Adoption News and Views

July 2008

2008/2

This is the second 2008 edition of *Adoption News and Views* a newsletter which aims to provide information about adoption of children and about any legal and policy developments affecting adoptees, birth parents or adopters. It will also provide progress reports on efforts by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955. Newsletters will be sent out at three monthly intervals or more frequently if important issues arise. Back issues will be sent by email on request.

The main purpose of the newsletter is to provide up to date and accurate information for people with an interest in adoption on current and law and policy and any proposed changes. It is hoped that it will also provide a forum for people to discuss adoption issues. Reviews of books and other publications touching on adoption are invited.

***Adoption News and Views* is sent to you because you are known to be a person interested in adoption. If you do not want to receive further issues you should reply to this email indicating this. If you know of others who would like to receive future issues or you or others would like to send in 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.

Adoption reform remains becalmed

We have a new Minister of Justice but adoption reform continues to receive a low priority from the Ministry of Justice. The possibility of an adoption reform Bill being introduced before the upcoming election seems remote and there is no reason for optimism that things will move faster after the election.

A deputation of professionals with a specialist interest in adoption law and practice met with the former Minister of Justice, Hon Mark Burton, more than two years ago. The Minister acknowledged that the Adoption Act 1955 was seriously out of date and confirmed that adoption reform had been taken off the Ministry's work programme in 2003. He agreed to do his best to have the issue returned to the work programme for 2006/07 and advised the group that there would be better communication about progress with reform than in the past. It was later confirmed that adoption reform had been included in the Ministry's 2006/07 work programme but no further information has been provided by the Minister or the Ministry about the nature of the proposed reforms or progress with drafting new legislation other than advice

this year that no instructions had been given to the Parliamentary Draftsmen to prepare an adoption reform Bill.

Frustrated by the slow progress with reform and the lack of information as to progress Robert Ludbrook wrote to the new Minister Hon Annette King on 20 June 2008 as follows:

Hon Annette King
Minister of Justice,
Parliament House
Wellington

Dear Annette King

Reform of Adoption Act 1955

I am writing to you in your capacity as Minister of Justice to express my concern at the failure of the present government to give priority to reform of the Adoption Act which is 53 years old and completely out of touch with current social realities.

A group of professional people with a special interest in adoption reform met with your predecessor, Hon Mark Burton on 11 May 2006. The main thrust of our concerns was that adoption reform had been taken off the government's work programme without any public announcement or any reason being given. Mark Burton agreed that the Adoption Act was in urgent need of reform and indicated that he would endeavour to have reform of the Act put back on the Ministry's work programme. He advised the meeting that significant progress had been made with proposals for reform. When we expressed disappointment at the low priority that had for decades been given to adoption reform and the lack of information being provided to the public as to progress with reform Mr Burton gave us an assurance that he would keep our group informed as to developments.

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

Prior to the May 2006 meeting I provided the Minister with a detailed briefing as to the areas of the current Act that breach the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. I also identified many provisions of the Act which are in breach of New Zealand's obligations under the UN Convention on the Rights of the Child. New Zealand: in its 2nd report to the UN Committee on the Rights of the Child, the government advised the Committee that it intended to reform New Zealand's adoption laws. The Committee in its October 2003 report welcomed this assurance and pointed to certain areas where reform was clearly needed. A blueprint for reform has been provided by the comprehensive NZ Law Commission Report *Adoption and its Alternatives* published in September 2000. There has been new adoption legislation in the United Kingdom and in New South Wales so there is no shortage of models for reform. The New Zealand government has to submit its combined 3rd and 4th reports to the UN Committee in November this year and the sad reality is that there has been no change to the Adoption Act 1955 since the assurance given by New Zealand to the United Nations Committee and welcomed by the Committee five years ago.

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

> "The Adoption Act 1955 is widely regarded as outdated and in need of reform. Professor Mark Henaghan recently called it 'an embarrassment'. It is one of the oldest statutes in New Zealand to still be applied on a relatively regular basis. Despite ongoing calls for reform by commentators and Judges alike, this has not happened
> .
> There have been five inquiries and reviews of the Adoption Act over the years and numerous recommendations none of which have been acted on".

I appreciate that you have quite recently assumed the Justice portfolio and cannot be blamed for the former Minister's lack of communication. It is nearly two years since adoption reform was restored to the Ministry's work programme and the public are surely entitled to know what progress has been made and what is blocking the reform process.

I and members of the group that met with the former Minister would greatly appreciate an update on progress with reform. It is an issue that is likely to be raised by the UN Committee on the Rights of the Child when in 2009 it comes to consider New Zealand's performance under the Convention. It may well become an issue in the upcoming election.

I and my colleagues would be very happy to meet with you and your officials to discuss these matters at a time convenient to you.

Yours sincerely
Robert Ludbrook

The letter has been acknowledged by the Minister's office but no reply has been received as at 8 July 2008.

Adoption Act 1955: Recognition of Tikanga Maori

Edited extract from report **Guardianship, Custody and Access: Maori Perspectives and Experiences, Ministry of Justice 2002 Ch 7** *Maori Concepts of Guardianship, Custody and Access: A Literature Review* by Ani Mikaere. The full report can be accessed at www.justice.govt.nz/pubs/reports/2002

"After examining seven statutes in the area of family law, Donna Durie-Hall and Joan Metge reached the "inescapable conclusion" that Maori had been seriously disadvantaged under that law. They found that in most cases the statutes had been "formulated and passed on the basis of commitment to Pakeha values and objectives, without regard to their compatibility with tikanga Maori", resulting in Maori family forms and values being placed under great stress.

The statute most offensive to tikanga Maori was found to be the Adoption Act 1955, with its open rejection of Maori beliefs and practices. The damage done to Maori conceptions of

whanau by the model of closed stranger adoption that this statute implemented has been fully dealt with elsewhere. John Rangihau observed that by cutting children off from their whakapapa, closed stranger adoption had the effect of making "a child of lineage, a child who belonged only at sea, to be rescued if possible". The vision of Maui adrift on the sea, with no member of his whanau able to find and rescue him by providing him with the whakapapa necessary for him to reclaim his identity, is a haunting one. Such an outcome would not have been Maui's loss alone: not only would he have been denied the opportunity to benefit from the security that whanau membership brings, he would also have been unable to perform the many feats that improved the lives of his descendants. The magnitude of the loss to Maui's whanau and to all his human descendants had his tupuna not rescued him defies comprehension.

The notion of children as "possessions" clearly does not sit well with Maori beliefs. It has been noted that from a Maori perspective "[t]here is no property in children"and the idea of regarding the child as a chattel of his or her parents is clearly repugnant to a Maori world view. It has also been argued by Maori that the centrality accorded the child is not in keeping with Maori tradition; nor is the assumption that a child's birth parents are the natural and exclusive guardians.

The Maori child is not to be viewed in isolation, or as part of a nuclear family. The Maori child is not the child of the birth parents. Under Maori tradition, the importance attached to the child's interest is subsumed under the importance attached to the responsibility of the tribal group through the tribal traditions and lore of inherited circumstances. The hapu or tribal group, is bound to provide for the physical, social and spiritual well-being of the child and its upbringing as a member of a particular hapu. This responsibility would take precedence over the view of the birth parents.

The following section refers to the now repealed Guardianship Act 1968 but is equally applicable to the Adoption Act.

The principle that children belong to the whanau, hapu and iwi is directly countered by the provisions of the Guardianship Act, which is focused entirely on the nuclear family model. This focus also interferes with the possibility of whanau sharing the rights and responsibilities for raising children. Finally, the possibilities for children exercising both their rights and their responsibilities with respect to their whanau, hapu and iwi are heavily proscribed by a model that elevates the nuclear family as aggressively as it devalues Maori concepts of whanaungatanga:”

New Zealand adoption laws culturally inappropriate and outdated

For some years with submissions I have tried to get some sort of inquiry going and an apology to the adult adopted Maori who were disadvantaged by the long out dated adoption laws. With the work I did I was privileged to meet a number of them. I burnt myself out trying to address the issues of others. Although I was disadvantaged myself I consider I was one of

the lucky ones. I have written to a couple of MPs in the last couple of years but really had no response. I thought they would be the best to try and address it.

They had a National inquiry process for Mental Health Whanau who were ill- treated in institutions. Not sure what the outcome of that was? There were many adopted who went through institutions including many foster homes which were culturally inappropriate and abusive. For example, a baby went through four homes in a space of six months including an institution before being found a definite placement. Another went through many foster homes before she reached the age of fifteen and left home. The Whanau who were forced and encouraged to give up these babies did not know what happened to the child.

In some cases the birth parent made stipulations on what Whanau the baby went to. Department of Social Welfare (now Ministry of Social Development) could not find what they wanted and so kept them in foster homes. Then at times some were placed in a home for adoption and those Whanau would change their minds and give the babies back if they were found to be abusive. Guinea pig babies! There were mothers not wanting their babies to go to a poor Maori Whanau. Hmmm, and that was still happening in the 1990s. Quite sad.

The outdated adoption rules need to change. There has been no official ongoing support from the Government for the adults who were adopted. Many ended up in prisons, suicidal, dead and ill.

extract from material contributed by Mauri Ora which can be viewed at http://www.bebo.com/Lost-thru-Adoption

Exploration of family placement as an alternative to adoption: international comparisons

No obligation under Adoption Act 1955 to explore family placement

If a birth mother approaches Child, Youth and Family seeking to place her child for adoption there is no statutory obligation on the agency to explore with her other options such as placement of the child with a member of the mother's family or with the father of the child or a member of his family.

Article 21(a) of the Convention on the Rights of the Child requires agencies responsible for adoption to determine on the basis of all pertinent and reliable information that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians. The meaning of this requirement is not very clear but the *Implementation Handbook for the Convention on the Rights of the Child* UNICEF (2ed) 2002 suggests that every adoption will require proper investigation with full reports from independent professionals to the authorities considering the adoption. It refers to Art 7 (right of child to be cared for by parents) and Art 9 (right of child to maintain personal relations with both parents on a regular basis). The Convention would seem to require that the possibility of a child being cared for by the child's father or by members of the father's family/whanau should be investigated before adoption is considered.

Recent New Zealand legislation has emphasised the importance of members of a child's whanau, hapu, or family group as additional or substitute carers of children who cannot be cared for by their parents: s4(c) & s5(a), (b) & (c) Children, Young Persons and their Families Act 1989; s3(2)b) & s5(5)(b) & (d) Care of Children Act 2004.

Practice in relation to exploring family alternatives to stranger adoption
A 1995 version of the Adoption Local Placements Manual contains a statement that "The placement of a child within a family is an alternative that all birth parents, especially those with Maori children, should consider." It adds that "Placement with relatives offers continuity in the child's life and relationships, which should make it a sensible option in most cases": Adoption Local Placements Manual March 1995 para 5.1.

The Manual notes that there are fewer legal restrictions on in-family adoptions than on stranger adoptions and refers to s6(4) Adoption Act which provides that social worker approval is not needed to the placement of a child in the home of a relative with a view to adoption and s4(1)(b) which enables adoption orders to be made in favour of a relative who is 20 years of age or older (in the case of a stranger adoption the adoptive parent(s) must be at least 25 years).

A more recent version of the Manual under the heading Involvement of Family/Whanau advises social workers that "Birthparents should be encouraged to consider the benefits of involving their parents. family/whanau, in the planning of the child's future" and that "Grandparents and other family members may also want to offer the child a permanent placement with them" but adds that "if the birthparents remain adamant, even after counselling, that they do not want their families involved, the social worker must respect their wishes. Social workers cannot breach the client's right to confidentiality, and consequently, may not approach other family members without the birthparents' expressed permission": Adoptions Placements Manual Introduction – Service to Birth Parents and their Families 31/5/05, 8.

Child, Youth and Family's Manuals stress the birth parents' right to privacy and confidentiality and seem to view birth parents and not the child as their clients. If this is the official view it is at odds with the requirements of the UN Convention on the Rights of the Child. In other jurisdiction it is established as a fundamental principle that adoption is to be regarded as a service for children: s8(1)(b) Adoption Act 2000 (NSW); Adoption and that adoption agencies must treat the child's welfare throughout the child's life as the paramount consideration: s1(2) Adoption and Children Act 2002 (UK).

Family placement principle in other jurisdictions
Adoption Act 2000 (New South Wales)
This is the most recent adoption legislation enacted in any Australian State or Territory. It recognises the significance of members of the child's extended family in two ways:

- s8(1)(f) & (g) of the Act provide that in the case of an Aboriginal or Torres Strait Islander child-the Aboriginal or Torres Strait Islander child placement principles are to be applied. These principles are set out in ss35 and 39 respectively and they require that, as a first option, children shall be placed with members of their own community/ extended family

and, only if that is not practicable, placement with some other Aboriginal/Torres Strait Islander person is to be the second preferred option.

- s8(2)(f) obliges any decision-maker, in determining the best interests of the child, to have regard to the relationship that the child has with his or her parents and siblings and any significant other people including relatives where such relationships are relevant.

Adoption of Children Act 1994 (Western Australia)

Section 3(2)(c) states the principle that the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child. While this principle does not require that preference be given to relatives of the child it does place a duty on agencies and courts making decisions in adoption matters to explore other care arrangements including placement with family members.

Adoption and Children Act 2002 (United Kingdom)

Section 1(4)(f) imposes an obligation on adoption agencies and the court when making a decision relating to the adoption of a child to have regard to various matters including the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

Comment

This is another example of New Zealand adoption law being out of step with Maori and other cultural child-rearing practices. Some other cultures view the child not as the property of the birth parents but as part of a broader family group whose members have rights and responsibilities in respect of the child's upbringing. In the United Kingdom and some Australian States there are statutory provisions that require adoption agencies to explore possible placement with members of the child's whanau or extended family group and whanau/family placement is the cornerstone of New Zealand's Children, Young Persons and their Families Act 1989. Our adoption laws remain rooted in a monocultural view of children and their families.

Robert Ludbrook

European Convention on Adoption

In May 2008 the Committee of Ministers of the European Community adopted a new European Convention on the Adoption of Children. The Convention updates an earlier 1967 Convention in the light of social and economic developments in the last 40 years. The updated Convention improves the procedure for national adoption and makes it more transparent, efficient and resistant to abuse. In this way it also improves the conditions for international adoption. The aim is to take account of social and legal developments while

keeping in mind the European Convention on Human Rights and bearing in mind that the child's best interests must always take precedence over any other considerations.
New provisions introduced by the European Convention on Adoption include:

- An adoption shall not be granted until appropriate enquiries have been made about the adopter, the child and his or her family. Data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.
- The father's consent is required in all cases, even when the child was born out of wedlock.
- **The child's consent is necessary if the child has sufficient understanding to give it. A child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years. If the child's consent is not necessary he or she shall, as far as possible, be consulted and his or her views and wishes shall be taken into account having regard to his or her degree of maturity. Such consultation may be dispensed with if it would be manifestly contrary to the child's best interests.**
- Any consent must be given only after the persons whose consent is required for have been counselled and informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely.
- **The Convention extends to heterosexual unmarried couples who have entered into a registered partnership in States which recognise that institution**, and to single persons. It leaves States free to extend adoptions to homosexual couples and same sex-couples living together in a stable relationship.
- **The new Convention strikes a better balance between adopted children's right to know their identity and the right of the biological parents to remain anonymous**:
- The minimum age of the adopter must be between 18 and 30, and the age difference between adopter and child should preferably be at least 16 years;
- **An adoption may be revoked** or annulled only by decision of the competent authority **on serious grounds permitted by law before the child reaches the age of majority. The best interests of the child shall always be the paramount consideration.**

Comment
The new European Convention on Adoption is a pointer to fundamental principles that should be incorporated in any reform of Adoption Act 1955. The passages marked in bold above indicate where New Zealand's adoption law does not meet the standards set in the European Convention on Adoption.

Robert Ludbrook

Adoption Act and birth father's consent to adoption

Under the Adoption Act the consent of the birth mother of the child to adoption is always required unless the Family Court dispenses with her consent. The consent of the birth father

is only required if he was married to the mother at or after the time of the child's conception or birth
or where the father is a guardian of the child: s7(3((a). The Court can also require a father's consent where, in the Judge's opinion it is "expedient to do so". The usual meaning of the word "expedient" is "convenient or practical" and in any particular case it is a matter for the discretion of the Judge hearing the case.

There is no obligation under New Zealand law for the mother of a child to advise the authorities of the name and details of her child's father and there is no power for the authorities to compel the mother to provide this information. A proposed amendment to the Births, Deaths and Marriages Registration Act 1995 would require both parents of a child to notify the Registrar of the birth of their child regardless of the nature of their relationship but the signature of only one parent is sufficient if (a) the other parent is unavailable, or (b) requiring the other parent to sign the form would cause "unwarranted distress" to either parent: cl 10 Births, Deaths and Marriages and Relationships Registration Bill which would insert a new s9(1)(a) & (2) Births, Deaths and Marriages Registration Act. If this new provision is passed into law, all fathers will be required to sign the birth notification unless to do so would cause unwarranted distress to the mother or the father. It would result in the names and details of more fathers being included in a child's original birth certificate. The Bill as introduced provided no guidance as to what the Registrar of Births might accept as evidence of "unwarranted distress" but it might apply to distress to the mother whether the child was conceived as a result of rape or incest or where the father had a wife and children from whom he was anxious to conceal his extra-marital relationship.

It is widely accepted today that a child has a right to know his or her parents and this right has gained traction from Art 9.3 of the Convention on the Rights of the Child which requires the government to recognise the right of the child to maintain personal relations and contact with both parents on a regular basis unless it is contrary to the child's best interests. If the father's identity and circumstances are recorded on the birth register it is not possible for Child, Youth and Family social workers to make an assessment whether the father or members of his family might be willing and able to care for the child as an alternative to adoption.

These issues have received some attention in England where there is a statutory responsibility on local authorities in s1(4)(f) Adoption and Children Act 2002 to make inquiries about children's relatives and consult with the relatives before arranging an adoption of the child. The question has arisen whether a local authority has the power (or obligation) to compel a mother to reveal the name and details of the father of the child she has placed for adoption.

Holman J in *Z v County Council & R* [2001] 1 FLR 365 held that local authorities had no power to compel a mother to reveal the name of the father of her child or to provide information as to the circumstances of the child's conception. More recently in *Re L (Adoption: Contacting Natural Father)* [2007] EWHC 1771 a mother claimed she had no information about the father but the local authority suspected she could identify him but was unwilling to do so. It sought a ruling from the Court whether it could force the mother to

divulge information about the father. It was held that she could not and that her strong wish that her family should not know about the birth and the adoption should be respected. A comment on this decision by Caroline Bridge in [2008] Fam Law 9 made the point that there might be a father out there who was willing and able to bring up the child and that, even if the child was adopted, she would need to know something of her father and her father's family and to understand that all avenues of finding out about her father had been explored. The English Court of Appeal in *C v XYZ County Council* [2007] EWCA Civ 1206, [2008] Fam Law 301 addressed the same issue and decided that, while the local authority had a responsibility to make inquiries about the relatives of a child being considered for adoption, it need only do so where such inquiries are in the best interests of the child. The Court of Appeal added that such inquiries are not in the child's best interests simply because they may elicit information about the child's family background. Inquiries about relatives are only warranted where they genuinely further the prospect of finding a long term carer for the child without delay.

On this issue there is a need to balance the mother's right to privacy against both the father's right to know that he has a child which is being offered for adoption and the child's right to know the identity of and to have contact with the father. It is hard to tell whether there are viable family care options unless inquiries about the father and potential carers in his family are made.

The New Zealand Law Commission in its report *Adoption and its Alternatives* reported that, of those who responded to its discussion paper, 34 persons favoured a legislative requirement that social workers be required to make reasonable efforts to identify and locate putative fathers while only three opposed this proposition. Fifteen submitters supported an exception in case of children born as a result of rape, incest or domestic violence while seven considered that the child had a right to know whatever the circumstances. There was however minimal support for requiring the birth mother to identify or disclose details about the father: *Adoption and its Alternatives* NZLC R65 September 2005 paras 410, 411. The Law Commission recommended a legislative requirement that a social worker make reasonable efforts to identify and locate the putative father.

Even if a mother could be compelled to identify the father of her child the man named could refuse to be interviewed or could deny paternity. There is currently no power under New Zealand law to require a man to undergo testing to confirm or disprove his paternity. The Family Proceedings (Paternity Orders and Parentage Tests) Amendment Bill 2008 (a private member's Bill) would allow a man who was in doubt as to his paternity of a named child to apply for an order of paternity or non-paternity and to obtain an order that a buccal sample be taken from the child to assist in the court's determination. It would not force a reluctant male to provide a buccal sample to prove or disprove his paternity of a named child.

English House of Lords strike down Northern Ireland ban on adoption by unmarried couples

The House of Lords *In re P and others (AP) (Appellants) (Northern Ireland)* [2008] UKHL 38 (HL) had to consider whether a Northern Ireland statutory instrument which restricted joint

applications for an adoption to married couples over the age of 21 years was consistent with article 14 of the European Convention of Human Rights which states:

> "enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth *or other status*." (emphasis added).

The appeal was brought by a couple who had been excluded from consideration as adoptive parents of a child on the ground only that they were not married. The woman was the natural mother of the child. The man was not the father, but he and the woman have been living together for some years the child was treated as a member of their family.

The Human Rights Act 1998 (UK) provides that it is unlawful for a public authority (including a court) to act in a way which is incompatible with a right conferred by the European Convention.

By a majority of four to one the House of Lords rejected a blanket ban on applications for adoption by unmarried couples. The judgments of the five Lords make interesting reading. Lord Hoffman accepted that marriage (and not being married) was a status within the meaning of the Convention while making the comment that, compared with people who are married, the unmarried are a formless group. The second issue - whether unequal treatment was justified - caused the House of Lords greater difficulty. There had been evidence that, statistically, married couples, who had made a legal commitment to each other, tended to have more stable relationships than unmarried couples, whose relationships may vary from quasi-marital to ephemeral. The Family Court had held that there was a legitimate purpose for the difference in treatment (namely, the best interests of children generally) and that the interests of the applicants must be balanced against the interests of the community as a whole.

Lord Hoffman accepted that, in general, it was better for children to be brought up by parents who are married to each other but did not consider that there was a need for a "bright line rule" to determine what class of people should adopt children. He added that:

> “It is one thing to say that, in general terms, married couples are more likely to be suitable adoptive parents than unmarried ones. It is altogether another to say that one may rationally assume that no unmarried couple can be suitable adoptive parents. Such an irrebuttable presumption defies everyday experience. The Crown suggested that, as they could easily marry if they chose, the very fact that they declined to do so showed that they could not be suitable adoptive parents. I would agree that the fact that a couple do not wish to undertake the obligations of marriage is a factor to be considered by the court in assessing the likely stability of their relationship and its impact upon the long term welfare of the child. Once again, however, I do not see how this can be rationally elevated to an irrebuttable presumption of unsuitability”.

Baroness Hale, agreeing with the decision of the majority, made the pertinent comment that ultimately “the issue is whether the child should be deprived of the opportunity of having two legal parents”. While accepting that it was for the authorities to determine whether appellants

were suitable to adopt the child she concluded that there was no longer an objective and reasonable justification for the 'blanket ban' on joint adoption by unmarried couples.

Thanks to Bill Atkin, Professor of Law, Victoria University of Wellington for bringing this decision to our notice.

Trends in New Zealand domestic and intercountry adoption

Domestic adoption orders made by the New Zealand Family Court in 2006/07:

Adoption by non-relative	60 (a reduction from 87 in 2006 and from 296 in 1992)
Adoption by parent and step-parent	69 (a reduction from 73 in 2006 and from 280 in 1992)
Adoption by relative	70 (increase from 65 in 2006, reduction from 180 in '92)
Adoption by foster parent	3 (a reduction from 4 in 2006 and from 38 in 1992)
(Type not recorded)	11

TOTAL DOMESTIC ADOPTIONS 213

Intercountry adoptions by New Zealanders in 2006/07

Intercountry adoption orders made by NZ courts	53 (a reduction from 61 in 2006)
Overseas Intercountry adoptions recognised in NZ law	353 (a reduction from 356 in 2006)

TOTAL INTERCOUNTRYADOPTIONS 406

News from Adoption Awareness and Education New Zealand

Adoption Education and Awareness New Zealand website

The Christchurch based Adoption Education and Awareness New Zealand Trust has developed a website that addresses the New Zealand context as well as providing robust international evidence and information about adoption. The site will provide information for all people living with adoption whether they are adoptees, birth families, adopted families or partners and friends of people living with adoption. There is a growing awareness that people other than those directly involved in adoption seek a greater understanding of the impacts of adoption on the people in their lives who have adoption experiences.

The site will be a central point for the collection and dissemination and adoption related information locally, nationally and internationally. The Adoption Education and Awareness New Zealand web site will go live shortly and the official launch is planned for early in the New Year. Watch this space!

Adoption law reform

Unfortunately, we are not aware of any Government progress since the last Adoption Newsletter towards reforming the Adoption Act 1955. There is a misconception 'out there' that there is no closed adoption occurring any more in New Zealand and that 'open adoption' is supported by legislation. That misconception (pun intended) could be partly responsible for dampening the perceived urgency for law reform and narrowed people's understanding of the need for law reform. While open adoption of New Zealand born babies/children is

generally the practice under which adoptions are made, there is still no legal framework to support this and closed adoption is sanctioned under the current legislation. The Wellington group continue to develop networks with interested parties to address this misconception and raise awareness of the Adoption Act 1955's non-compliance with UNCROC regarding the rights of the child and non-alignment with supporting legislation and social work practice guidelines.

Susan Atkin
The address of Adoption Awareness and Education New Zealand is P O Box 10297, Phillipstown Christchurch 8145

Adoption of Stolen Aboriginal Children

Henri van Noordenburg is currently working on a PhD at Griffith Universiity, Brisbane. He is writing a photographic narrative on *International Adoption of Australian Stolen Generation Children.* He is working closely with individuals who were part of the stolen generation as well as with organisations such as *Link Up* Australia.

Henri believes that some Aboriginal and Torres Strait Islander children were adopted by New Zealanders or that their adoptive parents moved with them to this country. He would like to hear from anyone who can assist him in tracing such children or their adoptive parents or provide other relevant information.

Death of highly respected Australian adoption activist

Dian Welfare a tireless worker for the rights of birth mothers and for reform of adoption laws in Australia died on 16th April 2008 from pancreatic cancer aged 56. Di was the founder and president of Origins. Lily Arthur gave the following eulogy at her funeral. The Origins website is **http://www.angelfire.com/or/originsnsw/**

Eulogy For Dian Welfare

Never doubt that a small group of thoughtful people could change the world. Indeed, it's the only thing that ever has. ***Margaret Mead***

This quote was the beginning of the transformation for changing the thinking about adoption not only here in Australia but throughout the western world

A small group of mothers headed by Dian Wellfare brought forth a voice to millions of women all over the world who had lost their babies to the adoption machine.

Dian was a sixteen year old single mother when she lost her only and beloved baby to the evil practices that were rampant throughout this country. Her baby swept away and hidden away from her without her ever having looked into his face. She had suffered the most mortal wound that could beset a mother….. the loss of her first-born infant.

It was a wound from which she would never recover, an invisible wound that would bleed for many years, until she finally set eyes on her one and only child for the first time.

She referred to her awakening as finally coming out of the “fog” that clouded her mind. With the determination of a Titan, Dian started to deal with the catastrophic blow that had been dealt to her and her baby.

Reaching out to women in 1995 she found a few mothers who shared her experience. It was from this small group of mothers that Dian founded a support group known today as Origins. It was to be the birth of her vision that has had a dynamic impact exposing the damage of mother and child separation.

This small group grew and became an organisation that would research not only the mental health damage of adoption but also the illegal practices that saw 150,000 women like Dian lose their babies in Australia.

Many long hours were spent trawling libraries and bookshops searching for books, papers and anything she could find on adoption. Her library on this one issue would be the envy of any agency that dealt with the subject.

And over a short period of time it became apparent to Dian, that young vulnerable women like her were used as “social experiments” to cure the problems of the infertile couples demanding children.

In her own words, “the truth about the lies and crimes of the perpetrators came flying off the shelves at her”.

Outraged and motivated to expose the truth of one of the greatest violations of women in this country Dian set herself on a course that would take her voice not only across Australia but across many lands and into the minds of so many other mothers who were “asleep” or in a trauma blocked out by the catastrophic loss of their babies.

Like a sleeping giant finally waking, mothers across the world finally started to see the truth of the adoption myth. I was one of those women.

As a student in 1997 it was one of my assignments to study the dynamics of a group. Never have dealt with my adoption issues I decided to study a support group that focused on adoption.

I made my first phone call to Origins in April of that year and for the first time I spoke to Di. It was a phone call that would not only change my life but would also bring about a friendship that spanned the past 11 years.

I went along to my first support group meeting, and for the very first time met a woman who not only inspired me but the only one who finally gave me the courage to voice one of the

greatest catastrophes of my life, the loss of my baby. It was a secret so horrible, I had held it in silence and shame for over three decades.

For the first time in my life I was finally given permission to talk not only about my loss but to finally grieve openly for my child.

But this was not only my story, this was the story of many mothers like myself. Dian gave back the voices to many, many, mothers to do the same. For once in our lives we could openly talk of our pain and suffering, not as victims but as any mother who had lost a child though any other circumstance.

By helping mothers to finally have a voice, Dian gave us not only the confidence to speak up, but also gave us the courage to demand accountability for the actions of those who had not only committed us to a life of misery and shame, but also committed the most heinous crimes against motherhood known to mankind.

As Dr Geoffrey Rickarby once said, " it was the ultimate rape of the female condition".

Her energy was breathtaking and her determination and courage was dynamic, she had the capacity to lead mothers into battle to regain their dignity and reclaim their integrity

With a burning desire for justice, and to prove to her beloved son Andrew that he was loved and wanted, and that he was stolen from her, Dian took the State of NSW to court in 1996. She lost her action along with 2 appeals.

The blatant denial of justice would have been enough to crush the most hardened of litigants but not for Dian. It drove her on to demand a parliamentary inquiry into adoption practices on the ABC Lateline, program. With nerves of steel she presented her arguments in such an articulate manner that she flustered a seasoned adoption expert into capitulation.

From then on Dian was not to be silenced and encouraged mothers to see their local politicians and lobby them for an inquiry. After two demonstrations led by Dian outside state parliament house we finally got our Inquiry into adoption practices.

I was with Origins when this event happened and did my best to support my friend. No one saw Dian working over her computer day and night putting together the submission that drew together and finally made sense of the history and crimes of adoption.

Driven on by the loss of her court case and the quest for truth she finally presented a document of over 200 pages to the Inquiry, the basis of a book and all done over a period of a few short weeks.

She thought that finally the truth would be exposed. It was out there for the world to read

Two and a half years later after mountains of evidence and over 300 mothers stories, we finally saw the report handed down in the year 2000, the report finally acknowledging adoption practices committed against mothers like herself were illegal, but what happened to that truth?

As fast as it came out it was swiftly buried once again by a government that cowered from dealing with its own crimes.

Following the release of the report, Dian retreated from the world. Her thoughts only concerned looking after and counselling mothers and the adoptees that rang her. She was their lifeline and they hers. Her only contact with the outside world was through those people that called and those she spoke to through the internet.

Mothers became her sisters, and young men and women adoptees saw her as their mother figure. Dian was known as “Motherluv” on her forum. She showed love and care, and also took much pride in her boys Matty, Charlie and Skelly.

In the long hours of the night, hers was the voice that calmed the broken, the traumatised and the hopeless who turned to her. She was the one that so many people turned to, where they could not find anyone else to understand the level of their pain.

She was the one who could reach into their wounds and calm and heal their suffering, all this love and compassion unselfishly given to others and never dwelling on her own pain.

Not only a rock that offered safety to so many, she had become a fountain of knowledge on adoption, and through that knowledge changed the attitudes of people not only in Australia but also throughout the rest of the world.

Her statements were profound. On typing in her name to Google recently, I brought up many links to a quote she made, this is one of many.

“In order for an adoption to be successful you must first destroy the mother”. This quote led to people all over the world debating adoption, from a 12year olds’ essay to a students PHD thesis

Her analogies were famous and attracted much criticism, one of them questioning the art of parenthood, where she says to an adoptive father.

“Don't flatter yourself too much about parenting. It hardly takes intellect, just instinct. Even monkeys do it hanging upside down in a tree, scratching their bums at the same time.”

“In case you still don’t get it, which you obviously won't, it means: don’t think you're superior because you parent. Even monkeys do it.”

“...you sure you can't hang upside down in trees?.....oh nevermind.”

This one post that she put on an American forum attracted thousands of responses that led to debates for months, a sure sign of her impact on adoption theories

Still believing that justice must prevail over evil, Dian, a woman of “superior intelligence” as Dr Geoffrey Rickarby describes her, took her case back into court again in December 2006.

She spent nearly each waking hour, minute and second of the day for 2 solid years, to study the laws that were broken to argue her case against the state for fraud.

Hidden in a deserted court building away from the view of the public and court reporters, she single handedly presented her legal arguments in The Supreme Court of NSW.

I was privileged to have sat with her that day, the two of us against the State.

Dian, Courageous, Magnificent, a Lioness, slayed the dragon and tore down the arguments of the State, and they knew it. Once again their cowardly response was again to deny her justice.

Here is where things become hard to speak of.

Since that day and over the past 2 years I have watched my friend suffering with her health, never really complaining about the pain she was suffering, and through this pain she still maintained the strength to counsel mothers and adoptees, and redecorate her much loved home at Dulwich Hill. Still giving of herself to everyone and everything that needed her.

Her vision was to move into another chapter of her life where she could once more become active and enjoy life again. But as we know now this was not to be. The pain that disguised its self as symptoms of other illnesses, manifested to an illness that was to ultimately reveal itself as her most destructive adversary.

Over the past week I have had listened and read messages from people all over the world paying tribute to her, each one of them acknowledging that she was unique, all agreeing that never again will anyone have the persona to attract so much discussion on adoption as Dian. She was the catalyst that can never be replicated.

Reflecting now as a friend to Dian, I would like to express my own feelings for her.

Someone told me recently after losing another dear friend that the greatest love stories were usually those shared by friends, and in the case of Di and I this would be so.

From our first meeting, she gave me the strength and courage to walk with her on a journey that would take us into places where even the very bravest of people hardly dared to venture.

She awoke my sleeping mind and gave me back a dignity that I had lost for so many years. She gave me the knowledge to fight for and to find my stolen son and to have him back in my life again.

She gave me the courage to fight at her side for justice for women like myself.

She gave me back myself, a person who was lost to herself so many years ago.

Never a hard word, or too busy to chat, we spent many hours discussing the directions of Origins, our children, our families and our problems, Dian always playing the devils advocate for difficult situations.

She always had a very special way of seeing the most difficult problems in a clear and simple light.

These were the gifts that were not only given freely to me, but also to other mothers she came into contact with, here in this country, and far across the seas.

Never ashamed of herself, she challenged people's values, beliefs, and minds, and this brought her respect even from people with the most strongly held opinions.

She was insurmountable and openly declared her love for her son Andrew through her every deed, suffering and quest, taken not for herself but firstly for him

She elevated mothers from being victims of a cruel and evil catastrophe. She inspired them to openly speak of their grief as she has done, and not feel ashamed to declare their love for their lost children.

Dian has given Origins and those who have come into contact with her every thing a person could possibly give. She has given us the ultimate gift, her life, and we can never repay her for her love, devotion and compassion, and we thank her for the strength she has given us.

We who have loved her can honour her by standing in the truth she left us and by staying strong and making her life's sacrifices count for something.

I believe that she is now watching over us, her wings wrapped tightly around us all, her family, her mothers, their children and friends.

Her love and strength will keep us safe and one day we will all have the justice that our beloved leader fought so desperately hard for.

We who knew and loved Dian will share the sadness and loss with her beloved family, her mother Marion, father Gregor, her sisters Dale, Donna and Debbie and their families.

In a promise made to her a few short days before she left us
The committees of Origins, NSW, Queensland and Victoria promised to carry on with her vision, and even now I know that she is lobbying with a higher authority than anyone here on earth for justice and peace for her friends.

The journey has come to an end for Dian and we who cherished her were blessed to have shared it with her.

It is now goodnight and time to say…… Sleep well, beloved daughter, sister, mother and friend.