

## Rights and realities in the permanency debate

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Some months ago I listened with interest to a lead story on the ABC news. It concerned a statement by NSW Minister for Community Services, Fay Lo Po, calling for the freeing up of more foster children for adoption. Reference was made to unmotivated and abusive parents who were being given far too much time by the courts and case workers to 'get their lives in order' while their children languished in care. The Minister stated that these children had a right to stable, permanent care and that she would be making amendments to the new child welfare legislation to ensure that unnecessary delays were avoided. Her comments both in the media and Parliament and the draft amendments have generated a great deal of comment and controversy – there have even been warnings of a new 'stolen generation'.

My reaction was probably similar to many others immersed in the industry – yes, more children need permanent options with caring families; yes, they have a right to this; but what about all the competing rights, needs, wishes and considerations that are necessarily thrown into the mix when the safety and future of any given child is considered?

At the outset I'd like to affirm my commitment to the ideals of seeking permanency for children. I believe that permanent care options such as adoption or long-term parenting orders provide the majority of the good news stories, successes if you will, that we experience in child welfare. If one considers success rates, even the worst research figures for adoption disruption (in the 10%-20% range for older, special needs children in a few studies, Borland et al, 1991; Barth et al., 1987) suggest that the vast majority of such placements achieve long-term stability if not permanence, and the frequently reported 1-3% disruption rates for early-age adoption are overwhelmingly positive. I state this here to set a context

for some less encouraging observations that follow.

As a number of commentators have observed over the years, decision-making in child welfare always involves dynamic tension. There are no easy solutions, no magic bullets, only a quest for reasonable, ethical and balanced decisions.

*Permanence* is but one of many principles that influence contemporary child welfare practice (others include *normalisation, localisation, de-institutionalisation, least restrictive/detrimental alternative, family preservation*). As important as it is, permanence is subsidiary under law (at least in the new NSW legislation) to the principal consideration which is 'the safety, welfare and well-being of the child'. The competing principles are laudable in their own right when applied thoughtfully but they may actually be inimical to the achievement of permanence. *De-institutionalisation* and to a lesser extent *normalisation* are cases in point.

### PERMANENCY AND DE-INSTITUTIONALISATION

In Australia we have embraced these two principles to an extent unparalleled in other western countries. In our headlong rush to divest ourselves of anything that smacks of being institutional we have created a system that almost guarantees impermanence for our most troubled and vulnerable children and young people. Institutional care as defined in earlier reports (premises with over 20 children/young people, see Szwarc, 1985) has virtually disappeared (and I might add that it is generally unmentioned), as have family group homes, whilst even smaller group units with six or fewer residents are an endangered species.

If we look at the statistical trends in Australia (AIHW, 2000a; Bath, 1998),

from the late 1960s to the early 1990s there was a dramatic decline in the overall number of children in out-of-home care and this decline is most evident in residential care – in the late 1960s there were over 28,000 children in this type of care alone whereas today there are around 1,300. Since the early 1990s there have been steadily increasing numbers in care, from a low of around 12,000 in 1993 to just short of 16,000 in 1999. But all this increase and more has been taken up in foster care. Residential care appears to be in terminal decline. International comparisons show that de-institutionalisation has been more thoroughly embraced in Australia than in most other developed countries and even smaller group settings are fast disappearing (Bath, 1998).

Detailed research is not available, but from the practice front it appears that many of the children/young people that might previously have been placed in institutions (often under status offence provisions) are now placed in the few remaining residential options or, as is more commonly the case, in foster care.

It appears that foster care is often being asked to do a job it was not designed for – the care, management and treatment of children with seriously challenging behaviours. There are far fewer carers available in the traditional 'pool' (women who are not in the workforce) and they are being asked to take on older children with more complex and demanding behaviours.

All around the country the recruitment of carers is becoming increasingly difficult – figures from South Australia, for instance, indicate that whereas in 1995 there were slightly more carers available than children who needed them (980 carers and 967 children), by 1999 there were 978 children and only 704 carers. Over the same period the

number of children in residential care fell substantially (Barber, 1999).

It is any wonder that we are hearing horror stories of children shunted through 5, 10 and sometimes more than 20 placements. Mindless de-institutionalisation is at least partially responsible for the lack of permanent options for many of these children.

Part of my work entails providing consultancy support for agencies (government and non-government) grappling with non-institutional service options for children/young people with intensive support needs. Often this involves the creation of complex care programs for individual young people, which involve substantial staff groups and large sums of money (in some cases more than \$300,000 pa). It is akin to creating small service agencies focused on the needs of one young person.

Typically, these young people have experienced multiple foster care breakdowns which have involved a misuse and abuse of caring volunteers. Many such placements never had a chance of succeeding, but they were the only option available to placing agencies. This abuse of foster carers has left a legacy of resentment, guilt and emotional stress. Foster carers, who were never provided the high levels of support and professional advice that were needed, have subsequently been condemned as 'rejectors' when they finally admitted they could not continue.

Australia, and particularly NSW, has invented a new, innovative care alternative for young people with challenging behaviours – the motel model. It goes something like this:

1. Take one challenging and vulnerable young person who has been through a succession of foster placements, family/kin placements, youth refuges, residential units. Perhaps the young person has a mental health problem, has sexually offended against children or has an intellectual disability – invariably, they have been seriously abused themselves. They need the best that we have to offer in terms of programming, warmth, stability, clinical sophistication, quality care – you name it...

2. Finally admit that it is both damaging and unethical to seek yet another foster placement, then discover that there are no residential options available, or none that are suitable in terms of location or client mix.
3. Hastily recruit a team of carers and rent a motel room.
4. Roster these untrained workers with little or no experience to provide care, or more accurately, surveillance, for the young person. Usually there are no clear policies or guidelines for these workers, no foundational training in the developmental needs of children, in communication or crisis management skills, and no ready supervision or support.

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And it's not just older young people that are affected. Earlier this year I was approached about providing some assistance around the case of an eight-year-old girl who had had a succession of failed foster care placements. While the search for yet another foster option was underway she had been placed in a motel for several months with a team of visiting carers.

The picture is not always quite as bleak as I have painted it – sometimes the care is provided by established and experienced agencies and there is some attempt to provide meaningful training and support for workers. Nevertheless, the resort to gerry-rigged models such as these because no suitable alternatives are available, is hardly in the best interests of the children involved – certainly they offer little in terms of permanency.

Another common practice involves the use of youth refuges for young people (often under the targeted minimum age of 15 years) who are in statutory care. Such options are designed for older young people who are temporarily homeless and do not provide anything like the levels of supervision, protection, support and case management needed by children for whom the state has accepted a care responsibility. Again, this situation is largely caused by the abandonment of all care options apart from fostering.

I am quite aware of the many problems generated by institutional care, which have included the widely publicised tragedies of abuse and emotional neglect. Certainly, I have no sentimental or idealised notions about past institutional solutions and practices. However, for all their faults, some of these institutions and residential programs did provide a measure of stability and permanence for some children. Good quality residential care will sometimes be the only option for troubled and troubling young people that can offer some degree of permanence.

De-institutionalisation and normalisation are laudable principles and have certainly brought about positive and necessary changes to the out-of-home care system. However, they are not solutions and can sometimes create problems, both for the service system as a whole and for individual children.

#### **OTHER PRINCIPLES AND PRACTICE MODELS**

Interestingly, if we turn to some of the other prevailing principles and practice models, we find that many of these also contain the seeds of impermanence – again it turns out to be a matter of balance rather than the mindless application of a principle.

##### **Family decision-making**

This reflects a belief that the wider family/kin network is often better placed to find satisfactory solutions to child safety and placement conundrums. I do not doubt that this may be the case but the 'solutions' of the wider family caucus may have little to offer in terms of stability and permanence – it is other values such as identity needs and family

rights that predominate. Many of the young people who end up in residential care have experienced multiple placements with various relatives such as aunts, uncles and grandparents.

### **Kinship or relative care**

The assumption here is that it is preferable for a child to be placed within the biological family network rather than in non-biological foster care or adoption. Even when it is clearly the best option, many relatives do not wish to conclude formal adoption or guardianship arrangements out of concern about alienating the natural parent/s. There is some research evidence from the US, that kinship placements result in slower reunifications and fewer formal long-term arrangements (Berrick, Barth & Needell, 1994). There is also concern that such arrangements are generally subject to lower standards of assessment and monitoring. Again, the principle of permanence is a subsidiary one here.

With over 50% of placements being with relatives, NSW has about twice the average percentage of such placements as there are in other states (AIHW, 2000a). This suggests that there are quite different emphases placed on the paramountcy of this principle. Accordingly, there is likely to be variation across states in the emphasis placed on the principles of permanency planning.

Dare I say it, the same observations apply to the **Aboriginal Placement Principle** – this is almost universally supported as a necessary corrective to previous placement practices that ignored (or actively denied) the need for cultural and ethnic identity. However, the outcomes do not necessarily lead to permanency for the children involved.

Adoption is only one form of permanent placement option, and it may not be the preferred approach in Aboriginal communities where the emphasis is on relative/kin placement. However, I was quite startled to read in the most recent adoption publication by the Australian Institute of Health and Welfare (AIHW, 2000b) that last year there were only three adoptions of indigenous children and all of these were with non-indigenous adoptive parents. When we consider that across Australia over 23%

of the almost 16,000 children in care at any time are Aboriginal/TSI (AIHW, 2000a), the adoption figure is quite startling.

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### **Open adoption and open fostering**

These approaches (principles) are considered best practice and there are many confirmatory stories from the field of how such arrangements promote stability in care as well as continuity with birth parents. There are also stories about how such arrangements can maintain instability or fuel unrealistic reunification fantasies. The solution for many is an additional problem for the few.

The belief expressed by Minister Lo Po, that parental rights should be terminated earlier and more often, is shared by many in the community. However, contested termination invariably leads to hostility and alienation. Any permanent care options which result are not likely to be based on the accepted principles of openness and inclusiveness exemplified by open adoption practice.

### **Family preservation**

The term can be used to define a principle, a movement or a particular intervention model – here I am referring to the general principle. As noted in the earlier data, the push to keep children out of care and keep families together is long standing and apparently quite successful. To many in the field, however, the down side is that we do

not have the technology or data to tell us precisely which families will benefit from intensive preventive services – many such interventions are provided for families who will never be able to provide safe and stable care (often by order of the courts), and the well-being of children is seriously compromised in the process.

Many children are entering the care system older than they would have in the past and they are likely to have had multiple placements. They have often been subject to erratic and sometimes abusive care over a number of years while various allegations have been made and investigated and ameliorative interventions provided. This long and ultimately futile process causes untold harm to the children involved – their very ability to attach and thus benefit from permanent placements, is compromised (Hughes, 1997).

In summary, the cherished principles that guide our practice can in themselves contain the seeds of impermanence. Moreover, in some cases, a relatively less permanent option may be the most ethically sound and developmentally appropriate choice.

### **PREVENTIVE AND SUPPORTIVE SERVICES**

Moving on to some other realities, we could look at the services that are currently offered to both promote permanence by strengthening families and to maintain alternative placements once they are made.

(I am avoiding discussion here about larger economic issues, community attitude shifts or federal policy positions that indirectly promote, or work against, permanency. However, I would note that most commentators consider the significant drop of children in out-of-home care from the mid-seventies, to be linked with federal policy initiatives such as the single parent pension as well as attitudinal shifts towards acceptance of single parenting).

It is generally held (in NSW at least) that preventive services are fragmented, inconsistent and inadequate. When a family faces the prospect of a child being removed because of abuse or neglect, the services they are offered to improve their parenting depend on where they happen to be living and the

whims of the caseworkers. Often the family is not offered any help at all.

It is unlikely that the courts would look favourably on recommendations for the termination of parental rights when the assistance offered is so ill-defined in legislation and so fragmentary in practice.

Federal US legislation such as PL105-89 and PL 96-272 (backed in most cases by complementary state provisions) makes some attempt to define the range of services that must be offered to families facing the threat of parental rights termination and provide time frames.

However, the US laws offering monetary assistance to the states for increased numbers of adoptions based on the termination of parental rights, have come under attack because of their perceived bias against poor families (Hollingsworth, 2000). The same concerns would also apply in Australia.

It is not only the services prior to termination that are important. Those that are available after placement may be equally important in determining what sort of permanency ensues. Many long-term foster carers may wish to provide a more legally secure arrangement for their foster children but fear that the support currently available to assist them in providing care will cease with permanent orders.

Just last week I was talking with a long-term foster carer whose 14-year-old foster child was part of a counselling program that I run. She was clearly committed to the child and the child is attached to her. I asked her whether she had considered the enduring parenting order available under our new legislation. She said she had but had two concerns: the first was fear of alienating the child's mother who had a regular but difficult visiting relationship with her son; and the second was fear of losing financial and practical support to meet the ongoing needs of the child. The supports included those provided through the non-government agency (such as respite and the foster carer network) as well as the financial resources provided by the state.

In the ACT until recently, every placement, including those involving

care orders until the child turns 16, had to undergo a formal court review each year. The destabilising effect this often-adversarial process had on natural parents, children and foster carers was profound. There are many such situations where the legal permanency for children might be enhanced with more flexible orders that ensure stability and a departmental commitment to the provision of support after permanent orders are made.

I recently came across a short piece on the need for post-adoption services from a New York State advocacy group. It concluded:

... there is common agreement that post adoption services are the greatest unmet need in the adoption system today. There is no longer any question but that adoption support and preservation services are needed and desired, that the services can strengthen families, ward off disruption and dissolution, and encourage foster parents and others to adopt children in the foster care system (NYSCCC, 2000).

In Australia we might add permanent care to the adoption focus, but the need for post-placement services is just as pressing.

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#### **PERMANENCY AND IDENTITY**

To conclude, I would like to look briefly at the issue of identity. Children not only have a right to permanence as Fay Lo Po rightly points out, but they also have a right to their identity – sometimes these rights conflict. The issue of identity is also a reality that sometimes confronts those who seek to impose permanence.

Anyone who has worked in child welfare and particularly in adoptions/long-term foster care, knows about the power and persistence of family and cultural identity and the self-concepts that children bring with them into care. So often a child chooses to return to an apparently abusive and neglectful home, valuing the family identification more than the alternative comforts and physical security available to them. How many apparently settled young people talk about their sense of incompleteness and the need to find who they are and where they came from? How many jettison families and success at school in an apparent attempt to become like, and perhaps to join with, their imagined mothers or fathers?

I don't say this to discourage those who are committed to the care and support of these children/young people – we know that many will successfully negotiate this troubling phase of searching and adolescent turmoil, and that some who leave will eventually reconcile with their adoptive parents. But we always have to go gently and with patience whenever we look at providing children with a new start. The issue of rights, such as the right to permanence, is only one part of a complex puzzle – one for which there is often no legislative solution.

When we talk about permanence, rights, identity and other considerations, we are talking about policies that affect real people – particularly young people. My mind goes back to a 14-year-old girl who was placed in my former agency after the sudden and tragic (in my view) breakdown of her long-term foster placement. She wrote this wonderfully expressive poem encapsulating her early memories of abuse, the healing gift of her foster home, the breakdown and her hope for the future. It expresses the tension she experienced in knowing how beneficial the foster home had been for her, but also how she had grown increasingly uncomfortable. She suggests that the kindness she experienced created a sense of dissonance with her self-image and where she felt she belonged. Fortunately, she also had a sense of hope and an appreciation that, with time, her life would be transformed from 'ugliness' to 'beauty'.

## THE BLUE ORCHID

The wind blew through the tears on my petals.  
 Trying to stand tall with a break in my stem  
 The pain was vicious, but soon would all end  
 as the warmth of the sun surrounded me.  
 My stem and life started to mend  
 My tears dried and with a smile I lifted my  
 Face upwards.  
 Soon the sun got too hot and I shrivelled in its glare  
 Colourless, drab, lost in a field of beauty,  
 My time was not yet!  
 But change was there and slowly and gently  
 The magic wove its spell  
 Transformed from the ugliness of the past  
 I bloomed  
 For a blue Orchid is rare and slow to grow  
 But its beauty is eternal.  
 L.H.

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## What the research tells us

### Permanency planning, adoption and foster care

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The difficulties children and young people experience in out-of-home care have been well documented in numerous research and inquiry reports and are common to the welfare systems in Australia, Britain and North America. They include:

- the problems children and young people have in maintaining or forming relationships with their carers, their family, and peers;

- having any chance to participate or even be informed about the decisions that are made about their lives;
- emotional and behavioural problems;
- poor educational outcomes, and
- poor physical and mental health.

Many also feel stigmatised because they are in care, and in the worst case, some also suffer abuse at the hands of their carers. When they are discharged to

independent living at 16 or 18, they often gain little or inadequate assistance although this move generally occurs several years before their more advantaged peers move out of home. Their situation on leaving care highlights the overall situation for children and young people in care; although the inadequacy or abusiveness of the parenting that precipitated their entry into care renders them more in need of support and a secure, stable