Submission to Protecting Victorian's Vulnerable Children Inquiry

My name is Angela Smith; I am a Social Worker, recently retired. I initially worked in Foster care and Adoption in the mid 60's then worked in the area of Inter country Adoption in the 70's and then Special Needs Adoption in the mid 80's. For the last 25 years I have worked in Adoption and Permanent Care with the Eastern Region of the Department of Human Services in Victoria.

Our team came under the umbrella of Child Protection. I was a CAFW 4. We were fortunate in the Easter Region for many years to enjoy a very stable and experienced work force, which developed considerable expertise in the area and were acknowledged as such by other A&PC teams in Victoria. Our manager was awarded a Valuing Achievement award for her outstanding contribution to policy and practice. We also enjoyed the tremendous backing by Child Protection management in allowing us to assist our permanent care families on many levels pre and post legalisation, financially and emotionally with the many complex issues, children who have been in need of protection, bring to families not least issues like access with their birth family.

The children referred to the Permanent Care teams are those children who cannot be reunified with their birth family. Therefore, as a group, we permanent care workers have been in a prime position to look at the history of these children, the history of protective intervention, the work with the birth family, the period of time in foster care, attempted home releases and details of all the matters that have been in front of the Children's Court.

Permanent Care

The concept of permanent care introduced in the 1990's is that every child has a right to be raised in a loving family to call their own and, if it is not possible for it to be the biological family, then they need to have a new primary family in which they can be nurtured and raised, giving them enduring loving relationships until independence and beyond. Like open adoption it enables contact between a child and members of their biological family. Unlike adoption it does not change the birth certificate.

Historically, I believe for many children this has been enormously successful largely reflecting the efforts of the workers getting to understand the children's histories, needs, personalities, strengths, vulnerabilities, genetic loadings, attachment potential and relationships. This has been combined with great care in matching these children to trained and thoroughly assessed applicants, who wish to add to their family or create a new family. Careful and thoughtful introductions would start the placements. Work with the birth family was also crucial to assist them to come to terms with what has not been possible for them in parenting their child or children. Access was always encouraged at a level that was beneficial to all but the priority was always to reflect the needs of the children. Children often wanted to assume the new parents' surname. In recent times it has been possible to gain passports to travel with their new surname even when the original birth certificate reflects their origins.

In recent times there seem to be fewer children being referred to Permanent care and I submit that there are several reasons for this.

1. ***Mind set.*** There seems to a deep-seated mind set in our community including many making decisions about the care of children that almost 'no matter what' all children should be raised by their birth parents and, if not by them, then by their relatives. Obviously that is the ideal as we know children not raised within their birth family have extra issues with which to come to terms, but it is the 'no matter what' with which I have a problem. However we know the legacy for children of being raised by adult(s) who have great difficulty looking after themselves let alone being able to prioritise their children's needs whether it be as a result of mental illness, intellectual disability, drug addiction, domestic violence or their own neglect as children or a combination of one or more of these. The relatively recent brain research on the impact of deprivation and abuse in the early lives of children and its long-term impact is chilling.

2. ***New flaws in the system.*** The most recent Act for the protection of children tried to introduce a strictly time limited effort to support and assist birth parents to be able to parent better with the idea that children should not be left to drift and be in limbo and uncertainty about their future whereabouts, which is what they experience in many foster care placements. However that effort does not appear to have achieved the timely resolution of the children's future. Fault lies I believe in different facets of the system.

   a) Firstly, there is the "no-matter what" mind set often reflected in the protracted efforts put in to rehabilitating parents. When is enough enough?
   b) Further, there is the fact child protection cases pass from one team to another. This has the result that each new allocated social worker will try to remedy the situation with new zeal. Often the child becomes lost as the worker, who is overworked, and often inexperienced, will focus on the changes to the parents' behaviour, self esteem, confidence etc. to the exclusion of the circumstances of the child. Reading Protective files, there is often little information about the child – even about how they behave in an access situation.
      There are many examples where children have been permanently removed from a mother but where the birth of the 5th, 6th or even 7th child gives the new worker the same impetus to work towards home release as if this was with the first child. Another factor is that Child protection workers will often argue that the Court will require this of them.

      Dr. Scott in her Report on the Permanent care Program in September 2001 said

      'The current system perseveres far too long with some families where the prognosis for reunification is very poor and allows children to drift in out of home care. This is an over-reaction to the child welfare system of the 1960s and early 1970s that witnessed very large numbers of children unnecessarily admitted to, and often remain in, residential care for many years."

Very little has changed.

3. ***The Children's Court.*** My experience of the Children's Court has been one of marked delay of long term planning for children's care.

    a) *The Legislation*. The current Act does not clearly articulate that the children's interests should be paramount. Instead, the Act requires the magistrate to give consideration to many other factors in such a confusing way that the paramountcy of the child's best interest is lost.

    b) *Division of responsibility*. Another factor causing long delays in long term planning for the children is that the responsibility for decision-making does not lie with one judicial officer. When a case comes back to the Children's Court, a different magistrate will usually hear it on each occasion. In that situation, adjourning or deferring decisions does not have the significance that it would have if he or she were the magistrate responsible for the whole case. A distinct advantage for the child, and all parties, therefore, would be for one magistrate to take responsibility for each case and follow it through and so make sure a case plan is established as soon as possible, progress monitored and that there be realistic and tight timelines and, therefore, more timely decisions enabling the nettle to be grasped, if need be, at the earliest opportunity.

    c) *Education on psychological issues.* Magistrates also would benefit in training about child development and the impact of trauma and neglect on developing brains and other issues. Meredith Kiraly and Cathy Humphries at a recent conference celebrating 70 years of existence of the Social Work School at Melbourne University presented a paper on the impact of the level of access for young babies and children under the age of 2. They, the magistrates, have increasingly ordered high levels of access for very young children and babies, when they are in foster care, with their birth parents in the hope of maintaining or promoting attachment. Access these days no longer occurs in the foster parents home or with the foster parent present with the result that the young infant or child has to be transported often over long distances often by strangers to a place where the birth parents may not consistently turn up. In the research the frequency of access ordered was found to have no significant influence on the level of infants returning home to their birth family. The authors of this research presented it recently to the Children's Court Magistrates and sadly felt they received minimal interest from them.

    d) *Serial appeals and challenges*. Another difficulty is that birth parents have the right to endlessly challenge internal decisions within the department and to oppose extensions of orders through the Court, even when no evidence of change or improvement in their circumstances can be demonstrated. If they wish to contest an extension of an order then mediation is ordered, which may add to a further 3 month delay.

At no mediation that I ever attended was there any resolution of any matter.

To give an example, finally last year 8 and 6 year old siblings were placed in permanent care. Both parents suffered mental disabilities. The only had care of the siblings for 18 months of their lives; the siblings had been passed to grandparents and when they could not cope to an Aunt. A magistrate made orders giving custody to the department early on in their lives and then various magistrates continued to extend the orders time and time again. Unsupervised access was granted to one parent. There were many hearings, including many appeals by the parents and adjourned hearings. Because they were in foster care no plan was made for their future, a plan against which progress could be assessed. Guardianship was denied the department and only obtained when the parents themselves eventually consented to it, recognising finally that they could not ever care for the children. The level of access could then be reduced and become supervised. It was only then possible to find a couple to become the children's permanent parents. Their foster parents of 4 years did not want to care for them permanently as they wished to travel on imminent retirement.

e) *Legal Culture* Another factor that has also played a part has been the legal culture (there were some exceptions) that it would be a waste of the time for all involved including the protective workers to apply for guardianship because they would be tied up in court in a contest and the court in recent times never wants to allow the Department to have a guardianship order.

The protective workers have always been under enormous work pressure and, understandably, have gone along with that approach hoping that at least, as long as the foster placement lasts, the children will have stable, safe and loving care whereas to press for guardianship is simply too hard. But this is second best and doesn't always work.

The magistrates also tend to prefer to continue with custody orders when a child is in out-of-home care as this means they can determine the conditions including the level of access. This means the children are in limbo and continue to drift in foster care because recruitment of permanent carers is based on the assumption that children to be placed with permanent families will be on Guardianship Orders.

f) *A lack of understanding*. It is important that a strong message is conveyed to all the parties that permanent care is about providing a child with a stable and committed primary family for life. Passing guardianship to the department signifies that child protection is no longer working towards home release to the birth parents. This is critical in recruiting permanent care families because they are concerned about the legal security of a placement if they open their homes and hearts to a troubled child. When the placement is stabilised (usually after about two years) the Department transfers guardianship

to the new family. This staged process is, I believe, in the best interest of all involved, particularly the child, and gives the parents time to come to terms with the situation. The alternative is orders, which confer physical custody on the proposed permanent carers. Such an approach is unsatisfactory because it fails to recognise that the point has been reached where new permanent arrangements must be made for the child. In addition, under such arrangements the magistrates often order a higher level of access than extensive research or experience would support. A fundamental problem is that inappropriate levels of access will inhibit the child attaching to the new family and divide their loyalties especially if the parents are still opposing the case plan. It also gives the parents unrealistic expectations about the child's future and their role in it. Because the parents still have guardianship, it also gives the wrong messages to the child and the permanent carers as to where the power lies.

g) *The Children's Court Clinic*. The Clinic does not appear to approve or accept permanent care. It often argues that there is a relationship between birth parents and children that should be promoted and preserved notwithstanding the evidence of its destructiveness in some situations. The Clinic's lack of respect for foster parents and permanent care parents, in the matters with which I have been involved before the court has been distressing. The Court and the clinic rarely, if ever, treat foster carers or permanent carers as people who have considerable valuable knowledge about the child.

h) *Representation of the children*. I believe the appointment of a child's representative like a guardian ad litem that is appointed in the British system very early in the process would help. The person would be better able to focus on the best interests of the child. Lawyers presently engaged for the children are usually not in there for the long haul. Very few if any of those appearing for the children have an understanding of the psychological complexities involved. I have witnessed lawyers obfuscate the children's instructions to the Court so as not to hurt the feelings of the birth parents.

4. ***Damage to the system***. Finally, in some regions like the Northern region the viability of the permanent care programme is being put at risk by the merging of the permanent care teams with the protective worker teams. Is this to correct the failure to adequately resource protective staff in the protective work area and is that being addressed by damaging the permanent care program? For the effect has been that the former permanent care social workers spend most of their time in court and little time recruiting, training, working with children and supporting the permanent care families.

Foster Care:

1. ***Assessment limited***. Most foster parents do great work in very difficult situations. However in my experience many foster parents undergo limited assessments as people to care for children in the short term and are usually not

assessed and selected to be long term carers, although may become this by default. I have been a member of various foster care selection panels. One agency regarded my questioning or querying about a couple whether it be their difficult background, problematic family relationships, demands of their own children, or lifestyle as being uncharitable. There can often be little matching when a child enters a foster family as the child or children often arrive in an emergency situation where the foster family is chosen because of availability. The child may be placed as the eldest or middle child. The most successful placements are those where the incoming child is the youngest so the natural order is not displaced and the family can concentrate on the new member as the youngest. These vulnerable children need to regress as their needs have not been met and it is more acceptable for the youngest child to do this.

2. ***Kinship placements -assessments***. These placements are the present preferred option for children in the protective system. In the past there has been little assessment of extended family when they have applied to parent a relative's child. In the past there was also little financial support for such placements. It has been seen as a cheap and expedient arrangement often with grandparents. These potential placements deserve thorough assessment and if assessed as being in the child's best interest then support should be forthcoming. Issues of access need to be carefully considered.

3. ***Short-term care system used for long-term care***. Many young infants and children have been placed in the short term with older parents who are in late their late 50's and 60's who subsequently apply for them to stay with them, if and when the child becomes available for permanent care. This is often encouraged by protective workers because
   (a) The child will not have to move
   (b) The family will
      - accept them on custody orders and
      - not question but allow the level of access to continue which probably was appropriate if working towards home release but not if the case plan is permanent care.

   If the concern about the couple's future health and energy levels are queried, they will say they will rely on their adult children to take over the child's care in the future. This cannot be in most children's interest. Children should have the benefit of parents who are likely be present in their lives until they are of independent age and then for these parents to be grandparents to the permanent care children's offspring. Children have a right to have fit parents.

4. ***Foster Parent Applicants***. In recent times there have been fewer younger foster families and if there are, then the foster mother is often working. I understand Inter Country Adoptive parents are being encouraged to apply to be parents for local children with special needs or to be foster parents as the availability of overseas children is now extremely limited in Australia. Special needs adoption is one matter but to expect them in their role as foster parents to assist and encourage a child to return home to their birth family when their main desire is to add to their family or commence a family is quite unrealistic.

Adoption

Children in permanent care often tell their friends they have been adopted as for them it seems to reflect more accurately their placement, one of belonging. The community more readily understands the word adoption and its implications, while the concept of permanent care is relatively unknown. Adoption now only happens when the birth parents voluntarily relinquish their baby usually close to birth. In my experience the birth parents have to be very strong minded to do so as society judges these relinquishing parents harshly as being unnatural and will usually go to great lengths to deter them. Many people have issues with the change of a birth certificate in adoption. Historically this was done so as not to discriminate these children and to protect the privacy of the new family. Would adoption be more readily accepted if the birth certificate would reflect both sides of the tree? Certainly adoption provides the kind of certainty from legal challenge that permanent care fails to do.

Adoption and Permanent Care

Access.

In the area of adoption and permanent care, access is extraordinarily complex for all the parties. It often arouses powerful emotions. In the area of adoption where legislation was introduced in the 1984 Act to allow for the ongoing contact for birth parents with their relinquished child, it has proved for many birth parents too difficult to continue contact. However for children in adoption and permanent care it can be immensely healing for access to occur and the child to observe and see the two sides of his family tree treating each other with warmth and respect. The purpose of access changes if the child is not returning home. It is then more about identity issues, transfer of relevant information and often the ability of the child by contact to gradually be able to come to terms with why their parents were unable to provide for their care.

Research

Sadly money has rarely been supplied to investigate long-term outcomes for children in the system. We tend to rely largely on anecdotal information. For example there is a belief that all siblings should be placed together - again almost no matter what. Looking at the disruptions of permanent care placements over the last 25 years, I found that they were more likely to be placements where 2 or more same sex siblings were placed with a family. Placements, where the siblings were of different gender, appeared to be more enduring. When children's needs have been unable to be met with their birth family then often the sibling relationship is highly problematic. The children become very controlling and egocentric for survival. Their ability to attach is compromised. Their ability to empathise is damaged and often they have not been able to develop a conscience. They become fiercely competitive for what attention is available. For a family to live with, work with and attempt to provide therapeutic parenting, it is hard enough with one child but a huge burden with two. Families often more easily fall in love with the youngest and maybe the less damaged child. What is critical is that the nature and quality of the sibling relationship is carefully assessed before placement. We have successfully separated and placed siblings where they

have continued to have a high level of contact and we have also placed siblings together whom one would never separate.

Position of the Teams

There are some Adoption and Permanent Care teams who operate under the auspice of the Department of Human Services and others who are auspiced by non-government agencies. The teams operating from the Department are at a great advantage as a result of the proximity (that is sharing the same premises) to Child Protection teams due to the relationships that are developed and established between the workers and the decision makers. In my experience some non-government agencies rarely if ever received a referral of a child for permanent care.

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