



Top NT magistrate says placement policy neglects human rights of Indigenous children

Bennett, Gillian.
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The Northern Territory's chief magistrate says the pendulum has swung too far towards protecting Indigenous culture, at the expense of the basic human rights of Indigenous children.

Hilary Hannam will soon leave the territory to take a seat on the Family Court.

She says one of the key national policies in Aboriginal child welfare, the Aboriginal and Torres Strait Islander Indigenous Child Placement Principle, is not always consistent with the best interests of Indigenous children.

"It seems to me that the Placement Principle is taken to the nth degree and even though the principle says it must be consistent with the best interest of the child, I'm concerned that there is too great an emphasis on the cultural interests of the community and the family rather than the child's best interests, which relate to basic human rights," she said.

The ATSI Child Placement Principle applies in every state and territory and is designed to preserve Indigenous children's connection to their culture.

Broadly, it means that when a child needs foster care, priority will be given first to a place within the extended family, then within the child's community, then with an Aboriginal or Torres Strait Islander family, and only then - if no other option is available - with a non-Indigenous family.

Ms Hannam says the way the principle is applied means Indigenous children are being discriminated against.

"The reality is that Indigenous children will be returned to family or extended family or even to Indigenous people generally as if that is always consistent with their best interest," she said.

"Overall there's a conception in the community that culture is more protective than it necessarily is.

"Those children are entitled - as a matter of human rights law - to maximise their chances of development, to reach their full potential.

"If we are saying that all sorts of standards, whether it is education, health, housing, protection from harm or exposure to violence is a different standard for Aboriginal children than for non-Aboriginal children, particularly remote children, then we are discriminating against them.

"We are much more concerned about assuaging our own guilt about our own history and failing to come to terms with our own history.

"If we put to one side that these are Aboriginal children, and we're actually looking at the reality of what they're being returned to, we would not accept that standard for our own children. So why should we for Aboriginal children?"

Fiona Arney from the Australian Centre for Child Protection at the University of South Australia has studied the principle, and she says it does not only cover placement, but is designed to be applied very early in the protection process.

"Ideally, there is strong Aboriginal representation through family or through Aboriginal organisations in the decision-making process," she said.

"So there is an understanding of what is happening in the family, what might be affecting the child's safety but also what might be really promoting their wellbeing in the family and then making decisions around that.

"The best outcome for children will be having them placed somewhere where they are loved, where they are safe, and where they are connected to their culture and to their families, and that may be with family but that may be with other caregivers as well."

Aboriginal and Torres Strait Islander children in care

Aboriginal and Torres Strait Islander children are dramatically overrepresented in out-of-home or foster care.

Across the country, the rate of Indigenous children needing care is 10 times that of non-Indigenous children and that gap is increasing every year.

Community breakdown, the loss of culture, the legacy of the Stolen Generations and poverty and addiction are all reasons why so many Aboriginal families are falling apart.

But Aboriginal child welfare advocate Frank Hytten says children are being removed from their families unnecessarily and over-zealous child protection workers are misinterpreting Aboriginal culture.

"I was recently told (about a child being removed) because they were playing barefoot in the street and that was called neglect," he said.

"Other examples are that there is not enough food in the fridge.

"In an Aboriginal community that may not be surprising because that child may habitually go to their grandmother's place to eat, so there wouldn't be necessarily much food in the fridge.

"Now if the workers don't take time to actually talk to people - and they may be speaking different first languages - to talk to people and to understand and give credit to their explanations then bad decisions are going to be being made.

"So we need to examine how children are being taken away and what they are being taken away for."

Calls to 'loosen the system'

A roundtable of state and territory governments, Aboriginal service providers and NGOs found there are problems with implementing the Child Protection Policy in almost every state and territory.

Chief among these is the lack of suitable families, and the challenge of recruiting and training Indigenous people to become foster carers.

That is a problem Mr Hytten puts down to systemic hurdles.

"There are a number of the criteria that people have to meet to become carers that might seem legitimate, but when you start to unpack it there are things that seem to work against Aboriginal and Torres Strait Islander people," he said.

"For example, [high rates of Indigenous imprisonment mean] that none of those people are going to be viewed favourably as carers in years to come because they have a record.

"But if you look at what they've got a record for, it's often for things like not paying parking fines, or not turning up for court appearances over unregistered cars, things like that.

"These are issues not of crime but of poverty, or cultural misunderstandings both ways. Many of these things don't make a person unable to look after their children, or make their sister-in-law unable to raise children.

"We need to loosen the system."

Australian Institute of Health and Welfare figures show that the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care will increase steadily.

That will make it even harder for governments and child welfare workers to put Indigenous children in Indigenous homes.

Credit: By Gillian Bennett