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Pathways to parenting in New Zealand: issues in law, policy and practice

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RESEARCH ARTICLE

Pathways to parenting in New Zealand: issues in law, policy and practice

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In New Zealand there are many ways to become a parent, including two-parent families of heterosexual and homosexual couples, single parents, adoptive parents, kin carers, whāngai arrangements, long-term fostering, guardianship and assisted reproductive technologies. In this paper we discuss the different pathways to parenthood, how they have come about, and New Zealand's laws, policies and practices that make them possible but also challenging. Two areas of law of particular interest are the implications of the Adoption Act 1955, which continues to be discriminatory, although some of its provisions have been reinterpreted in the courts, and the Care of Children Act 2004, which introduced 'modern' parenting arrangements but allowed conflicts to remain with previous child care Acts. The new Home for Life policy introduced by the Ministry of Social Development will also be critically discussed, in light of its weaknesses. We conclude with implications of the varied pathways and identified gaps in our current knowledge that call for further research.

Keywords: New Zealand; parenting; fostering; adoption; reproductive technologies; children

Introduction

This paper highlights the varied approaches to parenting currently available in New Zealand, along with the law, policy and practice issues that make alternative parenting arrangements viable, preferred and/or challenging. The most likely alternative way for those wanting to become parents is to care for one or more of the 5000 children in the care population who cannot remain with their biological families for a variety of safety- and neglect-related reasons (Connolly & Cashmore 2009). Additionally, human assisted reproductive technologies (ARTs) have become another mechanism for would-be parents to have children. Below we describe some of the socio-historical contexts out of which the current parental pathways have emerged. We will then describe each of the mechanisms to parenthood in further detail. We end with a summary of

the major implications of these pathways, and highlight the areas in need of further research.

Background and context

New Zealand's alternative parenting arrangements have changed dramatically over the past 150 years. Before Europeans arrived, the Māori people (New Zealand's indigenous population) had their own system of caring for children called whāngai (described in more detail below). Europeans arrived in New Zealand during the late 18th century and settled in larger numbers from the 1840s onwards. Adoption was legalized in 1881 by the introduction of the Adoption of Children Act 1881, although the number of children being adopted was not high and the legislation was mainly to allow children to become extra family labour and to encourage people to take in deprived or abandoned

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children (Shannon 2001). There was a substantial rise in the need for adoption post-war (1950s onwards) and the Adoption Act 1955 facilitated the final adoptions of thousands of children, predominately children born of young unmarried mothers. Between 1955 and 1974, adoption rates averaged at about 2800 per annum (Else 1991). With more liberal attitudes towards young unmarried mothers; state financial support of single parents; increased access to contraceptives, abortions and social acceptance of these; and de facto couples keeping their children, adoption rates have significantly reduced over the past 40 years. In 1969, for example, according to Iwanek (1997), more than 6% of the nation's children were being relinquished for adoption; this would approximate to 3750 children. By 2000, in contrast, there were only 744 domestic adoptions recorded (New Zealand Yearbook 2010) and in 2010, that number dropped to just 199 domestic adoptions recorded (Child, Youth and Family 2010).

Children needing homes

Currently about 40% of the 5000 children in need of alternative parenting are able to go to kin carers (Connolly & Cashmore 2009). Kin care includes the care of children by relatives (commonly grandparents, siblings, aunts or uncles) and can be informal without legal intervention, or more formalized with relatives applying for guardianship or parenting orders using either the Children, Young Person's and Their Families Act 1989 or the Care of Children Act 2004, both of which are described in more detail below. Kin care in New Zealand, although common, is under-researched and unregulated (Frengeley 2007). Those who parent in this way receive less in the way of state financial support compared with those who foster long-term or those who adopt (Child, Youth and Family 2007; Frengeley 2007). For example, foster parents may get additional payments, and those who adopt are entitled to adoption leave in the same way as parental leave, but kin

carers are entitled to neither leave nor additional payments.

Another 1000 children currently in the care system live in family-group homes or group-based residential care (Child, Youth and Family 2010). Most of these children are older (usually over 10 years of age) and have missed out on the chances of permanent parenting arrangements, other than to view the group-home carers as substitute parents. In addition, about 1500 children live with non-kinship foster carers, in short-term and long-term arrangements (see below for more discussion of these practices). Most of the short-term fostering results in children remaining with their birth relatives, but long-term fostering often leads to permanent new families for children.

New Zealand's child welfare orientation is based on protection and support, as well as family empowerment and participation (Lunt 2008; Connolly & Smith 2010). Children are not removed from their birth parents as quickly as they were in the past, and unlike in the 1960s and 1970s, adoption as a form of family formation has become rare. Further, families are now viewed within a human capital focus—that is, children are viewed as a precious future resource, with a societal need to invest in families to ensure the economic future of New Zealand since, like most other westernized nations, it has an ageing population that will probably not be looked after by universal welfare provision (Lunt 2008; Elizabeth & Lerner 2009). The current welfare focus for New Zealand is 'cradle to workforce', not 'cradle to grave' as it was in the heyday of welfare provisions in the 1950s and 1960s.

Sadly, abuse rates of children within New Zealand are not declining and, indeed, are considered high among member nations of the Organization for Economic Cooperation and Development (Gilbert et al. 2011); this makes the ongoing need for parents and permanent carers a very real issue. Many children who are cared for by fostering arrangements or by kin are at risk of abuse, or have already been abused, by their birth relatives (Child, Youth

and Family 2007). For the 5000 children in the care system, alternative parenting options might be the difference between hope and misery. In the following sections, we explore with a critical lens some of the alternative parenting options that currently exist in the New Zealand child welfare system and consider some of the legal, policy and practice issues arising from them. Many of these issues have been identified by those most affected—the parents and the children—and so are considered from their perspectives.

Pathways to parenting

Critical look at adoption

New Zealand was one of the first countries to pass national adoption legislation, with the Adoption of Children Act 1881, which encouraged couples with ‘more positive circumstances’ to take in children who were otherwise neglected (Pitama 1997, p. 74). Occurring 45 years before any similar statutory provisions in the UK, the Act was heralded for its focus on the importance of the children. Over time, however, that emphasis was eroded and greater concern for shielding a couple’s infertility or a child’s illegitimacy led to trends that saw the adoptive parents’ interests coming before those of the children (Rockel & Ryburn 1988; Pitama 1997). The need for secrecy was clearly evident in the Adoption Act 1955, which mandated closed adoption practices. This Act heralded adoption as final, with full transfer of birth-parent rights to adoptive parents (Else 1991). The Act also terminated the rights of the children to know who their birth parents were (Walker 2001).

Thirty years later, the secrecy of this Act was challenged with regard to openness and access to information with the introduction of the Adult Adoption Information Act 1985 (Shannon 2001), whereby adoptees and birth parents from past closed adoptions could legally seek out and reunite with one another. The Adoption Act 1955 still regulates adoption within New Zealand today; however, since the mid-1980s, Child, Youth and Family (CYF)¹ has had

an ‘unlegislated’ policy of placing children into open adoptive arrangements. According to Iwanek (1997), the former head of the Adoption Unit of CYF, by 1997, 90% of domestically placed non-relative adoptions in New Zealand were open.

Intercountry adoption (ICA), which is currently a significant form of adoption in New Zealand due to the country’s extremely low domestic adoption rates, is regulated by both the Adoption Act 1955 and the Adoption (Intercountry) Act 1999. Looking at a snapshot of all adoption types, in 2009–10 there were 199 adoptions in New Zealand (Child, Youth and Family 2010). Most of these (136) were adoptions by carers with a prior connection and relationship to the children, whereas 63 were by non-relatives. About 40 of these 63 adoptions were domestic adoptions, i.e. New Zealand babies adopted by New Zealand citizens or residents. A further 23 were ICAs by New Zealand citizens of children from Russia, Lithuania, China, India and Thailand. Each year, the ICA rates vary: sometimes large numbers of Pacific Island adoptions have been counted as ICAs, and at other times some countries have closed their adoptions to specific countries when controversy has arisen.

The Adoption Act 1955 allows married couples and single people to adopt. De facto heterosexual couples have been able to adopt, although this is usually an exception, as the 1955 Act actually forbids it. People in civil partnerships who are gay or lesbian may not adopt as a couple (although there have been a few individual cases where gay couples have adopted in judicial reviews), but one person can do so as a single person. Gay couples can become Home for Life long-term foster parents; they can become guardians or hold parenting orders (see below); and they can also be recognized as parents of a child conceived through ARTs. But when it comes to adoption, the Adoption Act is clearly biased—their sexuality precludes most gay couples from adopting. This leaves gay/lesbian families with fewer options; they may also feel under more pressure to foster

when they would have preferred to adopt. However, under the newly passed Marriage (Definition of Marriage) Amendment Bill, gay and lesbian couples can now legally marry, and by extension, as married couples, they should eventually be able to adopt as couples—as has long been the right of heterosexual couples (Elliott 2013; Stuff.Co.Nz 2013). Nonetheless, with the passage of this Bill allowing same-sex couples to marry, there is speculation that it may result in a significant reduction to the pool of children available for adoption to New Zealand, as Russia is known to strongly oppose same-sex unions, and may ban ICAs to countries where same-sex marriage has become legal (Parfitt 2013).

In addition to its discriminatory nature and bias towards western, non-indigenous notions of family, the Adoption Act 1955 also has historical elements that are not in the best interests of children, birth parents or would-be adopters. For instance, the consent of the child is not required: this is particularly problematic for older children who may be adopted, and is contrary to the United Nations Convention on the Rights of the Child (UNCROC 1989). In practice, children from age five may be asked their views of adoption by professionals, but legally their consent is not required. In addition, while the birth mother's consent to relinquish is required, consent from the birth father is not a requirement (unless he is married to the birth mother). Again, in practice, birth fathers may be asked but there are no guarantees. Furthermore, once the birth mother gives her consent, it can be very difficult to withdraw this consent (Else 2011). The provisions of the Act also mean that birth parents who relinquish children for adoption are not required to undergo counselling or take legal advice before making their final decision; this aspect of the Act has been widely criticized (Law Commission 2000). The Act is also potentially sexist: a single man may not apply to adopt a girl (unless in special circumstances), but a single woman can adopt a boy. Finally, the adopted child is issued a 'new' birth certificate after the adoption has been finalized,

which usually shows only the adopted parents' names from the date of birth of child. In this format, the certificate has the effect of presenting the adoptive parents as the 'only' parents of the child (Else 2011); this is a historical practice that is seen as out of step with modern adoption methods. However, since the Births Deaths Marriages and the Relationships Registration Act 1995, it is now allowable to add the words 'adoptive parents' to the certificate, if the parents wish. An adopted child later has the right to search for information about his or her birth parents through the Adult Adoption Information Act 1985.

New Zealand's policy and practice approach to both intercountry and domestic adoption is based on principles of openness and the child's best interests even though the legislation governing adoption is outdated and favours the interests of the adopters (Pitama 1997). This is still in spite of the few cases where the Adoption Act 1955 has been interpreted by the courts in such a way as to adjust to modern conditions. Due to its mandate of closed adoptions, there have been many attempts to reform the Adoption Act 1955 (Law Commission 2000; Ludbrook 2011) but these have failed in spite of ongoing criticism. The Adoption (Intercountry) Act 1999 was an attempt to implement the Hague Convention (1993) by only dealing with countries that had signed and ratified the convention. Yet, most of New Zealand's intercountry adoptions have come from Russia, which has not ratified the convention. In practice, it has not been possible to ensure that New Zealand's legislation is in line with policy. New Zealand's Adoption Practice Framework, however, is clearly focused on ensuring that children are protected and that adoptions are as open as possible. The Adoption Practice Framework principles are listed as being: 'child-centred', 'family and culturally responsive' and 'strengths and evidence-based' (Child, Youth and Family 2012). Although the framework is brief, it is apparent for any prospective adoptive arrangement that Child, Youth and Family practice is rigorous, child-focused and supportive, particularly during

the assessment and early stages of adoption (Gibbs 2010).

Critical look at foster parenting through guardianship, custody and parenting orders

As New Zealand makes adoption orders on only a few children domestically, further options to become permanent parents to children in need of families are provided by a variety of legal orders covered by the Children Young Persons and Their Families Act (CYPFA) 1989 and the Care of Children Act (COCA) 2004. Social workers under the CYPFA take abandoned, abused or neglected children and place them with foster families (kin or stranger). Orders for custody and guardianship are made under that CYPFA. Foster parents who are likely to look after a child long-term may apply to the courts for custody first. This custody order is usually in addition to the guardianship order already held for the child by the chief executive of Child, Youth and Family. When social workers and the chief executive are satisfied that the child will not return permanently to the original birth family home, foster parents may also apply for guardianship. Guardianship was first introduced as a legal order in 1887 and has been used widely to ensure that people who care for a child on a day-to-day basis can be involved in making important decisions for the welfare of the child in the care system.

Once there are no more care and protection concerns for a child, if that child is permanently placed with the foster parents and is not likely to return to his or her birth home, the foster parents can apply for permanent parenting and guardianship orders under COCA. Parenting orders allow foster parents, with a view to permanency, to apply to the courts for the right to the day-to-day care of the child. Birth parents will usually remain as guardians to their birth children who are being fostered, but they are not able to strongly influence the daily care of the child where custody or parenting orders are in place. They have even less influence when foster

parents have gained guardianship. The COCA legislation, unlike the Adoption Act 1955, allows children (often through a child advocate) to express their views on matters affecting them. These views must be taken into consideration by those proposing and making court orders involving alternative care arrangements. For an Adoption Act 1955 adoption order, a social worker 'may' have asked the prospective adoptive child for their views of the proposed adoption.

If foster families have chosen to use the guardianship and custody provisions of the CYPFA 1989, they usually have more capacity to demand assistance from social services, that is, from Child, Youth and Family. For example, a services order can be made in favour of Child, Youth and Family monitoring and paying for supervised contact between birth parents and birth child, rather than the foster family having to monitor and pay for such arrangements. Services orders can also include extra money to fund additional services for the child (such as counselling or psychological programmes) and they can continue for long periods of time, unlike the support offered by the Home for Life scheme (described in more detail below), which lasts for only three years. The COCA provisions seem to allow for the termination of long-term support in the case of permanent foster care more readily than CYPFA 1989 provisions. Some parents have identified this issue as reason enough to stay on the earlier Act. Some parents choose the CYPFA 1989 legislation to ensure that Child, Youth and Family is a shared guardian to the child they are looking after. In addition, where custody orders under the CYPFA 1989 are in place for particular children, then these are required to be monitored and reviewed by Child, Youth and Family. This gives additional support to parents, especially where demands from children with challenging behaviours are high. In short, custody orders under CYPFA guarantee to keep Child, Youth and Family involved and parenting orders under COCA do not.

Critical look at the Home for Life scheme

In 2009–10, 339 children were given a Home for Life—that is, they were enabled to become permanent members of families by whom they had been fostered, without being formally adopted. The Ministry of Social Development introduced the then-new Home for Life policy in 2008–09. This policy attempts to get foster children looked after permanently by foster parents so that children feel they have permanent homes for as long as they need one, and that they will be loved and valued (Child, Youth and Family 2011a). The ideology behind this policy is congruent with the research evidence that a greater sense of permanence and stability is provided for children who are either adopted or have stable long-term foster placements (Biehal et al. 2010). Child, Youth and Family points out in its documentation on Home for Life that once a child is viewed in this way, and after Home for Life is confirmed by legal means, then they are no longer considered a ‘foster child’ (Child, Youth and Family 2011b). Furthermore, since the Adoption Act 1955—the country’s prevailing adoption law—mandates for closed adoptive placements that sever ties between children and birth families, the Home for Life scheme offers permanency that does not preclude ongoing contact with birth family.

When a family has offered a Home for Life to a child, then Child, Youth and Family offers a package of support for the first three years. This includes: initial financial assistance of NZ\$2500 and advice about gaining the Un-supported Child’s Benefit, help with meeting legal costs, ensuring access to respite care, and counselling or other assistance. Social workers or Home for Life specialist workers will also assist with ongoing contact between birth relatives and the Home for Life family (Child, Youth and Family 2010). The Home for Life support package is available only to children who have been legally in the care of Child, Youth and Family (i.e. been in state care) and this rules out kin care and most whāngai

(see below), as the children in these circumstances are being cared for outside the jurisdiction of Child, Youth and Family (Child, Youth and Family 2011b). At this stage, this might be viewed as a cost-saving measure given the large numbers of children who are cared for by kin and whānau.

One of the issues facing Home for Life parents is the focus by Child, Youth and Family on encouraging foster families to apply for parenting orders and guardianship under the COCA, which (as described above) reduces the chances of long-term obligation and support to families from child-care agencies once these orders have been granted. In this way, Home for Life is much more like adoption than long-term foster care. Under the CYPFA 1989 legislation, guardianship can remain solely with Child, Youth and Family or be shared with the Home for Life parents and this can lead to more services and financial help being provided over a longer period of time. Parents often prefer the CYPFA 1989 legislation because under it, they can ‘demand’ more assistance from Child, Youth and Family. The paramountcy of the best interests of the child enshrined in the CYPFA 1989 means that, in practice, parents can use this legislation to advocate for a better deal for long-term foster children.

Another issue is what happens when a child matures and ‘ages out’ of care. It is not clear from the information offered about the Home for Life programme, nor that of guardianship or fostering, what parents should expect when the children in their care reach maturity. In many of the US states, for example, where foster care remains the only alternative to adoption, this has been identified as a major issue (Munson & McMillen 2009; Avery 2010). ‘... Foster youth without families do not have the comfort and security that belonging to a family network brings...’ (Avery 2010, p. 401). In response, programmes that offer some form of support for young adults leaving care are beginning to be developed, since the families are under no obligation to continue ‘supporting’ the young person. This is where further investigation may help

clarify the needs of young people, as after 17 years of age, the CYPFA 1989 usually discharges young people in its care, and with the COCA Home for Life scheme, parents have responsibility, and once their children reach 17 years they may feel that the children are old enough to be independent adults.

Other issues identified by caregivers (including long-term foster parents and kin carers) have been highlighted in a survey carried out by Child, Youth and Family in 2007 (Child, Youth and Family 2007). Concerns expressed by the 720 caregivers participating included: the need for more information from Child, Youth and Family workers; desire for better and more honest communication from social workers; the need for greater access to support services; the need for more help with managing children's challenging behaviour; and concerns about safe contact with birth parents. Long-term support, financial support and other services such as respite care and counselling were noted as critical issues. Kin or whānau (the Māori word for family) foster carers, in particular, expressed difficulties in obtaining the resources they needed to care for the children living with them and the lack of regular social worker visits (Child, Youth and Family 2007).

Brief description of kinship parenting and whāngai

The Adoption Act 1955, with its imposed monocultural definitions of adoption—and its mandated closed adoption practices—had a major impact on Māori parenting arrangements. Since the Act effectively terminated the rights of adopted children to know their birth parents and whānau, and denied them access to genetic information, it also had a major negative effect on Māori children (Walker 2001), many of whom were adopted into white Pākehā (the Māori word for European or non-Māori) homes (Pitama 1997).

Prior to the Adoption Act 1955, Māori had their own customary system of child placement referred to as whāngai, built on the importance of whānau and whakapapa (genealogy and

ancestry). From the words 'tamaiti' meaning 'child' and 'whāngai' meaning 'to feed or nourish',² tamaiti 'whāngai' is a child who is nurtured or raised by someone other than the child's biological parents (McRae & Nikora 2006). Whāngai are considered taonga (highly valued treasures) to be held collectively and in trust for future generations (Griffith 1996) and, therefore, are 'gifted' to the whāngai parent whose role it is to look after the children and nurture them through to adulthood (Else 1991, 2011; Shannon 2001). This customary system was open, with children able to remain in contact with their birth parents (Walker 2001; Keane 2011). A benefit of such arrangements was that whāngai children gained ties and commensurate rights to both families (Bradley 1997).

While it continues to have no legal standing (Dyhrberg 2001), whāngai practices have remained the accepted approach in principle and practice for Māori families with children in need of care outside the birth home, regardless of the various adoption and child care Acts passed that have either negated or supported them during the past 150 years. Furthermore, despite representing less than 15% of the country's total population (Worrall 2009), about 47% of New Zealand's current care population are Māori, many of whom are in whāngai or kin-based care (Connolly & Cashmore 2009). In the year 2009–10, 1730 Māori children were living with extended kin or foster carers (Child, Youth and Family 2010). Māori children are more likely to be placed with extended family than New Zealand European children (Worrall 2009). Kin care is the norm for Māori but non-kin care is the norm for Europeans. This is because in Māori culture, grandparents are more involved in looking after their grandchildren. Evidence is clear that children in kin arrangements do need as much support as those in fostering arrangements, as they have many of the same needs as children in other care arrangements. However, as kin carers, they are not eligible for support under current legislative Acts (Frenghley 2007; Worrall 2008).

Issues identified by research into kin care show that: carers often become kin carers in an unplanned, ‘pressing circumstances’ way; kin carers are often older and receive fewer supports and services than foster carers; kin care offers greater stability than foster care; and kin placements are more likely to keep siblings together (Frengley 2007; Worrall 2008). In addition, social service and social work relationships with kin families are much more complex than foster arrangements. This is due to the kin role of protecting the children and viewing themselves as family and not as temporary carers or quasi-professionals; the kin carers see themselves as the experts who ‘consult’ social workers rather than are ‘managed by’ social workers (Frengley 2007).

As pathways to parenting, kin and whāngai care are mostly unplanned but this does not suggest that such arrangements should be ignored or unsupported. In fact, it is the unplanned nature of these arrangements that suggests the need for financial, social and educational assistance is quite high in kin care (Worrall 2009). These arrangements are fragile and complex but little is currently known in New Zealand about the full extent of the needs and issues for families formed in this way.

Introduction to assisted reproductive technologies

In the consideration of pathways to parenting, much of the previous literature has been related to finding families for children already born. Most parenthood, of course, results not from the already born child’s needs but from a person’s desire for children. When people cannot reproduce naturally (referred to as infertility), they often turn to ARTs—the broad term for a host of procedures designed to assist people to achieve pregnancy.

Artificial insemination (AI) is one of the oldest—and simplest—forms of ART,³ whereby sperm is placed directly into a woman’s vagina or uterus (Daniels 1988). If the woman does not have a partner, or the partner’s sperm

is not viable, she may use donated sperm (referred to as donor insemination). In cases where fertilization of the male and female gametes (sperm and egg) occurs outside the body, these procedures are collectively referred to as in vitro fertilization (IVF). There are literally a dozen or more IVF treatments; however, one of the most common is embryo transfer. This is when eggs are removed from the woman’s body and mixed with the man’s sperm in a laboratory. The embryo (fertilized egg) is then transferred to the woman’s uterus (Goedeke & Payne 2009). In some cases, these procedures may require the use of either donor eggs or donated sperm. When both the egg and sperm are required, these embryo donations may be the result of separate donations formed into embryos in the laboratory, or they may be ‘surplus’ embryos donated by a couple who had also undergone IVF treatments (Goedeke & Payne 2009). In either case, the child will be genetically unrelated to both parents.

Finally, assisted reproduction may involve the use of a surrogate—a woman who contractually agrees to carry and deliver a baby for another couple. In surrogacy, the pregnancy may come about from AI using the sperm of the contracting male. If pregnancy results from an embryo transfer (either the couple’s embryo or a donated embryo), the surrogate in this case is referred to as a gestational carrier, and she will be genetically unrelated to the offspring. Whether a gestational carrier or a surrogate, after delivery the woman would be expected to relinquish the child to the contracting couple, who would become the ‘adopting’ parents; that is because surrogacy is not legislated in New Zealand (New Zealand Law Commission, n.d.) and, therefore, the relationship between the surrogate, contracting parents and child is the same as that in adoption. Moreover, until such time as she relinquishes the child to the contracting parents, the surrogate remains the child’s parent—regardless of biological relatedness.

Since news in 1978 of the world’s first ‘test-tube’ baby, there have been ‘astonishing’

advances in the human reproductive technology field (Advisory Committee on Assisted Reproductive Technology 2004). In 2004, New Zealand passed the Human Assisted Reproductive Technology (HART) Act, the purpose of which was, among other things, ‘for the protection and promotion of the health, safety, dignity, and rights of all individuals, but particularly those of women and children, in the use of these procedures and research’ (New Zealand Parliamentary Counsel Office 2010, p. 1). In accordance with the Act, every ART procedure must have prior approval from the Ethics Committee on Assisted Reproductive Technology. In this way, there is governmental oversight to deal with the unforeseen complications arising from ARTs. For instance, the HART Act 2004 limits the number of sperm donations by a single donor, in order to reduce the chance that there may be too many genetically related ‘strangers’ living near one another. This is just one example of the complex nature of ARTs.

In the field of ART, issues of stigma and secrecy often mirror those in adoption (Daniels & Taylor 1993), where the needs of donor-conceived individuals wishing to access details about their genetic heritage clash with those who desire anonymity in the areas of gamete and embryo donation. It is the same dilemma seen in adoption where one’s rights to remain anonymous are pitted against other’s rights to know their ancestry. Fortunately for the donor-conceived individuals, one of the principles of the HART Act 2004 is that ‘donor offspring should be made aware of their genetic origins and be able to access information about those origins’ (New Zealand Parliamentary Counsel Office 2010, p. 1), which brings their rights to the fore. As with open adoption, this emphasis on openness, while beneficial to the offspring, may be quite challenging for donors and/or parents of donor-conceived children. Unfortunately, very little research currently exists that can guide either the practitioners or parents facing this challenge.

Implications of New Zealand’s current alternative parenting arrangements

New Zealand’s legislation for the alternative parenting of children has progressive and regressive elements. In many ways, New Zealand has led the world in some of its child placement/family formation practices. However, until legislative reform is achieved, and the country’s prevailing adoption law (the Adoption Act 1955) is superseded by legislation that reflects not only some of our current practices—in particular, those areas in grave need of being updated—New Zealand families will continue to bear the brunt of this antiquated law. Yet, even as we write, it is being reported that several members of New Zealand’s Parliament are calling for changes to the Adoption Act 1955 (Young 2012). Apart from the obvious need to update our adoption law, below we highlight three of the practice concerns as identified from within the current literature on New Zealand’s different pathways to parenting.

The need for ongoing governmental or agency support

Adoptive parents, kin and foster carers consistently experience a lack of support from social, health, educational and other services (Worrall 2009; Gibbs 2010). Parents want more regular and ongoing support, better and more open communication, and ultimately hope for the needs of their children to be met. Until more resources are directed at children and their families who have started new lives—which are positive but full of challenges—carers will continue to feel they are not being listened to. Perhaps a new Act based on the UK Adoption Support Services Regulations (Gibbs 2010) called ‘Support for Alternative Parenting’ could be introduced. Support could be regulated and monitored for the following services: assessment, counselling, advice and information; financial support; services to enable groups of families to meet; contact services and mediation to assist with organizing contact with birth families;

therapeutic needs' services; and assistance to build the relationship between primary carers and their children. This might integrate support for long-term fostering, adoption, kin and whāngai arrangements, as well as parenting with ART-born children, and can achieve the extra assistance and help that families continually ask for (Child, Youth and Family 2007; Worrall 2009). Parents and caregivers need more long-term financial and social service support and the only way they will get this is if agencies such as Child, Youth and Family are legally guided to provide it. There also needs to be more explicit information about support for when a child 'ages out' of their out-of-home care. In adoption, the legal nature of that relationship means that even when the child turns 18 years of age and is no longer a minor, the adopted person remains a member of the adoptive family, just like any biological offspring. On the other hand, what of the young person in a guardianship or Home for Life relationship, when s/he turns 18? With no obvious ongoing family support, will the guardians or Home for Life parents continue to offer the important emotional, psychological and fiscal support needed to transition into independent living? If not, will Child, Youth and Family provide any support?

The need for openness to be reflected in current legislation

It is clear from the literature that New Zealand as a nation values openness, contact and ongoing relationships with one's family/whānau, culture and heritage (Scherman 2012). In 1985, New Zealand passed the Adult Adoption Information Act, creating opportunities for adoptees and birth parents from formerly closed adoptions to search for, and reunite with, one another. In that same decade, Child, Youth and Family began its unlegislated policy of placing children in open adoptive relationships. In 2004, the HART Act was passed, which legally mandated that donors remain identifiable so that donor offspring could access information about their genetic origins. Finally, openness

and access to information about one's ethnic heritage is one of the fundamental tenets in the Māori practice of whāngai.

On its own, this philosophy of openness is not a negative issue. On the contrary, it is central to that which makes New Zealand's family formation practices so progressive, especially when considered alongside the practices of other western countries. Nevertheless, there are some challenges that come with that openness. For instance, despite Child, Youth and Family's long-standing policy of placing children in open adoptive arrangements, this is a practice not welcomed by all, as the openness can be intimidating.⁴ Furthermore, although research suggests that open adoption is preferable to closed, as it supports better outcomes for the children, some adoptive and birth parents find the ongoing contact too difficult. As with domestic adoptions, intercountry adoptions are also encouraged to be as open as possible, but as most children come from overseas orphanages, it is accepted that there will be limits to real openness (Scherman 2012).

The Home for Life scheme, which offers the permanence that has been empirically identified as a key factor in supporting positive child outcomes (Biehal et al. 2010), can be seen as an alternative to the closed adoption practices mandated in the Adoption Act 1955. However, with no research on the practice, it is unknown: (1) how effective this policy is; (2) if it is creating the security children need from permanence; or (3) how it compares with adoption and/or guardianship. Furthermore, as it is more like adoption than long-term foster care, there are not enough post-placement resources or services provided to families—which brings us back to the issue raised in the previous section.

Despite the nation's philosophy of openness—seen clearly in our preference for long-term foster care, guardianship and the Home for Life placement practices, as well as in the mandates of the HART Act 2004—in the field of adoption, we are still bound by legislation that requires closed placement practices, which seal away all identifying information and links to

one's birth heritage. New Zealand must update its adoption law and formalize the expectations of openness that already exist.

The need to make pathways to parenting less discriminatory

The lack of modern, up-to-date adoption legislation is at the heart of this final issue—that of the discriminatory nature of the Adoption Act 1955, which currently prevents same-sex couples from adopting, and limits some placement options, for example, for single men. Under that legislation, only one partner of a same-sex couple is currently able to adopt, forcing couples to choose who will become the 'legal' parent (Friar 2012). Similarly, if a gay or lesbian couple turns to ART as a means of creating a family, only one partner will be able to contribute his/her gametes, requiring couples to choose who will become the 'biological' parent.

While only science can resolve the later complications of ART, legislative reform is what is required to resolve the former. Furthermore, the majority of research on gay/lesbian adoptive parenting suggests that they parent in the same, competent manner as that of heterosexual adoptive parents, and that the children are equally well adjusted (Evan B Donaldson Adoption Institute 2006; McAlonan & Scherman n.d.), lending more support for the contention that modern adoption legislation can and should include the rights of same-sex partners to adopt.

The need for more research

In truth, we know little of how alternative parenting actually works, or how successful it really is. Yet each year thousands of New Zealand children experience the alternative parenting arrangements described here. Most of the studies conducted so far in New Zealand have been small-scale in nature, with few focused on the current issues or needs of families. Nor do we have enough information on the pros and

cons of specific interventions. In response to our critical look at the current pathways to parenting in New Zealand, we have identified numerous gaps in the research. For instance:

- How do the long-term outcomes for children raised in kinship care compare with those of children in residential care, foster care, guardianship or adoption?
- What are the experiences of children in long-term foster care and guardianship, and are these preferable to adoption?
- What happens to youth in long-term foster care and guardianship relationships when they reach maturity?
- Are the support services currently available to the different parenting arrangements adequate to serve this unique and growing population?
- Do more children need Home for Life or are the current arrangements sufficient for both parents and children?
- How are the families that are formed via surrogacy and other ARTs negotiating their complex relationships?
- What are the outcomes for children born of ARTs, and what do they want to know about their heritage?
- Are the needs of Māori being met with the current child placement practices, and how prolific is the practice of whāngai?
- How similar or different are the parenting styles of gay and lesbian adoption parents to traditional heterosexual adoptive parents?

Conclusion

In this piece we have explored the main pathways to parenting that exist currently in New Zealand and highlighted some of the legal, practice and policy complexities that underpin the full host of arrangements. The need to integrate socially, culturally and fiscally appropriate legal and policy elements is paramount for the population of 5000 children in care needing alternative parenting; for the children

in need of kin care; for the children who will be born via ARTs; and for all of the families who will face daily challenges as they care for these children. Children have the right to know and appreciate their biological heritage, and 'new' parents need to be supported to feel comfortable sharing that history. Any person who wants to parent also needs to be valued for what they can offer a child rather than experience discrimination because they are homosexual, single or male. New Zealand's laws and policies need to move with the times; to be flexible enough to ensure that those who want to become loving and caring parents can do so, and that children who are in need get the permanency they deserve.

Notes

1. Child, Youth and Family is the statutory agency in New Zealand with primary responsibility for adoption, fostering and the care and protection of children.
2. In this context, to nourish is meant in the fullest sense of the word; not only with food but with affection and instruction (Griffith 1996).
3. While most literature includes AI within the general definition of ARTs, the US Centers for Disease Control (CDC) excludes procedures involving only sperm or medications that enhance egg production (separate from retrieval) from its definitions of ART (Centers for Disease Control and Prevention, n.d.).
4. Scherman & Harré (2004) found that 18% of 112 adoptive parents in their study reported choosing intercountry adoption over domestic adoption as a means of avoiding New Zealand's open adoption practices.

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