



The role of decision making in the over-representation of Aboriginal and Torres Strait Islander children in the Australian child protection system

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Published

2020

Journal Title

Children and Youth Services Review

Version

Accepted Manuscript (AM)

DOI

[10.1016/j.childyouth.2020.105019](https://doi.org/10.1016/j.childyouth.2020.105019)

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The role of decision making in the over-representation of Indigenous children in the Australian child protection system.

Abstract

The over-representation of Aboriginal and Torres Strait Islander children in the child protection is a serious concern in Australia. At least a proportion of decisions concerning this group of children could be false positive errors. Assuming this could be true, we draw on the decision-making ecology model of judgement and decision making in child protection to speculate on possible causes of such errors. This model suggests that false positive errors would occur if level of risk children face is estimated to be higher than is actually the case or if decision threshold used to make decisions to remove children from their family are too low. We present a discussion of factors that could potentially influence judgements and decision thresholds, which has implications for practice. It is argued that false positive errors are most likely to be avoided through more accurate assessments of risk children face and the longer term needs of the family. We argue that achieving this requires a theoretically grounded, culturally informed framework to guide assessments. We propose that bi-cultural training in two existing frameworks, Indigenous and non-Indigenous, could improve assessments and decrease the likelihood of false positive errors in decisions involving Indigenous children in Australia.

1. Introduction

In traditional Aboriginal society, as is true today, old people and children were the most important members of the community and it was the responsibility of all members of the community to look after the older people and children (Wild & Anderson, 2007). However, genocidal government policies for two centuries have had a devastating impact on the social fabric of the First Peoples of Australia, the over-representation of Indigenous¹ children in the child protection system being a prime example (O'Donnell, Taplin, Marriott, Lima, & Stanley, 2019). The Australian Institute of Health and Welfare (Australian Institute of Health and Welfare, 2018) reported that Indigenous children in 2016-17 were seven times more likely to have received child protection services than non-Indigenous children. The report found that there has been a greater increase in the rate at which Indigenous children received child protection services since 2013 compared to non-Indigenous children (an increase from 126.9 to 164.3 per 1,000 for Indigenous children compared to an increase from 18.5 to 22.3 per 1,000 for non-Indigenous children). The rate at which notifications of suspected child maltreatment were substantiated² was also seven times higher for Indigenous children. A third (34%) of the substantiations for Indigenous children were for neglect, compared to 20% for non-Indigenous children. Indigenous children were also over-represented in out-of-home placements, the rate rising from 48.2 per 1,000 in 2013 to 58.7 per 1,000 in 2017. Over the same period the rate for non-Indigenous children rose from 5.3 to

¹ We use the term Indigenous to refer to people of Aboriginal and Torres Strait Islander descent.

² A substantiation is the conclusion following an investigation that there is reasonable cause to believe that a child had been, was being, or was likely to be, abused, neglected, or otherwise harmed, or where children have been abandoned by their parents or the parents are deceased (AIHW, 2018).

5.8 per 1000. Across Australia, around a third (32%) of Indigenous children were placed with non-Indigenous caregivers or in non-Indigenous residential care.

We suggest that it is plausible, albeit difficult to establish, that at least a proportion of the decisions made in relation to Indigenous families are false positive errors, specifically the removal of children from families who are providing an adequately safe and nurturing environment. Reflecting on this as a possibility might highlight areas of potential concern that could be subjected to empirical research. The alternative, which is to blindly accept that all decisions are accurate and justified, requires the assumption that the over-representation is wholly accounted for by inherent deficiencies in family functioning that is unique to the Indigenous community (see Choate & Lindstrom, 2002). We structure our arguments by drawing on the Decision Making Ecology model of judgement and decision making in child protection (Baumann, Dalgleish, Fluke, & Kern, 2011).

2. Decision making in child protection

The Decision Making Ecology framework distinguishes two stages of the decision making process in child protection. First, a judgement is made on the likelihood a child will be harmed by their family, i.e., a judgement, or estimate, of risk. This can include the immediate safety or the child and the capacity of the family to meet the longer term needs of the child. Second, a decision threshold is applied such that a positive decision (e.g., a child should be removed from their family) is made when the perceived level of risk exceeds the decision threshold. That is, the decision threshold is the line in the sand over which the child is perceived to be at unacceptable risk of harm justifying a specific course of action, and below which the risk to the child is perceived to be low enough that the course of action is not required.

The distinction between the estimation of risk and the application of decision thresholds is important as false positive errors will occur if 1) the level of risk is inaccurately judged to be higher than it actually is, or 2) the decision threshold applied is too low (a relatively low level of risk is deemed sufficient to decide the child should be removed from their family). Below we consider factors that could potentially influence judgements of risk and decision thresholds in the context of child protection decision making involving Indigenous families.

3. Judgements of risk

In this section we consider factors that might elevate the perceived level of risk in Indigenous families who are providing an adequately safe and nurturing family environment. These factors include problems with standardised risk assessment procedures, failure to appreciate cultural differences in child-rearing and applying non-Indigenous standards of child rearing when assessing parenting capacity.

3.1. Initial risk assessments

An initial assessment of risk focuses on the immediate safety of the child. Many jurisdictions around the world have adopted Structured Decision Making (SDM) tools to assist in assessing a child's immediate safety (Barlow, Fisher, & Jones, 2012; Barlow et al., 2019). SDM tools were developed to help practitioners prioritise services to children on the grounds that specific risk factors are statistically associated with a greater risk of child maltreatment. Importantly, the tools are heavily loaded with items measuring historical risk factors, static risk factors that by definition can never change such as a history of substance misuse, prior child protection involvement, and past incarceration of a parent.

When the presence of an historical risk factors is present, but not a current problem, SDM tools can over-estimate risk raising the possibility of a false positive error. For

example, parents who have misused substances in the past but have overcome problems with addiction to the extent that they are now fully capable of providing a stable, safe and nurturing family environment. While a history of substance misuse is statistically related to future risk of harm, what is important when assessing parenting capacity is the parent's risk of relapse. Similarly, prior involvement with the child protective system is a risk factor that elevates the SDM systems' estimate of risk irrespective of how the family came to be involved in the child protection system. Research carried out in Queensland found children whose families were provided with child protection services with the aim of supporting the families were more likely to have subsequent child protection involvement. The authors of the research speculated that this may be due to greater surveillance of the families who receive support (Jenkins, Tilbury, Hayes, & Mazerolle, 2018) increasing the likelihood that a child protection concern would be detected and reported. The effect for these families is that they will be assessed by SDM tools to have an elevated level of risk as a result of the child protection involvement. This will be the case even if the report is not substantiated and if support offered to the family was effective in improving family functioning. A similar argument applies to a history of incarceration as a 'risk factor'. Indigenous people are arrested and incarcerated at a high rate. However, arrests and incarceration can be a socially determined consequence of systemic discrimination (e.g., incarceration resulting from non-payment of fines as a result of living under the poverty line) that has little or nothing to do with parenting capacity (see Allen & Abresch, 2018; Joy & Beddoe, 2019).

In Queensland, the SDM system has been modified in an attempt to ensure cultural influences specifically related to Indigenous families are considered. Professional judgement can then be applied taking into consideration cultural factors in order to 'override' the system. These modifications include acknowledgement of cultural differences in attitudes

towards child independence, earlier age at which children take responsibility, cultural authority within kinship/clan groups and cultural responsibility, the passing on of knowledge or skills (Queensland Government Department of Child Safety Youth and Women, 2019b). However, there are many other important cultural differences in Indigenous child rearing that requires a high level of cultural capability on the part of non-Indigenous practitioners to appreciate (Featherstone, 2017). An important focus for research is to assess the extent to which professional judgement is culturally informed. One way this could be tested is through qualitative examination of rationales provided for over-rides, whether the over-rides lead to an increase or decrease in classifications of risk, and whether these vary between Indigenous and non-Indigenous families, and whether cultural factors are indeed appropriately considered.

Two final points on SDM tools are worth noting. First. the predictive validity of SDM tools are evaluated according to their success in predicting whether there is a recurrence of maltreatment, such as a further report or substantiated notification (Coohey, Johnson, Renner, & Easton, 2013). To be considered culturally equitable, risk ratings based on SDM tools should predict subsequent recurrence similarly for Indigenous and non-Indigenous families. It is notable that (Jenkins et al., 2018) found Indigenous status was a stronger predictor of recurrence than a rating of ‘high risk’ on the SDM tool, raising concerns on the cultural appropriateness of SDM tools in Australia. Seconds, while SDM tools are most suited to assessing immediate risk of harm rather than the longer term needs of the family, the classification of risk can influence subsequent thinking about a family. It is well documented that practitioners faced with the stress of a high work load and pressure of time to make a decision may overlook relevant information about a family and search for information that confirms a prior judgement (Bartelink, van Yperen, ten Berge, de Kwaadsteniet, & Witteman,

2014; Munro, 1999; Roets & Van Hiel, 2007). Thus, when a SDM tool classifies a family as high risk based on historical risk factors a negative perception of the family can be created potentially influencing subsequent assessment of the longer term needs of the child and family.

3.2. Assessment of parenting capacity

Assessments of parenting capacity focus on the longer-term needs of children and the capacity of parents and family to meet those needs. These assessments require that practitioners acquire and interpret information to determine whether a family has the potential to meet the long-term needs of the child. The fact is that the majority of child safety officers in Australia are non-Indigenous and unless they have attained a high level of cultural capability, the process of investigation may be hindered by an inability to engage with Indigenous families and failure to appreciate cultural differences in child rearing (see Byers, Kulitja, Lowell, & Kruske, 2012). Indeed, concerns have been raised that non-Indigenous child protection workers can hold stereotyped views of Indigenous families and lack cultural knowledge making them ill-equipped to conduct culturally informed assessment of Indigenous families (Bessarab & Crawford, 2010; Ryan, 2011). The key point to be made here that we discuss in more detail below, is that accurate judgements of risk and assessment of the needs of families should be based on thorough assessments of a family that are guided by a theoretically sound and culturally informed framework of child development and family functioning.

4. Decision thresholds

As explained above, the second step of the decision-making process that can lead to false positive errors is applying a decision threshold that is too low. This would contribute to the over-representation of Indigenous children in the child protection system if the decision

thresholds applied in decisions relating to Indigenous families were lower than those applied in decisions relating to non-Indigenous families. In this section we consider factors that can lead to different thresholds being applied to Indigenous and non-Indigenous children.

Decision thresholds are influenced by many factors at the individual practitioner, organisational and governmental level (Munro, 2005), but these are generally fuelled by two competing motivations. One motivation is to keep children safe through removal from their family to ensure children do not remain in unsafe environments. Referred to as a child protection orientation (or bias), this is associated with a low decision threshold (less evidence that the child is at risk is needed to justify removal). The second opposing motivation, identified as a family preservation orientation, is to keep the child in the family as long as possible driven by the belief that separation of children from their families, however brief, is traumatic and damaging and should be avoided whenever possible. This family preservation orientation is associated with a high decision threshold (more evidence that the child is at risk is needed to justify removal).

Since the early days of colonisation, government policies in Australia have resulted in a high rate of removal of Indigenous children from their families. Until the 1940's these decisions were not motivated by child welfare concerns. During the era of assimilation, "protectionist" rather than welfare legislation applied to Indigenous children and there was no requirement that evidence of maltreatment be established to justify removal (Human Rights and Equal Opportunity Commission, 1997). The policies were aimed at absorbing Indigenous children with 'mixed-blood' into non-Indigenous society and eliminate their Indigenous identity. It was only in the 1940's that child welfare law was applied to Indigenous children, at which point, to justify removal, it was necessary to establish Indigenous children were 'neglected', 'destitute' or 'uncontrollable'. This was not hard as Indigenous families were not

provided with financial support from the government at the time, and poverty was seen to be synonymous with neglect (Human Rights and Equal Opportunity Commission, 1997).

Stereotyped views of Indigenous families being unable to meet the needs of their children were prevalent resulting in an extreme child protection orientation based on the assumption that removal was in the best interests of Indigenous children (Human Rights and Equal Opportunity Commission, 1997). Such extreme views take time to change and once engrained can linger, even if not explicitly expressed.

In recent times, concerns at the organisational level regarding the over-representation of Indigenous children in the child protection system have put pressure on the child protection system to shift towards a family preservation orientation. For example, in the preamble of a 2013 report into the child protection system in Queensland (Queensland Child Protection Commission of Inquiry, 2013) the commissioner wrote “The risk-averse ‘better safe than sorry’ culture that has sprung up over the last 10 years has been only too evident during this inquiry. To children, a loved parent is much more than the worst thing the parent has ever done them: most children are better off being cared for haphazardly by a loved parent than in someone else’s family or a state-run facility” (page xiii). While not specifically referring to Indigenous families, this is an explicit statement recommending an organizational shift towards a family preservation orientation that would be expected to decrease the rate of removal of children of in Queensland.

If the change in policy was to shift decision thresholds equally for all families, the result would be a reduction in the rate of substantiated notifications of both Indigenous *and* non-Indigenous children. Interestingly, since the publication of the report in Queensland there has been a decrease in the rate of non-Indigenous children in Queensland but an *increase* in the rate of substantiations of Indigenous children (Queensland Government Department of

Child Safety Youth and Women, 2019a). One explanation for this disparity is that the change in government policy and practices resulted in the desired shift in decision thresholds towards family preservation for decisions involving non-Indigenous families, but not for decisions involving Indigenous families.

Prior research suggests decision thresholds might explain such a disparity. In a study of decision making within the Department of Family and Protective Services in Texas, Rivaux et al. (2008) found that risk assessment scores were lower for Black children compared to White children. This was true for cases that were closed, referred for family support and cases in which the children were removed. However, regression analyses found that race predicted decisions to provide services or remove children even when controlling for level of assessed risk and poverty. Specifically, families of White children were more likely to be referred to family support services while children of Black families were more likely to be removed. The authors drawing on the Decision Making Ecology model argued that it was not a cultural bias in assessing risk that lead to the higher rate of Black children being removed, but rather a difference in the decision thresholds being applied in the decision making process. The authors speculated that removal was seen to be the only choice as family support services were not available in Black communities. It seems likely that perceiving removal to be the only option, which had the effect of lowering the decision threshold for Black families, may well have resulted in false positive errors. Whether there are factors operating in Australia to lower decision thresholds being applied in decisions involving Indigenous families is an important focus for research.

An important point illustrated by the study of Rivaux et al. (2008) is that the factors used to assess risk are different to the factors that influence decision thresholds. Risk is estimated by assessing characteristics of a family (e.g., parental substance misuse, the quality

of the parent-child relationship) while decision thresholds are influenced by factors independent of the family's functioning. These include organisational and community level factors such as case load, quality of supervision, the culture of the workplace, availability of family support services, government policy; and practitioner level factors such as personal attitudes and opinions regarding good enough parenting, a family preservation-child safety orientation, professional training and experiences in the field (Baumann et al., 2011; Cross & Casanueva, 2009). If an assessment is made when there is uncertainty as to whether risk factors clearly outweigh strengths in the family or vice versa, decision thresholds can have a significant effect on the decision made. A high decision threshold will result in a higher rate of false negative errors, a low decision threshold will result in a higher rate of false positive errors. That is, under conditions of uncertainty shifts in decision thresholds will alter the ratio of false negative to false positive errors. Thus, well intentioned changes in government policy and practice aimed at shifting decision thresholds will not change the rate at which errors are made unless accompanying shifts in practice are successful in increasing certainty that risk has been estimated accurately.

5. A culturally informed framework to guide judgements and decisions in child protection

A high level of certainty regarding the risk of a family will over-ride the influence of decision thresholds (Baumann et al., 2011; Harnett, 2007). Thus, the most important change in practice is to carry out thorough assessments to ensure certainty that assessments of risk and the capacity of families to provide a safe and nurturing family environment are accurate. This requires that assessment be guided by evidence-based and culturally-informed frameworks. We suggest a bi-cultural model of training could facilitate a shared understanding of the needs of Indigenous children and their families. We describe, as an example, how the holistic model of Aboriginal and Torres Strait Islander social and

emotional wellbeing (SEWB) described by Gee, Dudgeon, Schultz, Hart, & Kelly (2014) and the evidence-based framework underlying the Parents under Pressure program (Barlow et al., 2019; Dawe & Harnett, 2007, 2013) could form the basis of bi-cultural training. In addition to providing guidance for assessing and working therapeutically with Indigenous families, the bi-cultural training would explain why ‘mainstream’ frameworks that are not informed by Indigenous knowledge are likely to fail to meet the needs of Indigenous children and their families, and explore how ‘mainstream’ organisations can shift policy and practice to align to be culturally informed.

We suggest bi-cultural training is important as much child protection practice is carried out by non-Indigenous practitioners who have a responsibility to acquire the cultural competency to work with Indigenous children and families. By ‘cultural competency’ we refer to the definition provided by SNAICC (2015) that ‘cultural competence is a continuous journey of cross-cultural learning that can only happen through deep and genuine relationships with Aboriginal and Torres Strait Islander people, p9’. There is no particular standard of knowledge or practice that can be considered competent. It is a journey that requires developing meaningful relationships and mutual respect which we argue can be facilitated by the sharing of knowledge that is relevant to the task at hand. For Indigenous practitioners, we suggest that the bi-cultural training is vital as culturally informed practice requires that non-Indigenous practitioners appreciate that there are cultural differences in child-rearing and that failure to recognise this is likely to lead to childcare practices being ignored or misconstrued.

It is also important that non-Indigenous practitioners appreciate that the social and emotional wellbeing of Indigenous people is influenced by a sense of connection to family, community, culture and country (SNAICC, 2015). Further, that the extent to which children

and adults have a sense of connection or disconnection is influenced by social, political and historical determinants such as trauma and the chronic stress that derives from exposure to adverse social determinants, such as poverty, unemployment, discrimination, social exclusion, risks of violence, racism, lack of health services, etc (Gee et al., 2014).

The PuP framework draws on empirical evidence that a safe and nurturing family environment is crucial to positive child developmental outcomes and that central to this is the quality of carer-child relationships, positive expectations of care-givers and vigilance to the child's safety. Unlike many western models of parenting that suggest there are a 'correct' set of parenting skills that lead to positive child outcomes, the PuP framework adheres to the principle of multi-finality—that there are multiple pathways to the same outcome. In practice this is translated to mean that there is no right or wrong way of parenting, and that cultural differences in child rearing should be respected. Problems arise when practitioners view parenting practices through a specific cultural lens that can distort the interpretation of what they are observing. In practice this means non-Indigenous practitioners seeking advice on whether a particular observation during an assessment might or might not be a cause for concern.

Like the Indigenous framework, the PuP framework acknowledges that the wider social ecology (social determinants) are detrimental to the capacity of carers to be consistently sensitive and responsive to their children and erodes the capacity of care-givers to provide a safe and nurturing family environment which, in turn, can impact negatively on children's developmental outcomes. Whether adversity does in fact reduce the family's capacity to meet the needs of their children depends on the resources available to them. In the case of Indigenous parents, a strong sense of connection to family, community and culture would be acknowledged as a significant strength.

An important contribution of both the Indigenous model of SEWB and the PuP framework is that they provide a systematic procedure for making sense of the information obtained during an assessment across various domains of family functioning, that is used to develop a case formulation. A case formulation takes into consideration the inter-relationships between domains of family functioning, by explicitly addressing how a protective factor in one domain can mitigate the effect of a risk factor in another domain. So called ‘risk factors’ may have more or less of a negative impact on family functioning under different situations. For example, the extent to which a family is negatively impacted by adversity (e.g., low SES) will vary according to the emotional resilience, capacity to problem solve and the level of connection the family has with community and culture. Thus, together the frameworks promote a strength-based approach to assessment that assumes positive outcomes of children raised in families facing adversity can, and often are achieved. Bi-cultural training would provide the opportunity for a discussion on the overlap as well as the differences in ways of thinking about families. An honest and respectful dialogue has the potential to develop trusting working relationships and mutual respect.

6. Conclusion

Policies and procedures in child protection do not align well with Indigenous approaches to child rearing and models of SEWB. In the assessment of parenting capacity cultural differences in child rearing practices can be ignored or misconstrued and protective factors, such as connection to culture and community are not sufficiently appreciated. If non-Indigenous practitioners are not sufficiently trained in cultural differences in child-rearing, Western models of parenting will be used, at least implicitly, to guide investigations when assessing Indigenous families. This is particularly troubling if practitioners hold stereotyped views of Indigenous families. The Decision-making Ecology model informs us that decisions

made under conditions of uncertainty are prone to bias and that the only way to eliminate bias is to increase certainty through accurate assessments and the provision of effective services for families. We argue that a culturally informed framework to guide assessment and ensure appropriate and effective support is offered to families is one strategy that has the potential to decrease the over-representation of Indigenous families in the child protection system in Australia.

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Conflict of Interest Statement

PH is the co-developer of the Parents under Pressure (PuP) program. The PuP program is owned and disseminated by Griffith University. Proceeds from dissemination are distributed in accordance with Griffith University policy. Surplus funds from training contracts are used to support research activities associated with the PuP program. GF has no conflicts of interest to disclose.