

Historical Perspective on Youth Justice in New Zealand

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Overview

Youth Justice in New Zealand today has evolved through significant social and political changes in New Zealand. This module explores the Historical Perspectives on Youth Justice in New Zealand by looking at current Youth Justice Models and social and legislative changes that have contributed to what it looks like today.

Duration

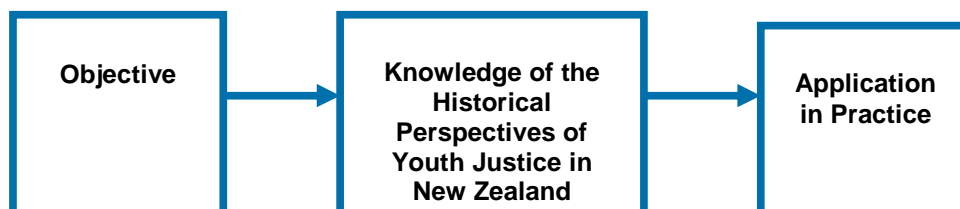
This self directed module should take you approximately 8 hours to complete.

About this Module

The module covers what you need to know about the Historical Perspectives of Youth Justice in New Zealand. It's designed to enable you to reflect youth justice and how it has evolved.

The flowchart below illustrates the process for working through this module.

Learning Process Flowchart



Objective

By the end of this directed self-study, you will be able to:

- describe the origins and trends of Youth Justice in New Zealand
- describe key points and events in the development of Youth Justice in New Zealand
- research and analyse information on Family Group Conferences over the past year



Information about the Historical Perspectives on Youth Justice in New Zealand

Your Knowledge

It is important, in any line of work, to have some understanding of the events in the past that have shaped the way in which we work today. As Youth Justice practitioners you need to have some knowledge of the history of Youth Justice in New Zealand.

Task 1 Current Knowledge

What is your current knowledge of events that have contributed to the Youth Justice system in New Zealand today?



Please write your current knowledge here



Youth Justice Today

New Zealand has had radical changes in its Child Welfare and Youth Justice systems. Having knowledge of the historical perspectives of Youth Justice gives practitioners a wider understanding of how their practice has evolved.

Youth Justice today is underpinned by the Children Young Persons and their Families Act 1989 (the Act) which sets out restorative justice principles on which the Youth Justice system in New Zealand is based. Before the introduction of the Act, shifting social and political philosophies reflected the changing views of children and young people as either being in need of care or strict control.

Initially, New Zealand's Youth Justice development followed international trends but later introduced a system which moved away from these trends and focused on how family could be included in decision making for the child and young person.

Youth Justice is a core and important function of within the justice system. The legislation, policies and practice that have emerged out of historical changes has given practitioners today the opportunities to practice in partnership with children, young people, their families and key stakeholders within Youth Justice.

The focus of youth justice is to reduce the rate and severity of youth offending. To achieve this, we need to learn from the past and continue to change and develop the way we work and think about youth justice. Alongside this we need to address the issues that lead children and young people to commit crimes. Youth Justice today has a very different face from that of the past and continues to evolve.



Task 2: How I can contribute



Access the Historical Perspectives on Youth Justice in New Zealand topic area to read the *Youth Offending Strategy*.

The strategy details how the Government plans to respond to youth offending. It builds on the strengths of the existing youth justice system and addresses its shortcomings. .

Record below, how you contribute to the overall goals / objectives of these key practice documents.

Overall Goals and Objectives	I contribute to this goal and objective by:



History of Youth Justice in New Zealand

The Children, Young Persons and their Families Act came into practice in 1989. Within the Act are objectives and principles to guide practice when working with children and young people who offend. Before the legislation, there were significant historical events economically, socially and politically in New Zealand that influenced how current youth justice practice would be achieved.

Emily Watts in her article '**A History of Youth Justice in New Zealand**' provided a timeline of key legal milestones for Youth Justice in New Zealand.

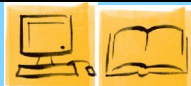
1867	Neglected and Criminal Children Act passed. This gave courts the power to commit children to industrial schools. It also sought to keep industrial schools distinct from reformatories, which were for 'criminal' children.
1882	Industrial Schools Act passed, repealing the 1867 Act. This placed the guardianship of neglected or criminal children in the hands of the Managers of the Industrial Schools. The Act also increased the power of the Education Department, giving it considerable discretion over where a child was placed and for how long. Justices of Peace Act passed. This distinguished between children (aged under 12 years) and young persons (aged 12 and under 16 years). The Act stated that non-homicide indictable offences committed by a youth could be dealt with summarily (with the parents consent). Penalties available for both children and young persons were imprisonment, fine or whipping.
1893	Criminal Code Act passed. Section 22 stated that no person under the age of 7 could be convicted of an offence and those under the age of 12 were given the benefit of the <i>doli incapax</i> rule.
1900	While reformatories had been legislated for since the 1867 Act, the first reformatories were established to keep criminal children separate from those in need of care. Burnham Industrial School and Te Oranga Home were transformed into reformatories. The age limit of committal to an industrial school was also raised to 16 years.
1906	Juvenile Offenders Act passed. The object of this bill was 'to save children from the degrading influences and notoriety inseparable from the administration of justice in Criminal Courts.' The Act established private hearings for juveniles, stating that Magistrates should assign a 'special hour' for hearing of charges against persons under 16 years.
1908	Industrial Schools Act passed, consolidating the 1882 Act.
1917	Statute Law Amendment Act passed, giving statutory recognition for the appointment of Juvenile Probation Officers. This represented an attempt to keep juveniles in natural home conditions and relegate an admission to an institution as a last resort.
1924	Prevention of Crime (Borstal Institutions Establishment) Act passed. This recognised the measure used since 1909 of sending some male youths between 15 and 21 to prison.
1925	Child Welfare Act passed, making 'better provision with respect to the maintenance, care and control of children who are specially under the protection of the State and to provide generally for the protection and training of indigent, neglected or delinquent children.' The Act formally established Children's Courts.
1957	Juvenile Crime Prevention section of the Police established.
1961	Crimes Act passed, raising the age of criminal responsibility from seven to ten. The Act formalised the <i>doli incapax</i> rule: No child shall be convicted of any offence... under the age of 10 years. No child shall be convicted of any offence ... when over the age of 10 years but under the age of 14 years, unless the child knew either that the act or omission was wrong or that it was contrary to the law (ss. 21 and 22).
1968	Guardianship Act passed, which formally established the paramountcy principle, stating that the interests of the child or young person shall be the first and paramount consideration (s 23(1)).



1972	Department of Social Welfare formed.
1974	Children and Young Persons Act passed.
1978	Report of the Royal Commission on the Courts published recommending the establishment of a Family Court that should include the Children and Young Persons Act within its jurisdiction.
1979	Report by the Auckland Committee on Racism and Discrimination (ACORD) on the maltreatment of children placed in care in DSW homes. International Year of the Child, focusing public attention upon the rights of children. Discussions during that year resulted in the establishment of the New Zealand Committee for Children and a National Advisory Committee on the Prevention of Child Abuse.
1980	Revision of Court structure of Court of Appeal, High Court, and District Court with separate Family Court created.
1983	Report of the Advisory Committee On Youth and Law In Our Multicultural Society published. Maatua Whangai commenced.
1984	The Labour Government established a Working Party to review the existing Children and Young Persons legislation.
1985	Criminal Justice Act passed, forbidding imprisonment of a person under the age of 16 years except for a purely indictable offence
1986	Puao-Te-Ata-Tu report filed. Te Whaingā i Te Tika report to the Minister of Justice. 1986 Children and Young Persons Bill introduced into the House, largely following the recommendations of the 1984 Working Party.
1987	The Labour Government established a second Working Party to review the 1986 Children and Young Persons Bill. The Working Party's report was referred to Select Committee in December 1987.
1988	State Sector Act passed.
1989	Public Finance Act passed. New Zealand signed the United Nations Convention on the Rights of the Child, which states In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3.1) The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or indirectly, or through a representative in a manner consistent with the procedural rules of national law (Article 12.2) Children Young Persons and their Families Act came into effect November 1st.



Task 3: Individual Research



Access the Historical Perspectives on Youth Justice in New Zealand topic area and read the following references by clicking on the Youth Court website.

1. Article by Emily Watt – *A History of Youth Justice in New Zealand*
2. Article by JA Crockett – *The History of Youth Court since 1989*

Reflect on the readings and please note how they relate to your practice.



Please write your responses here.



Welfare and Justice Models

The Children Young Persons and their Families Act 1989 introduced a significant change in dealing with young offenders; it removed the "welfare model" and introduced the "justice model".

The welfare model was based on the belief that criminal behaviour in young offenders stemmed from various factors relating to undesirable upbringing and environment. At the start of the 20th century the focus was on care and protection of young people rather than on accountability and punishment; the Youth Courts focussed on their "needs" not their "deeds".

Over time, concern arose about the operation of Youth Courts. Critics argued that the power of the Courts ignored due processes, for example, the presumption of innocence and legal rights of the child. Rehabilitation was perceived as being used to justify unnecessary and significant intrusion in the lives of children.

Gradually a perception developed within New Zealand social services about the welfare model becoming ineffective; it was seen as being too permissive and did not hold young offenders accountable. There were concerns that the model was unable to deal with persistent offenders leading to a demand to return to deterrent retributive models. Consequently many countries, including New Zealand, revamped their youth justice policies to allow for accountability and due process. As a result the "*justice model*" was developed. (Judge Walsh 2005)

The justice model is often positioned at the opposite end of the justice spectrum from the welfare model. It promotes accountability, determinate sentences relative to the offence, respect for the legal rights of young people, and the establishment of more formal procedures. In some respects the justice model is an inversion of welfare ideals, focusing on: offending, not the offender; responsibility and freewill, not determinism; equality of sanction, not individual treatment; and determinate sanctions rather than indeterminate rehabilitation. (Watts E, www.justice.govt.nz/youth)

However, while the new youth justice system in New Zealand did move away from the traditional welfare model, it was intended to meet justice and 'welfare' needs by holding young offenders accountable for their actions while giving appropriate consideration to their wellbeing. This is endorsed by the principles of the Act and it is primarily through the FGC process that these needs can be reconciled.

Looking back, the Children Young Persons and their Families Act 1989 can be seen as heralding a huge philosophical shift from seeing children as chattels to nurturing and valuing them as taonga-our joy and our future. (Dyson R 2007)



Task 4: Then and Now Exercise



Access the presentations title '***Last Twenty Years***' and '***Moving Forward April 2007***' in the Historical Perspectives on Youth Justice in New Zealand topic area and complete the following exercise.

Using the table below, note some of the elements in the Welfare Model (then) and note the changes that you have seen in your site today (now). Explain how this has contributed to improving practice.

THEN	NOW	WHAT DOES THIS MEAN FOR ME AS A PRACTITIONER?



Puao-te-Ata-tu (Daybreak)

In 1985, the Minister of Social Welfare charged a Ministerial Advisory Committee with investigating the operations of the Department of Social Welfare from a Maori perspective. This was due to a growing concern about the disproportionate number of indigenous children involved in the social welfare system. There were also concerns within non-government social justice circles on practice. In addition, they had identified systemic biases and examples on inequality.

This report was an in-depth critique of the then Department of Social Welfare and the Children and Young Persons Act 1974. Both were found to reinforce institutional racism, which resulted in high numbers of both Iwi Maori and Pasifika children entering foster care (Connolly 2001, Cheyne et al. 1997).

Maori wanted greater input into the new legislation to ensure they were granted more influence in the Care and Protection process. Their input was taken into account as part of a much wider international emphasis within the social service arena on the weakness of services based on universalist principles. Methods based on these seldom met the needs of minorities, who were often some of the neediest groups in society (Cheyne et al. 1997). Furthermore, the Treaty of Waitangi provided a constitutional imperative for including Maori values and concepts within legislative frameworks, something the previous two decades of Maori protest in a wide range of areas had highlighted (see Spoonley 1988).

Following the release of the report by the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (1988) further consultation was undertaken with various Maori groups. This consultation was to further discuss issues raised within the report in regards to the operation of the Department of Social Welfare in particular the removal of children from their families. As the result of the lengthy consultation was the new legislation, Children Young Persons and their Families Act 1989.



Task 5: Identifying Key Messages



Access the Historical Perspectives on Youth Justice in New Zealand topic area and read the following material.

1. Puao-te-Ata-tu (September 1988)

Please make comments on what you believe the key messages of this document are and how Puao te Ata tu relates to the Youth Justice system today.



Please write your responses here



Children, Young Person and their Families Act 1989

The Children Young People and their Families Act 1989 totally revamped the focus and process of juvenile justice in New Zealand. The Act emphasises the importance of maintaining and strengthening relationships between young people and their family groups, as well as resolving matters within the context of family systems wherever possible. The Family Group Conference is the mechanism that gives expression to those goals.

Key drivers in developing the legislation were cultural appropriateness, due process family empowerment and a need to offer effective diversionary procedures as an alternative to formal criminal and civil proceedings. These remain the driving principles of the legislation today.

Since the Children, Young Persons and Their Families Act 1989 (the Act) there have been ongoing developments for Youth Justice in New Zealand. Alongside the Act policy and practice guidelines exist that are consistent with the principles and objectives of the Act, the Treaty of Waitangi and Puao-te-Ata-tu.

Youth Justice in New Zealand has a renewed emphasis on addressing the key factors which leads young people to offend. Enhanced relationships and collaboration are seen as the key to reducing the rate and severity of offending alongside assisting those affected by the crime and partnerships in the youth justice sector and communities of interest.

Task 6: Reflection Exercise

Discuss with key Youth Justice stakeholders the following questions. During your discussions reflect on how the responses fit with the principles and objectives of the Act.

1. What are the issues facing young people in your area?

Please write your responses here.





2. What local initiatives have occurred or are occurring to address the problems in your area?

Please write your responses here.



3. What supports are you aware of that are in place for families of young offenders in your area?

Please write your responses here.





4. What supports are in place for victims?



Please write your responses here.

5. What interventions in your area for young offenders, their families, victims and the community have been effective and why?



Please write your responses here.



Family Group Conference

Family Group Conferences are the “lynch-pin” of the New Zealand Youth Justice system. (Judge Becroft 2006). The Family Group Conference model was introduced in New Zealand in 1989 as a family decision making process to be used in the statutory child welfare and youth justice systems. It radically altered the way decisions were made about children who were in need of care or protection and about young people who were offending.

This legislative model requires that family become partners in the decision-making process as well as the key players in the future lives of their children. The Children, Young Persons and Their Families Act acknowledges that making any real changes for children and young people requires us to include and - wherever possible - be led by, their families in the process (Dyson 2007)

Youth Justice FGCs include the young offender, the victim and their families in the decision making process. Other restorative justice ideologies are included by involving the victim in the decision making and encouraging mediation between the victim, the offender and their families.

While New Zealand did not use the term until later the New Zealand system became the first in the world to institutionalise a form of restorative justice. Family Group Conferences became the hub of New Zealand’s entire youth justice system. (MacRae & Zehr 2004)

The Family Group Conference is intended for serious offences and is governed by principles but youth justice practitioners need to learn from the past and ensure that Family Group Conferences continue to be promoted as the primary means by which decisions are made for children and young people who offend or who at risk or in need. (Connolly and Dyson)

A review of Youth Justice capability in Child Youth and Family has reaffirmed that we need to understand the young person in the wider context of their lives and that people need to work more closely with communities and families. This will ensure that better quality information and advice is made available to FGCs. This in turn will lead to decisions that are more sustainable through a greater commitment to monitoring and concluding outcomes. Services will be delivered in a way that strengthens children’s places in their families and their communities.



Task 7: Mini Research Project

Conduct a mini research on the history of Family Group Conferences in New Zealand and share your findings in a form of a presentation with your manager and/or colleagues.



Note the key points of your mini research project here.



References

1. Consolidated Child, Young Persons and Their Families Act 1989. An online version can be accessed here: <http://gpacts.knowledge-basket.co.nz/gpacts/public/text/1989/an/024.html>
2. The Little Book of Family Group Conferences
3. www.justice.govt.nz/youth
4. Walsh AP., 'Youth Justice Model v The Welfare Model'.
<http://www.justice.govt.nz/youth/media/speeches/youth-justice-model-dec-2006.html>
5. Dyson, R (November 2006)., 'Celebrating innovation in family decision making: the Family Group Conference'., Wellington Town Hall