

INTRODUCTION

Adoption, fostering, permanent care and beyond

Re-thinking policy and practice on out-of-home care for children in Australia

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BACKGROUND AND CONTEXT FOR OUT-OF-HOME CARE

The papers published in this special issue of *Children Australia* were originally presented at a two day symposium held in Melbourne on 26 and 27 November 2009. The symposium, *Adoption, fostering, permanent care and beyond: Re-thinking policy and practice on out-of-home care for children in Australia*, was jointly convened by the Department of Human Services (DHS), Victoria and the School of Political and Social Inquiry at Monash University in conjunction with the History of Adoption in Australia project (Monash University 2009).

The event was a partnership between professionals working in this area and university researchers. Each group brought different perspectives and imperatives to the table. For DHS and the sector, the immediate frame of the symposium was the major policy statement *Directions for out-of-home care*, announced in May 2009 by the Victorian Minister for Community Services after consultation with community service organisations and young people living in care (DHS 2009a). It announces a framework for change which incorporates action on seven fronts or 'reform directions'. These are to support children to remain at home with their families; to provide a better choice of care placement; to promote wellbeing; to prepare young people who are leaving care to make the transition into adult life; to improve the education of children in care; to develop effective and culturally appropriate responses to the high numbers of Aboriginal children in our care; and to create a child-focused system and processes (DHS 2009a). The driving principle informing the reforms is to ensure that policy and service provision are centred on the needs and interests of children and young people, and to ensure that young people are consulted as to what their needs are (rather than assumptions being made by adults as to their needs).

These reforms are framed by the *every child, every chance* program, which works to embed the Government's commitment to child-centred approaches within legislation, policy, practice and the training and support of workers in

the sector. Initiated in 2005, the *every child, every chance* commitment has driven the process of legislative reform which saw the development of the Children's Bill and the subsequent passage through the Victorian Parliament of the *Children, Youth and Families Act 2005*, the *Child Wellbeing and Safety Act 2005*, and the *Children, Youth and Families Regulations 2007*. Further developments under this umbrella include the formulation of the *Charter for children in out-of-home care* (DHS 2009b), which gives further weight to the commitment to child-centred service provision.

Other initiatives directed to securing better outcomes for children in care include a major review of the provision and supports for kinship care undertaken in 2007. Community consultation was informed by an issues paper outlining what is known from the research literature about the benefits of kinship care, where it is indicated, and the supports required for its optimal functioning (DHS 2007). This led in 2009 to the announcement of enhanced support for kinship care across Victoria, with 19 new programs to be rolled out in two stages, commencing March 2010.

On any measure, the programs and initiatives outlined here represent a high level of legislative and policy development centred on the needs and rights of children and young people who find themselves in out-of-home care of various kinds. The statements on policy and service provision as outlined in *Directions for out-of-home care* and the *Charter for children in out-of-home care* appear to enshrine a thorough commitment to the needs of children as a priority of policy and practice. Resources prepared for workers in the field, such as the *Leading Practice* resource guide (Gibbs et al. 2010), recognise that workers across the sector need training and support to engage in the informed and reflective practice required to achieve child-focused policy and service provision.

Yet, amongst professionals in this sector, from both government and community, persistent questions remain. Do we fully understand how the needs of children and young people in out-of-home care can be translated into policy and practice? Can we be confident that the present needs for

security and stability of vulnerable children are being appropriately balanced with their longer term needs for connectedness, belonging and identity? Are we confident of what we mean by the 'best interests of the child', especially when we look to history and find that many of those responsible for past, discredited practices genuinely believed that they were working in the best interests of the children into whose lives they intervened, with disastrous consequences for many?

The academic group sharpened the critical perspective of the symposium, working to bring historical context and historical understanding to the analysis of current events, and to see things which we might otherwise take for granted as being historically situated and subject to change. There were many occasions on which received understandings and practices were subjected to challenge and scrutiny – and not only by historians.

Perhaps the strongest expression of the need for those working with vulnerable children always to be aware of the presence of history, and their part in making it, came with George Habib's reflection during the first day of our proceedings that we must be in the business of making policy and engaging in practice which is not only the best policy and practice for now, but will prove to have been the best when reviewed in 20 or 30 years time. Services for children need to encompass the present child and the future adult. As the lessons of the Stolen Generations and Forgotten Australians have painfully taught us, the children we deal with today will live with these decisions for many years into the future.

THE SYMPOSIUM

The event was held over two days, the first of which comprised a series of formal presentations from a range of speakers providing critical and historical perspectives on ideas and principles underpinning present policy and practice. The papers published here were presented in this part of the program. The second day commenced with a keynote address by Robyn Miller (DHS), 'Practice dilemmas in securing stability for children: What is in the child's best interests?' Miller used a series of case studies to highlight the practical dilemmas facing workers dealing with children, their families and their carers in securing stability and negotiating other priorities such as the need for contact with families. Miller's paper provided a strong practitioner focus for the small group discussions which followed, considering particular challenges and impediments in the provision of services for children and young people in need of out-of-home care.

The second day concluded with the formulation of a set of recommendations for future action. These covered a number of issues directed at the provision of better services for children in out-of-home care arrangements of various kinds,

including a commitment to explore a 'one door' approach to the recruitment and training of carers, along the lines of the New Zealand program outlined by Debbie Sturmfels. Other resolutions pointed to the need for a better educated and better supported workforce in this area. This would entail better communication between the sector and universities with respect to undergraduate and postgraduate curricula which are more appropriately focused on the needs of children in out-of-home care situations; and partnerships between the sector and educational institutions in the development and provision of on-going professional development. The full set of recommendations generated at the symposium is currently under discussion within the Department of Human Services.

PAPERS IN THIS SPECIAL ISSUE

The essays collected in this volume represent a selection of those presented to the symposium. Regrettably several speakers were not in a position to rework their presentations into full written papers for publication. Hence we are not able to publish papers from Aligiri Alisandratos, George Habib, and Robyn Miller. While the absence of these papers is a loss, the proceedings published here nonetheless reflect the diversity of perspectives presented at the symposium, with practitioners from a range of government and community programs in Victoria and New Zealand, and academics from the disciplines of history and sociology, as well as social work.

The strong historical focus in papers by Cuthbert, Musgrove and Swain, and Quartly reflect the preoccupations of *The Search for Family: The History of Adoption in Australia* research project, which investigates the outcomes of past adoption policy and practice and seeks to translate these findings to the contemporary policy domain. It is unusual to find a group of historians presenting at a conference with a strong focus on contemporary policy. However, as Cuthbert argues in her paper 'Beyond apologies: Historical reflections on policy and practice relating to the out-of-home care of children in contemporary Australia', there are few fields more dogged by the tragic legacy of past policy and practice than those of child protection and the out-of-home care of Australian children. Since the mid-1990s the Human Rights and Equal Opportunity Commission's (1997) inquiry into the forced removal of Indigenous children has been followed by a series of reports into other episodes in the sorry history of child removal in Australia. The nation has had to confront revelations of the damage done to individuals and families through the intervention of the state and its agents into the lives of children and families, through removal, adoption, institutionalisation and other forms of statutory care. Developing policy and delivering services for vulnerable children in contemporary Australia necessarily means engaging at some level with this historical legacy. As Cuthbert suggests, for us as a community to move beyond

this history of policy and practice related to vulnerable children and their families, we need both a critically reflective and an historically-situated framework for policy and service delivery.

Contributions towards that framework were offered by Marian Quartly in her paper, 'The rights of the child in global perspective' and Nell Musgrove and Shurlee Swain in their paper, 'The "best interests of the child": Historical perspectives'. Quartly's paper provides the historical context for the emergence of the concept of the rights of the child and a critical framework for viewing this concept – and its necessary limitations and contradictions. The concept of the child as a rights bearing individual is, as Quartly argues, necessarily flawed or limited by the consideration that children, as such, are rarely in a position to claim or defend their rights. Focusing on the central 'right' as defined by the United Nations Convention on the Rights of the Child (1989) that 'the child ... should grow up in a family environment, in an atmosphere of happiness, love, and understanding', Quartly usefully points to the inherent contradiction between the child imagined as a rights-bearing individual and the child imagined as in need of protection, by the family and, if necessary, by the state.

Musgrove and Swain chart the emergence of the 'best interests' principle, now enshrined in Victorian law (Children, Youth and Families Act 2005). They argue that in contrast with present policy considerations, in the mid-nineteenth century Australian responses to children in need were significantly influenced by the belief that such children posed a threat to society. Musgrove and Swain then survey the local and international influences which have directed child welfare practice and policy towards a philosophy in which the wellbeing of the child is central. They suggest that the concept of the child's personal welfare (as distinct from the earlier concern with the safeguarding of society from the threat posed by unruly children) influenced the understandings of welfare officials long before the term 'best interests' was widely employed. However, they suggest that the transition in thought to a welfare model, as distinct from a law and order model, did not necessarily correlate with marked improvements in the outcomes for children within the welfare system.

In their presentation 'Human rights as social investment for Indigenous children and families: Putting history, culture and self-determination back into the equation', Muriel Bamblett and Peter Lewis of the Victorian Aboriginal Child Care Agency provide an indigenous interpretation of the 'best interests' framework. Bamblett and Lewis argue that when assessing, planning and addressing the needs and interests of the child, due consideration must be given to the cultural identity of the child. For Koorie children it is critical that culture and connection to community are maintained so that their safety, stability and developmental needs are addressed appropriately.

While the notions of home and homeplace are central in the processes of healing Indigenous people removed from their families and their communities, as outlined in the report of the Human Rights and Equal Opportunity Commission's inquiry into the Indigenous Stolen Generations, *Bringing Them Home* (1997), home as the place of belonging is also important to a range of other people removed from their families as children and placed in care. In their paper, Jenny Higgins and Lynette Buoy from the Centre for Excellence in Child and Family Welfare examine data on the generally negative outcomes for children in out-of-home care and argue for greater supports for children and young people to remain at home and with their families.

Another perspective on the multiple practice dilemmas which those working with vulnerable children and their families confront is provided by Annette Jackson, from the Take Two program at Berry Street, in her paper 'Stability: The dilemmas of providing a secure base for children who are on very shaky ground'. The particular dilemma tackled by Jackson concerns whether (and at what point and under what conditions) re-unification or permanent care is the best way to achieve security and stability and to address the best interests of children at-risk. As Jackson's paper demonstrates, while reunification with family of origin and permanent care are often posited as binary opposites, the decision which faces professionals working with children is rarely a simple either/or option. Rather it involves complex factors in both the decision-making and the implementation of the decision. These factors include the basis and process for decisions; the importance of timing (for the child, the parents, the carer/s, the service and legal systems); how to meet the child's heightened developmental needs before, during and following this process; the importance of identity; and the level and type of real-life support needed on the ground. It is also about the relationships needed to provide children with the foundation of a secure base and a safe haven, so they can learn that adults provide comfort, safety and a base upon which they can learn to explore the world.

In arguing for more proactive and child-oriented policy, Max Liddell, in his paper 'If child-centred policy is the answer, what's the question?', also suggests that in developing such policy we may run the risk of oversimplifying what is required. Drawing on a combination of current events, international developments and research, Max argues that child-oriented, or family-oriented, or community-oriented policies need to predict future issues, rather than only addressing current deficiencies.

Susan Smith and Debbie Sturmfels' paper, 'One Door: A unified approach for caregivers', turns attention to the recruitment, assessment and training of carers. These authors from Child, Youth and Family in New Zealand report on an innovative approach which fundamentally 'rethinks' the out-of-home care provision for New Zealand children. As Smith

and Sturmfels write, New Zealand (like Victoria) currently operates different entry pathways for people wishing to adopt, foster or offer permanent care for a child. In this paper, they outline the work now underway to develop a unified application, preparation, assessment, training and support system for applicants wishing to care for a child, whether by adoption, guardianship or as a transitional (foster) caregiver. Placing the child at the centre, One Door uses a framework comprised of six core attributes for parenting a child not born to you: safety; attachment; resilience; identity; integrity; and support. Sturmfels' presentation made a great impact on all participants and this paper makes a valuable contribution to Australian deliberations on enhancing out-of-home care provision for children in need.

Anticipating and informing group discussion of the inadequacy of the Children's Court processes for dealing with children's care issues which occupied time on the second day of the symposium, Ferdinand Zito's paper, 'The child's best interests ... or near enough? A lawyer's perspective', draws on his experience representing children in the courts. For Zito, a central question of concern – which resonated with many participants in the symposium – is the degree to which a fundamentally adversarial court system can ever adequately address children's interests as a paramount concern. For Zito, the phrase 'best interests of the child' is often no more than rhetoric evoking an obscure legal concept incapable of precise application. Nevertheless, it remains perhaps the most important standard to be applied when attempting to determine what might be the interests of children at law. But there is much ambiguity in the meaning of the phrase and uncertainty in the application of this principle and the standard it presumes to impose. Not surprisingly, many questions remain unanswered. Firstly, what exactly is the *paramount* status of the best interests standard? Secondly, in deciding the best interests of the child, does the ultimate responsibility lie with the judge or does it require some judicial deference to community values, as presumably expressed in the legislation? Lastly, does the standard, as it stands today, run the risk of being so general that its application can easily be distorted? Echoing the contradiction noted by Quarty in her consideration of children's rights, Zito argues that as children themselves generally do not make applications to the court, their

interests inevitably will be dependent on those of *other* parties, such as parents and the various professionals who assist them. As long as these principles are sought to be upheld in a system which is philosophically and practically adversarial, our ability to promote, maintain and protect the best interests of children will be inhibited. The question this raises for all concerned is a troubling one – is near enough good enough, or is it just the *best* we can do?

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