Iwi Social Services: Why the lack of progress?

Mike Doolan

Mike Doolan was Chief Social Worker for the Department of Child, Youth and Family Services from 1994 to 2001. He is currently an adjunct senior fellow at the Social Work Department, University of Canterbury, Christchurch, New Zealand.

Introduction

This article examines why the establishment of Iwi Social Services, a key object of the Children, Young Persons and Their Families Act 1989 (The Act), has been a slow and difficult process, achieving only limited results. There are undoubtedly many reasons for this. There was, for example, significant Maori unease with the original term used for an Iwi Social Service – Iwi Authority – and this was not rectified until 1994 when an amendment was enacted.

There have clearly been other issues for Maori in achieving an appropriate partnership with state agencies (MMD, 2000a; MMD, 2000b). Sources have recounted the impact of neo-liberal economic reforms on social services provision during the 1990’s (Mason, cited in Cockburn, 1994; Cheyne, O’Brien and Belgrave, 1997; O’Brien, 2001). This article, however, focuses discussion on the response to the legislation by the state agency responsible for administering the provisions, the Department of Child, Youth and Family Services (CYFS). It argues that at least some of the reason for Iwi Social Services policy being ‘the state’s best kept secret’ (Bradley, 1997: 3) may lie in: inadequate agency understandings about the intentions of the law; confusion about what constitutes statutory work and how this differs from contracts to deliver services to the state; and a lack of agency understanding about its appropriation responsibilities towards s.396 organisations.1

While these things affect all s.396 organisations, the article argues that their impact has been greatest for Iwi Social Services (and also Cultural Social Services) because they combined to inhibit those bodies from operating within their own, culturally bounded practice paradigms.

Background

The 1980’s saw an intense process of examination of the role of the state in child welfare matters. Debate was heavily influenced by Maori concerns about the impacts of traditional child welfare service paradigms on their people. The report Puao-te-Ata-tu (DSW, 1988) was highly influential in generating legislative change in relation to children’s services. Members of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare heard the views of Maori that ‘radically different approaches and structures would be needed if the Department and its programmes were ever to address the needs

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1 Collectively, Iwi, Cultural and Child and Family Support Services are known as the Section 396 Organisations, reflecting the section of the statute relating to their approval.
of its Maori client Group’ (Keenan, 1995: 11). Its report especially argued that value be accorded customary support systems in Maoridom as vehicles for directing state assistance to Maori families (Keenan, 1995).

Puao-Ata-tu was an important influence in the formation of the objects and principles of The Act and, in particular, in opening up the way for organisations other than the state agency to work with children and young persons in need of care or protection, and their families. The state was making an assertion by means of this legislation that it no longer saw itself as substitute parent, but rather as a defender of kin networks (Cockburn, 1994). An important thrust of The Act is to ensure the movement of the state’s clients to kinship-based organisations like Iwi Social Services and Cultural Social Services, and to Child and Family Support Services in local communities. It must be noted, however, that there are no procedural elements in The Act that require this to happen in any particular case. For Maori and the state alike, this was relatively uncharted territory, as had been the directed and extended consultation with Maori which had led to this reform in official thinking in the first place (Keenan, 1995).

Fifteen years after the passing of The Act, 23 Iwi Social Service organisations exist, few of whom act as independent statutory authorities as the law permits, and there is no effective geographical network of them. No Cultural Social Services organisation exists at all. This seems, on the face of it, a significant failure of legislative intent. There is no doubt that CYFS has devoted considerable effort to this issue, but the results are not encouraging. An important opportunity is being lost when ‘The Act clearly includes Maori and non-Maori on the same boat, yet in practice, Maori continue to be relegated to the lower decks’ (Bradley, 1997: 5).

What did The Act intend?

In establishing conditions for voluntary agencies to join with the state in providing services for children and families, The Act envisaged the development of a child welfare services network for New Zealand. Networks are the alternative to either centrally controlled services hierarchies or services markets and consist of a number of seemingly independent entities brought together to work towards some common objectives where the coordination of activity is required, both in meeting client need and in using resources in the most productive way (Newberry and Barnett, 2001). Under The Act, CYFS is charged not only with assisting service providers develop delivery capability and promoting cooperation between them but also implicitly with coordinating services activity within the collective of agencies (including itself) providing services for children and their families. Thus, CYFS has a superintending role. In the literature on contracting of services by the state, it has the role of public manager (Taylor, 2000).

The Act may be seen as an early example of more modern attempts to forge a ‘third way’ alternative to government or market provision (Walker, 1999), whereby networks, which are partnering arrangements between collaborating agencies, are promoted. Approval as an Iwi Social Service pursuant to s.396 of The Act positions (but does not compel) the organi-

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3 Information provided by the Department of Child Youth and Family Services, February, 2005.
4 CYP&F Act, 1989, Part VIII.
5 S.4(a) and s.4(g).
The ‘statutory social work’ confusion

That voluntary agencies have statutory roles and responsibilities directly prescribed by law may be a uniquely New Zealand provision, and one that is possibly not well understood in New Zealand. Two statements by a Government minister would seem to indicate some confusion as to what was intended in the legislation:

I am aware that Pacific social services providers deliver a range of services, from statutory services such as the provision of care for children to community-based preventative services designed to address issues well before they become problems (Maharey, 2001a).

Less than two weeks later:

The Government agrees that CYFS – and NZ families – can only benefit from a firm commitment to community partnership – and that partnership with the community on non-statutory work will allow CYFS to focus on the effective execution of its statutory duties (Maharey, 2001b).

In the former view, voluntary agencies have statutory functions; in the latter, they are conceived as having a non-statutory work focus. There is a widespread view in the Department that statutory social work is the purview of CYFS. Work carried out by CYFS is referred to as statutory social work (Dearsley, 2000), the implication being that social work in voluntary agencies is not. More unequivocally, ‘the delivery of statutory social services [is] the responsibility of [CYFS]’ (Taylor, 2000: 18). Neither author accurately portrays the provisions of the legislation governing child welfare activity in New Zealand.

What has possibly confused the issue is that, in addition to any of the functions that they may assume on behalf of their own clients as a result of their approval under s.396,6 agencies may choose to be service providers to CYFS in relation to CYFS’ clients. Indeed, approved organisations may feel it necessary to undertake, or even confine themselves to, this service-provider role as a means of consolidating an adequate funding base. The confusion is exacerbated by the fact that CYFS employs contract methodology to fund both the statutory and contracted activities of s.396 agencies. This has possibly worked more to the detriment of Iwi Social Services than it has to Child and Family Support Services, because the latter are less likely to experience the discomfort or dissonance that culturally-based organisations experience under state-imposed contractual conditions, which will almost always prescribe activity and process.

The funding responsibility

Apart from the confusion over who exercises statutory functions, there is confusion about funding arrangements for these. There is only one appropriation for the administration of

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6 s.19, s68, s.79, s.81, s.82, s.101, s.102, s.104, s.106, s.107, s.108, s.110, s.114, s.126, s.129, s.135, s.139, s.140, s.141, s.166, s.186, s.362, s.363, s.390, s.391, s.394, s.395.
The Act, and this is entrusted to CYFS to manage. There seems be a widespread belief within CYFS, particularly at the service delivery front, that the purpose of the appropriation is to fund outputs delivered by CYFS itself. However, The Act creates an obligation on the Chief Executive to give effect to decisions, recommendations and plans of family group conferences. As an Iwi Social Service has the right to seek a family group conference for its own client families, it has a right to expect that the Chief Executive will give effect to the family group conference outcomes ‘by the provision of such services and resources, and the taking of such actions and steps, as are necessary and appropriate in the circumstances of the particular case’. All actions subsequent to a family group conference (such as supporting a plan, Family Court work, or providing care) are statutory activities carried out by the Iwi Social Service and thus are to be resourced by the state. That such obligations are regarded as unfair or inappropriate incursions on the CYFS budget by a significant number of CYFS managers is something that needs to be addressed by the Department.

That the Chief Executive’s obligations to fund the statutory activities of Iwi Social Services are satisfactorily met through what is known as the Section 19 Bed-nights Contract is questionable, as is the Department’s authority to tie access to resources for these purposes to this sort of contract. Treasury Contracting Guidelines do not seem to acknowledge the responsibility CYFS has for funding the statutory activity of non-government organisations (as, for example, in relation to s.34(2) of The Act), but rather concentrate on the state contracting for services on behalf of its own clients (Treasury, n.d.). There appears to be no current mechanism for projecting and planning for the volume of statutory activity carried out by non-state organisations to ensure that the appropriation to CYFS is sufficient for these purposes.

The rise of contracting

Historically, public sector services were delivered through hierarchies. During the 1980s, however, interest developed in the use of markets with the state divesting itself of its trading activities and the hierarchies that had managed them. Market concepts and language became increasingly applied to the purchase and delivery of social services – education, health and welfare – and quasi-market systems were pursued (Newberry and Barnett, 2001). This led to the ascendency of such notions as contracting for service delivery over the funding of agency activity through grants (Burn, 1998). The then Department of Social Welfare signalled the change in its approach to funding the voluntary sector when it issued new guidelines in August 1989, just two months before The Act became law (DSW, 1989). From the early 1990s, the Department took an increasingly directive stance with provider agencies (CYFS, 2002) at some cost to the mission and goals of voluntary sector agencies (Higgins, 1997) and undermining network development, particularly the attributes of interdependence and cooperation that characterise effective networks. While the 1989 DSW guidelines for contracting for social services espoused the rhetoric of a fairer and more culturally appropriate means of expressing funding agreements (DSW, 1989), the experiences of the voluntary sector agencies fell considerably short of the vision (Shirley, 1992; Smith and Lipsky, 1993; Leat, 1993; Rivers Buchan Associates, 1995; Dawson, 1996; Burn, 1998; NZ Council of Christian Social Services, 1998; Taylor, 2000). In particular, the contracting

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7 s.34.
process was assessed as not responsive to the needs, rights and interests of Maori, and did not provide opportunity for Maori to participate directly in the process (Ministry of Maori Development, 2000a).

In its guidelines, the Department described its legal authority for entering into contracts as resting largely on s.407 of the Act, which it claimed gave: ‘specific authority for the [Chief Executive] to enter into contracts for the provision of services to enable the [C.E.] to carry out […] functions under the Act’ (DSW, 1989:17). Giving effect to the decisions, recommendations and plans of family group conferences is a function of the Chief Executive, but it is s.34 (2) that establishes what the Chief Executive must do, not s.407, which relates to contracting with a community service.\(^8\) The guidelines claim that s.34(2) conveys an inferred authority to contract, but give no grounds to support such an inference. They also infer authority to contract in a number of other sections,\(^9\) none of which, unlike s.407, has a specific reference to contracting. There is at least an argument that the differences in wording between s.407 and these other sections in respect of funding provision is not accidental. It may be argued that any s.396 organisation should be in no less advantageous a position in accessing money for its clients for whom a statutory intervention has been necessary, than CYFS is for theirs. This would indicate funding by way of yearly allocation (in the same manner that CYFS delivery units are funded) rather than by way of contract, and that accountabilities should be assessed by way of the Act’s approval processes, rather than by way of a contract instrument. The ability of a s.396 organisation to manage its statutory work within a finite budget (as CYFS is required to do under the terms of the Public Finance Act 1989) might then become an approvals issue.

The use of contracts did not happen initially. In the early years of The Act’s implementation, s.396 organisations experienced major difficulties in accessing the resources they needed at the local level, even when the Family Court had made orders in their favour. Rates of payment varied by locality and were often delayed and sometimes not paid at all.\(^10\) At that time, the Community Funding Agency negotiated with CYFS to set aside funds to give effect to orders of the Court. Thus, the s.19 Bed-nights Contract was an attempt to resolve inequities and give s.396 organisations access to funding without having to negotiate this with local offices on a case-by-case basis. By then, the Community Funding Agency had developed its contracting methodology and it is not surprising that this was the vehicle employed. However, while the intentions were good, the result restricted access to funding to those situations where there was a Court order, and ignored other provisions to which the Chief Executive is required to give effect – in particular, the plans of family group conferences that do not result in a Court order.

Because they are approved organisations, CYFS looks to s.396 organisations to provide services for CYFS clients, and enters into contracts with them to do so. It seems apparent that these roles have merged over time so that, even when s.396 organisations act as independent statutory authorities, they are funded in ways that mimic their contracting arrangements with CYFS. The use of contracts as the method of funding the statutory functions of s.396 organisations may, in fact, be ultra vires.

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\(^8\) Established under s.403 of the Act.

\(^9\) s.363; s.387; s.388; and s.389.

\(^10\) J. Harrison (personal communication July 10 2003).
The impact of contracting on Iwi Social Services

It seems unlikely that the designers of the statute introduced the provision for Iwi Social Services with the intention of having such organisations behave in the same way as the state. Indeed, the very essence of the vision of Puao-te-Ata-tu and The Act is that Iwi Social Services will act differently, providing services that are nested in the values, customs and beliefs of Maori.

A distortion of this key aspiration is risked when the contracting methodology is extended to the funding of the statutory activities of an Iwi Social Service. The reason for this is that contracts specify outputs and processes – what is to be done and how it is to be done – which limit the ability of an Iwi Social Service to deliver its services in its own unique way. When voluntary agencies agree to contracts ‘that are output based and where activity is monitored, then they forego their ‘clinical freedom’” (Bernstein, 1991: 161). The Department of Internal Affairs (cited in MMD, 200b) has commented that the emphasis by purchasers on outputs reduced the ability of providers to modify services to meet local needs and improve outcomes. MMD (2000b: 38) also cites a number of writers (e.g. Hunt, 1995; Clark, 1997; Smith; 1996; O’Sullivan, 1998; Florence, 1996; Leigh, 1994) as asserting that when voluntary agencies became agents of government, their capacity to respond to their communities was compromised.

Even when providing services to state clients, a legitimate use of contracts for service, Maori providers resist the imposed prescription of culturally-based activity. They join the call for contractual arrangements that identify a means of measuring improvements in the lives of service users, rather than focusing on information about the number of interventions or internal agency processes (MMD, 2000b). Frustration with the process of output prescription is amply illustrated by this quotation from a Maori provider:

The whole agency contracting process really flies in the face of the so-called partnership approach with iwi. It is not a partnership approach. It is very much about here is the contract, we will purchase these things from you at this price. Do you want it or don’t you want it? (MMD, 2000b: 24).

Maori providers are even less likely to accept prescription in their activities when the authority for these derives from the law itself, and indeed they should not agree to do so under any circumstance. For these activities, they are more properly accountable under the approvals provision of s.396 of The Act than through any contractual mechanism.

A way forward

Iwi Social Services need to be released from the current state straitjacket they are in if they are to develop and prosper. This will involve some shifts in departmental thinking, such as:

- Acceptance by CYFS that under the provision of Part VIII of The Act, Iwi Social Services are established as alternatives to state provision, and draw their authority directly from the law. This creates the need for an entirely different basis to the relationship than when an Iwi Social Service agrees to provide services to the state for CYFS clients;
- Acceptance by CYFS that it has a statutory duty to develop Iwi Social Services capability.
In the spirit of Puao-te-Ata-tu, and the law itself, this will be service capability defined and prescribed by Maori themselves, and not by CYFS;

- Acceptance by CYFS that it is the manager and steward of the appropriation that is provided to fund all the statutory activities that arise from The Act, not just those that it performs itself. As regulator, funder and provider of services, CYFS has a duty to develop a collaborative, coordinated network of service providers. It cannot act in competition with them, or establish market conditions to regulate the funding of statutory activity. CYFS has a responsibility to assess the total volume of statutory activity in projecting its appropriation requirements and to ensure that any appropriation it receives is distributed fairly in an open and transparent process.

- The involvement of s.396 organisations, as equal partners with the Department, in the annual budgetary cycle process, which estimates total volume projections and associated funding requirements, and allocates the appropriation equitably amongst all the providers of statutory services under The Act.

Acceptance of these would open up the way for a new relationship between CYFS and Iwi Social Services. Some features of this relationship might be:

- Iwi Social Services each reach agreement with CYFS about the outcome intentions of statutory activity in relation to Maori clients within each agency’s purview, and the services each party will contribute to meet these.

- Iwi Social Services receive allocations based on their patterns of statutory activity and projected client and activity numbers, in the same way the Department’s own delivery units are funded.

- Iwi Social Services each determine the mix of outputs they assess will achieve desired outcomes, and are held to an outcomes assessment regime no more rigorous than is CYFS for the same purposes;

- Accountability for providing professionally and culturally appropriate services, for achieving appropriate outcomes and for fiscal propriety is addressed in the annual review of approvals status of Iwi Social Services.

By these means, New Zealand may get closer to fulfilling the dream of Puao-te-Ata-tu and the Children, Young Persons and their Families Act 1989, and closer also, to a proper recognition of the role of such agencies in a coordinated network of service provision:

Motivated by a desire for a caring society, [voluntary agencies] establish and operate programmes of education, health, social welfare and economic improvement among disadvantaged sectors. They have long been involved in pioneering new approaches to meeting needs and solving problems in society … (Commonwealth Foundation, cited in Rivers Buchan, 1995: 3).

References


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