

Section 112 (28) states:

"The persons referred to in sub-section (2A) must be taken to be a party to a proceeding in the Court for the purposes of section 18, 19, 22 or 23."

This means that the Court must allow the permanent caregivers to participate fully in the proceedings.

**The Children's Court**

- The Children and Young Persons Act S. 18 sets out procedural guidelines to be followed by the Court.

The Court must take steps to ensure that the proceeding is:

- comprehensible to everyone involved;
- understood by the child;
- open to all parties with a direct interest to participate;
- made aware of the child's wishes
- made aware of cultural issues.
• The Family Division of the Children's Court conducts proceedings:

- in an informal manner;
- without regard to legal forms, and
- considers evidence on the balance of probabilities.

• The Children's Court usually hears proceedings in open court. The Court may, under Children & Young Persons Act S. 19(2), order that the court be closed, upon application by anyone involved in the proceedings. The Court may in any case, close the Court without any such application.

This may be appropriate in cases where the child would be distressed by having details of the case discussed with members of the public present.

• The Court must not hear or determine any proceeding if it is satisfied that a child or parent or any other party requires the support of an interpreter.

Workers must ensure that arrangements are made for an interpreter to be present if necessary. This is done through the Legal Interpreting Service.

**Legal Representation**

• **Non-Contested Applications**

Non-contested cases are defined as situations where all the parties agree. With a permanent care order application, this means that the permanent caregivers, the D/G, the birth parents and the child are in agreement with the order and the conditions for access for which application is made.

In these circumstances, legal representation may not be required.

The Permanent Care worker should attend Court to support the parties and to be available to answer any questions put by the Court.

• **Contested Applications**

An application for a permanent care order may be contested by one or both birth parents. An application which is likely to be contested must be discussed with the Court Advisory Unit to ensure the provision of legal representation.

**There are two prerequisites to be met before an application can be made**

• An application for a permanent care order may only be made in relation to persons approved by the Director-General or by the authorised N.G.O. as suitable to have custody and guardianship of the child. S. 112(2) requires this approval as a preliminary step. Permanent caregivers will have been provided with specific
documentation confirming that status as "suitable". The Court report(s) must provide advice about the approval.

- S. 112(1) states that the Court may make a Permanent Care Order only if the child has been away from the care of the parent for 2 years, or at least 2 out of the last 3 years. An application can only be made, therefore, once the child has been out of the parents’ care for this period.

**The Court Process**

- In considering an application for a Permanent Care Order the Court must be satisfied regarding the matters described in Section 112. The Court makes its decision on the basis of material put before it by the Director-General, and the opposition parties.

- The role of the Permanent Care Team in terms of these sections is to provide written advice to the Court that the permanent caregivers meet all these criteria. This will involve appearing as a witness at Court to support the information and opinions contained in written report.

- **Attendance at Court**

  With contested applications, both the Protective Worker and the Permanent Care Worker who prepare the Disposition and other Reports will attend Court. With non-contested applications, only the Permanent Care Worker will attend Court.

  The Children & Young Persons Act S. 41 states that the author of a report to the Court may be required by the child, the parent, or the Court, to attend Court to give evidence.

  Furthermore, the Children &Young Persons Act S. 42(2) states that the Court cannot consider a matter where the content of a report is disputed, if the author does not attend Court, unless the child or parents consent to the report or the part in dispute being admitted into evidence.

- **Preparing for Court**

Permanent Care Workers may experience some concern about involvement in a contested court application. Appearing as a witness and undergoing cross examination can be a difficult and stressful experience. The worker should discuss their concerns with their supervisor.

The following guidelines have been modified from those set out in the Standards and procedures for Protective Workers. In preparing for Court, the Permanent Care Worker should:

- Be clear about the known facts of the case and how best to present these in giving evidence.
• Be clear about the elements of the assessment and approval of the applicants.

• Determine the need to call additional witnesses to court and discuss this with the legal representative.

• Make sure relevant files are taken to Court.

• Bring a copy of your report to Court, underline the main points, write factual examples of what you are saying in the margin of the report.

• Arrive at Court with sufficient time prior to the commencement of proceedings to enable any necessary discussions (e.g., legal representatives, Registrar, etc.).

• Meet with the legal representative before court begins and acquaint him or her with all the available evidence and the basis for the case.

• Discuss any concerns you may have regarding the child being present while you are giving evidence. Inform the legal representative if you do not want the child to be present and outline your reasons.

**Giving your Evidence**

Your legal representative will:

• introduce you to court and invite you to state your name, workplace location, qualifications and length of employment;

• give the Report to the magistrate;

• ask if you have anything you wish to add to your report;

• question you on the issues of dispute;

• ask you to outline the reasons for the recommendation in your report.

**Cross-Examination**

• Cross-examination refers to the process whereby the legal representative of the birth parents (or the parents themselves in exceptional circumstances) question the assessment and recommendation presented to the Court. Cross-examination
focuses on both the evidence contained in your report and what you have already said to the Court.

- The role of the parents legal representative is to act on the parents wishes. This usually leads to questioning the validity of the permanent care workers evidence. On occasions, in order to do this, the legal representative may be aggressive or belligerent towards the worker.

- Being cross-examined is difficult. Workers should keep in mind the following:
  - be clear about the basis of your expertise, - your qualifications, direct experience (including relevant placement experience), years of practice, attendance at seminars in the field and any indirect relevant experience;
  - questions must be answered truthfully. Do not overstate your position or agree to an inaccurate proposition, despite the badgering of Counsel. Your credibility will be adversely affected if you have to retract an earlier statement;
  - questions should be answered as briefly and succinctly as possible. Long and involved explanations may become confusing for both the worker and the magistrate;
  - ensure you understand the entire question and request clarification if in doubt;
  - if in doubt about a question where a yes/no answer is being sought, explain your difficulty to the magistrate who will advise you on how the question is to be answered:
  - be prepared to give your assessment, the precise factual information which supports your assessment and how this compares to the "norms";
  - be able to clearly define the terms you use (e.g. indiscriminate, unattached, suitable);
  - allow yourself some time to think before answering questions;
  - be prepared to acknowledge the family's strengths; do not argue with counsel, simply state "I disagree";
• always remember that counsel will represent the parents by challenging your credibility. Do not show your anger, despite Personal attacks:

• state the source of your information;

• give evidence in a clear, audible and confident manner;

• direct your answers to the Magistrate, not to Counsel. It is the Magistrate who must be convinced of your credibility and the merits of the material presented:

• if you cannot recall specific events, ask the Magistrate’s permission to refer to your notes:

• if you are asked personal questions your legal representative can state that it is irrelevant. However, it may be more appropriate to answer the question. Personal questions are generally a "tactic", aimed at distressing the worker. It is most important to respond calmly and clearly.

Re-Examination

At the conclusion of cross-examination, your legal representative can re-examine the worker to clarify any points arising in the cross-examination and to rebuild your case if necessary.
DISPOSITION REPORT

The Children & Young Persons Act S. 113(1) states that:

"the Court must not make a permanent care order unless it has received and considered a disposition report".

A disposition report is a report which provides information, assessment and advice to the Court, to assist the Court to determine the most appropriate disposition.

With an application for a Permanent Care Order the disposition report should deal with the requirements outlined in S. 112.

These requirements concern the child, the parents and the permanent caregivers.

The provision of strong evidence to satisfy the Court will require active cooperation and collaboration between Protective and Permanent Care Services.

This is because of the time frames involved, and because Protective Services and Permanent Care Services are involved at different stages of the case.

Protective Services will allocate a protective worker to review the file, and assess the parents' current situation and to liaise with the permanent care worker in the preparation of reports to Court. The protective worker will take responsibility for filing the Disposition report at Court.

The Parents

Sections 112(1)(a) and (b) concern the child's parent(s). They state:

"(1) The Court may make a permanent care order in respect of a child if -

(a) the child's parent has not had care of the child for a period of at least 2 years or for periods that total at least 2 of the last 3 years; and

(b) it is satisfied that -

(i) the parent is unable or unwilling to resume custody and guardianship of the child or

(ii) it would not be in the best interests of the child for the parent to resume custody and guardianship of the child."

Information to be presented to Court

The type of information to be presented to the Court in relation to whether or not the parent should resume care of the child should include:
- a history of the case, from notification through to the point at which the decision was made that permanent care is the best way to meet the child's current and future needs.

- description of the services and supports put into place to encourage and support the parent to achieve the changes necessary to eliminate significant risk to the child and therefore make return home possible.

- an outline of any action taken by the parent to achieve the goals and tasks decided upon in the case planning process as necessary to achieve the child's return home.

- the above actions should have been set within a specific and agreed time frame, and these should be described.

- assessments relating to the capacity of the parent to fulfil the responsibilities and duties of parenthood, with a focus on the capacity to provide for the long term needs of the child in a consistent and continuing basis. This should include past assessments, plus an up-to-date assessment of the current risks to the child of returning to the care of the parents.

- a recommendation that a Permanent Care Order in favour of the permanent caregivers be made.

Coordination

The decisions to firstly not return the child to the parents, and secondly to place the child in a permanent alternative family will have been made by Protective Services through the case planning process prior to the referral to the Permanent Care Team for placement.

In most cases, the protective worker has no further contact with the birth family after the child is placed with a permanent alternative family as the Permanent Care Service usually accepts case management responsibility. The Permanent Care Team may maintain ongoing contact with the birth parents, within the context of supporting the permanent placement and/or supervising access. The level of this contact varies from case to case. Relevant information gained as a result of this contact should be shared with the protective worker who is preparing part (a) of the report, (see 4.2.3)

Structure of the Disposition Report

The Disposition Report should be structured as a two part report, with:

(a) the Protective Worker responsible for preparing that section of the report dealing with assessment of the parent, i.e. S. 112 (1)(a) and (b); and
(b) the Permanent Care worker responsible for the preparation of that section of the report which deals with the permanent caregivers and the child i.e. S. 112(c)(d)(f) and (g).

In the case of an Aboriginal child the Permanent Care Worker must discuss the application with the appropriate Aboriginal agency, and inform them of the requirements of S. 112(e), i.e. that the Court cannot make a Permanent Care Order until it receives a report from an Aboriginal agency recommending the making of the order, see 4.6.

The Protective Worker will take responsibility for coordinating the preparation of the report, and for filing the report at Court.

**Non Government Agencies**

The Children & Young Persons Act states that the Director-General must prepare the disposition report.

Non-government agencies cannot be authorised to undertake this responsibility. The NGO Permanent Care Team, however, is authorised to approve caregivers, and will therefore be responsible for the provision of evidence in support of the placement.

**The Process**

The Disposition Report must be lodged at Court by the allocated protective worker as a two part report series, and will refer to the accompanying documentation from the Permanent Care Worker.

The Permanent Care Worker will provide their written and signed report directly to the protective worker, who will attach it to their report, and send it as a package to the Court.

The complexity of Permanent Care Order applications highlights the necessity for the preparation of detailed case notes at all stages of work with families.

**The Permanent Caregivers**

The Court requires information, assessment and advice regarding the permanent caregivers. It is the responsibility of the Permanent Care worker to provide this to the Court.

The Children & Young Persons Act S. 112(1)(c) states that the Court must be satisfied that:

"the person or persons named in the application as suitable to have custody and guardianship of the child is or are suitable -

(i) any prescribed matters; and"
(ii) any wishes expressed by the parent in relation to those prescribed matters.”

**Regulations**

The prescribed requirements relating to suitability of permanent caregivers to have custody and guardianship of a child are set out in the Children and Young Persons (Custody and Guardianship) Regulations 1991. These are:

(a) that the personality, age, health, marital and family relationships, emotional maturity, financial circumstances and general stability of character of each applicant is such that the applicants have the capacity to provide a secure and beneficial emotional and physical environment for the child's upbringing until the child reaches social and emotional independence:

(b) that there is compatibility between the religion, race or ethnic background of the applicants and the child:

(c) if any applicant has had the care of a child before applying to the court, that the applicant has shown the ability to provide such an environment for the child; and

(d) that each applicant demonstrates an understanding of the importance of access to the parents and exchange of information, concerning the child.

These requirements will have been dealt with at the different stages of the assessment and placement process.

The assessment process deals with (a) and (d), with the Applicant Assessment Committee taking this information into account when making a decision regarding the approval of applicants, (b) is dealt with at the stage of linking a specific child with the family; and (c) would be assessed as part of the ongoing supervision of the placement during the period before the making of the application.

**Parents' Wishes, in relation to prescribed matters**

Once a decision for permanent care is made, either as part of the case planning process or after the Court directs that a custody and guardianship application be brought, parents will be offered the opportunity to express their wishes.

This provision highlights the importance of continuing to maximise the parents' involvement in decisions about the child's placement and to offer them the opportunity to contribute to decisions about the child's permanent caregivers.

The parents' wishes will be obtained, and clearly recorded in case notes. Parents ought to be supported in making decisions around permanent care whenever possible. Workers need to be aware of the complex responses of parents when confronted with decisions about permanent placement, eg. sadness, anger, relief, guilt. These feelings may affect the parent-child relationship, as well as how the parent relates to the Permanent Care Team and the permanent caregivers.
Obtaining and considering the parents' wishes in a permanent care situation, where the parent opposes the placement and may wish the child returned home, is more complex than in an Adoption context. In Adoption, except where dispensation is being sought, the parent is actively consenting to relinquish the child.

Nevertheless, an effort must be made to engage the parents in this process.

if it is impossible to fulfil the parents' wishes, eg. it may not be possible to recruit permanent caregivers which satisfy the wishes of the birth parents and meet the needs of the child, or for some other reason, then the needs of the child will determine appropriate action. Parents will be informed of this, and invited to modify their wishes.

With those placements made prior to the proclamation of these provisions, parents may not have been offered this opportunity.

With these existing placements, parents must be invited to express their wishes.

The Court will be informed of any conflict or discrepancies between the parents' wishes and the characteristics of the permanent caregivers, and this needs to be set within the context of practice prior to proclamation of these provisions.

**The Permanent Caregivers**

S. 112(1)(d) states that the Court must be satisfied that:

"the person or persons named in the application is or are willing and able to assume responsibility for the permanent care of the child by having custody and guardianship of the child".

Advice regarding the ability of the permanent caregivers to provide permanent care will be part of the report to Court prepared by the Permanent Care Team.

The permanent caregivers are required to attend Court to indicate their willingness to accept custody and guardianship of the child.

It is desirable that permanent caregivers will have had the care of the child for some time before an application for a permanent care order is made to the Court. With special needs placements, an application to finalise a placement would not usually be made under 12 months. It will have been possible therefore to monitor the progress of the placement and the child's physical and emotional development, and the caregivers ability to provide a secure and beneficial environment. This information can then be presented to the Court.

**Wishes of the Child**

The Children & Young Persons Act S. 112(1)(f) states that the Court must be:
satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child’.

These provisions are consistent with the case planning principles (Children & Young Persons Act S. 119 (e)(f)(g)(h)) which encourage the child's participation in the case planning process and acknowledge the need to take into account the child's views.

Except with babies and very young children, permanent family placement is generally a process done in active co-operation with a child. Permanent family placement involves a process of preparation of the child, the length and focus of which depends on the age and needs of the child.

The child will, therefore, have had opportunities to contribute to decisions about permanent family placement, and about the characteristics of the family where they are placed.

It is important in establishing the wishes of the child that the child does not feel stressed in relation to choices.

**Legal Representation of the Child**

It is the intention of the Children & Young Persons Act 1989 that children will be legally represented. (S. 20(1)(d). The role of the legal representative is to "... act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child", (S. 20 (9). Section 21 of the Act which mandates that children are legally represented is not likely to be proclaimed in the near future. Nevertheless, practice at the Children's Court is that children above the age of seven years attend Court, and are legally represented by the Duty Legal Aid Solicitor at the Children's Court. This legal representative will present the child's wishes to the court.

Children below the age of seven do not need to attend Court and are not therefore routinely legally represented. The Court may, however, order that any child be legally represented.

The Protocol developed between DHS and the Legal Aid Commission deals with issue around the legal representation of children.

The separate representative will ensure that all matters and witnesses relevant to the child's instructions are before the Court. The separate representative would wish to see and interview children over the age of seven, in order to advocate for the child's wishes at Court.

The legal representative will act to ensure that the child understands the effects of a Permanent Care Order.

**Welfare and Interests of the Child**

The Children & Young Persons Act S. 1 12(1)(9) states that the Court must be:
"satisfied that the welfare and interests of the child will be promoted by the making of the order."

While the suitability of the permanent caregivers can be assessed having regard only to the prescribed matters and the parents wishes (S. 112(1)(c)(i)(ii)), the Court may consider other matters to be relevant to whether the welfare and interests of the child will be promoted by the making of the order. Information which falls outside these sections should still be presented, in support of the granting of the order applied for. This may include other relevant characteristics of the permanent caregivers or of the placement.

The Court must be advised regarding both the short and long term benefits to the child from legalising the placement through a Permanent Care Order. This involves advice both in general terms with a focus on the principles of permanency planning; and particular advice with regard to the individual application, and the individual needs of the child.

The Court should be provided with advice regarding the child's right to and need for care which is consistent and secure; the benefits of family life to a child's development, including their self confidence, security and maturity and the need for children to belong to a network of significant personal relationships that are expected to last beyond the age of 18 years.

**Aboriginal Children**

The Children & Young Persons Act S. 112(1) (e) states that:

"in the case of an Aboriginal child, it has received a report from an Aboriginal agency that recommends the making of the order."

These provisions are consistent with the caseplanning principles which state that decision making must involve relevant members of the Aboriginal community to which the child belongs, and must recognise the principle of Aboriginal self-management and self-determination. (S. 119(m)). The Victorian Aboriginal Child Care Agency is the appropriate agency to provide the report. It is an approved Adoption and Permanent Care Agency.

Consultation with the appropriate Aboriginal agency will have begun early in the intervention process, and must occur when permanent family placement is the likely case plan.

In terms of placement options, the first option for placement will be with a family which is a member of the Aboriginal community to which the child belongs; the second, with a family belonging to an Aboriginal community, and the third option, with persons approved by an Aboriginal agency, and the Secretary.
APPLICATIONS FOR EXTENSION OF CUSTODY/ GUARDIANSHIP TO THE DIRECTOR-GENERAL

Many cases which lead to an application for a Permanent Care Order will have previously been taken to the Court for a decision regarding an extension of a custody or guardianship to the Director-General Order.

Responsibility for making an application to the Children's Court to extend a guardianship to the Director-General Order rests with regional Protective Services.

In considering these applications the Court must consider:

(a) The likelihood of the re-unification of the child with his or her parent;
(b) The appropriateness of making a permanent care order in respect of the child;
(c) The benefits for the child of remaining in the custody/guardianship of the Director-General. (Children & Young Persons Act S. 101(3)),

and must take into account.

(a) The safety and well-being of the child; and
(b) The nature of the relationship of the child with his or her parent, including the nature of the access between the child and the parent during the period of the order; and
(c) The capacity of the parent to fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional, intellectual, educational and other needs of the child; and
(d) Any action taken by the parent to give effect to the goals set out in the case plan: and
(e) The effects on the child of continued separation from the parent; and
(f) Any other fact or circumstance that, in the opinion of the Court, should be taken into account in considering the welfare and interests of the child. (Children & Young Persons Act S. 101(4)).

If the child has been placed in permanent care, but an application for a Permanent Care Order is not yet appropriate, strong evidence must be presented to Court, to support the application for extension of the custody/guardianship order to the Director-General, with a view to an application for a Permanent Care Order being made, within 12 months.

The Permanent Care Team must be involved in the application, in all situations where a child has already been placed in a permanent care placement, by way of providing a written report to Court, and/or appearing as a witness. Detailed guidelines around
extension of guardianship applications are contained in the Protective Services Practice Manual.

**Joint Custody and Guardianship Orders**

The Court is empowered by S. 112(3)(b) to make a Permanent Care Order in which the birth parents and the permanent caregivers share guardianship. The permanent caregivers have custody of the child.

S. 112(3) (b) states "a permanent care order .........

"may vest guardianship of the child jointly in the persons or persons named in the order and the child's parent if the court is satisfied that;"

(i) the Director-General, the child and the persons to be named in the order as guardians have agreed on the terms of the order: and

(ii) special circumstances exist which justify the making of such an order "

Joint guardianship assumes an ability of the parties to reach agreement on matters which affect the long term welfare of the child. This must be based on a commitment to establishing and maintaining a process of communication regarding which decisions will be made jointly, and on the process of reaching agreement.

Guardianship rights and responsibilities relate to the long term welfare of the child, and include such issues as education, religion, employment, changes in place of residence and health needs other than those of an urgent or routine nature.

All parties i.e. the child, the permanent caregivers, the birth parents, and the Director-General must agree on the making of the Order. The Permanent Care Team should consider a plan to apply for a joint order in terms of the ability and commitment of the parties to work together to manage this shared responsibility.

It is possible that this provision may encourage some parties to bargain for a shared order if the matter is not contested. Permanent Care Teams must be alert to this possibility, and discuss it openly with the parties. Such bargaining is inappropriate.

A shared guardianship order can only be granted if there are especial circumstances". It is assumed that a shared order would be a most unusual occurrence.

The Court may adjudicate in situations where the parties granted joint guardianship cannot agree. S. 112(6) states:

"if two persons who have been granted joint custody or guardianship of a child under a permanent care order cannot agree on the exercise or performance of a right, power or duty vested with them as custodian or guardian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit".
This provision also applies to the situation where the caregivers separate, and cannot agree on their rights and responsibilities as joint custodians/guardians.

The Permanent Care Team is not necessarily involved in such an application, but may be involved if the Court requests it, or if any of the parties call the worker to appear in Court as a witness.

Access

A permanent care order must include access arrangements. The Children & Young Persons Act S. 112 (3)(d) states that a permanent care order;

"(d) must include conditions that the Court considers to be in the interest of the child concerning access by the child's parent".

The Permanent Care Manual sets out clear practice guidelines in chapter 14, "Access Considerations". This details the purposes of access in permanent care, the factors which require consideration in determining appropriate access arrangements, and the management of access.

These matters must be considered when a caseplan of permanency is being planned. At the time of the referral of the child to the Permanent Care Team, a written agreement is usually completed involving the relevant parties, and spelling out roles and expectations. Recommendations concerning appropriate access arrangements should be included in this.

The assessment and placement process must ensure that each caregiver demonstrates an understanding of the importance of access to the parents and of information exchange (Children & Young Persons Act and Regulations). Access arrangements may involve the need for ongoing post-legalisation support eg. to manage situations where access is difficult for any or all of the parties.

The Report to Court prepared by the Permanent Care Team should include general statements about the role of access in permanent placements and then detail the access arrangements in the particular case, highlighting how these are in the child's best interests.

It is useful to be able to go to Court with all parties having come to an agreed position on access. The parties should be supported to reach agreement.

APPLICATION FOR A VARIATION OR REVOCATION OF A PERMANENT CARE ORDER

The Children & Young Persons Act Section 115 states that:

115 (1) An Application for a variation of a permanent care order or for the revocation (in whole or in part) of such an order may be made to the Court by-

(a) the child in respect of whom the order is made; or
(b) a parent of the child; or

(c) a person granted custody and guardianship of the child under the order; or

(d) The Director-General.

(2) The appropriate registrar must cause a copy of an application under sub-section (1) to be given or sent by post as soon as possible to any person by whom such an application could have been made under this section.

(3) On an application under sub-section (1) the Court may, if satisfied that it is in the best interests of the child to do so -

(a) if the application is for a variation of the order, vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody or guardianship of the child: or

(b) if the application is for the revocation of the order, revoke the order in whole or in part.

The Act does not set out any specific grounds for these applications. There are no requirements concerning the timing of these applications.

The Court must be guided by what is in the best interests of the child.

S. 48(1)(b)(ii) states "The Director-General must prepare and submit to the Family Division a disposition report if ... he or she applies, or is notified that a person has applied ... for the variation or revocation of a permanent care order".

**Variation of Access Conditions**

Under S. 115, the Court may vary access conditions, if an application to do so is made by the child, the parent, the person granted custody and guardianship or the Director-General. The Director-General will be required to submit a disposition report. (S. 48(1)(b)(ii)); and to be notified of the application.

The Director-General may therefore become a party to the proceedings.

**Provision of a Disposition Report**

The Director-General must submit a disposition report. The purpose of this report is to provide information, assessment and advice to the Court concerning the application to amend or revoke the existing Permanent Care Order.

Because these applications can be made at any time after the granting of a Permanent Care Order, a flexible approach is required regarding the role of the Permanent Care Team.
Many permanent care placements may require some ongoing contact with Permanent Care teams, especially related to supervision of access and information exchange arrangements. In other cases, there may have been no contact for some time.

The region where the child lives will allocate the task of preparing a disposition report to an appropriate worker. If this is a protective worker, this worker will liaise and consult with the Permanent Care Team.

APPEALS

The Children and Young Persons Act has provision for an appeal to the County Court to be made. Section 116 includes provision for an appeal to be made against the granting of a permanent care order, or the dismissal of an application for a permanent care order.

The appeal may be made by:

- the child;
- the birth parent(s);
- the applicant for a permanent care order;
- the approved permanent care agency;
- the person(s) granted custody and guardianship;
- the Director-General the Attorney-General.
- the persons named in the order as suitable to have custody and guardianship of the child.

Guidelines regarding appeals to the County Court are contained in the Standards and Procedures for Protective Workers.

RESTRICTIONS ON THE MAKING OF PERMANENT CARE ORDER

There are two situations which preclude the Children’s Court from making a Permanent Care Order. These are outlined in Section 113(2) of the Children & Young Persons Act which states that:

"The Court must not make a permanent care order if:

(a) a protection order is in force in respect of the child but an application to the Court to revoke it has been made but not yet determined: or

(b) there is a current proceeding under the Family Law Act 1975 of the Commonwealth seeking an order (on the terms of which the parties to the proceeding have agreed) with respect to the custody and guardianship of the child, being a proceeding commenced by a person who is not a parent of the child”.

A Permanent Care Order application cannot, therefore, proceed if there is a current application to revoke a protection order with respect of the child, or to the Family Court regarding the custody and guardianship of the child.
The Permanent Care Order application may proceed after the application to revoke a protection order has been decided, if the decision is for the Director-General to retain guardianship.

An application to the Children’s Court is not possible while the Family court is considering an application for a parenting order.

In addition, S. 115 (2) states that:

"the appropriate registrar must cause a copy of an application under sub section (1) to be given or sent by post as soon as possible to any person by whom such an application could have been made under this section".

The Court may decide to vary the access conditions if it considers this is in the best interests of the child.

[Appendix 31: Details required for legalization] [Appendix 32 Statistical Report of Adoptions in Victoria form] [Appendix 33 Permanent Care Order Application] [Appendix 34 CYPA 1989 Regulations regarding a permanent care order [Schedule 21: Memorandum of an adoption order] [Schedule 22: Application for copy of birth certificate]
17. FOSTER CARE CONVERSIONS/SPECIFIC APPLICATIONS

This chapter outlines procedures for applications where there is an existing relationship between the applicants for permanent care and the child who is referred to the permanent care program.

The two situations referred to are foster care conversions, where the intention is to convert a placement of two or more years duration to an adoptive or permanent care placement, and specific applications by person(s) with a relationship with a particular child.

Foster care conversions to adoption
A change in case plan from foster care to adoption is referred to the Permanent Care Team through the caseplanning process. As with all referrals, consultation should have occurred and the Permanent Care Team will be represented at the relevant caseplanning meeting.

The procedures relating to foster care conversions apply when the child has been in the care of the foster parents for at least two years. Placements of a shorter duration are dealt with as specific applications.

Tasks and responsibilities - foster care conversions to adoption
The tasks and responsibilities undertaken by the Permanent Care Team in this area are very specific, and relate to the Permanent Care Team’s legal mandate under the Adoption Act 1984. The Permanent Care Team does not take on case management responsibility or undertake tasks associated with case management, such as supervision of access.

The responsibility of the Permanent Care Team relate to three main areas, (1) legal status; (2) assessment of the applicant family; (3) preparation and presentation of the report to Court. This differs from situations where a child is referred to the Permanent Care Team for placement, as in these situations the Permanent Care Team does accept case management responsibility.

Legal status issues
Legal Status issues should be clarified as far as possible prior to referral to the Permanent Care Team.

When regional or foster care staff have an ongoing relationship with the birth parents they should discuss the situation fully with them and provide support. It is essential that DHS regional staff or foster care staff explore with parents their attitude towards signing adoption consents prior to a referral being made to the PCT. This includes clarifying the situation of both parents as far as possible. This preliminary exploration should take place in consultation with the Permanent Care Team.

Where a parent has indicated willingness to sign adoption consent, an approved counsellor from the Permanent Care Team must undertake counselling of the parent to meet legislative requirements.
It is only appropriate to consider a conversion of a foster placement to adoption where adoption is considered to be in the best interests of the child and:

- The parent(s) indicate willingness to sign consents;

or

- The parent(s) are unwilling to sign adoption consents, but consultation with the Permanent Care Team indicates there are potential grounds for dispensation of consent;

or

- There has been no contact with the birth parent(s) for an extended period (ie at least 12 months) which is a ground for dispensation. Attempts must be made to ascertain the parent(s) whereabouts and discuss their future plans prior to referral to the Permanent Care Team.

Assessment of the applicant family for foster care conversion

The Adoption Act 1984 gives the Permanent Care Team and other approved adoption agencies the legal mandate to report to Court regarding applicant families in adoption matters. Foster Care Conversions involve a formal assessment process and it is necessary for a worker from the Permanent Care Team to report to Court regarding the family’s suitability to adopt. The applicants complete the standard documentation and the allocated worker from the Permanent Care Team interviews the family and prepares a brief assessment report. At the time of acceptance of referral, the supervising foster care agency provides the applicant’s original foster care assessment report and a current update report. This material should clearly outline any concerns the agency may have regarding the application for adoption.

The permanent care worker generally visits the foster family on one occasion, and the assessment focuses on issues specifically related to adoption and permanent placement. These include:

- The development of the child’s identity and the implications of adoption;
- The foster family’s attitude towards the birth parents and the birth parent’s attitude towards adoption;
- The level of contact with the parents, ongoing plans regarding this and perceptions of the effect of adoption on relationships;
- Relationships within the foster family, including with each parent and siblings;
- Financial issues;
- The child’s wishes regarding adoption and ongoing contact with the his/her family;
- Formalised access arrangements, and the families ability to deal with these on their own, or with the support of community agencies.

The permanent care worker prepares a report which includes a recommendation and completes the checklist for conversion of foster parents to approved adoptive parents (Appendix 35). The report and proforma are submitted to the team leader of the Permanent Care Team for approval, and, if approved, the placement proceeds to legalisation. The family continues to relate to the foster care agency for ongoing support.

Foster care conversion to permanent care

Foster care services will retain responsibility for permanent care conversions where foster parents are approved to become the child’s permanent caregivers.
Specific applications for adoption or permanent care

Permanent care teams, DHS regional staff and foster agencies may at times be approached by families who have an existing relationship with a child and who wish to become permanent caregivers of that child. The child may or may not currently be in the applicants care. Specific applications frequently involve foster parents who have fostered the child for less than the two year period required for the placement to be regarded as a foster care conversion. They may also involve holiday hosts, family group home parents, or families may have had the child placed in their care as the result of a caseplanning decision or other arrangements. These applications often involve particular complexities due to the range of parties involved, and the need to minimise unnecessary moves for the child, while ensuring the child’s short and long term needs will be met by any permanent placement.

Caseplanning

Any change of caseplan to permanent care requires that a caseplanning meeting be held. As part of the caseplanning process, consultation takes place with the Permanent Care Team, regarding the plan for permanent care, and the potential specific application. The Permanent Care Team is invited to attend the caseplanning meeting. Where the child is in foster care and the foster parents wish to provide permanent care, discussion occurs between the region, foster care agency and Permanent Care Team to reach agreement as to whether an assessment of the family should be undertaken. Any existing concerns regarding the appropriateness of the application should be discussed at this stage.

The caseplanning meeting may then decide to refer the case to the Permanent Care Team to undertake an assessment of the family as prospective permanent caregivers of that child. At the time of acceptance of referral, the supervising agency provides the applicant's original foster care assessment report and a current update report. The material should clearly outline the nature of the agreement between the foster agency and the foster parents regarding care of the child.

Consideration should also be given to the appropriate role of the foster care agency or DHS region with relation to assessment and linking. In some instances it may be appropriate for the assessment to be undertaken jointly between the foster care agency/DHS regional worker and a Permanent Care Team member. This should be decided at the caseplanning meeting.

A preliminary visit should be made by the foster care worker to the foster parents to:
- Discuss the implications of the change to a case plan of permanent care;
- Inform the foster parents of the educative and assessment process required.

Where the placement does not involve approved foster parents, for example, holiday hosts, the preliminary visit will be made by the DHS allocated worker.

This visit may be undertaken jointly with a member of the Permanent Care Team.

Education, assessment and linking

Other than in exceptional circumstances, the specific application is considered by the Permanent Care Team alongside the applications of other potential caregivers in order to maximise placement options for the child. The specific applicants are also
expected to attend the relevant educative sessions held by the Permanent Care Team.

The procedures outlined above may be varied in exceptional circumstances, if this is considered to be in the best interests of the child. Instances where this may be appropriate include those where complying with this procedure would involve a lengthy delay in decision making and this is considered detrimental to the child.

For example, if there is to be no appropriate educative program for some time, consideration may be given to providing some modified material individually to the applicants. Any proposal to vary the usual procedure should be discussed between the Permanent Care Team, DHS region and where relevant, the foster care agency. The factors which require consideration include:

- Any concerns which exist relating to the family’s capacity to provide permanent care for the child;
- Whether the child is currently living with the family and the implications of continuing with the current placement;
- The age and needs of the child, and the likely availability of other appropriate placements.

The assessment of specific applicants differs to some extent from that of other permanent care applicants as there is an existing relationship with the child. It is necessary to include as part of the assessment detailed consideration of the quality of the relationship and implications for the child’s development of continuing or disrupting the relationship.

In addition to the usual issues requiring consideration the assessing worker should obtain information regarding:

- The length, nature and quality of the relationship between the applicant(s) and the child;
- The implications for the child of a change of placement given the child’s age and placement history;
- The views of other professionals regarding the appropriateness of the application;
- The views of the birth parent(s) and other family members. the wishes of the child;
- The availability of other potential placements for the child.

Decision making

Where the specific applicants are being considered alongside other applicants, it is necessary for the AAC to approve the applicants as permanent caregivers, and then to hold a linking meeting to consider all potential caregivers. Where the specific applicants are the sole applicants to be considered for the particular child, it may be appropriate to consider both the approval and linking in a single meeting. In these situations, the assessment report should address issues relating to both approval and linking. Relevant professionals from the DHS region or foster agency should be invited to the AAC meeting.

Appeals

The applicants may appeal an AAC decision using the usual processes (see the chapter on appeals).
If the decision of the AAC involves removal of a child under DHS guardianship from an existing placement, it will be necessary for the placement options for the child to be considered by the region with caseplanning responsibility and incorporated in the case plan for the child. It is not the role of the caseplanning meeting to review the decision of the AAC regarding the application. If the caseplanning meeting endorses the AAC’s decision regarding permanent placement, the applicants may appeal the caseplanning decision. The appeal will take place according to a protective services caseplanning appeal procedure, which may involve a review of the AAC decision.

**Post placement support**

If the placement is approved the provision of ongoing support should be negotiated between the Permanent Care Team, foster care agency and DHS region.

[Appendix 35:Permanent Care Team checklist for conversion of foster parents to approved adoptive applicants]
The following table sets out a task analysis and explanation of the primary roles of the foster care worker and permanent care worker in foster care conversions.

<table>
<thead>
<tr>
<th>Task</th>
<th>Permanent Care primary Worker</th>
<th>Foster Care Primary Worker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision for Permanent Care Order</td>
<td>Foster care worker and/or protective worker develops case planning report recommending permanent care</td>
<td>Foster care worker and/or protective worker develops case planning report recommending permanent care</td>
</tr>
<tr>
<td></td>
<td>Permanent Care service consultation</td>
<td>Permanent Care service consultation</td>
</tr>
<tr>
<td>Foster parent decision to apply to be permanent caregiver</td>
<td>Foster care worker assists foster parents to decide whether to apply to be permanent caregivers</td>
<td>Foster care worker assists foster parents to decide whether to apply to be permanent caregivers</td>
</tr>
<tr>
<td></td>
<td>Permanent care service May provide information to the foster care service</td>
<td>Permanent care service May provide information to the foster care service</td>
</tr>
<tr>
<td>Assessment of foster parents</td>
<td>For foster care placements less than two years: Permanent care worker undertakes assessment and writes assessment report</td>
<td>For placement greater than two years: Foster care worker undertakes assessment and writes assessment report</td>
</tr>
<tr>
<td></td>
<td>With caregivers consent, foster care worker provides foster care assessment information to the permanent care worker</td>
<td></td>
</tr>
<tr>
<td>Approval of foster parent for a permanent care placement</td>
<td>Permanent care worker attends Applicant Assessment Committee, presents report, and undertakes follow up work as required</td>
<td>Foster care worker attends Applicant Assessment Committee, presents report, and undertakes follow up work as required</td>
</tr>
<tr>
<td>Preparation for work with child</td>
<td>Primary worker may be permanent care worker, foster care worker or other significant professional</td>
<td>Primary worker may be foster care worker, or other significant professional</td>
</tr>
<tr>
<td>Task</td>
<td>Permanent Care primary Worker</td>
<td>Foster Care Primary Worker</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Preparation for work with Birth parent</td>
<td>Primary worker may usually be permanent care worker/protective worker, foster care worker. In some instances another significant professional may contract from permanent care to undertake this role</td>
<td>Primary worker may usually be the foster care worker but may be protective worker or other significant professional where negotiated by foster care</td>
</tr>
</tbody>
</table>
| Preparation of court report – liaison with protective services, etc. | Protective worker prepares disposition report, Part A.  
Permanent care worker prepares disposition report, Part B in consultation with foster care worker  
Foster care worker liaises with protective worker on disposition report, Part A. | Protective worker prepares disposition report, Part A.  
Foster care worker prepares disposition report, Part B  
Foster care worker liaises with protective worker on disposition report, Part A |
| Attendance at court                         | Permanent care worker, Foster care worker and other relevant professionals attend court and brief DHS legal representatives | Foster care worker and other relevant professionals attend court and brief DHS legal representatives |
| Application for continued caregiver payments | Permanent care worker to provide application form to the permanent carers to be sent on to regional DHS | Discharges foster family from foster care payment system  
Foster care worker to provide new application form to the permanent carers to be sent on to regional DHS |
| Placement supervision                        | Foster care and permanent care negotiate provision of post placement support to family | Foster care worker contracts placement support with permanent care family |
18. RELATIVE AND STEP-PARENT APPLICATIONS FOR ADOPTION

The rising incidence of divorce and remarriage has resulted in an increase in the number of blended families which include children from previous marriages. During the 1970s it became common for adoption to be used as a means of officially incorporating children into a parent’s new marriage. The terms ‘step-parent’ or ‘spouse’ adoption have been used to refer to the adoption of a child of one partner from a previous marriage or relationship by the other partner.

The term ‘relative’ adoption is used to refer to the less common situation of relatives such as grandparents or an aunt seeking to adopt a child who is in their care.

As relative and step parent adoptions increased in prevalence, the view was expressed that adoption was more appropriately used in situations where children were not related to the adoptive parents. More specifically, concerns expressed regarding adoption in relative and step-parent situations includes the following:

- Adoption permanently severs the legal relationship between the child and relatives who are significant to the child.
- Adoption could be used as a means of excluding the child’s extended family, who would no longer have a legal relationship with the child.
- Adoption may inhibit the ability of the family members to clarify their legal relationships and it may also inhibit the ability of the child to clarify his/her biological background.
- With relation to children adopted by relatives, genealogical confusion could arise as the child’s mother may become the legal ‘sister’ or ‘cousin’.

Legislative provisions

The 1987 amendments to the Adoption Act, 1984 reflect the view that the Family Law Act 1975 is the most appropriate means of providing legal recognition to parent/child relationships in family situations, and that, in all but exceptional circumstances, an order through the Family Court is more appropriate than adoption in relative and step-parent situations.

Section 12 of the Adoption Act 1984 reads as follows:

‘The Court shall not make an order for the adoption of a child in favour of a person, who, or whose spouse, is a relative of the child or in favour of two persons who are, or one of whom is, a relative of the child unless the Court is satisfied that:

a) the making of an order in relation to the guardianship or custody of the child under the Children (Guardianship and Custody) Act 1984 or the Family Law Act 1975 of the Commonwealth as amended and in force for the time being in relation to the child would not make adequate provision for the welfare and interests of the child; and

b) exceptional circumstances exist which warrant the making of an adoption order; and

c) an order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to in paragraph (a).’

Section 11 (6) applies the same provisions to situations where an application is made by the spouse of a parent or of an adoptive parent of a child.
Amendments to the Family Law Act were proclaimed in April 1990. These relate to step-parent situations. If leave is not granted by the Family Court prior to the lodgement of an adoption application in the County Court, the Family Court will continue to regard the child as a child of the marriage/de facto marriage of the birth parents. The rights of the birth parents in relation to custody, guardianship or access to the child do not cease, and the Family Court could entertain further applications from the non-custodial birth parents. If an application for leave of the Family Court is granted, application to the Family Court in the future could only be made in the role of ‘an interested party’ which is generally not as significant as that of ‘parent’.

**Differences between adoption and Family Court Orders**

The Family Law Reform Act 1995 commenced operation on 11 June 1996, and does away with the old terminology of ‘guardianship, custody and access’. New orders are established, known as ‘parenting orders’. Relevant orders are the residence order, which orders with whom the child lives, a ‘contact order’ which deals with the kind of contact between a child and another person, and a ‘specific issues order’ which deals with any other aspect of parental responsibility. When considering an application for a residence or specific issues order from a non-parent, the Court will assess whether this person is a suitable person.

**Permanency of the order and implications for legal relationships**

- An adoption order is permanent whereas an application may be made to the Family Court to vary or challenge a parenting order at a later time.
- A parenting order expires when the child turns 18. At the age of 18, a child may however make application to be adopted without the need for any other consent or reference to the amendment.
- After a child is adopted, a new Registration of Birth is provided which reflects the adoptive situation. With parenting orders, the child’s Registration of Birth is not altered.
- Once an adoption order is granted, the birth parent(s) cease to be the child’s legal parent(s) and the adoptive parent(s) become the child’s legal parent(s). With parenting orders, the birth parent(s) remain the child’s legal parent(s).
- In step-parent situations, an adoption order severs the legal relationship between the non-custodial parent’s extended family and the child, and grants rights to the applicant’s extended family. With parenting orders the extended family’s legal rights are unaltered.
- In relative situations, the adoption order changes the legal relationship between the child and members of the family. With parenting orders, legal relationships remain unchanged.

**Names**

When an adoption order is granted the adoptive parents choose the names by which the child will be known, although the Court must give consideration to the wishes and feelings of the child. The new name is then included on the child’s Registration of Births (Section 56 of the Adoption Act 1984). A Family Court order does not change the child’s name. However, a birth parent may, with the permission of the other parent, make application to the Registry of Births, Deaths and Marriages to change the child’s name on the Registration of Birth.
Inheritance
Once an adoption order is granted, the child will not inherit from his/her birth family unless specifically named in the will. If a Parenting Order is granted, the child will not inherit automatically from the caregivers, but will retain the automatic right of inheritance from the birth parents.

Access
The Adoption Act 1984 provides for access arrangements to be legally formalised in adoption orders. If the access arrangements are not included in the adoption order, there is no legal underpinning to the arrangements. Access arrangements included in adoption orders may be of a more limited nature than those included in Parenting Orders. As the non-custodial birth parent’s legal ties are not severed by the Parenting Order, later requests for access may be heard by the Court.

Financial support
An adoption order dispenses with the non-custodial parent’s rights and responsibilities with relation to the child and therefore any arrangements for maintenance will cease with the granting of an order. In general, with a Parenting Order, maintenance arrangements are included in the order.

The child’s sense of security
An adoption order may enhance a child’s sense of belonging with the caretaking family at the expense of severing ties with the non-custodial family. The limited practice experience in this area indicates that the legal security of Parenting Orders are usually sufficient to enable the child to feel secure in the caregiving arrangement. In certain instances, an adoption order may make better provision for the security needs of the child. In particular this may relate to situations where the non-custodial parent is deceased or absent or where the child has experienced considerable disruption and loss. It should be noted, that an adoption order in itself will not necessarily enhance a child’s sense of belonging and that a key factor is the attitudes of adults involved. That is, if the adults believe that only an adoption order will be adequate, their view is likely to influence the child.

Legal considerations
Age of child
Under Section 10 the Court may make an order for the adoption of a person who:
a) Had not attained the age of eighteen years before the date on which the application was filed in the Court; or
b) Has been brought up, maintained and educated by the applicant or either of the applicants, or by the applicant and a deceased spouse of the applicant, as the child of the applicant or of the deceased spouse under a de facto adoption (Section 10).

The Court may therefore grant an adoption order relating to an adult in certain circumstances. Where an application is made by an adult it is not necessary to address the provisions of Sections 11 and 12.
Adoption by one person
A spouse of a natural or adoptive parent must apply to adopt as a sole applicant Section 11 (5). This differs from the situation under the Adoption Act 1964 where the custodial birth parent and spouse made a joint application.

Joint orders in spouse adoption matters are no longer made as an adoption order cannot be made in favour of a legal parent of a child.

Section 11 (2) states ‘the Court shall not make an adoption order in favour of a person who is, or persons either of whom is, the mother of the child or a man who, under Section 33 (3), is an appropriate person to give consent to the adoption of the child.’

A relative of a child may apply to adopt the child either solely or jointly with his or her spouse (Section 12).

Length of marriage
Joint applicants must have been married or living in a stable de facto relationship for a minimum of two years. This includes two persons who are, or one of whom is, a relative of the child. Where there is no marriage certificate to provide a date for the commencement of the couple’s relationship, the worker must refer to other indicators. These may include the date of establishing joint bank accounts, joint ownership of property or application for a home or other significant loan, arrangements which name each party as beneficiary such as health insurance, wills, superannuation.

Section 20A of the Adoption Act determines that an application to be considered suitable to adopt the child of a relative or spouse, or de facto spouse, cannot be considered until applicants have been married or living in a de facto relationship for at least two years.

Prospective applicants should be notified of this. If application is made before the marriage or de facto relationship is of two years duration an extension of time during which to file a guardian’s report is normally requested of the Court.

Interpretation of the provisions of the Adoption Act 1984
The role of the permanent care worker
As was outlined in Section 2, the Court must be satisfied that each of the provisions under Section 11 (6) of the Adoption Act 1984 has been met before an adoption can be granted. For an application by relatives the provisions under Section 12 must be met.

The role of the permanent care worker is to provide information to the Court:
- Identifying the ways in which a guardianship and custody order would and would not make adequate provision for the welfare and interests of the child;
- Identifying and listing factors which may constitute exceptional circumstances (if any) and which may warrant the making of an adoption order;
- Giving the reasons why an adoption order would or would not make better provisions for the welfare and interests of the child than a guardianship and custody order.
What constitutes exceptional circumstances?

The Adoption Act 1984 does not describe what is meant by ‘exceptional’ circumstances. It is therefore open to interpretation at common law. As adoption applications are routinely heard in the County Court, no binding precedents have yet been set.

Experience with the Court indicates that this ground will commonly be met by a combination of circumstances which individually would not necessarily be considered ‘exceptional’. The following factors, individually or in combination, may be considered by the Court as constituting ‘exceptional’ circumstances. The permanent care worker is required to consider the individual situation and to list any factors which may constitute ‘exceptional’ circumstances. It is then the role of the Court to decide whether the factors fulfil the grounds for exceptional circumstances.

Factors related to the level of involvement between the child and the non-custodial parent(s) include:
- Ex-nuptial child (generally only if combined with other factors);
- Unknown father;
- Father denies paternity;
- Lack of contact with parent over an extended period (eg several years);
- Parent(s) demonstrates disinterest by very infrequent contact and lack of financial support;
- Deceased parent(s).

Relationship with extended birth family
- No contact with extended birth family.
- Extended family support adoption.

Factors which effect relationship between the child and birth parents negatively
- Child conceived by rape.
- Incidence of sexual abuse by non-custodial parent(s).
- Incidence of physical or emotional abuse by non custodial parent(s).
- Non-custodial parent(s) psychiatrically or otherwise incapacitated.
- History of criminality.
- History of violence between birth parents.

Factors relating to security of child
- Length of time child has been living with step-parent, noting age and level of attachment to step-parent (particularly relevant where child has lived with family since infancy.
- Child has particular exceptional needs for stability, eg, due to disrupted background, previous losses.
- Where all parties have a positive attitude towards adoption and identity issues are dealt with openly.
The adequacy of Parenting Order provisions

In comparison with adoption

There are a number of points which may be included in affidavits to highlight the ways in which a parenting order may or may not make adequate provisions for the welfare and interest of the child. The affidavit should highlight factors relevant to the specific situation, particularly if there are concerns that a guardianship and custody order may not make adequate provisions for the child. The following are common examples:

A Parenting Order may make adequate provision

- It would provide a legal framework for the applicant’s rights in respect of the child and would provide legal security for the child’s placement with the applicant.
- The child’s previous family relationships would not be confused or denied as the child would maintain his/her original birth certificate and legal identity.

A Parenting Order may not make adequate provision

- It would not invest the relationship between the child and applicant with legal permanency as it ceases to have effect when the child reaches the age of eighteen years, and may be varied upon change of circumstances.
- It would not allow the applicant to fulfil the role of legal parent to fill the gap left by the absence of the child’s biological mother/father. This is relevant where parent is deceased, unknown, or absent for many years.
- It may not provide the child with adequate legal security within the family to meet the child’s needs for security. This is relevant where the relationship with the parent has been characterised by major difficulties or there are particular security issues for the child.

An adoption order may or may not make better provision than a Parenting Order

The process for outlining the relevant factors is similar to that described above.

An adoption order may make better provision

- It may provide the child with a greater sense of belonging within the family than a Guardianship and Custody Order as it would establish the applicant as the Child’s legal parent and cannot be challenged or varied at a later time.
- It would allow the applicant to permanently fill the gap left by the absence of the child’s biological mother/father. This is relevant where parent is deceased, unknown or there is no contact.

An adoption order may not make better provision

- It would not alter the day-to-day circumstances of the family and would not, necessarily in itself, result in a greater sense of security for the child.
- It may heighten to likelihood of the child experiencing ‘genealogical confusion’ by altering the child’s legal status.
- It would not allow the child’s birth certificate to reflect his/her biological parentage.
- It would sever the legal relationship between the child and his/her birth parent and relatives. This is relevant where there has been some degree of contact between child and parent and relatives.
Making recommendations regarding applications

The primary role of the permanent care worker is to provide information to the Court so that the judge may make a decision regarding the case. If the permanent care worker and supervisor are clearly of the opinion that the application fulfils the provisions of the Adoption Act 1984 and that adoption is in the child’s best interests, he/she may recommend that adoption be granted. If the worker and supervisor are of the opinion that an adoption order should not be granted, the application may be contested and legal representation sought. In such cases separate representation should be arranged for the child. In other instances where there is not such a high level of clarity the worker may choose not to include a recommendation in the affidavit but to allow the Court to make a decision.

Processing applicants for adoption

Adoption and permanent care services provide a number of services with relation to relative and step-parent adoption.

Consultation

Prospective applicants and their solicitors may telephone adoption and permanent care services to request advice regarding a possible application.

The role of the worker is to provide information regarding the effect of the 1987 amendment, the differences between parenting and adoption orders, the general eligibility criteria for adoption, and the adoption process.

Application

If applicants decide to proceed with a parenting order, an application to the Family Court is arranged through their solicitor, and DHS has no further involvement. If it is decided to pursue adoption, the application for adoption is filed at the County Court and the regional DHS adoption and Permanent Care Team, or NGO service is served with the following mandatory legal documents:

- The child’s birth certificate;
- The notice of identification;
- The applicants affidavit in support of the application.

At times an adoption application may be made without initially consulting an adoption and permanent care service. If the available information indicates that the application is unlikely to meet the provisions of the Act, it may be appropriate to contact the solicitor to discuss the application and the alternative of a parenting order. The applicants may then decide to withdraw the application. If they wish to proceed with adoption, the agency or team must continue to process the application. Upon receipt of the above documents a report must be filed at Court within 30 days unless an extension is sought.

Consent/dispensation

The child must be legally available for adoption before an adoption order can be granted. It is necessary to establish whose consents are required and to undertake appropriate counselling. In some circumstances dispensation of consent may be undertaken. It may be necessary for counselling to take place with a birth parent who lives outside the area served by the team or agency with primary responsibility for the
case. In these instances the team leaders may negotiate for a worker from the team where the birth parent lives to undertake the necessary counselling.

Consent

*Effect of signing consent*

The effect of a consent to an adoption signed by a relative or a spouse of a step-parent of a child differs from that of a general adoption consent in two fundamental ways:

- The consent is specific to the person named therein and cannot be used as authority for any other person to adopt the child;
- The child’s legal status is not altered (i.e. he or she does not come under the guardianship of the Director-General and the parent who gives consent does not relinquish parental rights or responsibilities until the adoption order is granted.

The parent who gives consent does not relinquish parental rights or responsibilities until the Adoption Order is granted.

After an Adoption Order is granted the consent has the’ effect of:

- Entitling the spouse of the parent of the child to share his or her rights and responsibilities in respect of the child;
- In the case of an application to adopt made by any other relatives severs the legal ties between the parent and the child.

Consent processes

- Relinquishment counselling must take place according to the provision of the Adoption Act 1984 and the established counselling procedures;
- The schedules used for consents to relative and step-parent adoptions differ from these used with non-relatives;
- In the case of step-parent adoptions, there are separate forms to be signed by the non-custodial birth parent and the custodial parent. The custodial parent signs form 2 of Schedule 5 and his/her rights are not altered in any way by an adoption order in favour of his/her spouse. The non-custodial birth parent signs form 3 of Schedule 5 and relinquishes his/her parental rights once the Court makes an adoption order;
- With relation to relative adoptions, the birth parents sign form 3 of Schedule 5 and nominate the specific persons whom they wish to adopt the child. The parental rights of the birth parents are terminated once an adoption order is granted;
- The birth parents consents must be given in accordance with Section 34 of the Adoption Act 1984.

Establishing paternity

- The general guidelines should be used to determine which parties are required to give consent to adoption. In all situations, the birth mother is required to consent. Where the birth mother’s husband is seeking to adopt the child, or it is proposed that another relative adopt the child, the birth father is required to give consent if his name is on the birth certificate or he has established paternity in a legally recognised way;
- The provisions of Sections 33 and 49 of the Adoption Act 1984 apply in all adoption situations.
Dispensation of consent
The Court may dispense with the requirements for a parent to consent to adoption if the application for dispensation fulfils the provision of Section 43 of the Adoption Act 1984.

The most common ground for dispensation in step-parent situations is that the birth parent ‘cannot, after reasonable inquiry, be found’. (Section 43 (1) (a)). The applicant’s solicitor may search in the requisite manner (Section 43 (2)). The permanent care worker must then file an affidavit on behalf of the Director-General testifying to his/her satisfaction that, after reasonable inquiry, the person cannot be found.

If the requisite searching has not been completed by the solicitor, this task must be carried out by the permanent care worker. If the birth parents cannot be located after such searches as required under Section 42 (2) of Act are concluded, the worker should liaise with the applicant’s solicitor to ascertain whether an application to dispense with the birth parents’ consent will be made. An application for dispensation should be lodged by the applicant’s solicitor.

In preparing an affidavit for Court, the worker should refer to the fact that the application for dispensation has been made, and specify the attempts to locate the birth parent or the reasons the birth parent is unwilling to consent to the adoption. If the dispensation action has already taken place at the time of the Court hearing, the worker should refer to the granting of the dispensation in the affidavit.

Interview with applicants and family

It is necessary for the applicant/s to be interviewed in order for the report to Court to be prepared. The entire family should be interviewed, including the child, although the level of involvement of the child obviously depends on the child’s age and development.

The primary purpose of the interview is for the worker to gain sufficient relevant information to prepare the report to Court. The worker should also clarify any queries that the applicant/s have regarding the adoption process and the respective provisions of Adoption and Parenting Orders. It is possible that some families will decide at this stage to pursue a parenting order rather than adoption.

The areas which should be covered in the interview are outlined below.

Background to current caregiving arrangements
- Prior relationships/marriages;
- Previous custody arrangements;
- Length of current arrangements.

Marital/de facto relationships
- Length, quality and stability.
Child's relationship with caregivers
- Quality of relationships, level of attachment;
- Relationship with step-siblings/other children in family;
- Relationship with caregivers extended family.

Child's relationship with non-caregiving parents
- Quality of relationship;
- Extent of contact/access;
- Financial maintenance arrangements;
- Relationship with any siblings not placed with child;
- Relationship with other extended family members.

Custodial parent’s/applicant’s attitude to non-custodial parents
- Extent of co-operation with access;
- Openness in dealing with the child’s questions.

Motivation of applicant in seeking adoption rather than custody and guardianship
- Extent of understanding of the relevant issues;

Child’s attitude
- Re adoption and level of understanding of issues;
- Re access with birth parents/significant relations.

Comparison between adoption and a parenting order
- Identity issues - level of awareness and understanding of child regarding his/her background;
- Security - any particularly significant security issues;
- Extended family - impact on access arrangements and legal relationships.

The report is in affidavit form and must reflect an objective approach while fulfilling the requirement of the Act that the welfare and interests of the child concerned shall be paramount. Supplementary material in report form may also be provided.

The report is confidential, however copies are routinely sent to the applicant’s solicitor when the original is filed in Court.

The report must be approved by the team leader before it is filed in Court. The report is filed in Court with the original consent(s) and birth certificate(s).

The content of the report should be:
- a) Factual material based on worker’s own enquiries and observations;
- b) Information provided by the applicant(s) which must be attributed to that person and whether the information is substantiated by the worker’s own observations;
- c) The worker’s own perceptions and assessment and how these relate to the child’s welfare and interests, both now and in the long term. The report should state that these are the worker’s own perceptions and assessment.
Lodging in Court
The documents which require lodging at Court are:
i) The permanent care worker’s sworn affidavit;
ii) The required consents;
iii) The child’s original entry of birth.

These are lodged at the County Court at which the application was lodged either by hand delivery or by posting by certified mail. After these documents are lodged a date will be set for the application to be heard.

Extension of time
In some cases it will be impossible to file a report to Court within 30 days of first receiving the three mandatory documents. In these cases a letter should be written to the Court requesting an extension of time and stating the reason for the request. This may be one of the following:
• The applicant and spouse have not been married or in a stable de facto relationship for two years (and it is therefore difficult to assess the stability of the relationship);
• A non-custodial parent cannot be located for the purpose of signing a consent;
• The child does not understand his or her true origins or is under the misapprehension that the step-father is the child’s biological father.

The Court will usually send a written reply specifying a new date by which the report must be filed.

Legal representation
For legal advice on general and specific matters DHS workers should contact the DHS legal adviser, who should be able to advise over the telephone on most matters.

For advice on more complex issues and representation at Court it is necessary to inform senior staff in writing of the facts of the case and the reason legal advice or representation is sought.

When an NGO wishes to seek legal advice or representation, contact should be initially made with the head office program manager to discuss the case and relevant procedures.

In all situations where an application is contested the child must be separately represented. It is the responsibility of the applicant’s solicitor to organise the representation.

Hearing of the application
The worker should receive a written summons to attend the Court hearing from the applicant’s solicitor not less than 5 days before the hearing date. Generally the worker will be required only to attend the hearing but at times the worker may be required to give sworn evidence relating to the matter.

Filing
After receiving written notice of the outcome of the hearing and/or confirmation that no further action will be required the worker should direct the file to the relevant clerical officer to be registered and put away.

The worker should complete the Statistical Report of Adoptions in Victoria and return it to the Central Resource Exchange.

[Appendix 36: Notification to region with case planning responsibility that an adoption order or guardianship has been granted thereby terminating the guardianship order]

[Appendix 37: Statistical Report of Adoption in Victoria]
19. FINANCIAL ASSISTANCE

As at 1 January 1993, permanent care parents became eligible to receive ongoing caregiver payments. Payments are made as a matter of course, in the same way as other family based care, and the amount of payment is consistent with the that paid to other caregivers. This depends on the age of the child. Previously, permanent care placements made by Adoption and Permanent Care services could only receive payments if senior regional staff approved them on the basis of special circumstances and financial hardship. This policy was changed in 1993, in recognition of the impact of the permanent care order.

In addition, permanent care placements are eligible to receive placement support grants on the same basis as other alternative family placements.

Permanent Care
Caregivers are eligible to receive payments both before and after the placement is legalised. Most permanent care placements are legalised by the granting of a permanent care order from the children's court, or a parenting order from the Family Court, in a small number of cases. Permanent caregivers recruited by permanent care services may apply for payments to continue after the granting of an order. Caregivers will continue to receive payments if they choose to apply. The payment is not discretionary.

Adoption
The granting of an adoption order usually involves the adoptive parents accepting full responsibility for the child's existing and future needs, including financial responsibility. In situations where adoption is the optimal legal order and the child has special needs, ongoing caregiver payments are available.

Payments must be approved by the Protective Services Manager in the region with case planning responsibility, after a submission prepared by the permanent care worker, and recommended by the team leader.

Payments may be appropriate where:
- adoption is the preferred way to legalise the placement, and
- the unavailability of continuing payments would prevent an adoption application from proceeding, and
- the child has special needs, which may include:
  - developmental delay;
  - intellectual or physical disability;
  - forms part of a sibling group;
  - otherwise not able to be placed.

Children placed as part of the Disability Services Initiative in permanent care
The DS Initiative includes financial resources for the payment of discretionary grants of up to $5,000 per caregiver per year. These payments are managed by Permanent Care Teams.
20. POST LEGALISATION SUPPORT

In traditional adoption practice, the legal finalisation of placements resulted in the severing of all formal contact and support. In recent years there has been a shift in attitudes resulting in a greater openness, and current legislation provides for ongoing contact between the birth parent and the child. There has also been an increased recognition that adoptive families must deal with a range of issues associated with their adoptive status. The experiences of placement workers and the outcome of research studies have emphasised the importance of the availability of post finalisation support.

Post placement issues
The types of issues which commonly arise post legalisation include those which relate to predictable developmental phases, for example, communicating with pre-schoolers about adoption, or dealing with identity issues which arise in middle childhood and adolescence.

Other issues may relate to specific difficulties the family is experiencing, for example, families in which the child is showing disturbance such as aggressive or withdrawn behaviour. In particular, experience in placing older children indicates that the implications of poor early attachments, and the abuse and neglect experienced by the child can last for many years. Most children placed in permanent care bring many issues with them that do not resolve quickly, which may persist or reappear over time and present many challenges to the permanent care parents.

Initially it was believed that permanent care families would offer children the experience of growing up in a “normal” family environment independent of placement services and eliminate dependence on welfare services. This assumption has proved to be limited. Families who care for children who have experienced significant harm in their birth family are generally in need of long-term assistance. While it is clearly important to prepare applicants as comprehensively as possible, most families will require additional assistance at a later stage, once specific issues arise.

In addition, where placements break down the family may have renewed involvement with child protection services, and caseplanning responsibility may be assumed by the adoptive or permanent care family’s region.

Post legalisation supports

Parent support groups
Parent groups play a valuable role for both parents and children in sharing experiences and providing support. Permanent care families are made aware of the existence of these groups and are encouraged to participate. The relevant group is the AFAV (Adoptive Families Association of Victoria).

Permanent care teams
It is acknowledged that special needs placements where the children may have experienced multiple caregivers and suffered physical and/or emotional deprivations often present particular difficulties. The child may exhibit long-term behavioural and/or social and emotional problems.
Placement of children with significant intellectual or physical disabilities may result in periods of extreme stress and pressure on the family. The community resources available may be inadequate to meet the demand for post legalisation support and the PCT may provide ongoing support at these times.

**The aims of post legalisation permanent placement support are:**

- To strengthen the capacity of the permanent family placement system to make and sustain permanent family placements;
- To support permanent care parents to provide children with a family experience that compensates for past abuse/separations, promotes emotional wellbeing and enhances children’s capacity to form meaningful relationships as adults;
- To ensure that when placements must end children and permanent family members are supported throughout the process of separation.

After being contacted by a permanent care family in the post order phase, a Permanent Care Team member from the relevant region should undertake an initial assessment of the family’s situation. This assessment should include an examination of:

- The family history pre and post placement;
- The child’s placement background;
- Progress of the placement pre and post legalisation;
- Any specific problem area encountered previously;
- Birth family involvement;
- Any support services involved;
- Present difficulties;
- Further professional involvement warranted - short or long term.

In conjunction with the family, and in consultation with other relevant professionals, the permanent care worker should document the assessment and develop a plan for support and assistance. This may involve a range of options depending on the nature of the particular situation and in particular the proposed role of the permanent care worker. The plan is discussed with the team leader.

When short term assistance is required this may best be provided by the Permanent Care Team. Where longer term involvement or referral to a particular specialist service is appropriate, a referral may be made to community based agencies. Services which may provide assistance include:

- Education Department support services;
- Specialist services eg child psychiatric service;
- Local family support agencies;
- DS respite care services (eg Interchange, some foster care programs);
- Foster care agencies;
- Private counsellors/therapists.

Following referral to another agency, the Permanent Care Team worker may act as a consultant or support worker in dealing with permanent care issues.
On other occasions, it will be appropriate for the PCT to resume involvement with the family to provide ongoing support. There are a number of benefits from providing support from the PCT. These include:

- The permanent care team’s knowledge of the complexities of placing and supporting children in permanent care;
- Families may be reassured that they will not be scrutinised by services that do not understand the issues involved in permanent care;
- Permanent care teams understand the emotional, behavioural and physical needs of children placed permanently and can therefore provide counselling, behavioural management strategies and manage complex issues such as contact.

**In providing a post legalisation service to permanent care families, teams need to consider how they will respond to the need to:**

- Provide or broker as comprehensive, accessible, effective and flexible a range of services as possible, including consultation, support and therapeutic interventions
- Match the level of service provided to the needs of the child and family and the vulnerability of the placement.
- Establish strong working and knowledge sharing relationships with a range of other agencies including other family placement services, Adoption Information and Family Records Service, Child Protection Services, Disability Services, Child and Adolescent Mental Heath Services (CAMHS), community paediatric and early intervention services, schools and DET, Alcohol and Other Drug Services, Youth Services, Take Two and other key stakeholders providing services to the Child Protection client group.
- Develop a communication strategy directed at families and welfare service providers to facilitate outreach and early intervention to families in difficulty.
- Have a learning culture that seeks to develop, and disseminate widely, best practice in placement support, based on research, evaluation of the performance of the service and analysis of any disruptions.

Families who reapproach their original region or agency when they are no longer geographically located in that region should be transferred to their current region if it appears involvement is to be ongoing.

Situations where the placement breaks down to the extent that the child can no longer remain in the placement are covered in the chapter on Placement Disruption.
Post legalisation access arrangements
The Permanent Care Teams retain responsibility for supervision of special needs adoption and permanent care access and information exchange arrangements. The location of responsibility for supervision of finalised infant access and information exchange arrangements is usually the responsibility of the agency/region which finalised the placement. The AFRS (Adoption and Family Records Service) has responsibility for the management of some infant adoption access and information exchange cases.

Adoption and Family Records Service and register
The AFRS was established to implement the provisions of the Adoption Act 1984 for parties to obtain information with respect to adoption arrangements. Where contact with the Permanent Care Team involves a request for information regarding the adopted persons background, information regarding AFRS is provided. The adopted person and family members can then decide if they wish to utilise the service.

Utilisation of the service or register does not preclude or replace ongoing involvement by the Permanent Care Team or any other agency if a broader or more intensive support service is required.
21. PROTOCOL FOR OUT OF REGION WORK

Out of region work may be defined as any situation where there is ongoing involvement with any of the parties concerned with a permanent care placement and the person/s are geographically located outside the appropriate region or region of allocation.

This may include:
- either or both birth parents;
- the baby/child;
- adoptive applicants;
- adoptive or permanent care parents.

The regional permanent care team or NGO will therefore accept initial responsibility for all cases that originate within that region. Guidelines for transfer of case responsibility and allocation are as follows:

A transfer of responsibility and allocation to another region will occur in the following situations:
- the baby or child is placed in a permanent care placement outside the region of origin.
- adoptive applicants move outside the region of their initial application. Applicants who move between applications (ie second or subsequent applications) will be allocated in the new or current region.
- the permanent care placement family (PVA) move outside the region.
- the original placement disrupts and the baby/child is placed in another region.

Client preferences
It is recognised some parties involved in permanent care placements may have a preference to be serviced by a particular regional team, worker or NGO.

Reasons for this preference may include:
- an established relationship or a prior involvement;
- negative feelings toward the nature of the agency (either government or non-government);
- philosophical or religious sympathies with a particular service;
- maintaining client confidentiality.

In the situation of current or established involvement, eg supervision of a ‘difficult placement’, a sensitive response to this preference is advocated and may allow for an extended transition phase prior to, or during, the actual transfer of responsibility. Agreed time limits prior to the transfer would need to be established by the two regional team leaders involved.

In line with the regional structure a preference based on prior involvement ie second applications, birth parents or adoptive parents who have had previous contact, is not sufficient reason to determine case allocation within the original region

The only exception to this would be in the rare circumstances where the negative feeling were so strong as to prevent the person seeking or utilising the services of a
region or agency. The service may then be more appropriately provided by a region or agency other than the designated region. Acceptance of responsibility for the case by this region can only occur after consultation with the team leader in the client’s region of origin.

The Centercare Catholic Family Services is able to provide a statewide service to people who may wish to use this agency.

In unusual circumstances the issue of maintaining confidentiality may result in relinquishing parents not wishing to become known to a particular region or agency. In these situations relinquishment counseling may be provided by a region other than the parent's designated region.

**Guidelines for the delayed transfer of case responsibility**

- **Placement** - A placement is close to finalisation and a recommendation will be made for the placement to proceed to court within 2 - 3 months.

- **Applicants** - The assessment process is almost completed ie the home study process has commenced. These applicants should be transferred when approved.

Some flexibility may be needed in this area and applicants for special needs children who have commenced the longer group process may be part of a cross regional process with the two worker assessment being undertaken by a worker from the old and the new region.

- **Placement disruption** - A placement disrupts and the child is placed outside the supervising region.

Case responsibility should stay with the supervising region pending the outcome of the disruption review.

If the child is placed outside the region in an interim placement (eg foster care/residential care) the case would also stay with the original region unless it appears the placement will be long term and a great deal of work will need to be done with the child prior to replacement. Case responsibility may then be transferred to the child's region as the result of a caseplanning decision in the original region.

If the child is replaced in a permanent care placement, case responsibility should be transferred to the new region. Although this may need to incorporate a transition phase, it would be expected a transfer of responsibility to the new region would have occurred within 3 - 6 months of the placement.

In summary out of region work will usually occur only in the following situations:

- Transitional work within the guidelines detailed above. This would be time limited.
- Where strong negative feelings preclude client utilization of the service.
- Relinquishing parents desire for confidentiality.
- In some cases it may be appropriate for the original region to remain involved with the birth parent/s. This may be to provide ongoing counseling or in the relaying of information about the relinquished child. Linking the birth parent into community
supports or services with respect to ongoing relinquishment counseling may, however, need to be considered.

This involvement would not determine allocation within that region and would be done ‘under contract’ to the region of allocation.

- In cases where birth parents re-establish contact after the placement is legally finalized the initial involvement may be with the original region. Should it appear on-going contact is appropriate, responsibility for involvement with the birth parent should be transferred to the region where the child was placed. It is expected this transfer would occur within 3 - 6 months.
- In the situation of adoptive parents or children from finalized placements re-approaching the original region or agency for support, if it appears involvement is to be ongoing, these cases should be transferred to the current region within 3 - 6 months. In some cases it may be appropriate for the new region to link the family into community support services and networks.

**Administrative procedures**
Established regional procedures for the transfer of files apply to the transfer of permanent care files. All files must have a transfer report attached.