MAV/DHS Maternal Child Health Services Conference
Best Interest Principles – Conceptual Overview

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“The first and fundamental historical driver of child protection is the notion of the child as a holder of human rights. This is a post-Enlightenment nineteenth century concept.

As the view of the child as the property of parents has diminished over the past century, and the view of the child as a holder of rights has grown, the pressure on the State to use its coercive powers to uphold the rights of the child vis a vis their family has increased. Upholding the rights of the child vis a vis their family leads to an unavoidable contradiction as the needs of a child are usually best served by the family” (Scott, 2006)
“To place children and young people’s best interests at the heart of all decision making and service delivery” (White Paper, 2005)
Best Interests Principles

The *Children Youth and Families Act 2005* (CFYA) places the rights of the child and the safety and *developmental* experience of children and young people as a constant focus of the legislation.

- Safety
- Stability and
- Development
Best Interest Principles

- For the purpose of this Act, the best interests of the child must always be paramount.
- When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.
"It is estimated that tens of thousands of Aboriginal and Torres Strait Island children were removed from their families and raised in institutions or fostered-out to non-Aboriginal people.

This was seen as a way of promoting the ‘best interests’ of the child.

It made little difference what the Aboriginal family situation really was or how the children were cared for, because being Aboriginal was, in itself, seen as a reason to regard children as ‘neglected’." (Bamblett 2006)
The CYFA states that consideration must be given to:
- Respect for Aboriginal culture
- Aboriginal self-management and
- Self-determination

“the need, in respect of an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development ..” [s. 10(3)(c)]
The CFYA reflects a commitment to the whole child and their relationships with their family, school community and culture.

The CYFA demands that any intervention always integrates child focussed, developmentally appropriate practice.

Consideration must be given to:

- family sensitive and strength building practice,
- culturally sensitive practice and culturally specific practice in relation to Aboriginal children, and
- the recognition of Aboriginal self-management and self-determination.
The CFYA prescribes that a child’s connection to siblings, and kith and kin and to the broader community in education, health and social opportunities must also be considered.

The CFYA ensures that these aspects of the child’s life are not optional extras, but rather are viewed as the responsible business of the Child and Family Service Sector, Child Protection and the Court.

These statements reflect the CFYA’s commitment to the whole child and their relationships with their family, school community and culture.
A Meta Perspective

- Best Interests Principles lie at the heart of the CYFA.
- Active embodiment of the principles is the dynamic integration of the child and family service system, to enable safety, stability and wellbeing for every child.
Best Interest Principles

• The Best Interests Principles are framed in positive language.

• The inherent goal of the CYFA is that the service system:
  
  • Engages with the child and family in culturally respectful and helpful ways.

  • Leads to the child experiencing a safe and nurturing sense of belonging.

  • Provides opportunity for the child to develop in a positive way.
Systemic Perspective

• “The whole is greater than the sum of its parts.”

• We can be more effectual and create more leverage for change if we work together and combine intelligence, resources and goodwill.

• This requires multidisciplinary and multitheoretical approach, a tolerance for different practice traditions, a respect for other services but shared passion for the Best Interests of the child.
An Ecological Perspective

The theoretical underpinnings of the Best Interest Principles can be conceptualised as being informed by:


- The focus of practice is the person-in-environment.

- Darlington (1998) found that the best practice with children with difficulties is a model that includes a family in the process, and helps the young person to understand the family and vice versa.
Thoburn and colleagues (1995, p.217) show that there is a clear link between better outcomes for children and greater involvement of parents.

In their study, parents were actively involved in 65% of cases where the outcome was good and only 35% where it was considered poor or there was no change.
Robin Clark (2000) articulated the findings from her research on exceptional practice with troubled adolescents:

“It is clear from the literature that the single most important ingredient of effective service provision with these young people is the quality of the direct care staff and their capacity, either to offer caring and connectedness to these young people, or to foster this kind of relationship between the young person and some other nurturing adult, even when the odds seem to be against this.”
The CFYA demands that we think holistically about the child’s experience.

It necessitates a shift from the common practice of compartmentalised engagement around current risk to practice that is mindful of the impact of cumulative harm.
Practice Implications of the CYFA

The basic focus of any assessment and intervention must now answer the question “How is this child developing?” as well as “Is the child safe?”

This cultural shift is less about procedures and more about a change in mindset to a practice orientation that is truly systemic.
Case Planning

Case Planning is a **process** based on strong engagement and case practice that is mindful of the children and empowering of the family.

Case Planning is **dynamic** and **recursive**. It integrates new learnings and feedback, and is adjusted accordingly.

The Best Interests Principles require our practice to be both strength based, astute to the possibilities for change and healing, and forensically astute.
“Experts in many fields will acknowledge the possibility that later research may undermine the accepted wisdom of today. “Never say never” is a phrase which we have heard in many different contexts from expert witnesses.”

(R v Canning (2004) Court of Appeal)

- Program guidelines need to assist practitioners in the integration of both evidence-based research and culture of reflective practice.

- The both/and approach integrates knowledge and values, content and process and the best interest of the child are the clear goals.
No one theoretical model or practice framework is sufficient to address the breadth of concerns in child protection.

The content, research and knowledge base for practice is constantly increasing and evolving.

System-led resourcing is required for busy workers along with a personal and professional commitment.
• The CYFA is underpinned by knowledge from the resilience literature.

• Resilience is enhanced by connectedness to family/carer, school, community and culture.
The CYFA advocates for the young person to be connected to their family and community and culture.

The importance of cultural and familial connections is widely documented in the trauma, attachment and family therapy literature.

“cultural customs and rituals help individuals control their emotions, order their behaviour, link the sufferers more intimately to the social group, and service as symbols of continuity. Such processes of restitution ... are disrupted when cultures as a whole are traumatised” (deVries, 1986, p. 405)
Best Interests – Attachment Theory and Stability

- Attachment theory has been of vital importance to the child and family services field in recent years.
- A child’s attachment pattern cannot be adequately assessed without a thorough understanding of the context of the relationship with the carer.

  "From the perspective of the infant, attachment needs to have an urgency that trump nearly all other needs." (Dozier et al, 2006)

- Significant loss in early childhood, if unresolved, can have lasting ramifications and can lead to problems with secure attachment in the next generation.
“We are mammals. We are biologically programmed to connect. The infant’s drive is not towards safety, it is towards attachment.” (Van Der Kolk 1996)

Safety is always the primary concern and the focus on stability and attachment should not blind us to the basic need for safety.
Cumulative Harm

Families who experience ongoing concerns about the safety and wellbeing of their children are in repeating “stuck” patterns and the helping system through actions or inactions can at times become part of the pattern which “maintains the problem”.

“Group judgement and decision making will be vulnerable to the two biases of avoiding conflicting views and tending towards a consensus around an extreme position”

(Munro 2002 p.157)
“But the “worst case scenario” is, not infrequently, found in a child who experiences both abuse and neglect” (Post & Weiss, 1997)

“There is agreement that severe trauma of interpersonal origin may override any genetic, constitutional, social, or psychological resilience factor” (De Bellis, 2001)” (Schore, 2003, p.110)
Cumulative harm – the impact of neglect

“Physically abused infants show high levels of negative affect, while neglected infants demonstrate flattened affect” (Gaensbauer & Hiatt, 1984)

“There is evidence indicating that neglect may be even more damaging than abuse, and that there is a link between neglect and childhood and antisocial personality disorders in later life” (Hildyard & Wolfe, 2002)
“The notion of low impact high frequency events compared to high impact low frequency events can be useful in understanding cumulative harm. ... A cumulative harm perspective requires re-examination of each ... (notification) every time a new notification is made in order to assess whether a multitude of low-level risk factors is demonstrating significant cumulative risk.” (Frederico, Jackson and Jones 2006)
... the promotion of a more family-centred focus in mental health and drug and alcohol services, the development of common parenting assessment tools across sectors, and the promotion of regular case conferencing for parents with multiple needs, especially at the point of discharge from in-patient settings

(VCDRC Annual Report, 2006 p.xiv)
A culture of reflective practice is crucial.
Giving expression to the Best Interest Principles

The processes and communication between the parts of the system are critical for the Best Interests Principles to be enacted.

This requires that the broader system around the family join to flexibly and creatively engage the family in a solution focussed process that is:

- Timely
- Respectful and
- Culturally appropriate

rather than the family having to struggle to get help in a poorly coordinated service system or falling through the cracks completely, with dire outcomes for children.
Giving expression to the Best Interest Principles (cont.)

- Professional supervision and secondary consultation, which both supports practitioners and calls them to growth, is a vital component in the system providing a child focussed, family sensitive service.

- The voice of the child, an awareness of their developmental vulnerability, respect and compassion for the families’ experience, strengths and potential for recovery must be present in every supervisory context.
“for the individual, the overwhelming problem with human reasoning is that people do not like changing their beliefs. They go to great lengths to avoid the discomfort of having to revise their judgements. There is no simple antidote to this weakness. Child protection workers can be aware only of how they are likely to err and consciously try to counteract it.”

“A shift to a more critical approach is equivalent to changing from being a barrister to being a detective. A barrister defends one point of view, offering only information that supports it and trying to deny or discredit any challenges thrown at it by the opposing side. A detective is trying to establish the truth and looks diligently for evidence for and against a point of view.”

Munro (2002) (p.159)
Through the lens of the child (cont.)

- A case study involving multiple practitioners.
Decision making in line with the “Best Interests Principle”

- The best alternative for a child is the one that best protects the child and best promotes the safety and wellbeing of the child. (CYFA)
- Services and systems need to actively resource and enable practitioners to reflect on and review their practice so that the quality of the service for children and families is privileged.
- Munro (2002) has written about the decision making processes in child protection which can contribute to ‘not seeing’ either the cumulative harms or the strengths
  - “group judgement and decision making will be vulnerable to the two biases of avoiding conflicting views and tending towards a consensus around an extreme position.” (p.157)
Decision making in line with the “Best Interests Principle” (cont.)

- Previous service system responses and outcomes of interventions need to be realistically assessed.

- Clear and respectful communication processes between professionals will be needed to resolve the conflicts that may arise between professional groups, all of whom have a view about the child’s best interests.
Decision making in line with the “Best Interests Principle” – some questions

- Did they work? What do the children and their behaviours tell us about what is different? How would the parents and other significant others rate themselves in terms of ‘where they’re at’ on relation to where they want to get to? Did we help the family to achieve good outcomes for children in terms of their safety, stability and wellbeing?
- What’s changed? Are the children safer? Are they recovering from the abuse and/or neglect? How do we know? Are they more developmentally ‘on track’? What does the maternal and child health nurse say, what is the view of the school, the extended family, the G.P.?
- What was getting in the way of stability? If it was the mother’s mental health issues and her own unresolved trauma, have we supported her to address them?
- Have we been respectful of her cultural traditions? Were we fair and transparent and family sensitive? Has the violent perpetrator been engaged to take responsibility for his/her behaviour and get help?
- Do we have an informed assessment of his level of risk? What do the police say about the pattern of violence? Have we understood the complexity of the relationship? Have we supported the parent/s and children to access appropriate legal channels?
- What treatment or support have the children received to help them process the overwhelming events?
- Are they more able to play and concentrate and relate and participate and belong? Does someone notice?
- **Does someone delight in them?**
Robin Clark’s research into exceptional practice with troubled adolescents captures the essence of good practice as she quotes one of the workers in her study: “It has to be more than a job. What you do with kids and families you do with workers – you support, value, build a culture that respects individuals and encourages people to be different; and you encourage them never to give up. You teach them to never accept “no” if they think a kid really needs something. And not to accept that a service will not be provided for a kid....... After all that’s what parents do, isn’t it?” (Clark 2000, p.42)
“First they slaughtered our dove of purity. Then they killed our dove of trust. But we still have our Dove of Hope.”
References

White Paper (2005)
Scott (2006)
Bamblett (2006)
Bronfenbrenner (1979)
Gaensbauer & Hiatt (1984)
Hildyard & Wolfe (2002)
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Clark (2000) p.42