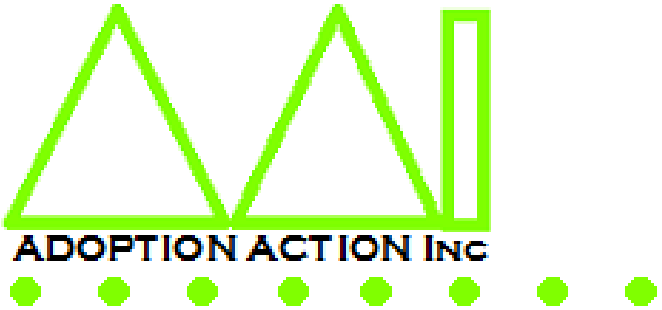


# ADOPTION NEWS AND VIEWS

**SEPTEMBER 2010** **2010-3**

*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by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955 and to bring the Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1997 into line with the Convention on the Rights of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 the anti-discrimination provisions in Human Rights Act 1993 and NZ Bill of Rights Act. 1990.

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 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**

## News

### Adoption Action Incorporated

A group of people with a special interest in adoption and adoption reform have incorporated under the name Adoption Action Inc. The objects of the society are:

(a) To propose and promote changes to adoption laws, policies and practices that will:
- enhance the rights and wellbeing of children affected by adoption
- eliminate the discriminatory provisions in current New Zealand adoption laws
- introduce new laws which will reflect current social attitudes and values and will accord with national and international human rights standards
- reduce the risk of sale, trafficking and inhumane treatment of children in intercountry adoption

(b) To collect statistics and undertake research which will increase community knowledge and understanding of the effects of adoption on those involved and will cast light on past adoption practices

(c) To disseminate information in relation to adoption laws, policies and practices to members, to the media and to the public generally

(d) To organise seminars and conferences on adoption and related topics.

The interim officers of the society are:
Convenor: Fiona Donoghue
Secretary: Susan Marks
Treasurer Robert Ludbrook
Committee: Mary Iwanek, Bill Atkin, Keith Griffith, Charlotte von Dadelszen, John Hancock

Adoption Action plans to arrange a conference in early 2111 to highlight the archaic state of New Zealand's adoption laws and to add momentum to the campaign for reform.

The membership fee is a nominal $10 and anyone interested in joining should complete the membership application form at the end of this newsletter or email the Convenor Fiona Donohue at adoption@clear.net.nz and a membership application form will be sent out.

### Cross-party group of MPs has its first meeting

A cross-party group of MPs led by Green MP Kevin Hague has been formed to bring together members who have a shared interest in adoption and will consider options for reforming current adoption laws. At the inaugural meeting members the Convenor and board members of Adoption Action provided a power point presentation outlining the areas in which current adoption laws were discriminatory and failed to reflect current attitudes towards children, families and openness in human relationships. While only five MPs were able to attend the meeting others signified their interest in being involved or being kept informed.

Those present were Kevin Hague (Greens) Rajen Prasad, Stuart Nash (Labour), Paul Quinn, Dr Cam Calder (National).

## Criticisms of the failings of NZ's adoption laws keep on coming

### Report of Children's Commissioner to the United Nations Committee on the Rights of the Child 3 August 2010

**Adoption**

104. Changes to New Zealand's adoption law are long overdue to bring it in line with modern adoption practices and UNCROC as noted in the Committee's previous recommendations regarding adoption and the application of Article 12.

105. The Committee may wish to consider making the following recommendation**:**

**"That New Zealand's adoption law be reformed to bring it in line with modern adoption practices, UNCROC and the Committee's previous recommendations**."

### New Zealand Civil Rights Handbook

Tim McBride Chapter 6 *Children* Craig Potton Publishing 1 July 2010 p233

"Adoption is seen as part of family law but it has never been integrated with laws covering disputes of the care of children and its procedures are governed by the Adoption Act 1955, which reflects social and cultural attitudes of a bygone era. Adoption not only authorises alternative care arrangements for the child: it severs the child's legal; and family links with the biological parents and any relatives traced through them. Adoptive parents become the child's parents as if the child had been born to them. An adoption order can be made in respect of any child under the age of 20 years. There is no requirement t the child be notified of the application for an adoption order nor that the child's consent be obtained."

### Non-Government Organisation Shadow Report to the Committee on the Rights of the Child prepared by Action for Children and Youth Aotearoa (ACYA) and released 18 September 2010

**Article 21 - Adoption**

**In the last 30 years, there have been six major reports and reviews proposing changes to the Adoption Act 1955, but none has been acted on. New Zealand's adoption laws are inconsistent with the Convention in many ways**. For example, the best interests of the child is not the paramount consideration when decisions are made about adoption; there is no mechanism for the child's views to be ascertained and taken into account; the Court is not required to take into account cultural factors affecting the child's relationship with family; New Zealanders can adopt children from countries which are not parties to the Hague Convention on Inter-country Adoption without any restrictions and without any scrutiny by the New Zealand courts or authorities. Please also refer to Paragraph 4.3 about legal recognition of traditional Māori whangai, and 3.14 about discrimination.

In 2003 the Government indicated to the Committee its intentions to reform adoption laws in line with the recommendations from the Law Commission's comprehensive 2000 report, *Adoption and its Alternatives: A Different Approach and a New Framework.* The Committee welcomed this and made recommendations as to what should be included in the reform. There has been no progress at all on adoption law reform and the current Government has indicated that is a low priority.

**Victoria University Student Magazine *Salient***

An article *The Option of Adoption* quotes Victoria University senior law lecturer and Associate Director of the New Zealand Centre for Public Law Dean Knight as saying:

> **"[Adoption] law at the moment is a dog's breakfast" Everyone knows that our model of a family has changed and become more diverse. The law has got to be updated."**

The article also quotes from the blogsite on legal matters of Andrew Geddis, Associate Professor of Law at Otago University who agrees that he law has to be updated and comments **"Everyone who has looked at it, including the Law Commission agrees". It is not just the gay adoption point – that's actually a bit of a side wind.but rather the Act's inability to cope with a variety of changing family arrangements that are part of modern New Zealand".**

Geddis also points out that the Act discriminates on the basis of marital status, family status and sexual orientation. all of which are prohibited grounds under the Human Rights Act 1991 and the New Zealand Bill of Rights Act 1990.

Green MP Kevin Hague is also quoted in the article:
**"The Adoption Act fossilises the views of society in 1955. It is tailored to an understanding of family."**
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*Salient* Vol 75 Issue 20 13 September 2010 22, 23.

**Another Family Court Judge questions the lack of impetus for reform**

Judge Maude sitting in the Whangarei Family Court on 1 June 2010 in granting an adoption order in a case in which an uncle and his wife had applied to adopt a 21 month old child Maori child who continued to have regular contact with both birth parents stated:

> [20] I am mindful of the contents of the Law Commission's 2000 report "Adoption and its Alternatives" and the growing view that adoption is a legal fiction by defining "adoptive persons" as parents while severing biological ties.
> [21] The reality is that successive governments have chosen not to remove the Adoption Act from the statute books. While it remains the Court must consider applications under it on their merits. There cannot be a judicial prejudice against adoption per se.
> ……
> [27] In my view, while adoption remains on the statute books. The Court must deal with applications under it, notwithstanding concerns it might have as to the legal fiction that it creates. There must, notwithstanding that, be good reason for the adoption being made as opposed to orders being made under the Care of Children Act. Each case must be dealt with on its merits.

**Comments on important decision which allows some unmarried couples to adopt**

New Zealand's Adoption Act 1955 restricts adoption applications to sole applicants and "two spouses". In a move to resolve the uncertainties surrounding the meaning of "two spouses" in contemporary New Zealand, the Family Court recently asked the High Court for a ruling whether a man and woman living in a stable de facto committed relationship should be treated as "two spouses" and thus be able to apply jointly to adopt a child.

Professor Bill Atkin of the Victoria University Law School and Robert Ludbrook discuss the High Court reasoning, the decision, and its implications.

**Comment from Professor Bill Atkin Victoria University Law School**
***Three steps forward and two steps back***

In June this year, the High Court delivered one of the more significant judgments on adoption law in recent years. In *An application by AMM and KJO* (High Court Wellington, CIV 2010-485-328, 24 June 2010) Wild and Simon France JJ held that a heterosexual de facto couple can adopt a child – they do not have to be legally married. Whether a Court will actually grant an adoption to a particular couple still depends on their suitability, that is whether they are fit and proper people to adopt, and whether the adoption will promote the welfare and interests of the child (see section 11 of the Adoption Act 1955). However, marital status does not now come into it.

The case before the Court was a step-parent adoption. While such adoptions are not always ideal, this case was possibly one of the strongest set of facts justifying a step-parent adoption. The child was born as a result of donor insemination. The biological father was unknown – the Court says "accordingly" unknown, which is somewhat counter to the policy in the Human Assisted Reproductive Technology Act 2004, enshrining an open approach to genetic information. Be that as it may, a step-parent adoption in this case was not going to lock out one of the child's parents and family. The mother formed a relationship with the step-father when the child was 18 months old and that relationship still existed 10 years later. The boy had known no other father than the man now seeking to adopt. As it was dealing with a matter of legal interpretation, the High Court did not delve greatly into question of the boy's welfare and views. However it is understood that the Family Court has subsequently made an adoption order.

*"Spouses"*

The old but still current Adoption Act 1955 states that two people wanting to adopt a child must be "spouses". The Family Court over the years has been divided on how to understand this term. The conventional view has been that it refers to legally married couples. However, in the face of social change and the prevalence and acceptability of de facto relationships, a more inclusive approach has also found favour. In one instance the people were in a customary Māori marriage but the Family Court judges have not limited their reasoning to such situations. The practice of Child Youth and Family has been: to exclude de facto couples from consideration as adoptive parents unless they intend to marry, but nevertheless to assist a Court where a case involving a de facto couple has gone directly to the Court and a report is needed.

To the person in the street, the answer to the question may seem obvious. Surely there is no reason in this day and age to limit the couples who can adopt to those who are married. In many ways, the law supports this approach: discrimination on the grounds of marital status has been banned for a long time. Even in the latest High Court case, the Attorney-General accepted that the law was discriminatory and that there was no justification for that discrimination.

*Getting round a few difficulties*

One difficulty is that the courts cannot blithely re-write legislation just because it is out-of-date or because it is discriminatory. They must not trespass on Parliament's territory. On the other hand, Parliament through the New Zealand Bill of Rights Act 1990 has told the courts to interpret legislation as consistently as possible with the rights and freedoms contained in that Act, including the anti-discrimination provisions. The High Court was therefore within its rights to give an expansive meaning to the words "spouses" if this was at all possible. The Court did not find it hard to conclude that this was indeed possible.

However, now another difficulty arises. Was there anything in the parliamentary history to prevent the Court from adopting an expansive approach? In 2004 Parliament passed the Civil Union Act. As a follow-up it amended a large body of statutes to apply them to civil unions and also in many instances to de facto relationships. The Adoption Act 1955 was notably

untouched. More than that, a Green Party amendment to extend the 1955 Act to civil union partners was roundly defeated. Today, the law often uses the phrase “spouses and partners”, the latter referring to civil union and de facto partners. The implication is that Parliament, speaking only five years ago, intended “spouses” to relate to married parties only.

Nevertheless, the High Court took the view that Parliament did not expressly rule out the application of the Adoption Act to de facto couples and, given the acknowledged discrimination, a wide definition ought to apply: “our task is to alleviate the discrimination now to the extent possible” (at [72]). Further and crucially, the judges considered that the purpose of the Adoption Act was not to privilege marriage as such but “to ensure that the applicants were a man and a woman, and that they were in a committed relationship. The traditional concept of the family unit would seem central to this limitation” (at [35]). Extending the Act to a stable and committed heterosexual relationship, though the parties were unmarried, is consistent, the judges considered, with the aims just outlined. Thus, the delicate balance between the legislature and the judiciary was not upset.

*Scope of the decision*
It might be thought that the decision opens the door to the adoption laws being applied to other relationships and indeed the judges recognised this possibility. However, this is where there are some oddities in the judgment.

The judges said that “there are formidable barriers to a successful application by a civil union couple” (at [39]). The reason is the failure of the Greens amendment, mentioned above. The amendment related only to civil unions and not de facto relationships, which therefore places civil unions in a different category in terms of the intention of Parliament. Yet, if the perceived purpose of the Adoption Act is about committed relationships, a civil union couple must surely fall within this notion, even more so than a stable de facto couple. It would be highly incongruous if a heterosexual de facto couple can adopt but a heterosexual civil union couple cannot.

Then there is the position of same-sex couples. The judges do not talk about “formidable barriers” here but do suggest that extending the law to such couples “would represent a departure from the traditional family unit concept” (at [39]) and change “the fundamental profile of adoptive parents by removing the requirement for a man and a woman” (at [63]). In some quarters, extending the law to same-sex couples is contentious. Yet, it has already happened in countries such as England, which is often slower to reform its laws than New Zealand is. Furthermore, surely the High Court judges themselves departed in their judgment from the traditional family concept as understood in 1955. If it is possible to allow tradition to change sufficiently to embrace heterosexual de facto couples, why can it likewise not change to include same-sex couples? After all, our family law and indeed the law in general now accept an inclusive concept of family, whānau and relationships.

*What next?*
The time has been ripe for adoption law reform for many years The High Court decision takes the bull by the horns in the absence of legislation but, as we have seen, it goes only so far. In some ways it is three steps forward and two back. The Minister of Justice has shown little or

no inclination to engage in law reform. So, it may be over to other couples to test how far the new ruling can be extended. Despite this, the question of "who may adopt?" is only small part of the overall picture. A fully-fledged revision of the whole of the adoption laws is still very much needed.

**Comment from Robert Ludbrook co-editor of *Adoption News and Views***
***A decision that resolves one problem but creates others***

The two High Court Judges in *An application by AMM and KJO* were careful not to openly criticise government for its failure to update the Adoption Act 1955. Family Court Judges, who have to make decisions in adoption matters, have been less constrained and have voiced their frustration at having to work with a law which is discriminatory, anomalous and out of touch with current social attitudes.

Although the High Court, in deciding that some de facto couples can apply to adopt a child, have removed one discriminatory element of Adoption Act 1955 but have left unchanged other discriminatory and anomalous provisions and created new areas of discrimination and anomalies;

- A married couple can apply jointly to adopt a child without restriction while an unmarried opposite-sex couple can only adopt a child if they satisfy the Family Court that their relationship is both stable and committed The High Court decision suggests that the length of the relationship and the shared care of the child to be adopted or other children will be relevant considerations. The result is that married couples will be treated more favourably than unmarried couples who have to do no more than produce a marriage certificate. This is inconsistent with the anti-discrimination provisions in the Human Rights Act and the New Zealand Bill of Rights Act;
- A man and a woman in a civil union will seemingly not be able jointly to adopt a child. The Judges' reasoning was that when Parliament passed the Civil Union Act 2004 and the Relationships (Statutory References) Act 2005 it did not to amend the Adoption Act to extend to civil union couples the right to apply for an adoption order. The reason given at the time for this omission was government's intention to undertake comprehensive reform of the Adoption Act 1955 along the lines of the Law Commission Report 2000. It is discriminatory and anomalous that opposite-sex couples who have formalised their relationship by entering into a civil union should be denied opportunities which are available to those who have not.
- Same-sex couples (even those who have made a formal commitment by entering a civil union) continue to be denied the right to apply for an adoption order. On this point the two judges placed emphasis on the fact that a Private Member's Bill which would have remedied this situation failed to gain support in Parliament. Private Members' Bills introduced by opposition members fail for all sorts of reasons (including the government's intention itself to introduce legislation on the point in question). The fact that a Private Members Bill does not progress is not necessarily evidence that Parliament does not agree with its content. Same-sex couples can (and many do) care for a child as a couple whether as parent and partner, relatives of the child, foster parents or joint guardians of the child. Denying them the right to adopt a child defies logic and discriminates against them on the grounds of their sexual orientation and family status.

- The word “spouse” is used in other sections of the Adoption Act. For example, a sole applicant for an adoption order must obtain the consent of his or her “spouse”: s7(2)(b). Does the extended meaning of spouse in relation to applicants for adoption apply equally to the consent provisions of the Act? Does a sole applicant for adoption now have to obtain the consent of his or her opposite-sex de facto partner or indeed former partner or is it only if the relationship is or was stable and committed that the partner’s consent is necessary?
- The High Court rejected an argument that it was not in best interests of the children that there should be inflexible rules about which couples can adopt a child. This factor has been influential in several Australian States and Territories which have amended their adoption laws recently to remove all eligibility restrictions. New South Wales this month passed amendments to its adoption law removing such restrictions following earlier moves in Tasmania, Australian Capital Territory and Western Australia. The United Nations Convention on the Rights of the Child states that the best interests of the child shall be paramount when adoption decisions are made.

One positive aspect of the *AMM & KJO* case was the concession by the Attorney-General that the Adoption Act without logic or justification discriminates against opposite-sex de facto couples in treating them less favourably than married couples. As the question on which the High Court was asked to rule was restricted to the eligibility of opposite-sex couples it was not necessary for the Attorney-General to state as position on whether exclusion of same-sex couples was equally discriminatory. The concession by the Attorney-General may be of assistance on any application to the Human Rights Review Tribunal for a declaration that the Adoption Act 1955 is inconsistent with the anti- discrimination provisions in the NZ Bill of Rights Act 1990.

The state of our adoption laws is a national disgrace. The Law Commission in its 2000 report made more than 90 recommendations for change. The Ministry of Justice in its response agreed with nearly all of these recommendations. The 1955 Act has been criticised over the years by Judges, lawyers and the many people who have been damaged by adoption. The Act breaches HRA, BORA & UNCROC. It does not provide adequate protections for birth mothers against being pressured and manipulated into giving consent to adoption of their child. Children affected by adoption have none of the rights given to children in other countries and under our Care of Children Act. Adoption is the Cinderella of Family Law neglected and languishing in some back room. Hopefully the High Court decision will give some publicity to the parlous state of our adoption laws and goad the government into starting the process of reform.

**Comment**

**Open Adoption: NZ Law lags behind best practice**

**Fiona Donoghue responds to an article by Melinda Williams in a piece published in the *Sunday Star Times Magazine* May 30 2010 under the heading *Welcome Home: Back in the day. Being adopted meant not knowing where you came from. Not so now.***

Melinda Williams argues that New Zealand's adoption system has moved with the times. She quite rightly states that some adopted people coming through the adoption "system" are fully supported by their birth and adoptive families to maintain relationships (and practice openness) with each of the families throughout their lives. This openness, while it comes with its own struggles, can in many cases provide a better outcome for adopted people than the closed "system" of the 50, 60s, 70s and 80s. "Openness" is based on the principle that adopted people (like non-adopted people) have a right to know where they come from.

However, there is no legal framework in New Zealand today to support open adoption. That is, the adopted child has to rely on the adults in their lives to be able to maintain their relationship with their birth families. This is because all New Zealand adoptions are still governed by the 1955 Adoption Act (a law so old that it predates television in New Zealand!). Under the legislation the factual birth certificates of adopted children continue to be sealed and replaced with birth certificates that are effectively "made up". Birth certificates are a statement of a person's identity, and so this "made up" information also affects their passports. Surely in a country that practices open adoption there is no need to 'modify' adopted children's birth certificates any more. In fact, not all countries make such modification to the birth certificates of adopted people by removing the birth family part of their identity. We are really kidding ourselves that our adopted people have open adoption in New Zealand when their right to their full identity is not supported in law. And you have to ask yourself, if there really is no stigma around adoption anymore and if we are all open about it (as claimed in the article), why do people in such articles feel the need to use false names? What is there to hide from?

As long as the 1955 Act (the legal guillotine) is able to sever an adopted child's connections with its birth families, adopted people remain reliant on the goodwill of their adoptive parents to actively keep the connections open. Neither the adopted person nor the birth families have any rights in law to maintain contact and nor are any agreements that might be made legally binding. At the very least, when a major event occurs in a child's life (e.g., serious illness or even death) then surely **all** parents should be entitled to be informed of these events and to know that they can rely on the law to support them.

Among other things, what the 1955 Act does not take into account is the future dire regret that many birthmothers experience sometimes months, sometimes years, after the adoption. The current Act allows mothers to give consent to an adoption ten days after they have given birth. Since 1955 we have learnt much and now know that expecting a woman who has just given birth to make such a life-changing irreversible decision is harsh and cruel to the mother and her baby.

When our adopted children become teenagers and begin asking those hard questions around their identity - are we going to expect them to be grateful for the openness already afforded them, pat them on the head and say "*birth certificates aren't important – it's the people who love you that count?*". Unfortunately, that won't cut it for many adopted people! What we need is openness, honesty and integrity.

It is always fantastic to see and hear of adoptions that are working well for adopted people, but let's not forget that until the outdated adoption legislation is updated, we are continuing to let many adopted people down.

**Fiona Donoghue**

**Adoptees and Donor Offspring—a Comparison**

There is a controversy raging over a report *My Daddy's Name is Donor* co-authored by E Marquardt, director of the Institute of American Values The report suggests that children born as a result of donor conception are hurting more, are more confused, and feel more isolated from their families than other children. It finds that donor offspring and adoptees fare worse on indicators such as depression, delinquency and substance abuse than children of biological parents. A trenchant criticism of the research on which the report is based has been written by Eric Blyth and Wendy Kramer, distinguished professors of applied social science based in Huddersfield and Hong Kong. They point out that the Institute of American Values previously released a report highly critical of donor conception.

The Institute's research was based on responses to a web-based survey with responses from 485 donor offspring aged 18 to 45 years and a similar number of young adults who were adopted as infants and another group that were raised by their biological parents. The report indicated that:

- donor offspring and adoptees were twice as likely to report problems with the law before the age of 25 years than children reared by their biological parents;
- donor offspring were twice as .likely to report mental health problems and substance abuse and adoptees were one and a half times more likely to report such matters than children of biological parents.

The criticisms of the research relate to the methodology and misrepresentation of the findings but the report may carry some weight because of lack of research studies of life outcomes for these three groups. Those who wish to read more about the debate should visit www.bionews.org.uk

**Overseas legal and practice developments - Australia**

***Western Australia***

The Western Australian government's apology to unmarried mothers illegally separated from their babies under harsh adoption practices is set to happen in Parliament in Perth, Western Australia on October 19 2010. This will be the first government worldwide to admit hospital and welfare authorities were wrong to immediately separate unmarried mothers from their babies after giving birth. It is likely that the apology will be transmitted live on the government web site at:
http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Legislative+Assembly+-+Live+Broadcast

Experts say tens of thousands of babies of babies in Western Australia were adopted illegally when their unmarried mothers were prevented from seeing, touching, naming or bonding with their children immediately after birth between the 1940s and the early 1980s. Health Minister Kim Hames said the exact format of the apology was still being finalised but it would be "to unmarried mothers of adopted children who were adversely affected by past adoption practices".
*The West Australian* 1 September 2010; Evelyn Robinson

***Australian Capital Territory***
Amendments were made in 2009 to the Adoption Act 1993 (ACT) to ensure that that the Territory's adoption laws were consistent with the Hague Convention on International Adoption and its human rights legislation. Significant changes include:

- New objects have been added to clarify that adoption will be a service primarily for children rather than for adults wishing to form a family and that openness in adoption will be facilitated;
- A new object to ensure there is consultation with the child and the child's views are taken into account throughout the adoption process;
- Adoptive parents must be ordinarily resident in ACT;
- Step-parents will have to obtain leave of the Court to apply for an adoption order;
- The period before which parents are able to give consent to the adoption of their child was extended from seven days to 28 days;
- Special provisions were made for birth parents under the age of18 years in recognition of their particular vulnerability. They will receive counselling and independent legal advice before they can give a valid consent;
- Provision was made for legally enforceable "adoption plans" to facilitate future contact with birth parents and to enhance development of the child's sense of identity;
- The child's given first name must be preserved with the option of adding new names;
- Younger birth siblings of an adopted child will have access to information about their older sibling;
- The entitlement to impose vetoes will be removed for future adoptions.

***Victoria***
The Victoria Law Reform Commission in its report *Assisted Human Reproduction Technology and Adoption* June 2007 addressed the issue of whether there should be restrictions on the classes of person who can adopt a child. Taking the view that parenting by same-sex couples is not harmful to children it commented:

> "Based on the available research on outcomes for children in a range of diverse families, the commission is unable to conclude that prohibiting same-sex couples from adopting children is justified according to the principle of the best interests of the child.
>
> The commission therefore recommends that the eligibility criteria in the Adoption Act be expanded to permit same-sex couples to adopt children in all circumstances in which heterosexual couples can. Adoption by same-sex couples is already permitted in Western Australia, Tasmania, the ACT and several states of the United States."

The Commission added that

> "It makes no sense that people in same-sex relationships are able to be approved as permanent and short-term carers of children in need, but cannot assume the full range of legal parental powers and responsibilities for those children."

***New South Wales***

The New South Wales Parliament on 10 September 2010 after what has been described as a "gruelling debate" decided on a conscience vote that same-sex couples could adopt a child. This change had been mooted in 2000 by independent MP Clover Moore. After scraping through by a small majority in the lower house the Bill was unanimously adopted by the upper house. It was said that there were 1500 children in New South Wales living in same-sex relationships "
ABC .am programme 13 September 2010.

***Northern Ireland***

Northern Ireland, like New Zealand, will only consider adoption applications by couples who are legally married. A proposal to extend eligibility to adopt to civil partners and unmarried couples was opposed by 95% of those consulted and the proposal was dropped. This decision was challenged by an unmarried couple who appealed to the House of Lords arguing that the denial of their application to adopt a child was in breach of art 8 European Convention on Human Rights (respect for family life). By a majority of four to one the Law Lords upheld the appeal. There was much discussion of whether the best interests of children were likely to be promoted by restricting applications for an adoption order to couples who have made a publicly recognised commitment to their relationship and who have legal responsibilities to each other. Lord Walker's dissenting judgment focussed on the particular situation in Northern Ireland where there was no shortage of adoptive applicants, fewer broken marriages and fewer children born out of wedlock. .
*Re P: (Adoption: Unmarried Couple)* [2008] UKHL 38, [2008] 2 FLR 1084 and see U Kilkelly "In *Re P:* adoption, discrimination and the best interests of the child" Child and Family Law Quarterly Vol 22, No 1, 2010.

**Florida**

On 22 September 2010 the Florida Third District Court of Appeal struck down the state's law barring lesbians and gay men from adopting. The decision affirmed a November 2008 Family Court ruling that the bar violated the Florida state constitution. In a unanimous decision the appeals court held that the scientific evidence shows that "there are no differences in the parenting of homosexuals or the adjustment of their children. . . [and] the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption."

The ruling will allow Martin Gill and his partner to adopt the two brothers (now 6 and 10) whom they have been caring for as foster parents since they took them in for what was intended to be a short stay over Christmas in 2004. The appeals court recognised that Martin is an "exceptional parent to [the boys] who have healed in his care and are now thriving." One of the judges noted that Martin and his partner's efforts in addressing the children's medical,

emotional and educational needs "are nothing short of heroic." It remains to be seen whether the state of Florida will appeal the decision.

**Recent NZ cases**

In *Application to adopt L* 21/12/09, Judge Druce, FC Kaitaia FAM-2009-029-000030 an adoption order was made in respect of a young adult aged 19 years and 11 months despite the adoption not receiving a favourable recommendation from the reporting social worker who considered that an adoption order was not necessary for L's welfare. The adoptive applicants were the mother and her second husband. L's father had consented to the adoption. L had been brought up in the household of the applicants for nine years and had expressed a strong desire to be adopted by her mother and step-father. None of her three siblings had expressed a desire to be adopted and an adoption order would have the effect of severing L's legal relationship with her siblings but would transform her relationship with her half-sibling (the child of the applicants) into a full sibling relationship. Judge Druce noted that L's relationships with her father and her paternal family was distant He accepted that the wishes of a person approaching the age of 20 years should be given considerable weight noting that L wanted her birth certificate to reflect who was her "real" father. Judge Druce made an adoption order deciding that L did have the legal right and emotional need to have her family relationships reflected in a structure that accorded with her now long-established experience of family life.

**Intercountry Adoption**

**Adoption by New Zealanders of Russian children**

The group ICANZ (Inter Country Adoption New Zealand) has been assisting New Zealand couples to find Russian children available for adoption and helping them with the necessary formalities. The group has since 1992 assisted New Zealanders to adopt more than 670 Russian children.

The Russian government suspended intercountry adoptions of Russian children in 2006 after concerns had surfaced about Russian children being bought and sold by intermediaries and being abused by some adopting families. Russia is not a party to the Hague Convention on Intercountry Adoption and so there was no obligation on New Zealanders seeking a child for adoption to get clearance from Child, Youth and Family or the New Zealand Courts. In July 2010 ICANZ was approved by the Russian authorities as a recognised agency to handle adoptions of Russian children. It is anticipated that Ministry of Social Development will now negotiate an agreement with Russian regional child welfare authorities which will set in place some of the safeguards which apply to intercountry adoptions between Hague Convention countries. It is likely that any agreement will require that prospective NZ adoptive parents be approved by Child, Youth and Family which will write a report for the Russian authorities (known as a Home Study Report).

Unlike Hague Convention Adoptions which allow only couples to adopt a child, the Russian government has in the past approved adoptions by single women. Child, Youth and Family has bilateral adoption agreements with other countries that are not parties to the Hague Convention, for example Hong Kong.

**Adoption of Haitian children in the wake of the massive earthquake**

The Christchurch earthquake was terrible but consider the Haiti earthquake in January this year in which 220,000 people died and 300,000 were injured. In the chaos and human dislocation that resulted, a number of agencies and individuals rushed to Haiti with the intention of taking orphaned children out of the country with a view to adoption by applicants in economically developed countries. Some receiving countries rushed through legislation to fast track such adoptions. Over 1200 children were adopted by people in the United States, and 850 by people in France, Canada, the Netherlands and Germany. A comprehensive report commissioned by the International Social Service agency made a number of recommendations, including:

- In the aftermath of a catastrophe, intercountry adoption is not a valid response, at least until full family tracing efforts are able to be completed;
- Prioritising intercountry adoptions should not be at the expense of emergency relief efforts;
- Adoptions should not be arranged until children have had time to recover in a familiar environment and until adequate identification and registration measures are in place;
- There was no competent body in Haiti to oversee adoptions and ensure that internal procedures were followed, and neither Haiti nor the receiving countries were in a position to ensure that domestic solutions were exhausted before fast-tracking adoptions of Haitian children;
- Few efforts were made to confirm the adoptability of children , nor were children consulted or prepared before being moved to other countries and meeting their adoptive parents often for the first time;
- Arrangements made by receiving countries were deficient – there being a lack of skilled professionals able to facilitate meetings of large numbers of children with prospective adopting parents, a lack of privacy on arrival of the children, and in some cases a lack of post-adoption support.

A section of the report states that New Zealand did not undertake intercountry adoptions from Haiti prior to the earthquake and would not faclilitate adoptions from that country unless contacted by a Haitian ex-pat who had concerns about a relative child in Haiti.

*Haiti: "Expediting" intercountry adoptions in the aftermath of a natural disaster ... preventing future harm* International Social Service www.iss-ssi.org

**UNICEF's position on Inter-country adoption (extract from position statement)**

Since the 1960s, there has been an increase in the number of inter-country adoptions. Concurrent with this trend, there have been growing international efforts to ensure that adoptions are carried out in a transparent, non-exploitative, legal manner to the benefit of the children and families concerned. In some cases, however, adoptions have not been carried out in ways that served the best interest of the children -- when the requirements and procedures in place were insufficient to prevent unethical practices. Systemic weaknesses persist and enable the sale and abduction of children, coercion or manipulation of birth parents, falsification of documents and bribery.

The Convention on the Rights of the Child, which guides UNICEF's work, clearly states that every child has the right to grow up in a family environment, to know and be cared for by her or his own family, whenever possible. Recognising this, and the value and importance of families in children's lives, families needing assistance to care for their children have a right to receive it. When, despite this assistance, a child's family is unavailable, unable or unwilling to care for her/him, then appropriate and stable family-based solutions should be sought to enable the child to grow up in a loving, caring and supportive environment.

Inter-country adoption is among the range of stable care options. For individual children who cannot be cared for in a family setting in their country of origin, inter-country adoption may be the best permanent solution.

UNICEF supports inter-country adoption, when pursued in conformity with the standards and principles of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoptions – already ratified by more than 80 countries. This Convention is an important development for children, birth families and prospective foreign adopters. It sets out obligations for the authorities of countries from which children leave for adoption, and those that are receiving these children. The Convention is designed to ensure ethical and transparent processes. This international legislation gives paramount consideration to the best interests of the child and provides the framework for the practical application of the principles regarding inter-country adoption contained in the Convention on the Rights of the Child. These include ensuring that adoptions are authorised only by competent authorities, guided by informed consent of all concerned, that inter-country adoption enjoys the same safeguards and standards which apply in national adoptions, and that inter-country adoption does not result in improper financial gain for those involved in it. These provisions are meant first and foremost to protect children, but also have the positive effect of safeguarding the rights of their birth parents and providing assurance to prospective adoptive parents that their child has not been the subject of illegal practices.

The case of children separated from their families and communities during war or natural disasters merits special mention. Family tracing should be the first priority and inter-country adoption should only be envisaged for a child once these tracing efforts have proved fruitless, and stable in-country solutions are not available. This position is shared by UNICEF, UNHCR, the UN Committee on the Rights of the Child, the Hague Conference on Private International Law, the International Committee of the Red Cross, and international NGOs such as the Save the Children Alliance and International Social Service.

New York 22 July 2010

**FILM REVIEWS**

***I'm Glad My Mother Is Alive***
**France 2009 Directors C & N Miller**

This film shown in Wellington and other main centres in at the recent International Film Festival is said to be based on a true story. It is a tale about a disturbed teenager Thomas and his younger brother who were adopted at a young age after their mother was persuaded by the authorities that she could not manage them and agreed to their adoption. Rebelling against his adoptive parents, Thomas tracks down his birth mother Julie but their initial contacts are difficult. He later moves into her home and forms a close relationship with her young son of a later relationship. Thomas is angry with Julie for having abandoned him and he expects her to be all the things his adoptive parents are not and is demanding of her love. Julie accepts him in a matter of fact way but he is jealous of her men friends and things spin out of control. The film ends with his stabbing her in a frenzied attack.

The strength of the film is the acting of the mother Julie (Sophie Catani) and the son Thomas (Vincent Rottiiers). The film illustrates the idealised image that an adopted person may have of his birth mother and the pain and anger that can be generated when confronted with the reality.

***Mother and Son***
United States Director Rodrigo Garcia
With Annette Being, Naomi Watts, Kerry Washington, Samuel Jackson, Jimmy Smits

This is a film about adoption and the human feelings that it unleashes in two natural parents, an adopted person and a couple seeking to adopt a child. The plot is complex as the stories of the main characters are skillfully interwoven with unexpected twists and turns. The film avoids stereotypes and focuses on the feelings of the individuals. The writer director has described the situation of a mother and a child separated by adoption as “living with ghosts”. While some of the characters find happiness there is no trite happy ending. There is a memorable scene in which an assertive teenage pregnant mother who has already turned down three couples conducts a searching interview of a woman who is desperate to adopt a child and her partner who is ambivalent.

**Comment**

**Adoption Act 1955- an archaic and barbaric law**

The New Zealand Adoption Act is an archaic and barbaric law created in the hey-day of mother and child separation for adoption purposes.

Over the past few years I have discovered many misconceptions regarding adoption in New Zealand and in particular, the fuzziness surrounding Open Adoption. From what I have read, heard and seen, the general public in NZ are still in the dark about adoption law and practices and this concerns me.

Recently, I came across several statements made by adoptive parents claiming ALL adoptions in New Zealand are now open. This is a real concern as they know this is not the truth.

Open Adoption in New Zealand is merely a verbal agreement made by those adopting to a mother placing a child for adoption, not to cut her out of her child's life entirely. The agreement can include visits, photographs or letters. However, there is no place in the law for an Open Adoption agreement meaning that there really is no such thing as Open Adoption legally. The New Zealand Adoption Act is based on closed adoption so to claim that all adoptions in New Zealand are open is false because the law does not recognise or enforce open adoption agreements. Several Australian states now have laws which enable the courts to make an open adoption order which can be enforced or varied by the courts.

The implications of this are huge. Adoption is a barbaric practice that cuts a person out of their family of origin forever and makes it out they are living an alternate reality by changing a legal document to state they are born to strangers. The effect of adoption means that a mother who loses her child to adoption, has NO legal tie to her child ever, ever again. Adoption makes it as if they were strangers to each other. And this means the systematic wiping out of heritage and a whole branch of family tree information. Open adoption was created to lure mothers in and lull them into a false sense of security by telling them they wouldn't lose their children entirely. The promise of letters, photos and visits puts the mother into a position of believing wrongly she will have a relationship with her child. The reality is, the minute the ink is dry on the final order, the adopters can, and often do, slam the door closed as fast as they can. Open adoption is really just another tool used to coerce mothers to place their child for adoption.

**Jodie-Anne Martin a New Zealand mother now living in Australia**

**Robert Ludbrook**
**Susan Marks - Editors**

**Application for membership form for Adoption Action Inc is a separate attachment**

***Adoption Separation: Birth parent stories***

Those of us who were separated from our children by adoption are very aware of society's attitudes to single parenthood in the 20th century. Many of us are ageing and our experiences are barely comprehensible to members of the current generation, who have grown up in a very different social context. Single parenthood is now generally tolerated and supported to the extent that, in some places, single people are permitted to adopt.

I believe that recording and publishing our stories is an important way to validate our experiences. It is also a valuable educational exercise to illustrate the attitudes to single parenthood which were prevalent in the last century, especially in the 1960s and 1970s when so many children were adopted. It is difficult for our children and grandchildren to understand the socially intolerant climate in which our pregnancies occurred and the only people who can

explain that to them are those of us who experienced society's disapproval and often lost our children because of it. In line with the social values of the times, single parents were discriminated against and treated in different ways from parents who were married. In many cases they were denied what in the 21st century is perceived as social justice.
I plan to publish a collection of narratives written by parents who have been separated from their children by adoption. I am hoping to obtain contributions from Australia, New Zealand, the United Kingdom, the United States, Canada and Ireland to illustrate the similarities in adoption experiences in the major English-speaking countries. As far as I am aware, this is the first time that such a collection has been produced.
It is my hope that the collection will educate our children, our friends and families, our communities, as well as professionals who may be working with those have experienced adoption separation. I would like to produce a permanent record of how it felt to be pregnant at a time when single parents were blamed and shamed by an unforgiving society.

**For further information, please contact me by e-mail[erobinson@clovapublications.com](mailto:erobinson@clovapublications.com) or by mail to PO Box 328, Christies Beach, South Australia 5165. For further information, please visit my web site at** www.clovapublications.com.

***Evelyn Robinson,* June, 2010**