

## PROJECT EVIDENCE

**PROJECT EVIDENCE for Prevention of Mental Disorders.** The project coordinator is Dr Allan Mawdsley. The version can be amended by consent. If you wish to contribute to the project, please email [admin@mhyfvic.org](mailto:admin@mhyfvic.org)

**[2] Selective Programs** are indicated for situations where subjects are at high risk of developing mental disorders unless there is preventive intervention.

[2 c] Social factors

- i Indigenous families
- ii Immigrant families, especially asylum-seekers
- iii Children involved with bullying
- iv Child Protection and out-of-home care

### **[2 c iv ] Child Protection and out-of-home care**

The project coordinator for this component is Dr Miriam Tisher. The version can be amended by consent. If you wish to contribute to the project, please email or contact Miriam on Tel. 9500-2411 Email [miriamtisher@almfamilytherapy.com](mailto:miriamtisher@almfamilytherapy.com) or [admin@mhyfvic.org](mailto:admin@mhyfvic.org)

#### **CHILD CARE & PROTECTION**

The healthy developmental progress of children must be considered in conjunction with their involvement with family and caregivers. Children are dependent upon adults for their care. MHYFVic hosts several Projects relating to the promotion of mental health and prevention of mental disorders through universal and targeted interventions enhancing the functioning of children and their families. See [Prevention Programs 1 a, b and c.](#)

There are statutory processes for the reporting of cases of suspected neglect or maltreatment, leading to investigation by Child Protection Workers of DHHS. There is some discretion as to whether cases are referred to social agencies on a voluntary basis for assistance in resolving the parenting issues or brought before the Children's Court for judicial orders.

Appropriate assessment, reporting of difficulties, case planning for necessary changes, provision of assistance to resolve problems, and monitoring of outcomes is the fundamental basis for child protection. Unless this is done it is not appropriate to make permanent care decisions. The preferred approach is for therapeutic interventions whilst the child is within the family. Voluntary assistance provided by social agencies requires specialist training and supervision, appropriate monitoring of outcomes, and adequate funding to support families in achieving the necessary changes.

Protection Orders may require families to achieve necessary changes with or without periods of substitute care of the child. It must be acknowledged that there are times when families may not be able to provide the necessary care, and substitute care is required. Substitute care is ordinarily undertaken by fostering. A small proportion of cases require therapeutic programs in specialist units. Occasionally it is recognised that permanent care orders are needed.

International comparisons of child protection systems show that there have been two widely divergent philosophies broadly categorised as "children's rights" and "family dysfunction" models. The "children's rights" model, underpinning the current Victorian Child Protection approach, emphasises a court-based adversarial process of removing children from situations of risk, whilst the "family dysfunction" model favoured in Scandinavian countries emphasises the support and remediation of dysfunctional families.

The advantage of the "child's rights" model lies in its immediate child safety first action, but the disadvantages lie in the failure to implement remediation and in the high cost and harms of alternative care. The advantages of the "family

dysfunction” model lie in the maintenance of family responsibility for remedial progress and avoiding costs of alternative care, but the disadvantage lies in some ongoing risks to child safety. Contemporary trends in Child Protection legislation move towards a composite “child centred” approach based upon incorporating the advantages of both models to achieve the optimal outcome for the child.

The health care system has for many decades recognized the need to adapt services to minimise separation and loss. Children’s hospitals no longer exclude parents from visiting on the misperception that it avoids distress, but on the contrary, will encourage parental access and support, including rooming in for some cases. The early discharge from hospital and treatment in the home is not only cheaper but generally better for the child’s progress. The Child Protection system, on the other hand, has lagged badly behind in dealing with this issue. True, the old institutional congregate care model has shifted to a foster care model, based on it being more family-like. But it is not the child’s own family and there is inevitable loss and grief with the disruption of parent-child attachments. When this is repeated through several cycles of failed re-unifications and further fostering in different families, permanent damage is done to the developing child’s emotional state. The Cummins Report recognized this and made recommendations aimed at reducing the time taken before a child is in ongoing care in a family that provides healthy attachments and developmental nurturance.

The Victorian Child Protection system is seriously deficient. It has responsibility for receiving and investigating notifications of suspected child abuse and neglect, and taking steps to protect children at risk. Given the large number of notifications, this is a major logistical exercise. The workload is so great that many regional offices have lists of unallocated cases.

A shift towards a “child centred” model could make use of a process used in child mental health services with distinct stages of ‘Intake’, ‘Assessment’, and ‘Treatment’.

The Intake process begins with the notification call. The response should be immediate, with sufficient information-gathering to ascertain whether the next action is to be by police, medical or child protective assessment. If by Child Protection, arrangements for the first assessment appointment should be put in place immediately. Obviously, this will vary with the nature of the case. Office-based appointments for clients who are able and willing to attend the office are relatively straight-forward, whereas negotiations for home visits to reluctant clients will take more finesse. Either way, two points are clear: 1) this phase requires a worker with skill, and 2) the time to undertake this work must be built into the workplace methodology.

The Assessment process involves forming a relationship of communication and trust with the clients, gathering information about the family structure and functioning, past and current history of the problems, and a shared understanding of the issues to be resolved. That then leads to negotiation about how those issues are to be resolved, resulting in the ‘Case Plan’. Again, the same two points are clear: 1) this phase requires a worker with skill, and 2) the time to undertake this work must be built into the workplace methodology.

The Treatment process is the carrying out of the changes that were mutually agreed between clients and Intake worker. This encompasses a wide variety of different agreements, ranging from the ‘watch and wait’ to the court-based intervention orders. Less experienced workers under supervision seem appropriate for this phase, which also seems to justify the restriction on number of cases per worker.

Child Protection could benefit in a number of ways by applying these principles.

## INTAKE

Intake is a crucial stage in the process because it sets the stage for later steps. That is why it needs a skilled worker. Cases resolved by mutual cooperation are much more likely to be successful.

The time taken in first contact will vary greatly with complexity of information gathering, but the skill of the worker will ascertain whether or not it can be managed collaboratively between the family and helping agencies or will require statutory intervention. Intake duty requires immediate availability and therefore needs to be scheduled without competing duties; this probably requires a roster of workers to ensure coverage whilst the accumulated cases are dealt with. Despite the difficulties, it should not take more than a few hours to determine whether the case can be managed collaboratively or not.

#### ASSESSMENT

As noted before, the assessment process involves forming a relationship of communication and trust with the clients and gathering significant sensitive information. Because this occurs in a situation of client fears of adverse consequences, there is likely to be reluctance and hostility. It may take a longer time to establish a positive relationship, but it is an essential part of the healing process for clients to accept that the caseworker is genuinely seeking a good outcome. Ownership of the problem-solving by clients is an essential pre-requisite for success.

Success at arriving at a mutual understanding of the difficulties and what has to change is a main predictor of good outcome. Capacity for change is the predictor, not the amount of change that has happened to date.

If clients are not able to control their animosity and achieve a mutually acceptable commitment to constructive change within a reasonable timeframe this is a prima facie justification for early permanency planning. Recognition of a need but limited capacity to achieve it (such as uncontrolled drug addiction) may justify alternative care arrangements whilst treatment is undertaken, rather than immediate permanency planning.

The undertaking of wholistic assessments by Protective workers who are committed to achieving a good outcome is much more efficient than separation of risk appraisal from therapeutic assessment. Splitting risk assessment from case treatment greatly reduces the likelihood of success because of the hurdle of relating to multiple people and liaising between them.

#### TREATMENT

Goals for change mutually agreed by clients and caseworker include the means by which those changes are sought. Generally, this would be through a family therapy process although sometimes additional components such as individual treatments may be incorporated. The therapeutic contract enables the caseworker to closely monitor the safety of the child as well as the rate of progress.

#### DISPOSITION

Most children in out-of-home care are there not because it is the best option but because Child Protection Workers do not have the expertise to do a family functioning assessment and appropriate remediation. If they did have that expertise, most of the children could remain in their families without the need for out-of-home care, let alone permanent placement away from their families. Families incapable of ever meeting the developmental needs of their children would be identified much earlier than in the current trial and error method of failed attempts at reunification. It is unconscionable for children to be placed permanently away from their families without a thorough attempt to remediate family dysfunction.

Recent amendments to the Children's, Youth and Families Act introduced mandatory time-limits on the duration of out-of-home care before a permanent placement decision is made. The authority of the Children's Court to determine what is in the best interests of the child has been severely curtailed. Whilst MHYFVic supports the concept of early decision-making about the long-term placement of children, the process is fundamentally flawed and needs further amendment. The current amendments are facilitating a whole new "stolen generation" and must be further amended to ensure adequate treatment.

There is a body of literature and ongoing research material relating to best practice assessment processes and legal disposition of cases. There is significant dispute around issues of adoption and permanent care orders for cases where

it is deemed unlikely that the family of origin will ever be able to provide adequate care for a child's healthy development. Some of this material is listed below in two groupings : 1) Out-of-Home Care, and 2) Legal Disposition of Care & Protection cases.

## **Topic One:**

### **Out-of-home Care**

Since the phasing out of historical forms of orphanages and institutional care, substitute care is usually some form of foster care but may be in alternative residential care facilities. Fostering programs are generally delivered by non-government agencies funded and regulated by the government. Increasingly the fostering is by kinship care within the extended families of the children, and within the category of kinship care the highest proportion is with grandparents.

The Commonwealth Government Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Group have issued a document titled "*An Outline of National Standards for out-of-home Care*" (2011) which can be downloaded. [Standards PDF](#) (download from Index page).

Berry Street Victoria, originally "Victorian Infant Asylum" on their website identify their first preference for children who can't live safely at home as Kinship care, ie., that they go to relatives. Another option is Foster care.

In respect to foster care, the Berry Street website advises as follows:

"When children can't live safely at home because of serious child abuse, neglect and family violence, the first preference is that they go to relatives (Kinship Care). Accredited volunteer foster carers also provide care for children and young people in their own homes (Foster Care). Our professional staff ensure these carers are properly screened, assessed and supported, as well as working directly with the children to ensure they get the help they need to recover.

Foster Care is the temporary care of a child/young person (birth to 17) within a home environment during a time when they cannot live with their parents. It can be for a few days, a few weeks or for much longer. Foster care is a responsive service to children who have experienced trauma and various forms of abuse and require a caring and nurturing environment. Wherever possible, the idea is to reunify children with their birth families eventually, providing this is in the best interests of the child. Foster care is required when there isn't an extended family member or members of a child's social network available to provide a home (known as Kinship Care).

For children and young people aged from birth to 17 years, care can be respite care, temporary emergency care (overnight up to 6 weeks), reception care (Children are subjected to child protection intervention and placement is required during the court phase. It can range from overnight to six weeks), transitional short-term care (A child is placed on a court order and still requires a placement for up to two years), long term care (Reunification is no longer considered and placement is required for more than two years).

Foster carers come from different backgrounds, cultures and experiences and may be: Single, couple, married or not married, male or female, may or may not have children, need to be over 21 years of age, of any sexual orientation, can have a variety of working and living arrangements and can live in houses, flats or shared households.

They state that Foster carers should have a sense of humour, patience, tolerance and a willingness to be flexible and open to new experiences. In addition, carers must be willing to work within a professional team and have a capacity to provide a safe, structured and nurturing environment. Foster carers receive a non-taxable fortnightly carer reimbursement to assist in meeting the cost of food, clothing and general living expenses for children/ young persons in their care, training to help them develop the necessary knowledge /skills needed, practical help and professional support through regular telephone calls, home visits and after-hours support.

Berry Street in their website advise that their foster care system is “in crisis”:

“Foster care in Victoria is in a state of crisis. Victorian carers receive the lowest reimbursement rate in Australia and yet more than 500 extra children need care every year. The Victorian Government needs to recognise the importance of foster care within our community. Send an e-mail to your local MP and your electorate candidate, let them know that our vulnerable children are depending on them”.

Apart from the reference to kinship care as being the first preference, there is no further mention of kinship care on the Berry Street website.

**Take Two** is a Statewide developmental therapeutic program for children and young people in the Child Protection system, established in 2003. It is a partnership between Berry Street, LaTrobe University, Mindful Centre for Training and research in Developmental Health and the Victorian Aboriginal Child Care Agency.

??? Offers services to kinship carers. *Waiting for further information about the programs offered.*

VACCA is the leading Aboriginal organization in Victoria providing out of home care and other support services to Aboriginal children and families. Their website advises as follows:

“Aboriginal children compared to their non-Aboriginal counter-parts are 10 times more likely to have a Child Protection (CP) concern substantiated, 15 times more likely to be placed on a protection order and almost 16 times more likely to be in out of home care.

In 2011-12, one in ten Aboriginal children in Victoria experienced an out of home care placement, compared to one in 164 for non-Indigenous children.[\[1\]](#) Aboriginal children also stay in out of home care longer.

VACCA believes a critical issue is the future of over 500 Aboriginal children currently being managed in Kinship Care by the Department of Human Services. The fact that 60% of Aboriginal children in out of home care are being cared for by a government department goes against the principle of self-determination and self-management as espoused in the Child, Youth and Family Act 2005.

The number of Aboriginal children and young people in out of home care has been increasing in spite of measures taken since the Human Rights and Equal Opportunity Commission’s Report of the Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.

The fact that more Aboriginal children are being removed from their families and more of them are being placed in the care of non-Aboriginal families is creating another generation who are being separated from their families and communities.

This state of affairs is untenable.

While we welcome the Government’s action on child welfare we await its specific response to the needs of Aboriginal children through its proposed “Five Year Plan for Aboriginal Children and Young People”. It is also high time that the Department handed over responsibility for Aboriginal kinship care placements back to the Aboriginal community.”

The Social Policy Research Centre 2013 report notes the importance of spiritual and traditional connections within the Aboriginal community both for identity purposes and for practical implications such as land rights. The authors note that indigenous children commonly grow up in a close relationship with their community and that many indigenous carers provide care for multiple children and frequently have dual roles of kinship and foster carers, providing care for children to whom they are biologically related as well as to non-relations. The distinction between kinship and foster care is further blurred as the indigenous cultural definition of kinship varies from conventional western definitions.

## Resources:

- Kinship carer's handbook: A resource for kinship carers in Victoria, 2014.
- Some lessons learned in the USA about Kinship Care, by Anne McLeish
- A submission by the Australian Psychological Society to the Senate Community Affairs Reference Committee's Inquiry into grandparents who take their primary responsibility for raising their grandchildren, March 2014
- Website for Kinship Care, Department of Human Services, Victoria, Australia
- Website for Berry Street Victoria.
- Conversation with Sandra Radovini, Director of Mindful ([sradovini@unimelb.edu.au](mailto:sradovini@unimelb.edu.au))
- Published literature

**The Kinship Carer's Handbook**, published in 2014, is user friendly, with a balanced focus on both carers' and children's needs, whilst acknowledging the broader family context.

Kinship care is defined as "...provided by a family member, close friend or other significant person in a child's life when the child cannot live with their natural parents".

Major sections include Looking after yourself, Health and wellbeing, Roles and responsibilities, Cultural connections, Legal matters, Financial assistance, Early childhood and Education and learning. The handbook was compiled with input from a broad range of advisors, including Kinship Carers and Grandparents Victoria, Victorian Government departments, Aboriginal agencies and lawyers. Illustrations complement the handbook and icons direct readers to follow on tasks, information etc. Community resources and support groups are identified with contact details.

The handbook documents initiatives in Victoria which constitute efforts to support kinship carers, all initiated since 2009. These include Mainstream and Aboriginal kinship care support programs, Kinship Carers Victoria, a collective and lobbying voice, provider of information and support to carers, delivery of carer information and support sessions delivered at local levels

In March 2014 the **Australian Psychological Society** put out a submission to the Senate Community Affairs Reference Committee's Inquiry into grandparents who take primary responsibility for raising their grandchildren. In their introduction, the authors note the "rise in the number of grandparents providing care to their grandchildren through formal and informal arrangements and the increasing complexity of the grandparent carer role in line with changing family demographics."

The authors further note that they have particularly focused on the needs of more marginalized groups such as Aboriginal and Torres Strait Islander communities and Culturally and Linguistically diverse groups.

The report notes the plethora of difficulties, including lack of practical support, conflict in relationship with birth parent, conflict for the grandparent between care of child (often birth parent) and care of grandchild, psychological and physical health being sacrificed due to caring relationships.

The authors stress that grandparents need to have increased access to financial, legal, psychological and social supports for themselves and for their grandchildren. They argue for the need for grandparents to gain an "Authority to act as responsible parent" to empower them to make day to day decisions about their grandchildren's education, health and social situation. Issues of safety for grandchildren have been cited in research, noting that children in

grandparents' care often have parents dealing with violence, substance abuse, homelessness and mental health difficulties.

The authors note that "emerging evidence suggests that children in kinship care have worse outcomes compared to children who have never lived in care, however, they appear to do at least as well, if not better, than children in non-relative care".

Published Australian literature:

**Downie, J.M., Hay, D.A., Horner, B.J., Wichmann, H & Hislop, A.L. (2010). Children living with their grandparents: resilience and wellbeing. *International Journal of Social Welfare*. 19: 8-22.**

West Australian authors Jill Downie and others reported in their 2010 paper on resilience and wellbeing of children living with their grandparents. These children had been in the full-time care of their grandparents for an average of 5.9 years. The sample included 8 males and 12 females, all except one identifying themselves as Caucasian and one identifying as Australian Aboriginal. Thirteen lived with single grandmothers, one with a single grandfather and the remaining 6 lived in coupled grandparent families. Main reasons for grandparent care arrangements were parental substance abuse, parental mental health complications, familial violence and maternal death.

They identified 20 children aged between 8 and 15 years who were living in full time care of their grandparents. Using the Piers-Harris Children's Self Concept Scale, the authors report that none of the children demonstrated total self-concept scores within the severely low range and only two children obtained self-concept scores lower than the average range. Thus, the authors report that the majority of the children in the sample experience above average self-concept and wellbeing in all the areas assessed as compared with normative data.

Qualitative analysis of the interview data with the children showed that generally they "felt positive about living with the grandparents and reported feeling safer and more loved with them than with their parents". The authors report that the children identified "physiological needs", "security needs" and "belonging needs" with sub categories of "basic physical needs", "safety and security", "love, care and belonging" and "family contact". The authors report these to be protective factors important in the development of resilience. Risk factors included "unresolved loss", "confusion/anxiety about their past", "concern about the health and wellbeing of their grandparents", "financial and environmental stress", "stigma and secrecy" and the "parenting style of their grandparents". Children spoke of parental substance abuse, mental illness, family violence and parental death as reasons for residing with their grandparents. The authors note several methodological limitations including possible need for grandchildren to positively describe their current living arrangements, small number of participants and a highly motivated group participating in the study.

**Tarren-Sweeney, M & Hazell, p. (2006). Mental health of children in foster and kinship care in New South Wales, Australia... *Journal of paediatrics and child health*. 42: 86-97.** This is an epidemiological study of mental health of children in court ordered foster and kinship care in NSW. Children aged 4-9 years. Sample. 347 children. Child behaviour checklist (cbcl) and assessment checklist for children (ACC) developed for this study. 297 children in foster care; 50 in kinship care Children had exceptionally poor mental health and social competence relative to normative and in care samples. Resembled clinic referred children in scope and severity of problems. Mental health profiles for children in foster care exceptional for non-clinical population. Rates of disturbance for children in kinship are we're high "though unexceptional". Issues to consider: level of adversity experienced by children before entering care. Dearth of information about reasons for entering care. But present sample experienced "very high adversity before entering care". Relatively common use of short term orders in NSW may contribute to relationship insecurity. Hypothesis that children who are less challenging and less impaired have greater chance of gaining kinship placement; by implication fewer well-adjusted children may be entering foster care than previously. Note closure of state's large

residential care facilities in early 1990s. Gender differences: data suggest that, given similar early adverse experiences, boys more likely to develop emotionally withdrawn, inhibited attachment responses as well as dissociative responses to pain whilst girls more likely to develop precocious controlling pseudo mature attachment behaviour and age inappropriate sexual behaviour. Comparisons between mental health measures of children in foster and kinship care led the authors to state that: growing up within one's extended biological family appears to be a protective experience, possibly for reasons to do with identity formation and familial bonding. Predictive modelling provided support for this hypothesis. Kinship care protected children from developing attachment problems and externalising problems, independent of their exposure to pre-care and in-care risk factors. Methodological limitations are discussed.

**Dunne, E.G & Kettler, L.J (2008). Grandparents raising grandchildren in Australia: exploring psychological health and grandparents' experience of providing kinship care. International journal of social welfare. 17: 333-345.**

Relationships between psychological health of grandparents raising grandchildren and grandchildren's social, emotional and behavioural issues in South Australian sample of 52 caregiving grandparents and an age matched sample of 45 grandparents who were not the primary caregivers of their grandchildren. Caregiving grandparents reported higher levels of stress, anxiety and depression (a significant minority in the clinical range) and a significant proportion of grandchildren had difficult behaviours in the clinical range. Relationships were found between grandparents' stress and depression and grandchildren's social, emotional and behavioural difficulties. The authors argue that their findings point to the importance of providing support and counselling for grandparents and early psychological assessment and ongoing support for grandchildren. Caregiving grandparents reported many factors contributing to their stress levels, including lack of financial support, conflict with birth parents and other family members, ongoing social, emotional and behavioural issues of their grandchildren and coming to terms with the loss of their children to drugs. More than half of the grandchildren's scores were in the clinical range for difficult behaviours that had a negative effect on them, their home life, school and peers. The authors note that the high levels of grandchildren reported by grandparents may be due in part to their own elevated emotional difficulties, thereby possibly inflating their children's difficulties.

“Thus, grandparents are coping with their own stress, anxiety and depression as well as trying to parent grandchildren who are exhibiting negative emotions and challenging behaviours. In addition, they have to manage the broader fallout of their grandchildren's behaviours, such as the impact of these behaviours in the social environment. This combination of issues is likely to make it difficult to parent effectively.”

**Social Policy Research Centre August 2013. University of New South Wales. Grandparents raising grandchildren: towards recognition, respect and reward.**

The authors differentiate between Formal (statutory) grandparent care and informal grandparent care. In 2012 almost 41,000 children and young people in Australia were subject of care and protection orders issued by child protection authorities. More than half of those placed in home-based care are with relatives or kin mainly grandparents rather than non-related foster carers. Survey draws on responses from 335 grandparent carers from almost every state and territory. Findings: grandparent headed families are financially disadvantaged in comparison with other families raising children. Most grandparents able to access government financial assistance. Over one third reported difficulties getting payments from centrelink, state/ territory governments or both. Many grandparents changed their employment arrangements as result of assuming care of their grandchildren. Reduction of income added to household stress. Grandparents made changes to their homes, eg moving to new house or extending their homes, erecting fences, moving suburbs. Health. Almost half reported that they had a long-term illness or disability. High proportion (62%) perceived that their health had deteriorated due to raising grandchildren. More than 50% reported that at least one of their grandchildren had physical problems and more than 80% had emotional or behavioural problems. Abuse and abandonment by parents were described by grandparents as cause of many psychological symptoms and physical injuries. Contact with children's parents. Most commonly grandchildren had infrequent or no contact with birth

parents. Social isolation and disrupted friendships one of the strongest themes from survey. Largest effects felt by younger grandparents. While many reasons why grandparents assume parental responsibility for grandchildren, literature suggests that these often related to issues concerned with parent's capacity to provide suitable and adequate care for children. (Pruchno 1999).

## **Topic two:**

### **Legal Disposition of Care & Protection Cases**

There are well-established processes for investigation of alleged cases of need for care and protection by Child Protection officers of the department of Health and Human Services. Many cases are managed without the involvement of the Children's Court. The Children Youth and Families Act governs cases brought before the Children's Court.

*The Protecting Victoria's Vulnerable Children Inquiry* reported that it has been taking on average five years to obtain a Permanent Care Order for children during which time they have been exposed to further trauma. It was recommended that barriers to adoption and Permanent Care Orders should be identified and removed. It was considered that greater certainty should be provided as soon as possible to children experiencing out-of-home care and that the number of placements should be significantly reduced.

An amendment Bill has been passed by Parliament. The changes are to be reviewed six months after promulgation to make any adjustments thought necessary in the light of experience. The names of some Court Orders have been changed and some have been deleted:

- Supervision Order → Family Preservation Order
- Custody to Secretary Order → Family Reunification Order
- Guardianship to Secretary Order → Care by Secretary Order
- Long term guardianship → Long Term Care Order

The Court Orders henceforth available are:

- Interim Accommodation Order
- Undertaking
- Family Preservation Order (Child with parents under conditions)
- Family Reunification Order (Child in out-of-home care pending return in 12-24 months)
- Care by Secretary Order (Child in out-of-home care 2-4 years to finalise permanency)
- Therapeutic Treatment Order
- Therapeutic Treatment (Placement) Order
- Long Term Care order (to age 18 years)
- Permanent Care Order

Permanency planning is calculated from when a child is first placed in out-of-home care on an Interim Accommodation Order. Time limits are mandated as 12 months for children under two years of age, 18 months for children 2 to 7 years old, and 24 months for children older. The amendments severely restrict the oversight by the Court of arrangements of the Department.

MHYFVic strongly supports the principle of ensuring early permanency planning for children whose parents are seen to be incapable of the necessary nurturance and parenting for their healthy development. However, there are two serious practical issues with the amended Act in its present form, for which we advocate further amendment. These are the inadequacy of the assessment process and the lack of judicial oversight.

Appropriate assessment, reporting of difficulties, case planning for necessary changes, provision of assistance to resolve problems, and monitoring of outcomes is the fundamental basis for child protection. Unless this is done it is not appropriate to make permanent care decisions.

The Act enables the recommendation for permanent placement to be made by a worker whose expertise is in Child Protection, not in the psychological assessment and management of families exhibiting dysfunction. The serious lifelong consequences of removal of children from their families of origin (lessons already amply demonstrated in Adoption Legislation reform and in the Stolen Generation) demand that such action only be taken after a major effort has been undertaken to remediate the family and expert evidence is provided to indicate that the family is incapable of responding. Although the Act requires DHHS to take reasonable steps to ensure that services are provided, it does not enable the decision to be deferred when services have not been provided.

The Children’s Court magistrates do not have the power to oversight the justice of recommendations for permanent placement. This is such a serious decision that natural justice demands that the evidence on which it is based is able to be appropriately judged. Protective workers should not be prosecutors, judge, and hangman. They simply do not have sufficient expertise.

MHYFVic believes that the Act requires amendment to ensure that a major attempt at remediation is mandated and that adequate assessment is undertaken to give evidence to a judge that the family is unlikely to improve before permanent care orders can be made.

The parliamentary Legal & Social Issues Committee received numerous submissions about the amendments which were overwhelmingly in accord with the MHYFVic advocacy for further amendment. Submissions are published on their website, from which the following summary (‘Y’ = support; ‘X’ = rejection; ‘O’ = no opinion expressed) has been extracted for the questions:

DHHS must ensure that necessary supports are provided; .....↓

The Children’s Court must oversee DHHS decisions; .....↓ ↓

The Children’s Court must have flexibility in Orders; .....↓ ↓ ↓

1. <u>Legal &amp; Social Issues Committee of Centre for Excellence in CFW</u>	O	O	Y
2. <u>Legal &amp; Social Issues Committee of Civil Liberties Inc.</u>	Y	Y	Y
3. <u>Berry Street</u>	Y	Y	Y
4. <u>Create Foundation</u> (Peak body representing the out-of-home experienced)	O	O	Y
5. <u>Parents with a Disability</u>	O	O	Y
6. <u>Children’s Court of Victoria</u>	Y	Y	Y
7. <u>Victorian Aboriginal Child Care Agency</u>	Y	Y	Y
8. <u>Aboriginal Family Violence Prevention and Legal Service Victoria</u>	Y	Y	Y
9. <u>Association of Relinquishing Mothers (Vic) Inc.</u>	Y	Y	Y
10. <u>Powerful Parents self-advocacy group within Reinforce Inc.</u>	O	Y	Y
11. <u>Law Institute of Victoria</u>	Y	Y	Y
12. <u>Victorian Bar Council and Children’s Court Bar Association</u>	Y	Y	Y
13. <u>Victoria Legal Aid Legal and Social Issues Committee</u>	Y	Y	Y
14. <u>Office of the Public Advocate</u>	Y	Y	Y
15. <u>Gatehouse Centre, Royal Children’s Hospital</u>	Y	Y	Y
16. <u>Family Inclusion Network of Victoria Inc.</u>	Y	Y	Y
17. <u>RMIT University (Professors Bessant and Watts).</u>	Y	Y	Y
18. <u>Australian Adoptees Association</u>	O	O	Y
19. <u>Victorian Stakeholder Network on Permanent Care and Adoption</u>	Y	Y	Y

<u>20. Emeritus Professor Terry Carney</u>	Y	Y	Y
<u>21. Australian Psychological Society</u>	Y	Y	Y
<u>22. Children's Court Private Practitioners' Association</u>	Y	Y	Y

Many other issues were raised in the submissions besides those three questions, most particularly the importance of maintenance of sibling relationships (including mandated co-placement), the rigidity of the time-frames, the limitations on family-of-origin contact, and the need for improvements in the child protection system. The Office of the Public Advocate went so far as to say that these changes were contrary to the Victorian Charter of Human Rights and the United Nations Convention on the Rights of the Child. Another recurring theme was the over-representation of aboriginal children in the system and the failure to heed lessons from past experiences such as adoption legislation reviews and the "stolen generation" reviews.

Although the Government undertakes to review the success of the amendments six months after implementation, there is considerable concern at the validity of such a review and whether it will be adequately researched and truly independent of departmental bias.

The obligation to take all reasonable steps to ensure necessary services for children and families took a fundamental step for the worse and has never recovered from the decision a couple of decades ago by the late Mr John Paterson, then Head of the Department of Human Services, that the core business of child protection workers was in the assessment and management of cases not including the provision of support and counselling which was to be referred out to other service-providers. The reality is that referral out does not mean that necessary services are actually provided. This will remain a fundamental weakness of the system until such time as DHHS resumes responsibility for service provision either directly or by contractual arrangements.

This MHYFVic Project seeks to gather best practice information in order to formulate a policy recommendation for advocacy to authorities.

Copy of Amendment Bill

Copy of Fact Sheet from Centre for Excellence in Child & Family Welfare

Copy of Law Institute of Victoria statement: Importance of Judicial Discretion.

Copy of Cummins Report summary attached to CCPPA submission

Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015: Legal and Social Issues Committee submissions:

23. Legal & Social Issues Committee of Centre for Excellence in CFW
24. Legal & Social Issues Committee of Civil Liberties Inc.
25. Berry Street
26. Create Foundation (Peak body representing the out-of-home experienced)
27. Parents with a Disability
28. Children's Court of Victoria
29. Victorian Aboriginal Child Care Agency
30. Aboriginal Family Violence Prevention and Legal Service Victoria
31. Association of Relinquishing Mothers (Vic) Inc.
32. Powerful Parents self-advocacy group within Reinforce Inc.
33. Law Institute of Victoria
34. Victorian Bar Council and Children's Court Bar Association
35. Victoria Legal Aid Legal and Social Issues Committee
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- 37. Gatehouse Centre, Royal Children's Hospital
- 38. Family Inclusion Network of Victoria Inc.
- 39. RMIT University (Professors Bessant and Watts).
- 40. Australian Adoptees Association
- 41. Victorian Stakeholder Network on Permanent Care and Adoption
- 42. Emeritus Professor Terry Carney
- 43. Australian Psychological Society
- 44. Children's Court Private Practitioners' Association

## **Submission summaries:**

### 1. Legal & Social Issues Committee of Centre for Excellence in CFW

The Centre supports the Bill and additional funding for early intervention services, intensive case planning and support, and funding for out-of-home care.

### 2. Legal & Social Issues Committee of Civil Liberties Inc.

Concern that Cummins Enquiry data on 1000 children is not available, also that the Bill does not follow the findings of that enquiry.

Concern at increased "adoption-readiness" without sufficient attention to past lessons about adoption.

Need for "Interim Accommodation Orders" and better services for vulnerable clients.

Need to incorporate conclusions of Royal Commissions on family violence and sexual abuse.

### 3. Berry Street

Berry Street supports the Bill but also supports independent judicial decision-making and oversight.

Need for mandated co-placement of siblings

Need for protection of children's rights independently of parental rights; define "best interests"

Concern at over-representation of aboriginal children

Strong reservations about the introduction of fixed timeframes. Examples of longer times required.

Impediments to permanent care

Reduction of financial support and placement support

Concerns at lack of review processes

Need for child legal representation

Berry Street recommendations to Cummins Committee on legislative change

### 4. Create Foundation (Peak body representing the out-of-home experienced)

Need for young person to have a voice in decision-making

Strong desire for sibling co-placement and continuing contact

#### 5. Parents with a Disability

Concern that parents with disability identifying a need are then classified as at risk, rather than supported. Case examples. Need for support.

#### 6. Children's Court of Victoria

Welcomes reinstatement of Court's capacity to consider whether the Secretary has taken "all reasonable steps" to provide services necessary in the best interests of the child. "The requirement to provide services and supports to families assumes greater significance in the context of the strict legislative time-limits imposed on achieving family reunification."

Over the past five years there has been a move towards less adversarial means of resolving the competing interests of the State, parents and their children in determining outcomes that are in the best interests of the children at risk. The Court considers the legislative changes will lead to an increase in contested cases as the incentive for resolution is removed.

The Court considers the power to make a supervised custody order and power to extend it are significant reasons why Conciliation Conferences have proved so successful.

It is the Court's view that the system of Court Orders is strengthened by having more flexibility than less because it enables orders to be tailored to a particular child's circumstances.

The Court considers interim protection orders are beneficial in facilitating resolution of disputed protection applications and, being of short duration, do not undermine the intent of the amendments to facilitate permanency. There is every reason in many cases why the best interests of the subject child require a particular course of action to be tested while the case remains under the overall authority of the Court.

It is the view of the Court that the inability to provide for greater contact than four contacts per year will result in less likelihood of settlement and a greater number of lengthy contested hearings.

The Court is concerned that some of the amendments removing judicial discretion have the potential to cause significant injustice to particular children.

#### 7. Victorian Aboriginal Child Care Agency

The VACCA submission refers to the over-representation of aboriginal children in care and the under-representation of aboriginal children in the care of aboriginal organizations and concludes that inadequate attention to cultural supports within the out-of-home care system is a serious missed opportunity. With the data showing that insufficient effort is being made to provide intensive support to families to prevent children being placed in care.....and to reunite children with their families, we as a system are clearly not doing what is in the best interests of aboriginal children.

"It is disappointing that twenty years after the....'Bringing Them Home' Report, that we are once again arguing why aboriginal children should not be removed from family and why connection to family, culture, community and country must be guaranteed."

"In our view there is a significant need for improvements to the child protection system through increased resources to prevention and early intervention services, an increase in culturally attuned Aboriginal family services, further resourcing the Aboriginal Child Specialist Advice and Support Service (ACSASS) and fulfilment of Section 18 of the CYF

Act, 2005. VACCA believes these reforms will do more to protect vulnerable children than the legislative changes outlined.

#### 8. Aboriginal Family Violence Prevention and Legal Service Victoria

Family violence is a leading cause of removal for almost every aboriginal child in statutory care in this state. The FVPLS recognise the adverse impact on children but also notes that there are harms caused by removal of children from their families.

FVPLS welcomes reinstatement of s276 requiring the Department to take reasonable steps to provide services necessary in the best interests of the child. However, the Court is prohibited from properly taking into account the steps the department has or has not taken.

FVPLS urges repeal of problematic provisions in the Act which:

- Impose a strict cumulative 12 month time limit
- Remove the Court's discretion to significantly extend this timeframe
- Prioritise adoption over permanent care, thus removing Departmental responsibility and oversight
- Removing Court scrutiny and the power to impose conditions for children on Family Reunification Orders, Care by Secretary Orders and permanent care orders.

The submission notes that the amendments are even more concerning when they are considered in the light of the significant lack of compliance by the Department with substantive protections in the Act. Given the existing failings by the Department to meet these statutory obligations, the removal of court scrutiny will exacerbate the problems.

Finally, it notes that although the Minister intends to review the amendments six months after implementation it is unlikely to occur in a satisfactory way, if at all.

#### 9. Association of Relinquishing Mothers (Vic) Inc.

The best interests of the child are met by the family of origin except where family dysfunction is intractable. Where a family experiences difficulty and the child is taken into care, it is imperative that a wide range of family supports are provided in a timely way and for a period of time that demonstrates that the State is truly committed to the reunification of the family.

Adoption should be the **last** option for any child who is in the care of the State.

Court oversight is essential to ensure that the Department does not exercise unfettered discretion.

No out-of-family placements should become permanent if the Department has not provided appropriate supports.

Care arrangements need access that enhances the relationship between child and natural family.

Much of the change seems directed to reducing the State's responsibility for the needs and support of children whose families are experiencing difficulties. It appears to be a deliberate attempt to reduce expenditure by the State.

"Excluding the natural family from an ongoing relationship so often leads to grief, dislocation and trauma and is now widely understood as a primal wound. The consequent costs to the state of the dysfunction this generates in young people needs to be taken into account when we consider the 'costs' of a legislative approach that assumes that privatisation will reduce the costs to the State."

#### 10. Powerful Parents self-advocacy group within Reinforce Inc.

All parents should be supported to have their children at home. Although the Department says the changes are about improving planning and permanency, where is the Department going to find permanent carers who will look after children with disabilities? Where are they going to find carers who will take all the children of a family together? Children are moved around all the time and even permanent care breaks down. We think that the changes to the Act will be terrible for our families, especially for our children.

#### 11. Law Institute of Victoria

The Law Institute is concerned that the amendments:

- Remove the jurisdiction of the Court to make orders to reunify families after a child has been in care for two years
- Remove the powers of the Court to make orders regulating the proceeding before it
- Diminish the ability of the Court to review decision making of DHHS
- Restrict the ability of the Court to decide care arrangements while increasing the ability of DHHS to assume parental rights and permanently remove such children from their parents

The LIV advocates for the full repeal of the 2014 Amendment Act, thereby restoring the jurisdiction and powers of the Court in accordance with the original Act. The LIV submits that, as the State court of specialist jurisdiction dealing specifically with matters relating to children, the Court should have the power to ultimately decide on the care arrangements for children and be able to hold DHHS accountable by reviewing the decisions made by DHHS and imposing conditions where required to ensure the best interests of the child in care are met.

#### 12. Victorian Bar Council and Children's Court Bar Association

The Victorian Bar supports reintroduction of s276 but seeks repeal of provisions which enact:

- Removal of Court's ability to impose conditions on Care by Secretary Orders;
- Time limits on Family Reunification Orders;
- Vesting parental rights in DHHS; and
- Removal of Court's ability to stipulate with whom a child lives

#### 13. Victoria Legal Aid Legal and Social Issues Committee

The LSIC generally supports the amendments, particularly restoration of s276 but proposes further changes which would:

- Reinstate the use of interim protection orders as an option available to the Court when DHHS has not taken reasonable steps;
- Provide Court discretion to extend a Family Reunification Order after a child has been in out-of-home care for two years;
- Reintroduce the requirement to name the carer on the order when a child is placed on a Family Reunification Order or a Care by Secretary Order;
- Reintroduce the Court's power to include conditions on Care by Secretary Orders and Permanent Care Orders for ongoing contact arrangements between the child and the birth parent(s).

#### 14. Office of the Public Advocate

The Public Advocate considers the amendments draconian, gravely detrimental to children in the short and long term, cruel to parents and will not protect all the rights of vulnerable children. They represent an alarming example of bureaucratic power creep and remove much of the capacity of the Children's Court to provide oversight of DHHS decision making. They exacerbate the power imbalance that exists between families and DHHS with the effect of

damaging families that should be entitled to support. They are at odds with many of the Best Interests Principles stated in the Act and are contrary to the Victorian Charter of Human Rights, the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with a Disability.

The Parenting Research Centre advises that there are no adequate tools or resources in place in Victoria to properly assess the functional parenting of parents with disabilities. Their research shows that parents with disabilities need to receive education first before their parenting skills and parenting capacity can be fairly assessed. The assessment then needs to be done in the home with the purpose of designing a support intervention that will be effective for that parent. There is evidence that parents supported and educated in these ways are generally capable of being good parents and meeting the needs of their children. OPA supports the view that services should be funded to work in this way.

Whilst OPA supports commencement of a Family Reunification plan being put in place as soon as a child is removed, the lack of adequate assessment and management services, and the longer time required by parents with a disability to develop and demonstrate parenting skills may exceed the 12 month time limit, resulting in an unfair discrimination against the disabled.

The removal of a child from the care of his or her parents and family is probably the most intrusive action that the State can take into the life of a family. It profoundly and permanently affects the lives of all the members of the family as children are taken away not only from their parents but from siblings, extended families and local communities. Although love, by itself, is not sufficient to provide for all a child's needs, it is nonetheless necessary for a child's healthy development, nurture and identity and cannot be reliably provided in out-of-home care even when the care is stable and capable. Despite considerable evidence to the contrary, it is often assumed that stability, certainty and safety will be found in foster care or permanent care. The Queensland government Carmody Enquiry concluded, however, "most children are better off being cared for haphazardly by a loved parent than in someone else's family or a state-run facility".

There is a great power imbalance between families and professionals in the child protection system. Child protection practitioners regard the child as their client and in focusing on the child may appear to have little or no concern for the parents and families. The Children's Court provides a necessary and important balance to the power of the bureaucracy and has the inherent jurisdiction to oversee the decision-making of DHHS.

The reduction in the power of the Children's Court and the role of lawyers under the new processes, together with the new hierarchy of protective orders, take away much of the ability of the Court to tailor-make orders for a child by placing conditions on those Orders. The Court will be severely constrained in its ability to make orders that protect the rights of children and parents. Much of the Court's judicial discretion is reduced under these amendments. The submission of the Law Institute of Victoria ably explores these matters and OPA strongly supports that submission.

#### 15. Gatehouse Centre, Royal Children's Hospital

Young children require stability to meet their developmental needs and the opportunity to develop attachments to key adults for their growth and development. We need a service system that responds to the special needs of young children and provides them with early identification of difficulties, early intervention, timely services as there is only a limited window of opportunity for changes in the family system to take place.

Children require some form of contact with family members. Forgotten Australians, stolen generation and adopted children searching for birth families tell us denying contact with family members is detrimental to children and young people's mental health. The reduction in the Children's Court oversight of child protection decision-making and care arrangements raises the issue of who will take on this oversight responsibility. These are important decisions which affect children and young people for life. The Children's Court requires additional resources rather than diminishing

their involvement in the lives of vulnerable children and leaving decisions to a statutory authority and its bureaucrats. Who will hold the DHHS responsible for its decisions?

16. Family Inclusion Network of Victoria Inc.

Research shows, time and time again, that children in out-of-home care do not fare well in contrast to children who were not removed.

There is a need to retain ongoing scrutiny and oversight of child protection matters by the Children's Court to ensure greater protection of vulnerable children and their families.

17. RMIT University (Professors Bessant and Watts).

The amendments are problematic because they enhance the power of the DHHS while reducing judicial accountability to the Children's Court. This move is dangerous given DHHS's long history of running a largely dysfunctional system that it has shown it cannot manage or change. The Act realigns the separation of powers in favour of the Executive. Fundamental to the rule of law is that the courts mediate in disputes between citizens, and between the citizen and the state. This vital role has been compromised by the new legislation.

The amendment repealing the requirement for the Court "to be satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child", which left no obligation on the government to assist families in any way before their intervention was finalised, is now being reinstated. The Government needs to ensure that DHHS is held accountable for delivering services required.

18. Australian Adoptees Association

It should be clarified that adoption is a **last resort**. All children removed from families will develop issues relating to their removal. Any legislation should include provision for intensive support and therapy for the children and, if needed, into later life.

19. Victorian Stakeholder Network on Permanent Care and Adoption

The negative impacts of adoption were described in Florence Clothier's 1943 article, "The Psychology of the Adopted Child" in *Mental Hygiene* 27:222-226.

The VSNPA has the following concerns:

- Adoption should not be included in permanency options because of its negative impact
- Care by Secretary Orders should not enable adoption without Court approval
- The powers and duties of the Children's Court should not be diminished
- The Court should order contacts which ensure the child's right to maintain family identity
- The Department should not provide financial incentives to Welfare Agencies to place children outside of their kinship care group larger than the financial support available to the kinship group.

20. Emeritus Professor Terry Carney

"The Carney [1982 *Child Welfare Practice and Legislation*] Review found that countless children in Victoria who had subject to wardship orders experienced serious denial of their rights to appropriate quality of care and due process in institutional care, now understood as 'out-of-home care'. This treatment often went undiscovered given a lack of regular judicial review of care arrangements and because of the lack of court-sanctioned conditions for the child to have contact with their families. Contact for children who are subject to care arrangements serves to preserve the

child's identity and also can provide an important safeguard against mistreatment in care arrangements as it is more likely to be discovered."

"Among the fundamental principles of the Carney Review were:

- (a) that prior to 1984, children were too readily removed from their parents and there was little, if no, emphasis on family preservation and hence it was important to formulate clear legislative criteria for the removal of children and to also place an onus on the state to do all things necessary to support family reunification;
- (b) that ultimately the intervention of the state into the lives of children must only be to the extent necessary.

I have therefore been concerned to learn that the 2014 legislative amendments to the CYFA increase the level of state intervention into a child's life, reduce judicial scrutiny of care arrangements and remove the Children's Court of Victoria's ability to determine contact arrangements.

The lessons of the past which influenced the Carney Report in the enunciation of guiding principles about child welfare, family reunification, stable environments for the upbringing of children and adequate external oversight of interventions, remain important.

I believe further amendments by way of reinstatement and rectification of the powers of the Children's Court are required to achieve a sound balance in this part of the law and to protect Victoria's vulnerable children."

#### 21. Australian Psychological Society

The APS College of Forensic Psychologists supports any intention to work towards increased security and stability for Victoria's most vulnerable children. However, the following areas of concern need to be addressed:

- Reinstatement of the s276 requirement to ensure provision of services also requires change to Family Reunification Orders.
- The Court should have the ultimate jurisdiction to decide whether reunification is appropriate and when it is not, and also to determine contact arrangements between children and their parents.
- The Court should be able to specify with whom the child will be living.
- The Court should be able to take into account services provided in determining the time frame for care.
- The option of forced adoption should be withdrawn.

#### 22. Children's Court Private Practitioners' Association

The CCPPA is concerned that the 2014 legislative reforms fail to protect Victoria's vulnerable children in the following ways:

- a) significantly departing from the recommendations of the Cummins Inquiry, a systematic and thorough review;
- b) removing the Court's ability to determine when reunification can occur over and above arbitrary time-frames, calculated cumulatively and retrospectively regardless of what is in the best interests of the child in his or her individual case;
- c) interfering with the Court's ability to conduct its proceedings and make an IAO in the best interests of the child as it did in the highly publicized case of two children sexually and physically abused in state residential care in 2014;
- d) removing the Court's ability to make conditions for and determine contact frequency on Care by Secretary Orders in breach of the human rights of children, and prohibiting the Court from determining the length of those orders in the child's best interests;

e) removing the Court's ability to determine the frequency of contact on Permanent Care Orders in the child's best interests;

f) removing the Court's ability to limit DoHHS care in the best interests of the child as per s.297.

The CCPPA supports the 2015 Bill in so far as it properly reinstates s.276.

However, the CCPPA seeks further that the 2015 also include reinstatement of the powers of the Children's Court and protections of the rights of Victorian children and their families, particularly in relation to contact.

## Alternative systems of Child protection

Two main orientations of intervention are identified:

- The child protection attitude (exemplified in the US, Canada, England and Australia) views child abuse as deviant acts from which children must be protected; responses tend to be legalistic and adversarial.
- The family services attitude (exemplified in Denmark and the Netherlands) identifies abuse as a problem of family dysfunction which is best addressed by help and support in partnership with the family.

Gilbert's book identifies a third orientation which is the child-focused approach. This sees the child as an individual with a relationship to the state which is concerned with the child's total wellbeing. Whilst the aim is for the child to be raised in a functional family the approach may be interventional. Underpinning this approach is the idea that the nation is strategically wise to invest in its children so that they will be healthy, educated and equipped to deal with future challenges.

The best practice model is one which responds to notifications by a prompt outreach contact with the family to offer support and establish a relationship of trust and communication whilst undertaking an assessment of needs, risks and family functioning. The preferred intervention would be to improve family functioning with the child at home, but temporary respite and other supports may be necessary. Intensive therapeutic work with the child and family will ascertain whether child's needs can be met, or alternative long-term arrangements made.

### References

Gilbert, N., Parton, N. and Skivenes, M. (Eds) (2011) "Child Protection Systems: International Trends and Orientations." New York: Oxford University Press.

For a further discussion see also PE3c i Child victims of abuse.

[\[To read Best Practice Model BP2c iv, return to Index and transfer to Best Practice Index\]](#)

[\[To read Policy POL2c iv, return to Index and transfer to Policy Index\]](#)

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