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Adoption News and Views

April 2013

Adoption News and Views is a quarterly e-newsletter which aims to provide information about adoption of children and about any legal and policy developments affecting adopted children, parents who surrender a child for adoption, and people who adopt a child. It also provides progress reports on any proposed changes to adoption law, and to efforts by individuals and groups pressing the government to give a higher priority to enacting new legislation. This is urgently needed to replace the out-of-date Adoption Act 1955 and other adoption laws, so as to bring them into line with the Convention on the Rights of the Child and the anti-discrimination provisions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. Adoption developments overseas will also be covered.

The Newsletter is sent out three or four times a year. Back issues can be viewed on the Adoption Action website: www.adoptionaction.co.nz

The newsletter aims to provide information on current NZ adoption laws, policies and practices and on any proposed changes. Overseas adoption reform issues are also covered.

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, please email Robert Ludbrook at the address below. If you know of others who would like to receive future issues, or you or others would like to submit news or views for inclusion in the next newsletter email Robert or ask interested others to do so.

It is hoped the newsletter will provide a forum for people to discuss adoption issues.

Members and non-members are invited to attend the Annual General Meeting of Adoption Action Inc to be held on Thursday 18 April at 1pm – details below.

Anyone wishing to become a member of Adoption Action for 2013/14 or to renew their membership should complete the membership application at the foot of this Newsletter.

Robert Ludbrook and Anne Else - Editors
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Bill to allow same-sex couples to adopt a child

The Marriage (Definition of Marriage) Amendment Bill is a Private Member's Bill introduced by Labour MP, Louisa Wall, in July last year. The Bill would alter the current definition of "marriage" in the Marriage Act 1955 to read:

"marriage means the union of 2 people, regardless of their sex, sexual orientation, or gender identity".

The Bill has been reported back by the Government Administration Select Committee which recommended that the Bill be passed subject to certain amendments. The Bill was controversial and received 21,353 submissions.

An issue raised by some people and organisations in their submissions on the Bill (including Adoption Action Inc) was that changing the definition of marriage in the Marriage Act might not automatically give same-sex couples the right to adopt a child.

On this issue the Select Committee commented:

"We acknowledge that some people feel very strongly about the issue of adoption of children by same-sex couples and transgender people. If the bill were to pass, it would make consequential amendments to the Adoption Act 1955 which would have the effect of enabling married same-sex couples to adopt children lawfully, as any married couple may do."

Some opponents of the bill (and also some supporters) are not in favour of any same-sex couples being able to adopt children. They argue that, if changes to adoption laws are to be made, this should be done through a bill that specifically amends the Adoption Act 1955. Some opponents of the bill also consider that a family with a mother and a father married to each other lead to the best outcomes for children. The New Zealand Law Commission in 2000, after detailed research and wide consultation, recommended that there be no prohibition against applications by same-sex couples to adopt a child, noting that of those making submissions on the issue to the Commission, nearly twice as many supported adoption by same-sex couples, compared to the number opposing this.

Under current law, a homosexual or transgender person may legally adopt a child as a sole applicant but same-sex couples may not jointly do so. Such a position seems absurd. If the bill is passed in its present form, it will ensure that all married couples are eligible to adopt, regardless of their gender.

There are many families comprised of children and same-sex or transgender parents. In such families, both parents do not have access to the full range of legal rights that married heterosexual couples have. This is not in the best interests of the children concerned.

It has been agreed that the bill will be decided on the conscience vote of individual Members and commentators believe that it is likely to be passed. It is open for MPs opposed to adoption of children by same-sex parents to oppose the consequent amendment to the Adoption Act but still vote in favour of same-sex marriages. It is curious that there is stronger opposition to adoption by gay and lesbian people than there is to same-sex marriages.

Another proposed change to the Adoption Act is an amendment to s 7(2) so that, before one partner in a same-sex marriage can adopt a child as a sole applicant, the consent of his or her partner must be obtained or dispensed with by the Court.

Robert Ludbrook

This is an important year for Adoption Action as its claim to the Human Rights Tribunal has been allocated a hearing date starting 18 November 2013. We are a small but dedicated organisation and we welcome support from those who share our views.

Adoption Action - Annual General Meeting

The **2013 Annual General Meeting** of Adoption Action Inc is to take place in a meeting room at the offices of Buddle Findlay, **Level 17, State Insurance Building on Thursday 18 April 2013 at 1pm, Cnr Willis St and Willeston St, Wellington Central** (entrance in Willis St).

Members and prospective-members are welcome to attend. The meeting is unlikely to last for more than an hour.

Adoption Action's Part 1A claim to be heard by Human Rights Tribunal

Adoption Action in July 2011 filed proceedings with the Human Rights Tribunal claiming that the Adoption Act 1955 discriminates on a number of different grounds in respect of which discrimination is unlawful under the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. It is seeking a declaration to this effect from the Tribunal.

This month Adoption Action filed an amended Statement of Claim so that it now includes eleven points of claim asserting that the two Acts discriminate on the grounds of sex (2 grounds), marital status (3 grounds), race (1 ground), disability (1 ground), age (2 grounds) and sexual orientation (2 grounds).

The case has been set down for hearing in the **Hearing Room 1, Tribunals Unit (Level 1, 86 Customhouse Quay, Wellington for two weeks commencing on Monday 18 November 2013** and is likely to attract publicity highlighting the pressing need for reform of our adoption laws to bring them into accord with current social attitudes and values as well as human rights. The hearing will be open to the media and members of the public.

Adoption Action was pleased to learn this month that the Human Rights Commission has indicated that it wishes to make submissions to the Tribunal on Adoption Action's claim. It is our intention to have several members of Adoption Action Inc. each making submissions on a different point of claim. We are also heartened to have received valuable advice and support from senior Victoria University Law students (through its Community Justice Project) and senior members of the faculty of law at Otago University.

Adoption Action will argue that government should not be free to discriminate by retaining old laws which are blatantly discriminatory under our human rights law, when ordinary citizens who do so can be restrained and ordered to pay damages.

Official forms – obtaining an original birth certificate and applying for a passport

Ever felt stumped, angry, confused, frustrated (all of the above and/or more) when you come across official forms involving information about your identity? You're not alone!! I and many others find them offensive. Here are two examples:

Below is an extract from the Department of Internal Affairs form which is now called *Request for Pre-Adoptive NZ Birth Certificate*.

BDM451

Request for **Pre-Adoptive** New Zealand Birth Certificate



When a person has been legally adopted in New Zealand, the birth certificate normally issued is the post-adoptive birth certificate, showing the details of the adoptive parents.

If you are born in New Zealand and adopted in New Zealand, and are 20 years of age or older, you may complete this form to request a copy of your original, pre-adoptive birth certificate, **showing the details of your birth before you were adopted.**

Your pre-adoptive, original, birth certificate is issued in accordance with the Adult Adoption Information Act ("AAI Act") 1985, and will be stamped "Issued for the Purposes of the Adult Adoption Information Act 1985".

Who may request a pre-adoptive birth certificate

Only the adopted person may request their pre-adoptive birth certificate (once 20 years of age or older).

Parent may not wish their information be given to adoptee

If you were adopted before 1 March 1986, either of your original birth parents may request that their identifying information not be given to you. Each such request expires after 10 years unless earlier removed or reinstated on request of that parent.

This is the form you need to fill out to get **your** information about **your** life and **your** family. It states "**Parent may not wish their information be given to adoptee**".

Not providing children (of whatever age) with information about their identity breaches the United Nations Convention on the Rights of the Child (Article 7 states that children have a right to know their parents and Article 8 states children have a right to have their identity preserved including family ties).

Does that mean that the Department of Internal Affairs is in breach of an international convention to which we are signatories?

Additionally, the birth certificate form states that the request is for the certificate "**showing the details of your birth before you were adopted**". The underlying assumption is that the facts of your birth changed after the legal adoption process was finalised. We've come a long way with science and technology, but actually altering the facts of the past is not only beyond the laws of physics; to quote Keith Griffith, "it's not even something anyone's God has claimed to have done!".

How do forms like this get approved for release inside our government agencies?

Another example is the Department of Internal Affairs form for an application for a New Zealand adult passport. Here is page 2, question 3.

PAS330 05/12



Application for a New Zealand Passport

Uruwhenua Aotearoa

Adult

3 Names at birth

 *If you have been legally adopted, please read section 3 of*

Write your mother's name at your birth
Surname or family name

First and middle names

Write your mother's name at her birth (maiden name)
Surname or family name

Write your father's name at your birth
Surname or family name

First and middle names

Write your name at your birth
Surname or family name (if different from section 1)

First and middle names (if different from section 1)

3 Names at birth

To confirm that you are entitled to a New Zealand Passport, we need to know your name at birth. We also need to know your parents' names that appear on your birth certificate and your mother's name at her birth.

If you were legally adopted, write the names of your adoptive parents and the names you were given after adoption.

This information should match what is written on your birth record.

This form has recently been altered to include the note to question 3 (above) regarding adoptions. However, the note is not for the benefit of adopted people. It merely addresses the Department's own confusion. This legal form directs adopted people to record events that are not truthful. It directs adopted people to complete the form to state that **your mother at your birth** was/is your adoptive mother. The same applies to the father.

In reality, we all know "as if born to" does not mean **born to**. I have in the past heard all the arguments from the Department of Internal Affairs that they "are bound by the legislation" and that they are not responsible for the legislation. It seems it's much easier to ask adopted people to lie about the facts of their birth when filling out these types of forms than to take any responsibility towards fixing the issue created by the outdated adoption legislation.

We do not need to be ashamed or embarrassed that we are adopted. Many of us do feel the need to be truthful in life, and certainly when filling out official government forms.

This passport application form contains a reminder that there are penalties of imprisonment and fines (or both!) for false information. It states: **Warning: It is an offence against the Passports Act 1992 to knowingly or recklessly make a statement that is false or misleading in a material particular for the purposes of gaining a New Zealand Passport.** I am sure most adopted people would consider that the parents who gave them life would qualify as a “material particular”, as would the fact of their adoption, and they would acknowledge that the statement required of them is false. There is no provision even for mentioning that these are their adoptive parents. If it wasn't such a serious matter it would be laughable.

11 Your Applicant Declaration

Tick one box

I have completed this application in my own handwriting.

Someone else has filled in this application for me because I have a disability or language difficulty.

 If someone else has filled in this application for you but you are able to sign your own name, you must sign this section. If you are unable to sign your own name, the signature in this section must be left blank. The person who filled in the application form for you must not sign this section but must sign the statutory declaration in section 8.

- ▶ I declare that the information I have given in this application is, to the best of my knowledge, true, complete and correct.
- ▶ I understand that if I have provided false information my passport can be cancelled and I can, by law, be fined or imprisoned.
- ▶ I confirm that I have read the section relating to Privacy in the Guide Notes for this application.
- ▶ I agree that, for the purposes of this application, other government agencies may release personal information about myself which will assist the Passport Office in determining my entitlement to be issued with, or continue to hold, a New Zealand Passport.
- ▶ I understand that if I use, or have possession of, a forged or false New Zealand travel document, I may be liable on conviction to imprisonment for a term not exceeding 10 years, a fine not exceeding NZ\$250,000, or both.

 **WARNING** It is an offence against the Passports Act 1992 to knowingly or recklessly make a statement that is false or misleading in a material particular for the purposes of gaining a New Zealand Passport.

Sign your Applicant Declaration here



The point I am trying to make is that this form tells us to be truthful, or incur a penalty, then directs us to be untruthful. This causes great internal conflict. The wording on the form may address any legal issues the Department of Internal Affairs has, but it is simply morally wrong to expect adopted people to lie on these forms (regardless that the legislation legalises the lie). No matter what legal jargon you put around it – it is still not the truth. Put another way, adopted people find themselves part of the lie and many do not wish to perpetuate it. Government agencies responsible for processing adoptions continue to choose to create lies around birth details by continuing to use this damaging legislation. I choose to tell the truth, and find it abhorrent that adoptions continue to be processed through the courts according to this legislation.

It is well past time for the Minister of Internal Affairs to work closely with the Minister of Justice to provide a complete overhaul of adoption legislation, in line with the Law Commission's recommendations for change, or else a complete repeal of the 1955 Act. It is important not only to remove the legal fiction that causes so much hurt and pain, but also, very importantly, to address the trafficking of children sanctioned by the Department of Internal Affairs, which a section in the Adoption Act allows for. More on that in a future issue.

I'm not even going to start on the other official government forms...

In the meantime, when it comes to these types of official forms, your frustration is shared!

Fiona Donoghue
April 2013

Australia

Commonwealth government apology

An event of national importance occurred in Canberra on 21 April 2013 when Australian Prime Minister, Julia Gillard, delivered an historic national apology in the Commonwealth Parliament to the thousands of mothers who were forced by government policies to give up their babies for adoption over several decades. More than 800 people, many of them in tears, heard the apology in the Great Hall of Parliament House and responded with a standing ovation. In her speech the Prime Minister stated:

"Today this Parliament on behalf of the Australian people takes responsibility and apologises for the policies and practices that forced the separation of mothers from their babies, which created a lifelong legacy of pain and suffering."

"We acknowledge the profound effects of these policies and practices on fathers who were often ignored at the time of the births and whose names were not included on birth certificates. We recognise the hurt these actions caused to brothers and sisters, grandparents, partners and extended family members."

"We deplore the shameful practices that denied you, the mothers, your fundamental rights and responsibilities to love and care for your children."

Ms Gillard acknowledged that, despite the apology, victims will still feel the pain.

"Friends, as the time for birth came, these babies would be snatched away before they had even held them in their arms."

Sometimes, consent was achieved by forgery or fraud. Sometimes women signed adoption papers whilst under the influence of medication."

Most common of all was the bullying arrogance of a society that presumed to know what was best."

The hurt did not simply last for a few days or weeks. This was a wound that would not heal."

This apology is extended in good faith and deep humility. It will be a profound act of moral insight by a nation searching its conscience."

The Prime Minister also acknowledged children who suffered sexual abuse at the hands of their adoptive parents or institutions, and added that many others identified the paralysing effect of self-doubt and a fear of abandonment as a result of their adoption.

A Senate Committee report had earlier found that unwed mothers were pressured, deceived and threatened into giving up their babies from World War II until the early 1970s, so they could be adopted by married couples. This was perceived to be in the children's best interests. The Senate committee began investigating the federal government's role in forced adoption in 2010 after the Western Australian state parliament had apologised to mothers and children for the flawed practices in that state from the 1940s until the 1980s. Western Australia was the first of five state and territory governments to apologise for forced adoption.

Roman Catholic hospitals in Australia apologised in 2011 for forcing unmarried mothers to give up babies for adoption and urged state governments to accept financial responsibility. Catholic Health Australia, the largest non-government hospital operator in Australia which provides 10 percent of

the nation's hospital beds, said the practice of adopting out such children to married couples was "regrettably common" from the 1950s to the 1970s.

Adoption in Australia is mostly controlled by state laws, but the report found that the federal government had contributed to forced adoption by failing to provide unwed mothers with full welfare benefits to which a widow or deserted wife would have been entitled. This did not change until 1973.

The head of the Apology Alliance, Christine Cole, who lost a child through forced adoption practices told of her experiences.

"I had my baby taken from me in 1969, and I think the use of the term forced adoption polarises the actual phenomena of what was going on. What was going on was kidnapping children, kidnapping newborn babies from their mothers at the birth. using pillows and sheets to cover the mother's face, drugging them with drugs like sodium pentothal, chloral hydrate and other mind-altering barbiturates.

It was cruel, it was punitive and then often the mother was transported like I was away from the hospital so you had no access to your baby."

Sources ABC and news.com.au 21 March 2013.

Northern Territory back flips on apology

The Northern Territory Government has back flipped on its commitment to deliver a formal apology to victims of forced adoption despite a petition asking for an apology. Former Deputy Leader of NT, Robyn Lambley, had earlier told ABC:

"It is our intention to apologise unequivocally and without hesitation."

The NT Minister for Families and Children, Alison Anderson, announced the change of heart via a press release, saying an apology would not be appropriate.

"These policies and practices did not continue after the Territory became self governing in 1978. Therefore, the Government decided against making a separate apology, it is our view that it would be inappropriate and indeed disingenuous."

Source ABC.

Editor's Comment

The New Zealand government has steadfastly refused to hold an inquiry into past adoption practices and has not been willing to consider making an apology. This is despite the strong recommendation of a Parliamentary Select Committee in 2001 that there be an urgent inquiry into past adoption practices in New Zealand.

Scotland

Mysterious disappearance of adoption records

The records of all adoptions in Stirlingshire between 1935 and 1969 are missing. The files are believed to have been destroyed by a clerk, now dead, apparently because she feared that families' "dark secrets" might be leaking out. Stirling Council has advised that the clerk destroyed the records to prevent adopted children being located. A Council spokesperson commented:

“It could be that, given the era in which she was working in the adoption field, although her actions were misguided, they were done with the best of intentions. Sadly, the lack of adoption records has caused distress to several clients.”

In Scotland, children have a legal right to see adoption records when they turn 16. In England, they have to be 18. The Scottish office of National Statistics has estimated that one in three adopted children will eventually request copies of their original birth records. Thousands of adopted children have also used social networking sites such as Facebook to get in touch with their natural families.

Source: Derek Alexander Daily Record and Sunday Mail 11 November 2012

South Africa

The South African constitution includes in Chapter 2 a Bill of Rights which incorporates rights established by a number of United Nations Conventions and Covenants including the Convention on the Rights of a Child. Section 28: of the Bill of Rights deals with children's rights, including the right to a name and nationality, the right to human dignity and the right to freedom from discrimination on the ground of age as well as other grounds. It applies the principle that the best interests of the child are paramount and gives under-18s the right to an independent lawyer in court cases involving them.

A novel feature of the South African Adoption Act 2005 is the requirement relating to the consent of the child whose adoption is under consideration. Section 233(1)(c) provides that a child may be adopted only if he or she has given consent, if

- the child is ten years of age or older; or
- the child is under the age of ten years, but is of an age, maturity and stage of development to understand the implications of such consent.

An adoption social worker will counsel the child and advise the Court on the child's understanding of the implications of giving or refusing consent. The consent must be signed in the presence of a presiding officer of the Children's Court.

Editor's Comment

Scottish law has since 1930 required the agreement of children aged 12 years or older to their adoption and this remains part of Scottish law today. In most Australian States and Territories, the consent of a child aged 12 years or older is required to his or her adoption. In some other countries a younger age is set. For example, Croatia sets ten years and Mongolia nine years.

In New Zealand the consent of the child to be adopted (who may be as old as 19 years) is not, and never has been, required. This is inconsistent with the obligation under Art 12 of the UN Convention on the Rights of the Child which requires that children shall be given the opportunity to express their views in any court proceedings that may affect them. Adoption Action is claiming in its Part 1A claim (see above) that New Zealand's failure to require the consent of any prospective adoptee under 18 years discriminates against some children and young adults on the grounds of their age.

Source: Professor Sandra Ferreira, Department of Private Law, University of South Africa, Pretoria speaker at a Colloquium *Listening to Children's Voices* Auckland University 25 March 2013.

France

French Assembly passes law to legalise gay adoption

France's National Assembly has passed a bill to allow same-sex couples to adopt children, handing a major legislative victory to President Francois Hollande's Socialists on a divisive social issue. The legislation has to be passed by the Senate, which also is controlled by the governing Socialists and their allies.

The measure, approved in the National Assembly in a 329-to-229 vote, puts France on track to join about a dozen (mostly European) countries that allow gay marriage. It has been passed despite a string of recent demonstrations by opponents of the so-called "marriage for all" bill. Polls indicate that a narrow majority of French citizens support legalising gay marriage, though that support falls when questions about the adoption and conception of children come into play.

The Netherlands, Belgium, Norway and Spain, as well as Argentina, Canada and South Africa have authorised gay marriage, along with nine U.S. states and the District of Columbia.

The issue has exposed fault lines between a progressive-minded leftist legislative majority in officially secular France, and the country's conservative religious roots. Critics - including many Roman Catholics - have railed that the bill would erode the traditional family. Socialists, however, sought to depict the issue as one of equal rights, and they played off France's famed Revolution-era motto of "Liberty, Equality and Fraternity."

"This law is going to extend to all families the protections guaranteed by the institution of marriage," Prime Minister Jean-Marc Ayrault said before Tuesday's vote. "Contrary to what those who vociferate against it say - fortunately they're in the minority - this law is going to strengthen the institution of marriage."

As with many major and controversial reforms in France, the issue drew its share of political grandstanding over weeks of debate. Conservative opponents forced a discussion of nearly 5,000 amendments, a move derided by Socialists as inconsequential stalling tactics. But by the final vote, the government rank-and-file rolled out grand, solemn statements of victory.

French civil unions, allowed since 1999, are at least as popular among heterosexuals as among gay and lesbian couples. But that law has no provisions for adoption or assisted reproduction.

Source: Associated Press.

Malaysia

Police in Georgetown have busted one of the largest child trafficking rackets in the country with the arrest of 33 people and the rescue of nine children aged between two months and eight years. A doctor from a private hospital was among the suspects. The chief organiser of the ring is said to be a woman in her 50s who is in police custody. Penang police chief, Deputy Commissioner Datuk Abdul Rahim Hanafi, said the syndicate which sold babies and young children for between RM18,000 and RM30,000 (equivalent to NZ\$7,000 to \$12,000) to adoptive parents had been active since 2009).

The police report that nine children aged between two months and eight years were retrieved from adoptive parents who had 'bought' them. The children are believed to be of Thai, Indonesian and Bangladeshi parentage, and are mainly the children of unmarried women with low incomes.

Robert Ludbrook and Anne Else
Ediitors



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APPLICATION FOR MEMBERSHIP OF ADOPTION ACTION INCORPORATED

I wish to apply for membership / renewal of membership of Adoption Action Incorporated and attach a cheque/cash for \$10 in payment of the fee for membership for the period to 31 March 2014.

NAME: _____

ADDRESS: _____

EMAIL: _____

PHONE OR MOBILE NO.: _____

SIGNATURE: _____

DATE: _____

#OPTIONAL:

My interest in adoption is as an adopted person / natural parent / adoptive parent / academic / other professional / other (please specify):

**#MEMBERS RECEIVE A COPY OF THE QUARTERLY E-NEWSLETTER
*ADOPTION NEWS AND VIEWS***

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