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'Permanent' Care: Is the Story in the Data?

Cathy Humphreys
Department of Social Work, University of Melbourne. E-mail: cathy.humphreys@unimelb.edu.au

Planning for 'permanency' or a 'family for life' has been an aspiration for many children in the out-of-home care system who are unable to return to live with their parents. It is a concept derived from research, which indicates that children who 'drift in care' have generally poorer outcomes than those who find at least a more stable, if not 'permanent', home. This article examines the Australian Institute of Health and Welfare [AIHW] data that reports publicly on child protection and children in out-of-home care to find evidence about how Australian children in out-of-home care are faring against this dimension of the care experience. Little can be said on the basis of this data. The article is written as a 'think piece' to raise questions about why, if such a dimension of the care experience is considered important for a significant group of children, the data is so opaque.

■ **Keywords:** permanent care, adoption, guardianship, foster care

The numbers of children entering and staying in care has been increasing exponentially. Currently, 37,730 are living in out-of-home care in Australia (Australian Institute of Health and Welfare [AIHW], 2011). The numbers of Australian children with experiences of living in kinship care, foster care, permanent care and residential care are, therefore, significant.

Paradoxically, at the same time as the number of children staying in out-of-home care is increasing, attention is being drawn to the poor outcomes for many young people leaving care. The poor education and vocational outcomes (Pecora et al., 2009; Wise, Pollack, Mitchell, Argus, & Farquhar, 2010), the numbers with significant behavioural, substance use and mental health problems (Baidawi & Mendes, 2010; Barber & Delfabbro, 2005), those who are moving from out-of-home care to homelessness (Stein, 2006), and the number of care leavers who populate our jails (Tweddle, 2007) provide cause for thought about the ways in which current policy and practice may fail these young people. That said, there is clearly also a group of young people who do well through their care experience (Barber & Delfabbro, 2005; Cashmore & Paxman, 2007; Fernandez, 2008). However, a focus on strengthening the response to young people leaving care has been a necessary, and an important reaction to this worrying data (McDowall, 2009). The data raise questions not only about the 'leaving care' experience, but also the policy and practices *within* care for children and young people.

One of many issues is whether too many young people are 'drifting in care' with too little attention to securing a 'family for life'; this and other issues may be contributing to poor outcomes when they leave care. This article is written as a 'think piece' raising more questions than it answers about the positioning of 'permanent care' in Australia. In particular, it focuses on our Australian data about 'permanent care' and what we can say, or not, on the basis of this data. For instance, do we have any understanding of how many young people in Australia who enter the out-of-home care system and are then unable to return to their birth family, find an alternative 'family for life', or, at least, find a 'permanent' family until they are 18 years of age?

'Drifting in Care'

An initial discussion is needed about 'permanency' planning for children and young people entering the out-of-home care system. 'Permanency' is placed in inverted commas throughout this article in recognition that it is an aspirational position, akin in some ways to marriage as a 'forever' relationship, while recognising that 30% of marriages in Australia end in divorce (Jain, 2007). Nevertheless, the significance of actively planning to secure long-term relationships for children coming into care is derived from the research in the area, and the problems associated with 'drift in care'. This phrase, first coined by Hartley (1984), refers to children who have no firm plans developed for their future. It is a concern that continues (Sinclair, Baker, Lee, & Gibbs, 2007; Tilbury & Osmond, 2006), but where the answers are far from straightforward.

Many children entering out-of-home care have appropriately short-term placements and then return home permanently (Barber & Delfabbro, 2005; Sinclair et al., 2007). There is also a group of children who are strongly attached to their birth families, may not be able to live at home, and permanent placement with another family with full guardianship rights is not appropriate. This is particularly the case for children coming into care late, or as adolescents (Sinclair et al., 2007). For other children, finding a placement that appropriately supports their cultural identity and relationships may provide major challenges (Cunneen & Libesman, 2000). However, unless these cultural and relational supports are taken into account, children may have poor outcomes, particularly those who come late into care (Moffatt & Thoburn, 2001).

The review of the literature by Tilbury and Osmond (2006) highlights the complexity of 'permanency' drawing out three different aspects: (a) *physical* (safe, stable living environments); (b) *relational* (stable, unconditional emotional connections); (c) *legal* (officially determined by the child welfare system; p. 167).

In the out-of-home care sector, placement stability is particularly important, potentially strengthened by physical, relational and legal supports. The data on the stability of children in care shows a significant relationship between the number of unplanned placement moves and elevated psychosocial and behavioural problems, and health and wellbeing (Osborn & Delfabbro, 2006; Sinclair et al., 2007). Over time, it appears that a group of children experiencing these moves become increasingly disrupted and disruptive, developing behavioural problems that can lead to further placement breakdown (Stanley, Riordan, & Alaszewski, 2005).

However, it has also been pointed out that it may not be the 'in care' experience that is responsible for placement instability. Children who move through many placements frequently come into care suffering the effects of abuse and neglect often demonstrated by highly problematic behaviour, emotional and attachment difficulties. Children entering care at an earlier age are generally showing much better outcomes having not suffered the effects of long-term abuse and neglect (Osborn, Delfabbro, & Barber, 2008; Sinclair et al., 2007).

Related to this issue are children showing poor results from failed attempts at reunification (which is one 'permanency' planning option). Sinclair et al. (2007) suggest from their United Kingdom (UK) data that failed reunification attempts appear to result in children who join the group of children who are 'unstable', moving through many placements with poor wellbeing outcomes. There is little accessible Australian data in this area. It is an area in which there may be policy problems in some state contexts in Australia. For instance, Victorian data derived from 1,800 children in care showed 48% had at least one attempt at reunification; 38% of these were unsuccessful and children returned to care (Department of Human Services [DHS], 2003). A further study of children attending counselling with the specialist out-of-home care service (Take Two), and therefore a sample weighted towards children with troubled behaviour, showed that of 847 children, 62% had at least one reunification attempt of which 92% were removed again. A small number had more than five reunification attempts (Frederico, Jackson, & Black, 2010). The data from South Australia suggest 50% of children reunified with their families were subject to a further child protection notification (Osborn & Delfabbro, 2006).

The arena of 'permanency planning' is clearly complex. A UK synthesis of research suggests the following principles for vulnerable children in the child protection system:

- early 'permanency' where appropriate
- stability where permanency is not possible
- early family support for children on 'the cusp' of care or where reunification is in their best interests (Hannon, Wood, & Bazalgette, 2010, p. 46).

It is with these principles in mind that some of the Australian data about permanency orders (the legal realm of 'permanency') are explored.

Adoption in Australia

The first area in which a naive observer might look for issues of 'permanency' would be within the Australian adoption data (AIHW, 2010). A glance would show that 'we don't do adoption in Australia' for children in out-of-home care. There is some intercountry adoption, which constitutes 54% of only 412 children adopted in Australia in 2009–10. There remains a group of children adopted by 'known' adopters ($n = 129$), most of whom are step-parents (57%), though there are also other family members and a small group of permanent foster carers in this group. There is also a category of 'local' adoption, which is a small group of young children adopted by people not previously known to them ($n = 61$). It would appear (though it is unclear) that few of these local adoptions are children placed via the child protection system. These adoption figures are the lowest number on record and represent a trend in which there has been a 21-fold decrease in adoptions since 8,542 adoptions in 1972–73. Almost all the decline in numbers (96%) occurred between 1972–73 and 1992–93 (AIHW, 2010, p. 38).

There could be many reasons for the decline in adoptions in Australia. The AIHW (2010) posits that it relates to the rise in successful family planning and many more single mothers keeping their babies as the community attitudes to 'unmarried mothers' change. Other commentary and research is also available (Conrick & Brown, 2010). However, in other countries with similar attitudes, the adoption rate is different. In the UK, there was an average rate of 5.5% adoptions of children in placements at the time a census of 13 councils was taken (Sinclair et al., 2007), while the rate in the United States (US) is 21% (U.S. Department of Human Services, 2010). In Australia, drawing from the 'known'

category of adoption, there appears to be 53 adoptions by foster carers constituting 0.1% of the out-of-home care population in 2010. There may also be a very small number of kinship carers or 'local adoptions' through which children were coming into adoption via the child protection system. However, this is not possible to ascertain from the data.

Explanations for such a difference are speculative. The emerging stories of 'relinquishing mothers' and the virtual 'baby industry' through which infertile, generally (though not exclusively) middle class couples were provided with babies by unmarried mothers is a shaming Australian cultural story (Howarth, 2010; Swain & Howe, 1995). The mores of the time provided support for such practices, which included the severing of any relationship between baby and birth mother and father. The result has been many children and their birth mothers and fathers spending decades searching for each other.

The shadow of the Stolen Generation and government policies in the 1950s and early 1960s that supported the adoption of Aboriginal children by white families must also play a part in the current cultural attitude to adoption. Aboriginal children, particularly those with a white father, were taken (often forcibly) from their parents and placed in state care. Many of these Aboriginal children were then adopted into white families (Human Rights and Equal Opportunity Commission [HREOC], 2000). Research in Western Australia suggests that the trauma of such a policy continues to show in the intergenerational patterns of mental health problems. Children whose families reported members being forcibly removed show two to three times the social and emotional problems of those who were not removed (Stanley, 2011, p. 102). The fact that such actions by the state were rationalised as being in 'the best interests of the child' and that a destructive policy was valorised through the mainstream mores of the time does little to assuage current concerns. In fact, it may well contribute to the continued wariness of adoption in the Australian context.

Out-of-Home Care Data on 'Permanency'

Notwithstanding the fact that virtually all Australian adoption is now 'open' (92% of local and 'known' adoption), Australia has not chosen to actively support 'permanent' care through adoption for children coming into out-of-home care except in a tiny minority of cases. Turning to other forms of 'families for life' for Australian children and young people in out-of-home care requires exploration of other child protection orders. Here I would like to forewarn the reader that the following section relates to data that is rather opaque, but I will endeavour to navigate the way through the complexities it reveals.

The Victorian Permanent Care Order

An obvious place to begin the search lies with the clearly named and long-standing Victorian permanent care order. However, an initial search of the AIHW report on child protection in which out-of-home care data are reported states: 'In Victoria, the Permanent Care Order was introduced in 1996–97 and is included in this data collection in the category 'guardianship and custody orders' (AIHW, 2011, p. 104).

This is not a statement that leads to a great deal of confidence in the data, given that the order was introduced in 1992. However, it also means that it is not possible in the reporting table of this data (see Table 3.5, AIHW, p. 38) to establish how many children are on the Victorian permanent care order, given that all orders for guardianship and custody are subsumed in this category.

However, turning to the AIHW Adoption Report (2010) it is possible to find more detailed reporting on the Victorian permanent care order. The reporting begins from 1992 when 11 orders were granted, and continues to 2011 when 199 orders were granted. While the data show that 2,685 orders have been granted since 1992, it is not possible to ascertain from either of the AIHW reports the proportion of Victoria's current 5,469 children in out-of-home care who are on permanent care orders.

Moreover, the Victorian permanent care order does not appear to differ greatly (if at all) from 'finalised third party parental responsibility orders' seen in some other states. The order does not change the legal status of the child; they expire when the child turns 18 or marries, and there is provision to revoke or amend the permanent care order (AIHW, 2010). The caregiver payment to the carer is also continued. Given these characteristics of the order, it is difficult to ascertain why it is reported in the AIHW Adoption Report.

Finalised Third Party Parental Responsibility Orders

In 2007, an audit of different state 'permanency arrangements' in Australia was undertaken by Dr Deb Absler and myself with assistance from Absler, O'Neill and Humphreys (2008). A template of questions was designed to assist in establishing some comparative data between states. However, while the report of the data was returned to each of the states that had been involved, the data was never published externally. Many states were in the process of introducing new orders or changing legislation and policy, and the data between states did not appear to be comparable. Both Western Australia and the Australian Capital Territory reporting on data in 2005/06 stated that they were introducing an enduring parental responsibility order and could report only 2 and 1 children respectively on the order. Other states such as Tasmania made statements such as: 'Given the absence of permanent care orders, it is not possible to provide the data requested' (Absler, O'Neill and Humphreys, 2008, p. 12).

The definition of 'permanent care' was also clearly problematic. For example, Queensland reported in 2005/06 that there were 295 children on long-term guardianship to a suitable person (family member) or long-term guardianship to a nonfamily member nominated by the chief executive of the Queensland Department of Child Safety. However, the

departmental representative also made the following observation about children not in kinship placements:

> Note however, that this isn't necessarily a permanent placement — it could include children admitted to a long-term order placed in a short-term placement while a long-term placement is found. So these figures are likely to represent the upper end (Absler, O'Neill and Humphreys, 2008, p. 11).

The Tasmanian Department of Child and Family Services representative also made the following comment:

> Although the Court can place the child under the guardianship of a person or persons other than the Secretary, such an order lacks the general intent of a permanent care order that exists in some jurisdictions. In particular, the order may be varied or revoked by the Court at any time on the application of a person who was a party to the application for the order. Furthermore, the arrangements for the care and protection of a child under a care and protection order must be reviewed via a family group conference at the request of two or more members of the child's family (Absler, O'Neill and Humphreys, 2008, p. 7).

The data from an internally circulated research report are presented to highlight the fact that 'finalised third party parental responsibility orders' reported by the AIHW (2011) may not necessarily reflect similar orders between states. The AIHW defines the orders in this category as:

> Third-party parental responsibility orders transfer all duties, powers, responsibilities and authority that parents are entitled to by law to a nominated person(s) considered appropriate by the court. The nominated person may be an individual such as a relative or an officer of the state or territory department. Third-party parental responsibility may be ordered in the event that a parent is unable to care for a child and, as such, parental responsibility is transferred to a relative. 'Permanent care orders' are an example of a third-party parental responsibility order and involve transfer of guardianship to a third-party carer. It can also be applied to the achievement of a stable arrangement under a long-term guardianship order to 18 years without guardianships being transferred to a third party. These orders are only applicable in some jurisdictions (AIHW, 2011, p. 31).

The definition indicates that this is a very broad category, yet it is possibly the closest reporting Australia has about children and young people with a 'long-term family' when they are in out-of-home care. However, Victoria does not report its permanent care order under this category, and the category also reports children in which the 'third party' can be a state officer and hence far from 'permanent' in terms of linking a child to a 'permanent' family.

The AIHW (2011) also states that: 'Western Australia, Queensland and South Australia are the other jurisdictions that are able to report children on orders where guardianship and custody (or parental responsibility) is permanently transferred to a third party' (AIHW, 2011, p. 104).

However, it is unclear if only three states can report on third party responsibility orders (not including Victoria which could, but does not), what the line of reporting in Table 3.8 on 'finalised third party parental responsibility orders' of the AIHW data means, given that five states and territories report data in this category. Frankly, the data are confused and, one can only assume, provided to the AIHW under categories in which the definitions lack clarity.

Discussion and Concluding Comments

The question arises as to whether this attention to the AIHW reporting data is simply academic, or whether the opaque data provides a window into attitudes to 'permanency' for children in the care system. It is frequently suggested that we only 'change what we can measure' and possibly this messy data may indicate lack of attention to 'permanent' arrangements. The data *suggest* that out of the total 37,730 out-of-home care placements for children in Australia, only a small proportion involve long-term 'permanent' care orders (of some description) that link a child to a family. However, this is merely a suggested trend rather than a statement that can be verified from the current public reporting.

There are clearly some problems with definitions. Each state has their own set of orders for children in care, which creates myriad orders across eight states and territories. Australia's current reporting definitions of guardianship or custody orders as well as third party parental responsibility orders are clearly inadequate for understanding the differences in these categories. Children under permanent care orders, as well as guardianship to 18 years to a designated person with parental responsibility (not an officer of the DHS), could be reported together, and need to be separated from orders through which short-term fostering occurs.

Other definitional issues may also be of significance. These include (a) the ease or difficulty in revoking 'permanent' or long-term guardianship orders; (b) the regularity of review (if any); (c) the extent of day-to-day decision-making; and (d) the extent to which major decisions rest with the carer or government officer. Other features, which may also be different between 'permanent care orders', are (a) the regularity and frequency of contact with the child's family members; (b) the extent of case management; and (c) the extent of support offered. These are all issues that may differentiate the different orders between states, and the extent to which the child and carers experience the placement as 'a family for life' or at least a family with stability until the young person reaches 18 years and beyond. These latter issues may not be able to be reported under the AIHW data. However, they are issues relevant to discussions of 'permanency' in which state reporting could be more transparent and available for comparison.

The problems with definition, however, may not be the only issue at stake. Sonia Jackson (2006) makes the following observation of the care system:

> A tension that runs right through the history of child care is between the aim of protecting children and young people from ill-treatment and undesirable influences and the ideal

> of family preservation and reunification. Sometimes the first objective is uppermost, sometimes the second, in a process that has often been likened to the swing of a pendulum. (Jackson as cited in Hannon et al., 2010, p. 43)

In Australia, the adoption data suggest that there is enormous discomfort about extinguishing parental rights through the adoption process, even though 'open adoption' through which children know their birth parents and have contact is the norm in the small numbers of adoption cases that occur. It appears however, that the pendulum swing is such that there may not yet be enough serious attention given to alternative 'permanent' arrangements for those children in care who are unable to return home. At least 'permanency' is not a story that can be told from the current state by state Australian reporting data.

There is a final coda to the Australian 'permanency' data story. It was mentioned earlier that Tilbury and Osmond (2006) suggest that there are different aspects to 'permanency': physical safety, enduring relationships, and legal arrangements. This article has focused on legal arrangements. However, other aspects of 'permanency', in particular enduring emotional relationships, are of great significance. Currently, the 'permanency' orders for children in most states involve loss of entitlement to ongoing support for matters such as education, counselling, health, and dental care. It is possible that some carers may be making decisions to stay on 'less permanent' orders to secure on-going benefits for the children in their care, many of whom have special on-going physical and emotional needs. Kinship carers, in particular, are often in serious financial hardship carrying many health problems themselves (Farmer, 2010). There are serious disincentives for 'permanent care' in most states.

Strengthening legal certainties for the most vulnerable children in the society, and making this visible in the data, is an accountability measure, which would have a goal of strengthening practice. However, it would be distorting, not to mention deleterious to children's wellbeing, if families who are strongly committed to children in their care are pressured into more legally enduring orders and, in the process, lose the child's entitlement to health, mental health and education benefits. This is an issue that will continue to distort the 'permanency' arrangements in Australia until better resolutions are found. In a 'think piece' about 'permanency' planning, these issues suggest that no strong and uncomplicated stance can be taken about 'permanent orders'. However, a good starting point for change is always to have transparency in the data so that a clearer understanding of the complex range of issues can emerge.

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