

Adoption News and Views

September 2009

2009/2

Adoption News and Views is a quarterly 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by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955 and to bring the Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1997 into line with the Convention on the Rights of the Child and New Zealand's Human Rights Act and NZ Bill of Rights Act.

Newsletters will be sent out 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 on current NZ adoption law and policies and on any proposed changes. Adoption reform initiatives overseas will also be covered. It is hoped that the Newsletter will also provide a forum for people to discuss adoption issues. Reviews of books, films etc touching on adoption are invited.

Adoption News and Views is sent to you because you are believed 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

New Zealand Developments

NZ Labour Party urges reform of Adoption Act

Labour's Justice Spokesperson, Hon. Lianne Dalziel, has written a piece for the New Zealand Labour website (20/8/09) commenting that "The Adoption Act is in need of a complete overhaul and the Law Commission should lead the debate". She wrote:

"Labour supports calls for a law change supporting the ability of gay, lesbian and de facto couples to adopt children, but it believes a more fundamental review of the Act is also needed.

The Adoption Act has not been fully reviewed since 1955 and is outdated and full of anomalies. For example the current law permits a single gay or lesbian person to adopt a child, but not a gay or lesbian couple, which is a bizarre distinction.

Labour did considerable work while in Government revamping the guardianship laws which resulted in the Care of Children Act 2004. It also introduced legislation to remove relationship-based discrimination in countless laws.

But the Adoption Act was left out of these reforms because it needed a complete overhaul, which was on our work programme.

I believe the child-centred approach which is the focus of the Care of Children Act should also be at the heart of modern adoption laws. The 2004 Act states that the “welfare and best interests of the child must be the first and paramount consideration” and it applies to all couples regardless of their relationship status.

It may be that the best approach is to amend the Care of Children Act to include adoption, as well as some of the other legal issues around parenthood. The matter should be referred to the Law Commission so it can develop an issues paper in the same way it has done with the liquor laws.

The matters that need revisiting are complex and we need all the facts on the table to ensure a constructive debate. The issues include whether it remains appropriate to have laws in place which sever relationships with wider family members as well as birth parents, when an adoption takes place.

Less than a quarter of adoptions these days are stranger adoptions, meaning that adoption is much more often about providing a legal framework around an existing set of relationships. Laws in regard to surrogacy and inter-country adoption need revisiting, as does the way the law treats the practice of whangai, or Maori customary adoption.

Editor’s comment

It is pleasing that Labour is giving its full support to adoption reform but it needs to be pointed out that Lianne Dalziel in 2003, when Associate Minister of Justice, indicated that an Adoption Bill would be introduced later that year giving effect to the Law Commission recommendations.. Shortly afterwards, adoption reform was taken off the Ministry’s work programme and was only restored in 2006/07 after a deputation met with then Minister of Justice, Mark Burton. It seems that little work was done on drafting new legislation and adoption reform disappeared from the Ministry’s work programme in 2008.

Ms Dalziel appears to have forgotten that the Law Commission in 2000 wrote a comprehensive report *Adoption and its Alternatives* suggesting options for reform of the Adoption Act. Their report was written after widespread consultation. The Ministry of Justice responded to the report indicating agreement with most recommendations.

Recent enquiries made with the Ministry indicate that no reforming legislation was drafted under the Labour administration.

The time for further consultation and yet another issues paper is long past. What is needed now is action. New adoption laws in New South Wales and Queensland provide excellent models for reform.

Robert Ludbrook

NZ Law Society submits report to UN Human Rights Committee

The Human Rights Committee of the New Zealand Law Society submitted a shadow report to the United Nations Human Rights Committee to be considered in conjunction with NZ government's fifth Periodic report under the International Covenant on Civil and Political Rights (ICCPR). The function of a shadow report prepared by a non-government organisation is to alert the UN Committee to issues of concern in relation to NZ's compliance with its obligations under the ICCPR.

The Committee posed nine questions which it wanted the UN Committee to ask the NZ government. These include:

1. What steps is the NZ government taking to ensure that legislation is consistent with human rights including those rights in NZ Bill of Rights Act 1990 and ICCPR;
2. What steps is the NZ government taking to respond to statements from the courts that legislation is inconsistent with human rights including those in the Bill of Rights Act?
3. What formal; procedures does the government have in place for responding to the findings of international human rights committees.(including the Committee on the Rights of the Child).

Editor's comment

No doubt one of the issues that the NZ Law Society had in mind was the concerns expressed by three Family Court Judges that the Adoption Act 1955 breaches the NZ Bill of Rights Act , the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Robert Ludbrook

A New Adoption Act for the New Millennium

Judge Paul von Dadelszen, then Acting Principal Family Court Judge, gave an address *A new Adoption Act for the new Millennium* to a Families in Transition Seminar on 17 August 2009. The following brief excerpts taken from his address are published with the consent of the Judge. The complete paper together with detailed references can be viewed at www2.justice.govt.nz/family/home.asp

The Adoption Act 1955

The Adoption Act was drafted according to the norms of 1950s New Zealand society. It was a time when having children out of wedlock was a social stigma. A young woman, unmarried and pregnant, would be taken out of the sight of the disapproving eyes of society until she had the baby, who was then quickly given up for adoption. Adoption was to be a “complete break” for the child. There was to be no reference to the child’s previous mother and, if known, the father. There was no such thing as “the open adoption”, a concept not provided for in the law but accepted now by many who adopt. Until 1985, there was no right for the child to obtain any information about their genetic parents. There was no consideration given to Māori customs or values. Adoption was approached having regard to the values of the white Anglo-Saxon society of the time. The only people who were allowed to adopt were married couples and single people.

Status of adoption law

I shall be blunt. The Adoption Act is outdated and it has become unjustly discriminatory. Since the passing of the Adoption Act, we have had the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 (HRA) pass into law. We have also signed the United Nations Convention on the Rights of the Child (UNCROC) and incorporated that into our domestic law. A recent study by Robert Ludbrook, Keith Griffith, Mary Iwanek and Anne Else has pointed out that the Adoption Act breaches the NZBORA, the HRA and UNCROC in eleven different ways.

In September 2000 the Law Commission submitted to the then Government its Report No. 65, *Adoption and its Alternatives: A Different Approach and a New Framework*. Amongst the Commission’s recommendations was the proposal that marital status should no longer be an eligibility issue. As was said at paragraph 141:

“Single persons (whether male or female) and couples (whether married, de facto or same-sex) would all be eligible to adopt a child. The suitability of a specific person or couple to adopt a particular child is a factual question to be determined on a case by case basis.”

The Commission felt that the outdated 1955 legislation needed to be modernised to reflect the norms and expectations of current society. The Adoption Act was enacted 35 years before the NZBORA. By s19(1) of the Bill of Rights legislation, everyone has the right to freedom from discrimination on grounds contained in the Human Rights Act, including marital status (meaning, amongst other things, married, in a civil union or a de facto relationship) and sexual orientation.

Although the provisions in the NZBORA and the HRA cannot override the Adoption Act, nevertheless, it is clear that the restrictions in the current adoption legislation run counter to Parliament’s (and so society’s) expectations as reflected in those two later pieces of legislation.

Conclusion

The idea of what constitutes a family has undergone a sea change in the last fifty years. What is commonly known as the nuclear family is no longer the norm. Nowadays, families often include those comprising a de facto couple and children from another marriage or relationship, same sex couples, a partner who has separated and entered into a new

relationship with another person but who still retains contact and is on a friendly basis with the ex-partner. A family may be made up of many generations of a wider family group living and loving together, Yet the Adoption Act only caters for the 1950s nuclear family. This needs to change.

Correspondence with Minister of Justice

Letter from Susan Marks to Minister
26 August 2009

Dear Honourable Simon Power

Submission regarding the outdated 1955 Adoption Act

The Acting Family Court Chief Judge Paul von Dadelszen's suggestion that we consider reviewing the 1955 Adoption Act is a valid one. The Act is suffused in the belief that there must be a complete break between mother and child ignoring all studies showing this to be harmful to both of them as the child does not feel like a separate entity until at least 3 years of age. Mothers don't just move on and forget their firstborn children.

As a mother whose child was stolen by the adoption system I feel I was discriminated against because of my unwed teenage status. Discrimination was based on this Act yet I had my child in 1974 when society's morals were hardly that of 1955. On top of the discrimination I was further subjected to feeling like my child was kidnapped as I was not entitled to a bar of information about his health or whereabouts. What sort of legislation is so necessary to keep mother and child apart if she has freely chosen adoption? There would be no need to hide him from you. We were treated like birth machines that were used to satisfy two complete strangers' needs. If you lose sight of a child for a moment and you feel that panic of losing sight of them – try to imagine going year in year out not knowing or being entitled to know if your child was happy or sad or who they were living with. Again, if we had chosen adoption we should have been entitled to know. Unfortunately many women didn't survive this added trauma from that one single signature. Told that we would move on and have more children of our own – what a despicable way to treat young New Zealand women that needed help when they were in the most vulnerable position a woman can be in. This Act not being a priority on the Minister's work programme is quite disheartening to say the least as no New Zealand mother deserves to go through the pain of adoption under this outdated cruel Act that is totally in favour of the adoptive parents.

We would not have signed adoption papers 10 days after giving birth a decision that was so final and momentous if we hadn't been so young, vulnerable, trusting and brainwashed by our peers. There are plenty of documents out there but none as permanent as adoption papers. Coercing a teenager to sign when they aren't legally old enough to vote or drink or get hire purchase or a visa card but to sign documents of such a permanent nature in 10 days without having any time apart from her baby to know how cataclysmic it would be, is just inhumane. The worst part once realising you were lied to was that you couldn't do a darn thing to get

them back – that is a grief no mother should endure. Mothers I know can't even remember signing as it was the most traumatic event of their lives. Hardly the reaction you would get if they had been lining up to give their children away as they had better things to get on with. Getting a teen to sign 10 days after birth when hormones are out of kilter and you are in that post partum emotional zone is so wrong and unethical and is far too short a time. New Zealand has the shortest signing time than any other country – why? Adoption was already a foregone conclusion as they bound up our breasts so we wouldn't further bond with our children, had a family picked out and signing the papers was just a formality. It was all horrific, cruel and totally unnecessary. The grief of that loss never leaves you or abates you just learn to live with it.

We were judged like gays - unfit parents to our own children because of our age and unwed status which was discrimination. Our children were not and never 'unwanted' that is the tragedy, all that suffering was for nothing, we could have done a better job in most cases. Adoption is not a perfect solution; it is a permanent solution to a temporary problem.

Yours sincerely
Susan Marks

Reply from Hon Simon Power

Dear Ms Marks

Adoption law

Thank you for your letter of 28 August 2009 regarding adoption law in New Zealand. I am sorry to hear of the difficulties you have experienced. Adoption is a complex and sensitive matter which raises a number of very important concerns for birth parents, children who are adopted, and adoptive parents.

I can assure you that I am aware of the issues that have been raised around adoption law and the need for reform. Work on adoption law reform is not currently progressing due to other pressing issues in the justice sector which the Government needs to address. I will readdress these priorities over time.

In the meantime you may be interested to know that the Ministry of Social Development has established the Care, Claims and Resolution Team to offer assistance to people who have been in the care of the Ministry of Social Development or the departments which preceded it, and who have questions or concerns about that care. As you may be aware, the Ministry of Social Development is responsible for the day to day operation of adoption legislation, including the provisions of adoption services and social work practice.

You may like to contact the Care, Claims and Resolution Team to see if they are able to assist you in any way. The team can be reached by phone at 0508 FAMILY (0508 326 459), by Email: HistoricClaims@msd.govt.nz or by post to PO Box 1556, Wellington.

Thank you for taking the time to write to me with your views on adoption law. I have asked my officials at the Ministry of Justice to note the issues you raise and retain your correspondence on file to inform any future review.

Yours sincerely
Hon Simon Power
Minister of Justice

Background to proposed changes to Adoption Act included in Child and Family Protection Bill

Optional Protocol to UN Convention on the Rights of the Child

Articles 34 and 35 of the Convention on the Rights of the Child require ratifying countries to protect children from all forms of sexual exploitation and from the abduction, sale and trafficking of children. This Optional Protocol was adopted by the United Nations General Assembly on 25 May 2000 and entered into force on 18 January 2002. It was signed by NZ on 7 September 2000 but NZ has not yet ratified it.

Article 3.1 of the Optional Protocol places an obligation on ratifying countries to put in place legislation making it a criminal offence to “improperly induce consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption”.

In New Zealand, the consent of the biological mother (and in some cases the consent of the biological father) is required before an adoption order can be made. The consent of a parent can only be dispensed with by court order on limited grounds set out in s8 Adoption Act 1955.

It is an offence under s27(1)(d) Adoption Act to pay money to a parent in return for that parent’s consent to the adoption of her or his child. The likelihood that in New Zealand the consent of a parent might be obtained by payment or reward is not great and the Family Court has the power under s8 of the Adoption Act to set aside an interim adoption order on the grounds that the purported consent of a parent was not a true and genuine consent and was secured by deception, duress or coercion. There is no doubt that, in the past consents, given by some birth mothers were of doubtful validity and were given as a result of pressure exerted by the father of the child, the mother’s family, the “mother and baby home” which provided accommodation for the mother during pregnancy, or staff or social workers attached to hospitals or the government agency responsible for adoption arrangements.

Intercountry adoptions where a child is adopted from an overseas country which is a party to the Hague Convention on Intercountry Adoption have to meet high standards in respect of the consent of the child’s biological parents: see Art 4 c. of Convention. But under New Zealand’s adoption laws there is nothing to prevent a New Zealander from adopting a child from a country that is not a party to the Convention. Such adoptions can be recognised under s17 Adoption Act 1955 and have the same force and effect as a New Zealand adoption order. These adoptions are not scrutinised by the New Zealand courts nor is approval necessary from Child, Youth and Family. Under current law there is no inquiry by the New Zealand authorities whether the parents of the child have given their free consent to the child being

adopted to overseas adoptive parents. The birth parents may not know that the child will be taken to a foreign country with a different language, customs and culture. The adoptive parents may be told that the child is an orphan or that the parents have given their free consent. There can be no certainty that the consent of the child's parents was not obtained by financial or other Improper inducement

New Zealand's National Plan of Action

A *World Congress Against the Sexual Exploitation of Children* was held in 1996 in Stockholm. At the Congress, delegates from 122 countries (including New Zealand) adopted a *Declaration and Agenda for Action* committing themselves to a global partnership against commercial sexual exploitation of children. The Ministry of Justice in February 2002 published *Protecting Our Innocence: New Zealand's National Plan of Action Against the Commercial Sexual Exploitation of Children*. As part of its responsibilities under the *Agenda for Action*, NZ was required to legislate to prevent consents to adoption of children being induced by financial other rewards or by duress or trickery. There is considerable evidence that, in some overseas countries, intermediaries are paid large amounts of money by proposed adoptive parents for securing a child for them to adopt. In some cases consent documents have been forged or false declarations have been prepared indicating that the child has been abandoned by the parents or that the parents cannot be traced.

Other legislative changes needed to enable ratification of the Optional Protocol were made some years ago. Changes to the Adoption Act are the last obstacle standing in the way of NZ's ratification of the Optional Protocol.

Proposed changes to Adoption Act 1955 to clear the way for ratification of the Optional Protocol

The Adoption Act 1955 was passed long before the huge growth in the international movement of children for adoption purposes and its provisions are inadequate to protect children from non-Hague countries adopted by New Zealanders from the risk that money was paid to the overseas parents or they were duped or pressured into giving their consent. There has been recent publicity given to the a scam in which Samoan parents agreed to relinquish their children in return for a promise that the children would be educated in the United States and then returned to their parents on the completion of their education. The children were in fact sold in adoption to American adoptive parents who were led to believe that the children had been abandoned (see below under International News).

The *Child and Family Protection Bill* introduced in August this year will make changes to the Adoption Act and to criminal legislation which will give children greater protection against overseas adoption scams. The Bill would:

- make it an offence to induce another person by fraud, duress, undue influence (whether by payment or otherwise) or other improper means, to consent to an adoption. The offence carries a maximum penalty of seven years imprisonment which means that a New Zealander who commits the offence overseas could be extradited back to NZ to face charges here;.

- empower a NZ court, if satisfied that an offence of inducing consent has been committed, to order that the child be removed to a place of safety pending return to his or her parent or guardian or pending other arrangements for his/her care;
- give the New Zealand criminal courts extra-territorial jurisdiction in respect of the offence of inducing consent where the person charged or the person whose consent has been induced is a New Zealand citizen or is normally resident in this country. Extra-territorial proceedings can only be brought with the consent of the Attorney-General;

Effect of the proposed changes

- Where a New Zealand birth parent is heavily pressured to sign a consent to adoption the person that has exerted the pressure might be charged with the indictable offence of improperly inducing consent.
 - Prosecution and conviction for such an offence would not invalidate the consent. If a final adoption order had been made it would be very difficult for the parent who had been pressured into giving consent to obtain a discharge of the adoption order. If only an interim adoption order had been made, revocation of the order could be more easily obtained under s8 Adoption Act;
 - The amendments make no change to s17 Adoption Act which allows New Zealanders to adopt a child from a non-Hague Convention country and bring the child back to New Zealand where the overseas adoption order has the same effect as a New Zealand order.

Conclusion

The proposed amendments are valuable as a warning that any payment or improper inducement to secure parental consent to adoption could result in prosecution and a heavy fine or lengthy term of imprisonment.

There have been very few prosecutions under the existing s27(1)(d) and it is unlikely that these amendments will have any great impact on consents given in New Zealand. The serious problem of consents obtained by foreign intermediaries in respect on intercountry adoptions by New Zealanders of children from non-Hague Convention countries is not addressed by the amendments.

What is needed are amendments to the Adoption Act which would prohibit intercountry adoption by New Zealanders from non-Hague countries or, at the very least make such adoptions subject to the same checks and monitoring as domestic adoptions so that a report from Child, Youth and Family and an order from the New Zealand Family Court would be required.

The proposed changes bring no benefits to birth mothers who historically had their consent to adoption of their child induced by threats, promises or undue pressure. If a consent is induced by improper pressure the Family Court has limited powers to discharge the adoption order once a final order has been made.

It is disappointing that the opportunity has not been taken to make changes to the Adoption Act to bring its provisions into line with the UN Convention on the Rights of the Child. In order to do this it would be necessary to make changes so that:

- The best interests of the child is the paramount consideration when adoption decisions are made whether by the Family Court or by Child, Youth and Family and other government agencies. The informed consent of both parents of the child should always be obtained before an adoption order is made unless a court has determined that it is not in the best interests of the child for the consent of a particular parent to be required: art 21 UNCROC;
- The consent of the child to his or her adoption should be necessary before an adoption order can be granted: see recommendation of UN Committee on the Rights of the Child in its October 2003 report on NZ's compliance with UNCROC;
- Adopted children should have the right to retain their original first names: see UN Committee's 2003 report;
- Adopted children should have the right to access information about their biological parents: see UN Committee's 2003 report
- The consent of birth parents and relatives of the child should be an informed consent given after those concerned have received counselling art 21(a);
- Intercountry adoption by New Zealanders should only be authorised if the court is satisfied that the placement of the child in a foster or adoptive family in the child's country of origin has been attempted and has proved impossible: art 21(b);
- Intercountry adoption by New Zealanders from non-Hague Convention countries should be subject to the same safeguards and standards as domestic adoptions and measures should be taken to ensure that intermediaries do not make improper financial gains: art 21(c) & (d)..

The proposed changes in the *Child and Family Protection Bill*, while commendable, do not address the real problems arising from New Zealand's antiquated adoption legislation nor do they ensure that in future parental consents to adoption are obtained only after the parent concerned has received counselling, has been fully informed of the alternatives to adoption and given information about the emotional effects commonly experienced by the relinquishing parent and the child. While the amendments will make it an offence to improperly induce consent to adoption they do not provide a means by which an adoption order made in reliance on an unlawfully obtained consent can be discharged.

The amendments to the Adoption Act 1955 nibble at the edge of the problem rather than addressing the serious deficiencies in the Adoption Act. The focus is on clearing the way for NZ to ratify the Optional Protocol to the UN Convention on the Rights of the Child rather than on making changes which will eliminate or restrict the abuses inherent in the adoption of children from countries where adoption abuses are rife.

Robert Ludbrook
www.hotmail.com

Court adoption statistics

The Family Court Statistics published by the Ministry of Justice in 2009 show that in 2007 there were:

- 379 applications for an adoption order filed;
- 247 adoption orders made, 41 applications were discontinued and 20 were dismissed or struck out,
- 1 application was made to vary or discharge an adoption order and this was granted;
- 36 applications to dispense with consent of a parent or guardian;
- 196 applications to inspect adoption records where filed and 51 applications were granted;

Age of adopted children (2007):

53 were of children aged 0 – 5.

20 of children aged 5 -10

17 of children aged 10 -14

10 of children aged 15 -19

Ethnicity of applicants and children (2007)

European/pakeha: 45% of applicants 29% of children

Maori	10%	10%
Pacific	31%	38%
Asian	11%	17%
Other	3%	6%

Family Court Statistics in New Zealand 2006 & 2007 Ministry of Justice April 2009

International News

International Social Service

International Social Service (ISS) helps individuals, children and families confronted with social problems involving two, or more, countries as a consequence of international migration or displacement. As an international not-for-profit organisation, it is active in around 140 countries through a network of national branches, affiliated bureaus and correspondents. Each year, it provides services to more than 50,000 persons throughout the world.

Amongst the most challenging issues of the 21st century is voluntary or forced movement across borders which makes the activities of ISS highly relevant to the current reality. One of its main areas of work is adoption – both national and intercountry.

ISS puts out publications on adoption. Fact Sheet 18 *Adoption: General Principles* explains the principles of “Subsidiarity” and:”Adoptability” as they apply to intercountry adoption.

Subsidiarity requires that intercountry adoption should only be considered once all measures to maintain the child in the biological family have been exhausted and placement of the child in the child’s country of origin has been fully explored

Adoptability while poverty may be a factor in parents placing children for adoption it should not in itself justify the adoptability of a child nor removal from its family environment.

ISS also publishes a Guide *The Rights of the Child in Internal and Intercountry Adoption-Ethical Principles*. Both of these publications are available online at www.iss-ssi.org

New South Wales inquiry supports adoption by same-sex couples

A New South Wales Parliamentary Committee has recommended that its Adoption Act 2000 be changed to allow same-sex couples to adopt children. The report contains a detailed analysis of the issues, including consideration of the strong opposition expressed by religious groups opposed to adoption by unmarried couples and same-sex couples. *Adoption by same-sex couples* Report 39. Legislative Council Standing Committee on Law and Justice July 2009. Various arguments were considered by Committee members:

Best interests of the child

A minority of members of the Committee argued that the research indicated that the interests of children are best served in a family where they are parented by both a mother and father in a permanent (preferably married) relationship. The majority were of the view that research evidence shows that family functioning is the primary determinant of outcomes for children, regardless of gender and sexuality. They were persuaded that sexual orientation is no indicator of parenting fitness or ability, and that there is no substantial research evidence to suggest that children are disadvantaged or harmed by being raised by same-sex parents. Their view was that it is in the best interests of adoptive children for prospective parents to be evaluated individually on the basis of their ability to provide the best environment for a particular child.

Human rights and legal issues

The Committee noted that the NSW legislation permitted foster care (but not adoption) by same-sex couples and allowed adoption by gay and lesbian individuals but not couples. The majority were concerned that the exclusion of same-sex couples as adoptive parents discriminated not only against the couples on the grounds of their sexual orientation and family status but also discriminated against children who were denied the opportunity to have gay or lesbian couples as adoptive parents. The majority further noted the growing national and international trend towards legal recognition of same-sex relationships, as well as the support for such recognition by law reform bodies. The majority agreed that removing discrimination from the *Adoption Act* would promote equality and send an important message to broader society about the positive contributions and capacities of gay and lesbian parents. The majority made a further point that Australia's obligations under international agreements required that the best interests of the child should be the paramount consideration in adoption law and practice.

The majority were satisfied that allowing same-sex couples to adopt would have no negative effects on intercountry adoption by Australians, given that the criteria for selection of suitable

parents was set by the child's country of origin and that all countries in the program currently exclude same-sex couples.

This is a brief summary of a comprehensive 187 page report which deals fully with the arguments for and against adoption by same-sex couples. The report can be viewed at www.parliament.nsw.gov.au

NSW adoption law will allow siblings of adopted children to obtain information about their brother or sister

Under New Zealand's adoption laws, siblings of an adopted child have no right to obtain information about a full brother or sister or half-brother or sister who has been adopted out of the family. The New South Wales Adoption Act 2000 was amended in 2008 to entitle a non-adopted sibling (whether of the half blood or full blood) of an adoptee aged 18 years or older to obtain certain information about the adopted sibling: section 133G.

Australia - Burgeoning interest in the social history of adoption

ABC Radio National's *Hindsight* is planning a program on the social history of adoption in Australia and has been gathering stories from Australians affected by adoption. A number of New Zealand mothers now living in Australia have told their stories to the producers of the program. The ABC has already broadcast a program *Secrets and Lies: the Untold Stories of Adoption* in which relinquishing mothers gave accounts of their experiences. The Social Issues Committee of the New South Wales Legislative Council in 2000 held an inquiry into past adoption practices in that State and issued a comprehensive report *Releasing the Past: Adoption :Practices 1950-1998*. The enquiry elicited many examples of insensitive, inhumane and sometimes illegal past practices affecting birth mothers. One birth mother told the Committee "The process of adoption never ends. There is a lifetime knowledge that your child is out there somewhere."

Origins rejects Australian Federal government apology for past adoption practices

Origins Incorporated, in response to the Australian Federal Government's willingness to offer an apology to mothers who have lost children through unlawful adoption practices has responded with the following statement:

"Acceptance of an apology, will mean that serious crimes committed against us and our children will be "swept under the historical mat forever", and, as an organisation committed to the pursuit of human rights and justice, *Origins Inc* will not let that happen. As an example the NSW Government has had nearly a decade to apologise since the tabling of the *Releasing The Past* Report 2000 that found it's adoption practices from 1950-1998 unlawful and unethical, and still to date has done nothing by way of acknowledgement, reconciliation or redress by the State to the 86 000, NSW mothers affected by these practices.

A litany of major crimes and human rights abuses were committed against mothers and their children across this country, and to let off those responsible for these human rights

abuses by accepting a few words given to appease a small group of mothers demanding an apology is sentencing those who want more than apology, and who have suffered decades of misery, to a lifetime of unresolved injustice.

An estimated 150,000 children were removed from their mothers over the period from 1950 to 1998 when adoption practices at this time had been deemed unlawful by *Releasing the Past*. The report was the result of a two and a half year Inquiry into past adoption practices.”

Genetic testing of children prior to adoption

Recently, a new angle to the many and varied debates over predictive genetic testing has emerged. A number of clinical geneticists in the UK have been requested to undertake genetic tests on children who are up for adoption. When advised that these tests were not in the interests of the children concerned, several local authorities handling adoptions obtained court orders requiring the tests. An interesting discussion of the topic has recently been published in the e-newsletter Bio News.

“It is usual for children who are being considered for adoption to be assessed by health and social work professionals. This is to ascertain their developmental progress and current medical status, and to identify future needs. Medical information is also sought from the biological parents of the children. If these investigations suggest a risk of inherited conditions, local authorities and/or prospective parents may wish to verify whether a child carries a specific gene.

Could this information result in a decision not to proceed with the adoption? It may seem disturbing that a person would reject a child on the basis of a genetic test. Discussing the issue on BBC Radio 4's *Inside the Ethics Committee* programme last year, ethicist Deborah Bowman argued that parents who would reject on these grounds are in effect 'commodifying' that child - something she regards as being clearly unethical. Deciding not to adopt a child with a particular genetic condition undoubtedly indicates a conditional attitude towards becoming a parent.

But do we really expect adoptive parents to approach parenthood unconditionally? The extensive medical examinations that are already a part of the adoption process give parents the chance of drawing back if the child has needs they cannot meet. Genetic testing is an extension of this. In fact, conditional attitudes towards parenthood are widely accepted and even expected. Women who terminate pregnancies on the basis of the results of prenatal diagnosis, or who use PGD (preimplantation genetic diagnosis) to select embryos, wish to have a child only if it is free of a specific medical condition. An entirely unconditional approach to parenthood may be the ideal, but it is not the norm. It would seem harsh to judge adoptive parents by such an exacting standard.

In the case of adoption, the interests of the child must also be considered. For some conditions that manifest themselves early in childhood, there may be strong arguments in favour of testing, especially if this means that swift intervention could improve long-term health outcomes for the child. In such cases, regardless of the adoption situation, it might be regarded as being in a child's interests to undergo tests. (Testing is minimally invasive

and carries virtually no risk in itself.)

The cases that have caused controversy are those where the disease is of later onset, meaning that there is no immediate medical benefit for the child, and in fact, testing may actually be harmful. The knowledge that one will develop a condition such as Huntington's disease, for example, may be a heavy psychological burden. Adults at risk of developing the disease often decide not to undergo testing. Testing children deprives them of this putative 'right not to know'. For these reasons, testing young children for late onset diseases is generally viewed as being inappropriate.

But perhaps the peculiar circumstances of adoption justify going against this commonly accepted view. Where children being brought up by their biological parents are at risk of genetic disease, a parent may be aware of something 'running in the family'. This lay knowledge is highly significant: it gives parents something to go on, and can help families to cope with risk. Parents are likely to have seen the effects of the disease on the sufferer, and those around him/her. Adoptive parents who lack this kind of experiential knowledge may feel that genetic testing could provide clear information that would relieve their uncertainty.

Yet genetic tests do not always fulfil expectations. Clinical geneticist Anneke Lucassen notes that people often assume that results will be conclusive, and can be followed up with an immediate intervention. As mentioned above, this is rarely the case. In Lucassen's experience, if parents are invited to discuss their expectations, and are made aware of the limitations of predictive testing, they generally opt to defer testing.

In the context of adoption it may be difficult to enter into this kind of discussion. But local authorities need to engage effectively with geneticists when such questions arise. And with the demand for genetic testing increasing, these issues are likely to arise more frequently in future. There may be occasions when there *are* compelling reasons for predictive testing, but these need to be discussed openly in the first instance rather than being pursued through the heavy-handed means of obtaining a court order.”

Excerpt from an article by Anna Smajdor BioNews 522 8 August 2009

New online journal of adoption.

A new online journal with a focus on adoption issues, the *Australian Journal of Adoption* has recently been launched. It aims to provide an independent and open access forum for people involved in the adoption. It is published by the National Library Association of Australia as an open publishing venture. Details can be obtained from the website www.nla.gov.au/openpublish/index.php/aja

From the media

Four sentenced in Samoan adoption scam

Wellington, March 1 2009 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 Ieti, 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.

The Children Who Couldn't Love
Ruth Laugesen
Listener 21/3/09

This article describes the experiences of some of the New Zealanders who adopted a total of 160 children from Romanian orphanages and Romanian families 20 years ago. It indicates that, while many of the children settled well in this country, many others have “gone off the rails” , in their teenage years “with problems ranging from promiscuity, arson and dropping out of school, to car theft, depression, self-harm, violence and suicide”. One adoptive mother is quoted as saying that as these children reach adolescence “they have lot of anger towards their adoptive mothers”. The article relates that similar problems are emerging with Russian children later adopted by New Zealanders. These difficulties were foreseen by critics of intercountry adoption including Mary Iwanek, former head of adoption services with Child, Youth and Family. Most of those quoted in the article attribute the problems encountered by these children to attachment disorder resulting from the lack of a close bond with a parent or carer in infancy. The article quotes several adoptive parents but only one adoptee. It would be interesting to have heard the perspective of the “problem children”.

Books and films on adoption themes

Film Sisters from Siberia New Zealand, 2009

In 2006 Wellington City Councillor Stephanie Cook finally succeeded, after much difficulty, in adopting two daughters from a Siberian orphanage. Katya was nine and Nadya four. The girls made the journey from the desolate steppes of Siberia to the middle-class community of Aro Valley. Russell Campbell, as a neighbour and friend, had unprecedented access to the new family and has managed to put together a thoughtful, intimate and revealing film about the process of settling in. Neither girl spoke any English when they arrived and Stephanie’s Russian was not good either. Yet through a mixture of languages and sign language, the trio managed to communicate and begin to bond as a family.

Determined that her daughters not lose touch with their culture, Stephanie has become involved with Russian cultural groups and émigrés in Wellington. And these fascinating characters, including a fishing-vessel jumper turned social worker and an eighty-six year old violinist and yoga teacher, give a broader view of the Russian experience in New Zealand.

Book Choosing inner Peace: The duality of Love & Loss Within Adoption by Ann

James Written by an adoptive Mother who lives in Sydney this has been described as a heart warming story and is strongly recommended Her email is annjames@tpg.com.au. Thanks to Chrissie Hamilton of Sydney for bringing this book to our attention.

Editors

Robert Ludbrook and Sue Marks
30 September 2009

