

Adoption News and Views

March 2009

2009/1

This is the first 2009 edition of *Adoption News and Views* a newsletter which aims to provide information about adoption of children and about any legal and policy developments affecting adoptees, birth parents or adopters. It will also provide progress reports on efforts by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955 and to bring the Adult Adoption Information Act 1985 into line with the Convention on the Rights of the Child..

Newsletters will be sent out three or four times a year. Back issues can be sent by email on request. The main purpose of the newsletter is to provide up to date and accurate information for people with an interest in adoption on current law and policy and any proposed changes. It is hoped that it will also provide a forum for people to discuss adoption issues. Reviews of books and other publications touching on adoption are invited.

***Adoption News and Views* is sent to you because you are known to be a person interested in adoption. If you do not want to receive further issues you should reply to this email indicating this. If you know of others who would like to receive future issues or you or others would like to submit information or views for inclusion in the next newsletter you can reply to this email or ask interested others to do so.**

While the aim of this newsletter is to provide an open forum for people interested in adoption issues, the editors reserve the right to decline or abridge any contributions offered.

**Robert Ludbrook
Susan Marks Editors**

Probably nowhere else in the court system does a court have to be as responsive to change and as knowledgeable about [change].

*NZ Law Commission *Family Court Dispute Resolution* NZLC PP47 2002 para 5 referring to the Family Court..*

Gloomy prospects for adoption reform

Since the last issue of this Newsletter there has been an election and a new National-led government is in power with the support of ACT and the Maori party.

The National party in its policy released prior to the 2008 election made no reference to family law issues other than domestic violence and made no mention of adoption reform. National's election manifesto outlined far-reaching policy changes in relation to law and order and has

introduced a number of Bills aimed at taking a tougher approach to criminal offending and particularly to youth offending. Processing these Bills will inevitably mean that Ministry of Justice resources will be focussed on the passing and implementation of this new legislation. The chances of achieving priority for adoption reform appear slim. The one ray of hope is that the Maori party may be able to impress on the Minister of Justice the urgent need for reform.

Adoption reform appears mysteriously to have dropped off the Ministry of Justice's work programme before the 2008 election. Readers of this Newsletter may remember that in 2006 a group of professionals with a special interest in adoption met with the then Minister of Justice Hon Mark Burton and, as a result of that meeting, adoption reform was reinstated to the Ministry's work programme in 2006/07. The Ministry's Statement of Intent for 2007/08 stated that one of the major initiatives to be progressed in 2007/08 was:

“Reform of adoption laws to create a single, coherent piece of legislation to make adoption laws more accessible, eliminate inconsistencies between current legislation and to better reflect current practice and New Zealand's international obligations.”

The Ministry of Justice *Statements of Intent* for 2008/09 and 2010/11 set out the Ministry's operational priorities for the period 1 April 2008 to 31 March 2010. This makes no mention of adoption or adoption law reform. In the Ministry's post-election briefing for the incoming Minister of Justice, Hon Simon Power, there is a section on issues requiring the Minister's attention in the following six months and a separate section on other less urgent issues. In neither of these sections is there any reference to adoption reform.

Once again adoption reform has been dumped from the Ministry's Work Programme and once again no reason has been given.

New Zealand's next report under the Convention on the Rights of the Child

New Zealand has to report every five years to a Committee of international experts on progress made towards full implementation of the UN Convention on the Rights of the Child (UNCROC). Its last report was considered by the UN Committee in 2003 and, at that time, the New Zealand delegation assured the Committee of its intention to reform NZ's adoption laws. The Committee welcomed this assurance although it expressed concern that the planned amendments were not fully in conformity with the principles of the Hague Convention on Intercountry Adoption. It also recommended that as part of the proposed reforms New Zealand should:

- Require children of a certain age to consent to their adoption;
- Ensure the right of adopted children to access, as far as possible, information about their biological parents;
- Ensure the right of children to maintain one of their original first names:

Concluding Observations of the Committee on the Rights of the Child: New Zealand paras 33, 34.

Ministry of Justice work programme. It was restored in 2006/07 after a deputation met with the then Minister then dropped again one year later and has since disappeared out of sight.

New Zealand's combined 4th & 5th reports under UNCROC were filed with the United Nations in November 2008. This report refers to the UN Committee's 2003 recommendations and responds:

“The Government has begun the process for a comprehensive reform of adoption laws with the Ministry of Justice conducting targeted consultation in 2003. A key objective in reviewing adoption legislation is to update the legal frameworks to better align with modern adoption practices, contemporary society structures, and values and obligations contained in international instruments. Due to other work programme priorities, the review was placed on hold for a period. Work on the reform recommenced in 2006. A considered and comprehensive approach is being taken to reviewing these complex issues.”

This is an astonishing statement. It clearly implies that work on adoption reform was ongoing in November 2008 when official documents make it clear that adoption reform had been off the Ministry's the work programme since 1 April 2007. The only excuse given for failure to carry through with its 2003 assurance given to the UN Committee is the impact of “other work programme priorities”. Clearly the fact that NZ adoption laws are seriously inconsistent with the Convention of the Rights of the Child carries little weight in deciding on work priorities.

New Zealand officials will have to front up to the UN Committee again in late 2009 or early 2010 and they will be pressed to explain why assurances given in 2003 have not been honoured and why the 2008 report contains misinformation as to progress with adoption reform. A former member of the Committee on the Rights of the Child has criticised some countries in their reports to the Committee as engaging in “diplomatic obfuscation” and this is a justified description of this aspect of NZ's report to the United Nations. It is embarrassing that New Zealand should mislead an international body in this way.

A non-government organisation report is currently being compiled Action for Children and Youth Aotearoa and will be sent to the UN Committee before its next consideration of New Zealand's progress towards implementation of UNCROC. It is likely to highlight NZ's lethargic response to the UN Committee's report issued five and a half years ago.

Robert Ludbrook

Another Family Court Judge highlights the pressing need for reform of adoption law

Family Court Judge Paul von Dadelszen in an editorial comment in NZ Family Law Journal this month adds his voice to that of his judicial colleagues in commenting:

“The Adoption Act 1955 is now more than 50 years out of date.” and adding “It is to be hoped that the current National Government will address urgently this outdated legislation which is inconsistent with [United Nations Convention on the Rights of the Child, New Zealand Bill of Rights Act 1990, Human Rights Act 1993 and Status of Children Act 1969] and with the expectations of New Zealand society at the end of the first decade of this century”. (2009) 6 NZFLJ 117.

Ministry of Justice record in relation to adoption reform

Ministry of Justice (formerly Department of Justice) has been aware of the urgent need for reform of the Adoption Act since **January 1979** when it received the report *Review of the Law on Adoption* which it commissioned from its former senior chief legal adviser, Patricia Webb. The need for reform was again highlighted in **1987** with the *Inter-Departmental Working Party Review of the Adoption Act 1955* undertaken by the Department of Justice. In **1997** former Minister of Justice Hon Roger Sowry acknowledged that the Adoption Act was out of date and indicated that he expected that amending legislation would be introduced within 12 months. In **1998** The Ministry of Justice commissioned the Law Commission to undertake a review of the Adoption Act and the Adult Adoption Information Act. The Law Commission issued a discussion paper which commented that social legislation could not be expected to have a life of more than 15 to 20 years in view of the way in which societal needs, expectations and values can change rapidly from one generation to the next. It obviously saw the Adoption Act as in urgent need of reform. The Law Commission completed a comprehensive report *Adoption and its Alternatives* in **September 2000**. The groundwork was in place for major reform of adoption laws but the process of reform then ground to a halt. Despite the Associate Minister of Justice announcing in **November 2003** that a Bill to amend the Adoption Act would be introduced later in the year no Bill has been introduced and no indication has been given when one can be expected. Adoption reform was quietly taken off the Ministry's Work Programme in **2004** and was only restored in **2006/07** after a deputation of professionals with a special interest in adoption met with the then Minister Hon Mark Burton. He was replaced as Minister by Hon Annette King but adoption reform continued to languish in government priorities and Annette King in **2008** declined to meet with the group that had received assurances from the former Minister that they would be kept informed of progress. There is no reference to adoption reform in Ministry of Justice Statements of Intent for 2008 – 2010 nor in its, Annual Report. The Ministry's briefing to the new Minister **November 2008** makes no mention of adoption reform. New Zealand's report to the UN Committee on the Rights of the Child **December 2008** conveys a false impression that progress is being made with adoption reform whereas all the evidence is that work on the issue ceased some time earlier.

It is 30 years since the Department (now Ministry) of Justice was alerted to the need to amend the Adoption Act. This message has been repeated by a series of government reports. Ministers of Justice in both main parties announced years ago that reforming legislation was about to be introduced. There have been huge social changes since 1955 but the Courts and those involved in adoption administration are working with a set of rules designed to meet the needs of people living more than half a century ago. Adoption has been truly described as the Cinderella of family law – languishing in a dusty back room.

Robert Ludbrook

Efforts in 2009 to get adoption reform back on track

A letter has been written to Minister of Justice Hon Simon Power the new Minister of Justice on behalf of the same group of professionals that met with Mark Burton. The letter and accompanying briefing paper are set out below:

Hon Simon Power
 Minister of Justice
 Parliament Building
 Wellington

Reform of Adoption Act 1955 and Adult Adoption Information Act 1985

I am writing to you in your capacity as Minister of Justice to express my concern about the failure of successive governments to give priority to the reform of the Adoption Act 1955. This Act is now 54 years old and completely out of touch with current social realities. The Adult Adoption Information Act 1985 is also in some respects out of touch with modern social attitudes.

There have been many inquiries and reviews of adoption legislation over the years leading to numerous recommendations. None of these have been acted on. Over a decade ago the National Party recognised that the Adoption Act 1955 was in need of urgent reform. In 1997, Hon Roger Sowry, then Minister of Social Welfare, in opening an international conference *Adoption and Healing* stated:

“The Coalition government acknowledges that the Adoption Act 1955 is an old Act and is in need of review. Work is progressing on this and I am personally committed to seeing it included in the legislative programme in the next 12 months”.

In 2000 the Law Commission provided a blueprint for reform of the Act in its report *Adoption and its Alternatives*. The then Minister of Justice, Hon Lianne Dalziel, announced in 2003 that amending legislation was to be introduced at the end of that year. In the same year the New Zealand delegation gave an assurance to the UN Committee on the Rights of the Child that the government intended to reform adoption legislation, an assurance that was welcomed by the Committee. Despite these assurances no Bill has been introduced, and adoption reform was taken off the Ministry of Justice work programme in 2006, restored in 2006, and then apparently dropped again in 2008.

I was one of a group of professional people with a special interest in adoption reform (see below) who met with former Minister of Justice, Hon Mark Burton on 11 May 2006. We wanted to convey our concern that adoption reform has been taken off the government's work programme without any public announcement or any reason being given. Mark Burton agreed that the Adoption Act was in urgent need of reform and indicated that he would endeavour to have adoption reform put back on the Ministry's work programme. He advised the meeting that significant progress had been made with proposals for reform. When we expressed disappointment at the low priority that had for decades been given to adoption reform, and the lack of information being provided to the public as to progress with reform, Mark Burton told us that he would keep our group informed of developments.

The Minister did not volunteer any further information about progress with reform during his term of office, but in response to a request, he did advise me in January 2007 that adoption reform had been included in the Ministry's 2006/07 work programme. The only other information I have received was a letter dated 4 September 2007 sent in response to an Official Information

request. I was advised that work on reform commenced in 2006, but any further information or documentation as to progress was withheld.

Prior to the May 2006 meeting, I provided the Minister with a detailed briefing on the areas of the current Act that breach the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. I also identified provisions of the Act which were inconsistent with New Zealand's obligations under the UN Convention on the Rights of the Child. An updated and expanded copy of this Briefing is attached.

The New Zealand government submitted its combined 3rd and 4th reports to the UN Committee late last year. The brief section on adoption states that "The Government has begun the process for comprehensive reform of adoption with the Ministry conducting a targeted consultation in 2003". This is a surprising statement as the Ministry of Justice Statement of Intent 2008/89 and 2009/10 makes no mention of adoption reform and the Briefing to yourself as incoming Minister (November 2008) is equally silent on the issue.

The sad reality is that there has been no significant change to the Adoption Act 1955 or the Adult Adoption Information Act 1985 since the assurance given by New Zealand to the United Nations Committee in 2003. There has been no apparent progress with the process of reform, despite assurances from former Ministers of Justice.

The lack of progress with adoption reform has in the last two years been robustly criticised by Family Court judges and family law specialists. In a recent decision, Judge Fraser commented that the Adoption Act 1955 was well overdue for reform: *Re T* (2007) 26 FRNZ 612. Two months later, Judge Walsh remarked that:

"The Adoption Act 1955 is widely regarded as outdated and in need of reform. Professor Mark Henaghan recently called it 'an embarrassment'. It is one of the oldest statutes in New Zealand still to be applied on a relatively regular basis. Despite ongoing calls for reform by commentators and Judges alike, this has not happened."

There have been similar criticisms of the state of adoption legislation in New Zealand by family lawyers and legal academics. While the number of domestic adoptions has been declining, the number of intercountry adoptions by New Zealanders has been increasing, peaking at 711 in 2007. Adoption is being used by increasing numbers of people to transfer parenthood in cases of surrogacy. A specialist in intercountry adoption law and practice, Dr Rhoda Scherman of Auckland University of Technology, wrote this year that:

"New Zealand's primary adoption law, the 1955 Adoption Act, which mandates for the creation of closed adoptions, no longer reflects our current practice of facilitating open adoptive relationships. Nor is it adequate to meet the requirements of the Hague Convention on Intercountry Adoption."

There has been new adoption legislation in the United Kingdom and New South Wales in the last six years and new legislation is planned for Queensland this year. Good models are available for reform of New Zealand's 1955 and 1985 Acts.

I appreciate that you have quite recently assumed the Justice portfolio and are in now way connected with past inertia and lack of communication in respect of adoption reform. The public are surely entitled to know what progress has been made and what is blocking the reform process.

Members of the group that met with the former Minister and others with experience of, or a special interest in, adoption would greatly appreciate an update on progress with reform. My colleagues and I would welcome an opportunity meet with you and your officials to discuss these matters at a time convenient to you.

Yours sincerely
Robert Ludbrook

Members of the group are:

Professor Bill Atkin, Victoria University of Wellington Law School

Professor Mark Henaghan Otago University Law School

Dr Anne Else author of *A Question of Adoption*

Mary Iwanek former head of adoption services, Child, Youth and Family

Keith Griffith author of *Adoption History and Practice – Social and Legal*

Robert Ludbrook author of *Brookers Child Law III Adoption*

Helen Colebrook co-author of Law Commission report *Adoption and its Alternatives*.

Fiona Donohue founder of *Adoption Support for Adopted People*

Susan Marks birth mother and co-editor of *Adoption News and Views*

A prompt acknowledgment of this letter was received on 20 March 2009 advising that the letter and briefing had been referred to Ministry of Justice officials for advice.

Attachment to letter to Minister

**BRIEFING ON NEED FOR ADOPTION REFORM
 FOR THE MINISTER OF JUSTICE - HON SIMON POWER**

The need for adoption reform

The Adoption Act 1955 is now 53 years old. Amendments have been made to adoption law in respect of access to adoption information and intercountry adoption, but there have been only minor changes to the Adoption Act 1955 despite a number of reviews and calls for major reform. The Law Commission in its 2000 report *Adoption and its Alternatives* undertook a careful review of the Act and provided an excellent blueprint for adoption reform which placed strong emphasis of the rights and interests of children. Problems with the Adoption Act 1955 include:

- The Act contains no reference to the child's rights – its focus is predominantly on the rights of the child's birth parents and the adoptive parents;
- The consent of the proposed adoptee is not necessary before an adoption order is made, even where the child is aged 16 to 19 years and is or has been married or a civil union;
- The names of a child of any age can be changed by an adoption order. The name the child may have used for years may be changed without the child's knowledge or consent;
- The welfare and interests of the child are not the paramount consideration in adoption (as required by the UN Convention on the Rights of the Child). They only one of the matters to be taken into consideration when an interim adoption order is made and the Act does not require that the child's

best interests be given consideration (let alone be the paramount consideration) when other adoption decisions are made;

- Children have no power to appeal against an adoption order even though an adoption order severs their relationship with their birth parents and birth relatives and will usually change their names. Under the Care of Children Act 2004 and the Children, Young Peoples and their Families Act 1989 children have a right of appeal against court orders which affect them;
- There is a risk that children can be adopted overseas and brought to New Zealand for the purposes of sexual exploitation or prostitution, the overseas adoption being recognised in New Zealand under s17 Adoption Act;
- New Zealand's adoption laws have been criticised by the NZ Law Commission, the NZ Human Rights Commission and the UN Committee on the Rights of the Child. Some provisions of the Adoption Act are not consistent with the Hague Convention on Intercountry Adoption.

Adoption Act reflects attitudes and values of a bygone era

The Adoption Act 1955 reflects attitudes towards families and children that prevailed in the 1950s, and the social values and beliefs of the immediate post-war period. Social values in 1955 were very different from those of today:

- Maori were expected to fit into western notions of children and families with no recognition of different cultural values and kin groupings in relation to children and child-rearing;
- Marriage was seen as the only acceptable basis for cohabitation and children born to unmarried parents were until 1969 characterised as "illegitimate" and in some respects treated as second class citizens;
- There was a widespread belief that women who became pregnant outside of marriage were promiscuous or deviant and that their infants would be saved by placing them with married couples who were presumed to be able to offer better care for the child;
- Pregnant single women had to leave school or employment. They were often rejected by their parents and some were left to fend for themselves. No benefit was available to unmarried parents caring for a child until the mid-1960s. Some young women had their child in Australia and the child was adopted there. Others took jobs doing domestic work for families and a number were hidden away in charitable homes for pregnant single women (which sometimes also acted as adoption agencies);
- Women's place was seen to be in the home caring for the children;
- There were great pressures on unmarried mothers to consent to adoption of their baby and mothers who demurred were labelled selfish and uncaring;
- Because adopted children were regarded as belonging wholly to their new parents, it was strongly impressed on birth mothers that they had no right to any further knowledge of or contact with their child. Birth mothers were sometimes made to swear on the Bible that they would never try to find out about or contact their child;
- Children were sometimes not told that they were adopted and grew up in the belief that their adoptive parents were their natural parents. The new birth certificate issued after adoption shows the adoptive parents as the child's birth parents.
- Contraception was not available to single women through family doctors or organisations like Family Planning. It was a criminal offence to sell contraceptives or give contraceptive information or advice to under 16s;
- Abortion was illegal and backstreet abortionists faced heavy criminal penalties;
- The government did not accept responsibility for the support of unmarried mothers and there was little subsidised day-care available;
- Men who fathered a child outside marriage were looked down upon. They had very few rights in relation to their child and they and their families were not considered as potential carers of the child;

- From the later 1960s, there were more babies available for adoption than there were couples willing to care for them, and lower standards were required of proposed adoptive parents than are required today;
- Although women considering placing their child for adoption were in most cases told of the legal consequences of an adoption order, they were not informed of the emotional consequences for mother and child nor were the alternatives to adoption explained to them. Adoption counselling was not available;
- The consent provisions, providing for the birth mother to sign consent ten days after the birth, did not contain any effective protection to ensure that a consenting mother fully understood the effect of an adoption order and the alternatives to adoption. It was (and remains) almost impossible for a birth mother to withdraw her consent once given.

Official reviews of adoption law

Since 1979, there have been six reviews of adoption law:

- *A Review of the Law on Adoption: Webb Report*, Justice Department 1979.
- *Puao-te-ata-tu (Day Break) Report of Ministerial Advisory Committee on a Maori Perspective*, Department of Social Welfare (1988).
- *Report of Adoption Practices Review Committee* Department of Social Welfare (1990).
- *Review of Adoption Law – Maori Adoption: Social Policy Agency* (1993).
- *Interim Report of Inquiry into Reform of Adoption Law*, Government Administration Select Committee (1996).
- *Adoption and its Alternatives: A different approach and a new framework*. New Zealand Law Commission (2000);
- Ministry of Justice undertook a targeted consultation with stakeholders (Unpublished -2003)

Each of these reviews has recommended significant reforms to adoption law. The Law Commission report proposed a series of reforms which built on recommendations of earlier reports and which proposed a new framework for adoption law. No action has been taken to implement the recommendations of these committees.

UN Convention on the Rights of the Child

The United Nations Committee recommended in its 2003 report on New Zealand that, in considering any reform of adoption legislation, particular attention should be paid to Art 12 (the right of children to express their views and have their views given due weight) and that its adoption laws should

- require that children of a certain age give their consent to their adoption;
- ensure the right of adopted children to access information about their biological parents;
- ensure the right of children to maintain one of their original first names.

Human Rights Commission Action Plan for Human Rights 2005

The *New Zealand Action Plan for Human Rights* released in February 2005 by the Human Rights Commission commented that opportunities for children to have genuine involvement in decision-making processes are limited in many settings. The Commission identified as a key area for action the need to amend the Adoption Act 1955 so that the consent of every child aged 12 or over should be required to an adoption order. Such consent is required in all Australian States and Territories.

Provisions of Adoption Act that breach the Human Rights Act 1993

- Section 3(2) -only married couples and single persons can apply to adopt a child (discrimination against unmarried applicants on the grounds of their not being married: s21(1)(b) HRA 1993)

- Section 4(1) -an applicant for an adoption order must have attained the age of 25 years and be at least 20 years older than the child (discrimination on the grounds of age: s21(1)(i) HRA)
- Section 4(2) -a sole male applicant can only adopt a female child if there are special circumstances (discrimination on the grounds of sex and marital status: s21(1)(a) & (b)(i) HRA)
- Section 7(3) -an adoption order can be made without the consent of the child's father in a number of situations where he was not married to or in a civil union or de facto relationship with the mother between conception and birth of the child (discrimination on the grounds of sex and marital status: s21(1)(a) & (b)(i) HRA)
- Section 7 -the consent of the child to be adopted is not required even if the 'child' is 19 (or in some cases 20 years) when the order is made (discrimination on the grounds of age: s21(1)(i) HRA)
- Section 16(2)(a) -the child is deemed to be born to adoptive parent(s) in lawful wedlock (discrimination on the grounds of marital status: s21(1)(b)(i) HRA)
- The adoption order has the effect that the child is deemed to have been the child of the adoptive parents from birth even though the natural parents may have cared for the child for some years prior to adoption: s16(2)(a): discrimination against birth parents on grounds of their being unmarried;
- Section 19 -Maori customary adoptions not recognised (discrimination on the grounds of race:s21(1)(f) HRA)

Provisions of the Adoption Act 1955 which breach the 1989 United Nations Convention on the Rights of the Child

- Section 11(b) -child's wishes to be considered in assessing child's welfare (there is no power to appoint a lawyer to represent the child and no designated mechanism by which the child's wishes can be ascertained and placed before the Court (Art 12 UNCROC Children have the right to express their views freely in all matters that affect them and to have their views taken into account);
- Section 11 - the Court is not required to take into account cultural factors affecting the child's relationship with family, whanau or aiga (Art 30 UNCROC indigenous and minority children have the right to enjoy their own culture);
- Section 16(1) The child's names are usually changed on the making of an adoption order and children are denied knowledge of the names and details of their birth parents until the child attains the age of 20 years. The Committee on the Rights of the Child has recommended that NZ's adoption law be changed so that at least one of the child's original names be retained after adoption (Art 8.1 UNCROC the child shall have a right to a name and a right to know his or her parents);.
- Section 16(2)(b) – adoption changes the child's family relationships and personal identity. The child is deemed to have been born to the adoptive parents in lawful wedlock and so the change of identity is backdated to the date of the child's birth even though the child has been cared for by the natural parents for years. This is incompatible with Arts 7.1 and 8.1 UNCROC (Child's right to know his or her parents and to have name, family relations and identity preserved);
- Section 23 -Court adoption records only available for search on a "special ground" (Art 9.3 UNCROC children separated from their parents have the right to maintain personal relations and direct contact with their parents);

In addition, the Adoption Act fails to comply with Art 21 *Adoption* in a number of respects:

- The best interests of the child is not the paramount consideration when decisions are made about adoption;
- All pertinent and information is often not available about the situation of the child's natural father;
- Counselling of birth parents is not a pre-requisite of their giving a valid consent to adoption;

- Section 17 Adoption Act is being used as a means of facilitating intercountry adoptions where genuine consents have not been given by the birth parents and where the welfare and interests of the child are not overarching considerations.

Chronology of moves to reform adoption laws

The Ministry of Justice is the Ministry with responsibility for adoption legislation and accordingly has responsibility for adoption reform. Child, Youth and Family (a unit within Ministry of Social Development - formerly part of Department of Social Welfare) is the government agency responsible for the administration of the Act. It is interesting to track the performance of successive governments on adoption reform over the past 20 years:

January 1979 *A Review of the Law on Adoption: (Webb Report)*, Justice Department makes a number of recommendations for reform of Adoption Act 1955. Patricia Webb commented that “adoption is a legal fiction and legal fictions, while they may bring about a solution of some problems, inevitably create others. No amount of legal juggling with the facts of the biological relationship can create, though it may serve foster, the sound psychological relationship between adoptive parents and child that is the child’s basic need.”

1987 *Adoption Act 1955 Review by an Inter-Departmental Working Party* an inter-departmental review of the Act conducted by the Department of Justice. It made a number of proposals for reform.

September 1988 *Puao-te-ata-tu (Day Break)* Report of Ministerial Advisory Committee on a Maori Perspective, Department of Social Welfare comments that adoption, as understood by Western countries, is a totally alien concept, contrary to the laws of nature in Maori eyes, for it assumes that the reality of lineage can be expunged, and birth and parental rights irrevocably traded”.

August 1990 *Report of Adoption Practices Review Committee* a report commissioned by Department of Social Welfare while not asked to comment on law reform issues made 28 specific recommendations for changes to the Act and adoption practice.

1993 *Review of Adoption Law – Maori Adoption: Social Policy Agency* (a unit within Department of Social Welfare). This review made recommendations for change to adoption law to take into account Maori cultural values.

April 1993 New Zealand ratified the United Nations Convention on the Rights of the Child. Article 21 of the Convention states that countries that allow adoption of children shall ensure that the best interests of the child is the paramount consideration and that parental consent shall be an informed consent given after counselling. The Adoption Act 1955 does not comply in either respect.

June 1997 The then Minister of Justice Hon Roger Sowry in opening a conference *Adoption and Healing* stated that “The Coalition Government also acknowledges that the Adoption Act 1955 is an old Act and in need of review. Work is progressing on this and I am personally committed to seeing it included on the legislative programme in the next 12 months.”

1998 The Minister of Justice required the Law Commission to review the Adoption Act 1955 and the Adult Adoption Information Act 1985 and to make recommendations on how the legislative framework should be modified to address contemporary social needs.

October 1999 The Law Commission, after a careful review of the Act, published a comprehensive discussion paper *Adoption: Options for Reform* and sought comments from a wide range of individuals and organisations.

September 2000 The Law Commission issued a report *Adoption and its Alternatives* which provided an excellent blueprint for adoption reform, placing strong emphasis of the rights and interests of children and proposing additional protections for birth mothers to avoid their being pressured to give consent to the adoption of their child. The report contains over 100 recommendations for reform of adoption law.

December 2000 New Zealand's 2nd report to the UN Committee on the Rights of the Child *Children in New Zealand* annexed the Law Commission report and indicated that adoption law will be reformed after a Parliamentary Select Committee had considered the options.

August 2001 The Parliamentary Government Administration Select Committee in its interim report *Inquiry into Adoption Laws* gave general support to the Law Commission recommendations although there was disagreement between members on some of the proposed reforms.

2003 Then Associate Minister of Justice, Hon Lianne Dalziel, indicated that an Adoption Bill giving effect to the Law Commission's recommendations would be introduced later in 2003.

October 2003 The UN Committee on the Rights of the Child in considering NZ's 2nd report welcomes the government's expressed intention of reforming adoption legislation and recommends that children of a certain age should have to give their consent to adoption and that adopted children should as far as possible have access to information about their biological parents.

February 2005 After widespread consultation, the Human Rights Commission published a *National Plan of Action on Human Rights*. The Action Plan identified as priorities for action the need to ensure that children's voice is given due weight in court proceedings and that the consent of children from the age of 12 onwards be required before any order is made for their adoption. The Adoption Act 1955 is not consistent with either of these recommendations.

2006 The Ministry of Justice *Statement of Intent* for 2006/07 advised that the Ministry ensures that laws remain acceptable and relevant to changing societal needs by providing research and supporting the government's legislative reform. It further states that it works to ensure that laws within its area of responsibility are aligned with New Zealand's international obligations.

May 11 2006 a group of professionals with a special interest in adoption met with then Minister of Justice, Hon Mark Burton, to express their concern at the lack of action in relation to adoption law reform. Several members of the group were critical of the lack of information being provided by the Ministry as to progress (or lack of progress) with its work on adoption reform or as to the reasons why it had been taken off the Ministry's Work Programme. The Minister expressed support for the need for reform and said he would try to get adoption reform included in the 2006/07 Ministry of Justice Work Programme. He assured the group that as long as he was the Minister communication would improve. Adoption reform was put back on the Work Programme later that year but there have been no public statements since then as to progress with reform. No Bill has been introduced nor any draft Bill circulated for comment.

June 2007 The Ministry of Justice *Statement of Intent* lists as one of the major initiatives to be progressed in 2007/08 "Reforming adoption laws to create a single, coherent piece of legislation to make adoption laws more accessible, eliminate inconsistencies between current legislation and to better reflect current practice and New Zealand's international obligations."

June 2008 Adoption reform does not appear in the Ministry of Justice *Statements of Intent* 2008/09 and 2009/10 list of priorities nor is there reference to adoption reform in the Ministry's *Annual Report* for 2007/08.

November 2008 Adoption reform is not mentioned in the *Briefing for the Incoming Minister*

December 2008 New Zealand's combined 4th and 5th report to the UN Committee on the Rights of the Child offers no explanation the lack of movement in relation to the recommendation of the Committee made five years earlier. It merely states that:

"The Government has begun the process for a comprehensive reform of adoption laws with the Ministry of Justice conducting targeted consultation in 2003. A key objective in reviewing adoption legislation is to update the legal frameworks to better align with modern adoption practices, contemporary society structures, and values and obligations contained in international instruments. Due to other work programme priorities, the review was placed on hold for a period. Work on the reform recommenced in 2006. A considered and comprehensive approach is being taken to reviewing these complex issues. "

A South Auckland lawyer's comments on Adoption Act 1955

Terry Carson, a South Auckland practitioner, commented in his recently published book *Understanding the Family Court* (2008):

"Anyone who lives in New Zealand will agree that our society and its standards and social expectations have changed considerably over the last fifty years. However, the law relating to adoption of children is still found in the Adoption Act 1955. The Act is out of date and out of touch with contemporary ideas. Despite numerous reports and reviews it still remains in force.

The Adoption Act 1955 largely treats a child as a chattel that adults can dispose of. Once an adoption order is made, the child is legally regarded as the child of the adoptive parents and it is almost as if the natural parents never existed. This is a very tidy solution but one that gives no thought to a child's extended family, cultural background or possible need to know about blood relationships as it grows older."

Maori damaged by Adoption Act make claim to Waitangi Tribunal

Several Maori have filed claims with the Waitangi Tribunal in relation to harm and disadvantage they have suffered as a result of NZ's adoption laws.

A recent claim has been made by members the Kararaina rōpu. Excerpts from the draft statement of claim are set out below:

Treaty of Waitangi claim no 1656

Statement of Claim under the Adoption Act 1955 Section 3 & 7, Consents to Adoption and Section 18 & 19 Maori Adoptions, 1862 Native Lands Act:

1.1 On behalf of myself and other Maori who were made wards of the state, adopted and fostered through the Governments Welfare systems, state that many of us were disadvantaged, traumatised and seriously affected by the Adoption Act 1955.

1.2. Under the Adoption Act 1955 Maori are prejudicially affected by the decisions of a birthmother and some not of legal age to warrant those decisions.

1.3 As Maori under the Whangai system and Treaty of Waitangi rights the Maori baby and extended Whanau, Hapu and Iwi had their rights taken from them in these decisions.

1.4 The courts and adoption processes stipulated and forced religious Christian views in the adoption process. As Maori the ancestral and cultural rights of Wairua Tapu were taken away.

1.5 Adopted Maori were prejudicially affected, and had their rights taken away through an adoption order that did not have the best interests of Maori babies. Under this act Maori were seen as having no cultural rights. Which contradicts the Treaty of Waitangi that states that Maori would have full rights Tino Rangatiranga over possessions which includes Whanau Hapu and Iwi. The baby being a descendent from Maori, Whanau Hapu and Iwi.

1.6 Tino Rangatiranga in the Maori language being complete control, and we claim that these matters are contrary to the principles of the Treaty of Waitangi.

1.7 There was no ongoing monitoring, support or checks of the day to day care of those who were adopted and fostered

1.8 Further state that immediate Whanau and descendents of those Adopted and Fostered Maori were also impacted by the Adoption Act 1955.

3.00 Loss of Iwi Hapu and Whanau and identity;

3.1 Many of us lost our Iwi Hapu and whanau with its own culture, dialect, blood ties, Tikanga, various Marae, whenua and waterways that provided the pillar of strength in Tikanga and Te reo to all Whanau links. The blood Whanau we never met who have passed on. The traditional and cultural knowledge, love and care lost with them. The maternal and paternal grandparents and whanau who were alive when we were brought into this world and never got the

3.2 Many of us lost the right to grow up play and swim in our place of origin. Turangawaiwai

3.3 Many of us lost an identity as Maori and our names changed the names that came from forbears, given with love and reason.

3.4 The meaning of a name in Maori is a link and lineage to Whakapapa. Whakapapa being tapu and sacred. Taonga and living breath to Maori. The blood line very strong in the provision of history of tangatawhenua. That history a taonga and strength which testifies to Tino Rangatiranga

7.00 We seek the following relief:

7.1 A public inquiry and Hui of all those who were affected, upon their evidence.

7.2 An apology on a Human Rights level.

7.3 Compensation for various losses individuals have had. Some with years of medical bills,

7.4 An open National registrar for Adopted Maori.

7.5 A Professional Maori advisory team with Iwi representatives.

7.6 I ask for permission to amend this claim, if necessary.

7.7 We wish the claim to be heard at a National Iwi Marae location.

Anyone interested to join in or support the claim can email

kararaina1960@gmail.com

Adoption Options website

I have recently checked out the Adoption Option website. There are a number of issues that made me sit up and take notice but I am going to focus on only one and that is this statement from their October 08 newsletter 'we greatly appreciate all the volunteers who are helping us spread the message that adoption is a positive option for crisis pregnancies'. It does not state who it is a positive option for, but I would guess it refers to the adoptive parents. This is 2009 and 'crisis pregnancies' come on, there are benefits available all sorts of care, fostering, etc. When women get pregnant it is usually seen as a 'blessing' and that is how I prefer to think of pregnancy "Crisis" in my view sounds like something life threatening and it is a farce to use the term in this manner as a tool to play the 'we can help you' card.

Adoption is a permanent solution to a temporary problem and the mother's so called 'crisis' might not be one until she has signed papers and realises her child has gone forever, that is what I understand to be a crisis. How can anyone make a lifelong decision and understand every implication of the most powerful document a person will ever sign. Once signed, it can not be undone. A teenager with no worldly experience and fed a diet of warm fuzzy stories, and mental conditioning is vulnerable and trusting. She has risked her life giving birth but will then be thrown on the scrapheap and her name will not even appear on the birth certificate. That is a 'crisis'. This type of propaganda is what the adoption industry feeds on. As long as adoption is promoted as a solution to a crisis we are in crisis in more ways than one.

Susan Marks

From the media

Four sentenced in Samoan adoption scam

Wellington, March 1 NZPA - Four Americans at the heart of an adoption scam that tricked Samoan families into giving up their children have escaped jail time in the United States. United States investigators travelled to Samoa and New Zealand to unravel the case against the Focus on the Children agency which adopted out 80 Samoan children between 2002 and 2005.

The agency told the parents the children would be educated in the United States, and could return home when they were 18. But the agency told the American families they were orphans and accepted thousands of dollars for them.

The editor of the *Samoan Observer* newspaper, Keni Lefa, told Radio Australia the judicial leniency would come as a great shock to the parents of the children.

Scott Banks, 47, Karen Banks, 48, Coleen Bartlett, 52 and Karalee Thornock, 36, received 60 months probation as part of a plea agreement in which they and their agency admitted various immigration, visa and fraud charges. Focus on the Children was ordered dissolved.

As a part of the plea agreement, the agency agreed to cease involvement in domestic and international adoptions. The defendants will also pay into a trust fund to help communication between the adoptive families and birth parents.

A 2007 federal indictment charged the defendants with 135 counts of conspiracy, fraud and immigration violations covering the adoption of 37 children between 2002 and 2005. But the United States Attorney for Utah, Brett Tolman, said this week a traditional criminal case resolution would have not resolved the issues for the children and families involved. Cases are still pending against three other defendants. Daniel Wakefield, 72, will be sentenced in March for helping locate children in Samoa. But the Samoan Government has not allowed extradition of two citizens, Tagaloa Leti, 46, and Julie Tuiletufuga, age unknown who are still sought by United States authorities.

The United States TV network ABC reported one adoptive parent, Michael Nyberg found the four-year-old he named Elleia, started saying the names of her parents and siblings, talking about how they all slept in a house together, even though the adoption agency said she had been abandoned by her family and left in foster care for months. "She started talking about things that didn't add up," he said. He returned the girl to her Samoan family — who had named her Sei and had never planned to give her up.

Wisconsin single mother Patti Sawyer was told the girl she adopted was found in a public toilet. "In reality, she was from a very happy family, eight brothers and sisters," she said. Ms Sawyer said she was concerned that if she took her adopted daughter back to Samoa to visit her biological family, she might not be able to take her out of Samoa to return to the United States. She hoped to convince the girl's Samoan family to let her finish her education in the United States, visit home, and share her life with two sets of parents.
NZPA 2/3/2009 © NZPA

Midwife faces disciplinary charges re adoption arrangements

By Mark Hotton The Press Christchurch

An Otago midwife tried to arrange for a patient's unborn child to be adopted by members of her family, a professional misconduct hearing has been told. The Midwifery Council's professional conduct committee yesterday began hearing the case in Alexandra. The midwife has interim suppression, while the names and identifying details of the mother, her parents, the father, and the midwife's family members have been permanently suppressed.

The midwife, identified in court as Ms N, faces charges of professional misconduct by failing to act in the best interests of her teenage client between November 2006 and January 2007. The charges include that while acting as midwife she initiated, promoted and managed a private adoption with family members as the prospective adoptive parents.

Among the charges were that she promoted her own interests, failed to make the mother aware of the mandatory statutory pathways for adoptions, failed to respond to the mother's social, psychological and emotional needs, and caused harm to the mother.

In his opening address, professional conduct committee counsel Matthew McClelland said that while working as a midwife for the mother, she suggested family members adopt the child. She initiated contact between the two parties but continued to act as midwife. The mother later decided to keep the child.

Nicole Murphy, a lawyer acting for the mother at the time, said she felt "uneasy" with Ms N being the midwife and her relationship to the potential adoptive parents. Her notes recorded concerns about the potential for the midwife to abuse her position of trust. Murphy said it was clear the mother was not allowed to stay at home if she kept the baby and she was concerned the mother could not make a full and informed decision, without pressure, about the adoption. She told the mother it was inappropriate for Ms N to be her midwife and potentially be a relative if the adoption went through and suggested the mother change midwives, something she later thought had happened. When asked by Ms N's counsel, David More, what her concerns were, Murphy said she took issue with how the potential adoptive family was introduced to the mother.

"I was also concerned about the lack of support she was getting. She was the child in this and she deserved more than she was getting," she said

Child Youth and Family's (CYFS) southern region adoption services team leader Peter McGurk said Ms N's arrangement of an independent adoption proposal before the prospective parents had been assessed and approved by CYFS was concerning. The organisation had statutory responsibility to approve any potential placement of a child and there was no such thing as a "private adoption" that did not need CYFS assessment and approval, he said. McGurk said that when Ms N made the mother aware of the availability of her family members as adoptive parents, they had not attended any of the required programmes or been assessed and approved as adoptive applicants., When the family members contacted CYFS in December 2006, they told the social worker they had met the mother, which was facilitated by Ms N, he said.

When asked under cross examination whether CYFS had done enough for the mother, McGurk said it did not have a mandatory responsibility to become involved with a mother considering adoption unless invited to do so. In this case, that did occur after the baby was born. He said CYFS staff had done what was required of them and taken all appropriate steps.

The children who couldn't love

Ruth Laugeson, a staff writer for NZ Listener, has written movingly about New Zealanders who in the 1980s adopted 160 Romanian children, some from poor families and others from Romanian orphanages where they had been kept in shocking conditions of neglect and abuse. There is also some reference to problems which affected New Zealanders who adopted Russian children. Most of the adoptive parents interviewed speak graphically of the behavioural problems exhibited by the children and their inability to form attachments. Unfortunately, the article does not provide any record of the views of the children concerned. Mary Iwanek, a

pioneer of open adoption policy in New Zealand, urged caution at the time and warned of the likelihood of difficulties with bonding, anti-social behaviour and education when children from a deprived background were uprooted from their home country and brought up in a country with a different language and culture.

The article, while strong on the difficulties experienced by the adoptive parents, does not explore the gaps in New Zealand's adoption laws that allowed prospective adoptive parents to travel to Romania, adopt a child in that country, and return to New Zealand with the child without any scrutiny of the adoption by the New Zealand authorities. In most cases there would have been no certainty that the parents of the children had given their informed consent to the adoption, that the adoptive parents were suitable people to take on the heavy responsibility of adopting a child from a very different culture. There would have been no assessment by the Department of Social Welfare or by the New Zealand courts that the adoption was in the child's best interests.

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