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State of Indifference? An Overview of Residential and Foster Care in New Zealand

Introduction

This chapter provides an overview, both historical and contemporary, of New Zealand's residential and foster care system. In a New Zealand context, residential and foster care usually means placements for children under the age of 17, who are in the care or custody of the Chief Executive of the Ministry of Social Development (our statutory child welfare agency, Child Youth and Family, is a service delivery arm of the Ministry). The chapter excludes consideration of those serving sentences in adult Department of Corrections' prisons, or the small amount of Ministry of Health and Ministry of Education residential provision available for children with acute mental health and special education needs respectively. Unless otherwise stated, the term *children* is used throughout to denote those under the age of 18, in accordance with the United Nations Convention on the Rights of the Child (UNCROC) (Office of the High Commissioner for Human Rights, 1989).

Key Historical Developments

Māori, the indigenous people of New Zealand, have always had their own traditional ways of caring for children, such as the customary fostering and adoption practice of *whāngai* by which some children are raised by someone who is not their birth parent (Atwool, 2006; Gibbs & Scherman, 2013). However, today's residential and foster care system is best seen as having its roots in the Industrial Schools of the 19th century.

Following European settlement residential care was to become, by the latter part of the 19th century, central to the Government's social services provision for children. Industrial Schools were established under the *Neglected and Criminal Children Act 1867*. However, concerns were soon raised about the quality and cost of many of these establishments (Dalley, 1998). In response, the *Industrial School Act 1882* gave the managers of industrial schools the power to 'board-out' some of their existing children to families in the community. These foster carers were largely drawn from the poor (Worrall, 1983). While the practice of *boarding-out* was long resisted by religious and other organisations, over time the Department of Education industrial schools built up their own networks of caregivers and by 1914, 40% (1,000 children) of those who were in the care of the State were boarded out in this way (Dalley, 1998). As well as for children under the age of 14 in industrial schools, boarding-out soon became the preferred form of care for others in the care of the State, such as infants and younger children.

While the industrial schools were closed or reorganised in 1916 (Pollock, 2012) and the term expunged altogether by 1925, by the early 20th century New Zealand had a plethora of residential care provision for children, including reformatory schools, orphanages, receiving homes, boys' homes, girls' homes, crèche (residential), probation homes, training schools, residential schools for the 'feeble-minded', and church homes (Dalley, 1998). Some of these establishments were run directly by the Department of Education, the Government Department responsible for child welfare from 1880 (until 1973). However, a significant number were private, with some degree of oversight from the Department of Education, and most were run by religious organisations, in particular the Catholic Church (Dalley, 1998).

The Child Welfare Act of 1925 gave much greater prominence to the welfare of "neglected, indigent and delinquent" children (Matthews, 2002, p. 120), and established a special Child Welfare Division within the Department of Education (Archives New Zealand, 2011). Further changes were made under the *Child Welfare Amendment Act of 1948*. However, with the post-war population boom and Māori urbanisation (Doolan, 2008) the number of children and young people in care continued to grow. One response to this was the development of a new model, adapted from England, in which married foster carers would live rent-free in a large property and be given an enhanced fostering allowance (Dalley, 1998). This model is still in place today, be it on a smaller scale.

As well as providing a more robust legislative basis for foster care (Garlick, 2012), the *Children and Young Persons Act 1974* was strongly shaped by notions of "autonomous professional expertise" (Cheyne, O'Brien, & Belgrave, 2009, p. 197) and the role of the professional social worker. Shortly afterwards, the New Zealand Foster Care Federation (now known as Fostering Kids) was also established (Ernst, 1999). Over these years, residential care provision also continued to grow to meet largely police-generated remand-related, demand; by the end of the 1970s the Department of Social Welfare alone had 26 residential establishments with 900 beds available nationally (Dalley, 1998).

However, through the 1970s and 1980s there was a succession of government inquiries and highly critical reports on the Department (for example, Auckland Committee on Racism and Discrimination, 1978; Human Rights Commission, 1982; Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1986); these paint a very grim picture of residential services at that time, and particularly so in relation to Māori. While there were some efforts to improve the quality of residential provision in the early 1980s, in 1987, the Department embarked upon a closure programme which over the next three years would see 20 of the Department's 24 residential establishments closed. By 1990 the Department would only have residential provision for 83 children (down from 900 only ten years earlier) (Dalley, 1980). With most residential provision abolished, foster care, whether with strangers or family members, became the preferred form of State care for most children and young people (Doolan, 2008).

The Children, Young Persons and Their Families Act 1989

The ground-breaking *Children, Young Persons and Their Families Act 1989*, remains to this day, New Zealand's primary legislation in relation to residential and foster care, and broader statutory child welfare (Stevens et al., 2011):

The new Act aimed to promote the well-being of children, young persons and their families in ways which were culturally appropriate, accessible and community-based, and which enabled parents and family groups to take charge of their child protection roles. (Garlick, 2012, p. 133)

Central to the Act was the establishment of the Family Group Conference drawn from an "indigenous Māori structure" (Waldegrave, 2006, p. 57); this was a new model of *child protection* and *youth justice* (the Act clearly distinguishes between the two) that embraces family decision-making (Atwool, 2006; Dalley, 1998; Fulcher, 2001; Keddel, 2007). The dominant explanation, within social work circles at least, for why and how the Act came about is that there was a strong demand for change from Māori, as most clearly demonstrated through the *Puao-Te-Ata-Tu (Day Break)* (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1986) and that key figures both within and outside of the Department of Social Welfare led extensive engagement and dialogue with Iwi (Māori Tribes) and other Māori organisations (Barrington, 2004). Buoyed by developing ideas of radical social work and broader social changes within New Zealand during the 1970s and 1980s, the 1989 Act represents the development of a more bicultural approach to supporting children and young people in their families and communities.

However, this was also the era of Rogernomics (the New Zealand equivalent of neo-liberal Reaganomics and Thatcherism in the US and UK respectively), and the promotion of "competition, the free market, deregulation, the control of inflation, restructuring and the partial privatisation of State assets" (Smith, 2015, p.114), and in New Zealand, such economic policies did not generally serve children well (Atwool, 1997). The 1989 Act (and as importantly, its actual implementation) can therefore also be seen as a cost-cutting and ideological measure designed to limit the role of the State in relation to the care of children, and put responsibility back onto families. Thus, the 1989 Act's biculturalism also needs to be seen within the context of the neoliberalism of the time (Cheyne et al., 2009; O'Brien, Sanders, & Tennant, 2009). Barretta-Herman (1994) goes further and suggests that there was a "convenient match between efforts to curtail government spending and the requests of Māori people to care for their own" (p. 273).

In most respects the 1989 Act is a particularly detailed piece of legislation, and in all runs to 424 pages and 469 sections. However, despite the vulnerability of those in State care, the Act has little to say about them and in particular those in foster care. Some (for example Dalley, 1998; Derrick, 1997) have suggested that with the passing of the Act there was simply a widespread belief that, as the legislative intent was that children should wherever possible be cared for by their family/whānau, there would be little or no need for non-kin foster care in the future.

Similarly, while section 447 of the Act provides for the making of regulations in relation to residential care (*the Children, Young Persons, and Their Families (Residential Care) Regulations 1996* were to come, be it seven years later), there is no similar legal power in relation to foster care. Consequently, within the Act, the State has few if any statutory duties that are specific to children in either kin or non-kin foster care. Boshier and Wademan (2010) also make the point that it is “surprising that the [1989] Act is almost completely silent [at that time] on how the relationship between caregiver and young person is to be treated as the young person moves towards independence” (p. 299).

One other major development, that importantly predates the passing of the 1989 Act by a few months, was the United Nations General Assembly’s adoption of UNCROC. Legally binding in international law, UNCROC provides a comprehensive framework for children and young people under the age of 18 and gives them over 40 economic, social, cultural, civil and political rights. While subject to three reservations which are still in force today, including one on the mixing of juvenile and adult prisoners (Human Rights Commission, n.d.; Ludbrook, 2009), New Zealand eventually ratified UNCROC in 1993.

However, notwithstanding some minor legislative changes, New Zealand has still not “explicitly incorporated the Convention into domestic law beyond ratification” (Boshier, 2005, p. 2.). Furthermore, despite Article 20 specifically concerning “the right to special protection and support for children who cannot live with their parents”, and a greater recognition that under UNCROC, signatories have a number of broader responsibilities towards those in State care, and to care leavers, arising from the *Guidelines for the Alternative Care of Children* (United Nations General Assembly, 2010), meaningful implementation in New Zealand in relation to residential and foster care has also been limited.

Contemporary State Care

In New Zealand the State, through Child Youth and Family, is the main provider of residential and foster care. However, placements are also provided by NGOs both large and small, including Barnardos, Dingwall Trust, Open Home Foundation and Youth Horizons Trust. The Ministry of Social Development (personal communication, 22 September, 2015), reports that at 30 June 2015 there were 5,026 children with a *care and protection* (as opposed to a *youth justice*) status, in the custody of the Chief Executive. Of these, 4,163 were in *out-of-home care* as shown below:

Table 1: Children in Out-of-home Care Placements on 30 June 2015, by Placement Type

Placement Type	Description	No. at 30 June 2015
Family / Whānau Placement	Child, Youth & Family kin foster care	2,193
Non Family / Whānau Placement	Child, Youth & Family non-kin foster care	1,182
Child and Family Support Services	Residential or foster care with a Ministry of Social Development-approved NGO	502
Family Home Placement	Child, Youth & Family establishment run by a live-in couple and relievers, or run by a staff team (Supervised Group Homes)	133
Residential Placement	Child, Youth & Family residences – large secure residential establishments	29
Other Supported Accommodation	Variety of other placement types	124
Total		4,163

The Ministry of Social Development does not similarly report on the number of young people who are in the custody of the Chief Executive by type of youth justice placement, although there were 109 young people in the four secure Child Youth & Family youth justice residences on 30 June 2015 (personal communication from Ministry of Social Development, 22 September, 2015).

While comparisons with other western English-speaking and Nordic countries can be problematic, it would appear that New Zealand has a low percentage of children under the age of 18 in State care (Smith, 2015; Thoburn, 2007a). However, it should be noted that New Zealand's provision is by international standards very unusual in that, according to Ministry of Social Development data (as cited in Bleach & Robertson, 2009), less than 5% of those in residential and foster care (across both *care and protection* and *youth justice*) are aged 16 years or older.

Unlike most English-speaking western jurisdictions, to date there has been no statutory aftercare service in place for young people leaving care (Atwool, 2013; Ashton, 2008, 2014; Ward; 2001; Yates, 2001). Almost all young people in care who lose most of their support services and Family Court orders before their 17th birthday (Boshier & Wademan, 2010). Child Youth and Family does fund two non-statutory *Transitions from Care to Independence* NGO support services (Stevens et al., 2011) for young people aged 15 to 19; although these are only available in our largest city. However, while the scope is narrow, a new Act of Parliament will give young people aged 15 to 20 moving from care to independence, a statutory entitlement to request advice and guidance from or on behalf of the Ministry of Social Development (Children, Young Persons and Their Families [Vulnerable Children] Amendment Act 2014, section 386A[7] [a]).

Similarly, New Zealand does not (at the time of writing) have an independent advocacy organisation for children and young people in care, or care leavers. Indeed, meaningful participation by children and young people in decision-making is not a strong feature of either the care or judicial system (Cleland, 2013; Smith, 2013, 2015; United Nations Committee on the Rights of the Child, 2011). New Zealand is also unusual in that the delivery of statutory child welfare is a central government responsibility (Smith, 2015), and until recently at least, this has inhibited effective interagency working. However, a statement of collaboration on children in care was signed in 2008 between the Ministries of Social Development (of which Child Youth and Family is a service line), Health and Education (Stevens et al., 2011). Following on from this and the *White paper on vulnerable children* (Bennett, 2012), the Ministry of Social Development made a commitment in the Government's *Children's Action Plan* to lead the preparation of a cross-agency strategy for children in State care (New Zealand Government, 2012).

With some notable exceptions (for example the foster carer support organisation *Fostering Kids* and the *National Caregiver Training Programme*), there are also gaps, some major, in what might be framed as the national out-of-home care-specific *infrastructure* i.e. system-wide leadership; evidence and practice-informed policy and quality assurance; national standards; professional qualifications; effective systems for staff and foster carer recruitment, support, development and retention; New Zealand research; mechanisms for the development and dissemination of best practice; and national information on effectiveness and outcomes.

Residential Care

In New Zealand, most residential care for children is provided directly by the State. This is in the form of large secure *youth justice* residences (30-46 beds each), secure *care and protection* facilities (8 to 20 beds each), staffed supervised group homes (usually five beds each, and either *care and protection* or *youth justice*), and family homes (similar to supervised group homes but with a couple living on-site rather than staffed per se). One of the secure *youth justice* residences manages six beds (formerly known as the National Youth Criminal Justice Unit) on behalf of the Department of Corrections, for vulnerable children and young people who would otherwise serve their entire sentence in an adult prison (Becroft, 2007). Another secure *youth justice* residence has a unit that operates as an eight week military-style activity camp (MAC) for serious and persistent youth offenders, which is run in partnership with the New Zealand Defence Force (Ministry of Social Development, 2013). While NGOs also provide residential care, this tends to be in specialist areas, for example harmful sexual behavior and conduct disorder, or specialist models, for example the *Teaching Family Model* (TFM):

Characteristics of residential care in New Zealand are as follows:

1. Having some of the same physical features as medium-security prisons (Maxwell, Robertson & Kingi, 2002), the secure residences are very much the public face of the State's out-of-home care system. Their performance, or more precisely, incidents covered in the media, are a matter of regular political and media debate.
2. The State's direct provision of residential care has again grown over recent years. In 1999, Child Youth and Family only had 76 beds across their three secure youth justice residences (Polaschek, 1999); that capacity is now 140 beds with the latest addition being the building of a new secure youth justice residence in 2010. There have been similar increases in secure care and protection provision including the 12 bedded National Residential Treatment Programme for Harmful Sexual Places (Te Poutama Arahi Rangatahi) that Barnardos New Zealand manages on its behalf; Child Youth and Family now has 70 secure care and protection beds available. Child Youth and Family has also recently developed their 'supervised group home' model and rolled it out across the country. While this uses former family home accommodation, this has helped to fill a significant gap in its directly-managed continuum of care.
3. In comparison to most jurisdictions in, for example, Australia, Canada and the United Kingdom, New Zealand's secure provision for 216 children and young people under the age of 17, is arguably high. However, what is particularly 'out of step' with these countries, as well as the United States, is that 70 of these beds are for the purposes of care and protection rather than youth justice. For example in Australia, which has systems that are generally similar to those found in New Zealand but with a population five times higher, only four (out of seven) states and territories have such a provision, and its use is strictly limited (PeakCare Queensland, 2013).

4. In terms of staffing, few of those working in residential care in New Zealand, usually referred to as either residential youth workers or youth care workers, hold professional qualifications, and training opportunities are limited; the residential task in New Zealand is generally seen as a very narrow one. However, while the country's residential facilities do not have a strong therapeutic milieu, Child Youth and Family and other providers do employ attached clinicians and specialist social workers.
5. Notwithstanding the above, there are numerous examples of residential care good practice across the country. For example, in an independent national assessment of social work practice, several aspects at one of the Child Youth and Family youth justice secure residences were deemed to have been exceptional (Office of Children's Commissioner, 2015), the Barnardos-run National Residential Treatment Programme for Harmful Sexual Places (Te Poutama Arahi Rangatahi) was recently cited by the Victorian Commission for Children and Young People (2015), and some of the education provision across residences has been found to be of a high quality (Education Review Office. 2013; Matheson, 2014).

Foster Care

As shown in Table 1, foster care placements in New Zealand, whether kin or non-kin, are largely provided directly by the State through Child Youth and Family, rather than the approximately 76 (Pollock, 2012) Iwi (Māori Tribal) Social Services and Child and Family Support Services that may also provide care placements (Murray, Tarren-Sweeney, & France, 2011). Most foster carers are essentially volunteers (Child, Youth and Family, 2007; Thoburn, 2007b); the allowances that they receive cover the costs incurred. While there are some specialist fostering schemes in place (for example the *Youth Horizon Trust* runs a Multi-dimensional Treatment Foster Care programme), the role of most New Zealand foster carers remains a very traditional, if nonetheless still challenging, one.

Foster carers are usually provided with support from Caregiver Liaison Social Workers (Atwool, 2010). The establishment and subsequent expansion of this foster carer support role is one of a number of foster care strategies and initiatives that have been put in place by Child Youth and Family over the last 20 years. While there is some evidence, be it largely anecdotal, of some improvements in the foster care system over recent years, the significant year-on-year increase in child protection referrals over much of that period has been a major challenge and has impeded progress on care. Key NGOs, and indeed Child Youth and Family too, do have good, and well-supported, foster care provision. However, there is just not enough of it.

Other features of contemporary foster care in New Zealand are as follows:

1. Kinship care in New Zealand has grown significantly over the last 25 years and is now a major form of out-of-home care (Atwool, 2010; Child, Youth and Family, 2007; Child, Youth and Family, n.d.; Connolly, de Haan, & Crawford, 2013; Stevens et al., 2011; Worrall, 2005). Indeed, from Table 1 it would appear that kinship care may now be the primary form of State care in New Zealand.

2. Most Child Youth and Family foster carers are from low-income households, and the organisation's foster carer approval process is light (Modernising Child, Youth and Family Expert Panel, 2015).
3. New Zealand does have a long-established foster carer training programme. While not mandatory, the National Caregiver Training Programme, now managed by Fostering Kids on behalf of Child Youth and Family, was established so that non-kin and kin foster carers could access training courses at locations across the country that were designed around their needs. This training programme now includes more advanced certificated training.
4. Unlike countries such as the United States and the United Kingdom, adoption is now rarely an option for children in care in New Zealand (Child, Youth and Family, n.d.; Thoburn, 2007b). However, a Home for Life scheme has recently been introduced; this involves a permanency support package being provided to an existing, or new, foster carer, to enable a specific child to be discharged from State care (Child, Youth and Family, n.d.; Gibbs & Scherman, 2013; Ministry of Social Development, 2012; Tapp & Taylor, 2013).

The Modernising Child Youth and Family Expert Panel

On 1 April 2015, the Social Development Minister announced the establishment of *The Modernising Child Youth and Family Expert Panel*. Signalling a major reform of the statutory child welfare agency, this Ministerially appointed advisory group was tasked with leading a complete overhaul of the organisation, through the development of a business case for a new organisational operating model (Tolley, 2015a). Within the panel's broad terms of reference there are a number of specific references to residential and foster care including: a review of the purpose and (cost-)effectiveness of the nine Child Youth and Family secure residences; a focus on transitioning from care; and foster carer recruitment, support and retention (Tolley, 2015b).

The establishment of the Minister's advisory group followed the publication of five major reviews of Child, Youth and Family, both external and internal, carried out over the period 2011 to 2014 (Tolley, 2015b). Since then two further reports were published in August 2015 – one historical and the other contemporary – that also raise serious questions about residential and foster care provision, and statutory child welfare in New Zealand.

On the 24th of August 2015, the final report of the *Confidential Listening and Assistance Service* was released. The service operated from 2008 to 2015, as an independent agency that provided an opportunity for people to be heard by a panel about their abuse or neglect while in the care of the State prior to 1992. It was part of an all-of-government response to such historic claims. The report, based upon the testimony of over a thousand individuals, paints a shocking picture of child welfare (and education and health) care prior to 1992, as a "neglectful system which allowed cruelty, sexual abuse, bullying and violence" (Confidential Listening and Assistance Service, 2015, p.6). The report makes a number of recommendations (some redacted) on improving care for children who are currently in residential and foster care.

On the 27th of August 2015, the very same week as the Confidential Listening and Assistance Service report, the Children's Commissioner released his report *State of Care 2015: What we learnt from monitoring Child Youth and Family* (Office of the Children's Commissioner, 2015). The report's three overall findings were that Child Youth and Family's practice was not consistent, it was not sufficiently child-centred, and it was not actually known whether children were any better off as a result of their intervention. While the report found that Child Youth and Family had strong systems and processes for child protection investigations and decision-making, a raft of deficiencies and areas for improvement were identified, and particularly so in relation to foster care, *care and protection* (secure) residences, and the measuring and monitoring of outputs and outcomes. Usefully, the report included perspective of those in State care.

As for the Minister's advisory group, at the time of writing they have just published their first of two reports. Within this interim report, a high level business case addressing the need for change, there is a strong focus upon children in care, indicative support for extending the care leaving age beyond 17, the need for an advocacy organisation for children in care, a strengthening of foster carer recruitment and support, and for a new system to enable social workers to spend more time engaged with children in care. This report also includes perspective of those in State care; the Minister's advisory group also has a youth advisory panel. In guiding their design, the following four building blocks are proposed:

1. A child-centred system
2. An investment approach
3. A professional practice framework and
4. Engaging all New Zealanders (Modernising Child, Youth and Family Expert Panel, 2015).

Major change, including larger roles for NGOs, whether existing Child and Family Support Agencies, Iwi (Māori Tribes) and/or new providers, is widely expected.

Conclusion

As a country, despite occasional short bursts of intense media interest, New Zealand has something of a sense of public indifference towards residential and foster care. Perhaps the 5,000 children currently in the care of the State reflect aspects of our society that many find uncomfortable. Such indifference has, with one or two notable exceptions, been paralleled by decades of neglect by the governments of both main political parties and their coalition partners. However, with the establishment of *The Modernising Child Youth and Family Expert Panel*, New Zealand's care system is at a crossroads. Drawing upon existing commitments to the importance of family/whānau, culture and community, as well as existing pockets of good practice, we have a once-in-a-generation opportunity to build a more selective and higher quality residential and foster care system that is also: better designed to reflect the needs of children and their families and effectively engage with them; more purposeful; best practice and research-informed; strongly orientated around the rights of children and hearing their views; safer; better able to effect positive change; and outcomes-focused. It remains to be seen whether that opportunity will be meaningfully seized.

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