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INDIGENISING

INDIGENOUS CHILD WELFARE

by Terri Libesman

INTRODUCTION

Indigenous children remain significantly overrepresented in all child protection departments in Australia.[1] Systemic problems which are closely tied to the history and current legacy of colonial relations between Aboriginal and Torres Strait Islander peoples and mainstream communities underpin this overrepresentation.[2] One of the most destructive colonial policies, which has particular significance for child welfare departments, was the forced and unjustified removal of Indigenous children from their families.[3] The trauma of this and other colonial policies is experienced intergenerationally by Indigenous communities.

This trauma is often compounded by current traumatic experiences including violence, sexual abuse and substance abuse both experienced and witnessed by many Indigenous children.[4] Over the past year considerable publicity has focused on child sexual abuse in Aboriginal communities, particularly after the revelations of a public prosecutor, Nanette Rogers, in the Northern Territory ('NT').[5] While these 'revelations' shocked many, the issues have been raised over a considerable period of time, often by Indigenous communities, with few effective responses.[6]

In Australia, Indigenous children are more likely to come into contact with child welfare departments as a result of neglect than abuse.[7] Neglect is directly tied to poverty. Poverty and marginalisation from the mainstream economy is also a legacy of colonial relations. If child protection legislation is to be effective it needs to facilitate policy which addresses the underlying causes of Indigenous children's overrepresentation in child protection systems.

WHAT NEEDS TO CHANGE?

It has been recognised that delivery of children's services by government departments in Australia has not provided effective outcomes for Indigenous children and families.[8] It has also been recognised that a case-based focus, that is, looking at each child's situation in isolation from the broader community issues, has not been successful.[9]

Many Indigenous communities have to struggle to maintain their cultural authority and the laws and traditions which sustain it. In a minority of these communities all law and order has broken down. The rule of law is a central tenet of the Australian legal system which fosters stability and security for many Australian children. It is founded on two principles, the first that law-making powers are not exercised arbitrarily and the second, that laws sustain a normative order and thereby law and order in a community. Australian Indigenous communities have been, and continue to be, denied the rule of law.[10]

The arbitrary exercise of powers at the most intimate level of Indigenous community life – the family – has been well documented.[11] The active suppression of Indigenous languages, laws and culture has also been extensively documented.[12] This denial of the laws and cultural norms which define appropriate conduct goes to the heart of the anomie, or social vacuum, which is faced by some Indigenous communities. If the underlying causes of violence and child abuse experienced in some Indigenous families and communities are to be addressed, then support for the culture, laws and traditions which nurture and provide order and stability in communities is needed.

Two of the deepest impacts of the colonial experience have been policies of explicit suppression of Indigenous laws and norms and their replacement with Anglo systems.[13] The second is the introduction of the worst of western culture, including drugs and pornography, into many communities already suffering dispossession and loss.[14] These impacts need to be addressed by supporting and harnessing Indigenous community capacity and by fostering contemporary Indigenous law and order. This requires a fundamental change in the way non-Indigenous organisations and welfare departments work with Indigenous communities and would provide the foundation from which collaborative efforts to address Indigenous children's wellbeing could be grounded.

SELF-DETERMINATION

Effective child protection requires implementation of principles of self-determination which, in turn, necessitates collaboration between Indigenous communities and organisations and non-Indigenous institutions, including child welfare departments. An Indigenous understanding needs to permeate all aspects of legislation, service design and delivery. While measures such as the inclusion of Indigenous staff in mainstream systems do improve these systems, such improvements are within a framework which is not attuned to addressing the structural or underlying needs of communities. Fundamental improvement requires acknowledging and facilitating community capacity to make and implement policy and programs which address individual and community child protection needs and, more broadly, requirements with respect to Indigenous children's wellbeing.

This capacity is not something that can be encapsulated in rhetoric, nor can it be implemented with a provision in legislation. What is necessary is an integrated approach to addressing individual and community trauma, building community capacity with a particular focus on children and families, and establishing processes and legislative structures for transferring responsibility, including resources, to community agencies. A model which can provide guidance is the Aboriginal Justice Inquiry – Child Welfare Initiative negotiations which have resulted in the Province, First Nations peoples and Métis peoples sharing jurisdiction over child welfare in Manitoba, Canada. This initiative provides an example of reform seriously committed to improving Indigenous children's wellbeing.[15]

AUSTRALIAN CHILD WELFARE LEGISLATION

There have been legislative and policy reforms in child welfare in Australia which acknowledge the importance of Indigenous identity.[16] There is a principle, Australia-wide, which requires the placement of Indigenous children for whom out of home care is necessary, with their extended family, community or another Indigenous family unless such placement is not reasonably practical.[17] In a number of jurisdictions there are legislative provisions which purport to be based on principles of self-determination and enable the Director-General or the equivalent head of the child welfare department to negotiate with Indigenous communities and put measures in place which 'allow as much self determination as is possible'.[18] Indigenous peoples' right to look after their children's wellbeing is recognised but only to an extent that the non-Indigenous department considers possible.

The recently reformed Victorian legislation provides for the preparation and implementation of cultural plans for Indigenous children who are placed under a 'guardianship to Secretary' Care Order.[19] It also provides for the delegation of many of the Secretary's powers to the principal officer of a designated Indigenous organisation.[20]

There is a growing impetus in all Australian jurisdictions and internationally towards permanency planning. The peak Indigenous children's organisation the Secretariat of the National Aboriginal and Islander Child Care ('SNAICC') believes that Indigenous children should always retain the possibility of reuniting with their families.[21] The Victorian child protection legislation has in place safeguards for Indigenous children which require that any permanent placement of an Indigenous child solely with a non-Indigenous carer must, together with other requirements, be recommended by an Indigenous organisation.[22]

While measures such as those referred to above will improve the manner in which child welfare operates in Indigenous communities, they do not provide the legislative and institutional framework for addressing the underlying problems which some Indigenous families face or the capacity to develop strengths or wellbeing in communities. This is because these measures are tacked onto child welfare legislation and service delivery frameworks which are founded on non-Indigenous experience, managed and implemented by non-Indigenous bureaucracies, in a manner which engages on non-Indigenous terms with the problems and potential solutions to attaining Indigenous children's wellbeing.

INTERNATIONAL STANDARDS

Most child protection legislation includes objectives and principles which broadly reflect the articles in the *United Nations Convention on the Rights of the Child* ('CROC'). There are, however, a number of problems with the way in which these principles are framed and enacted. For example, in New South Wales ('NSW'), the objectives and principles section of the legislation does not 'confer any right or entitlement at law.'[23] While the objects and principles section in most Australian child welfare legislation are derived from CROC, they do not adopt or mirror CROC. As Australia is a signatory to CROC, all government departments should comply.

The Convention's provisions are regularly interpreted and refined by the Committee on the Rights of the Child. The participation of Indigenous and other diverse groups in

the development of the jurisprudence of CROC offers the potential for standards which are inclusive of Indigenous children and communities to develop.[24]

CONCLUSION

It is very difficult for child welfare departments to relinquish power and resources. It is also very difficult for Indigenous communities to assume responsibility where this has been denied over a long period. Further, many communities not only need to develop appropriate decision-making structures and expertise but suffer endemic problems because of the widespread trauma and loss of capacity over a number of generations. It will therefore take considerable resources and commitment to build community capacity in many areas. It is not in Indigenous children's best interests to retain legislative and departmental structures which are not serving them effectively. Neither is it in their interests to transfer responsibility for their wellbeing to Indigenous agencies which lack sufficient capacity. However, a process of de-colonising attitudes, establishing new Indigenous child protection structures and empowering Indigenous agencies through training and provision of resources over a period of time will improve relations between mainstream and Indigenous agencies and communities and will facilitate, over the longer term, improvements for Indigenous children.

Addressing the underlying causes of Indigenous children's overrepresentation in child protection systems needs to go considerably deeper than an Indigenous child placement principle. If child protection legislation and practice is to be reformed in an effective way, then understandings of colonial policies and their impact on Indigenous children cannot be kept at arms length from reform. They need to be integrated in practical ways. Acknowledgment of the past needs to inform current legislation and policy rather than serving as a separate symbolic or policy statement.

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