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Aotearoa New Zealand

## Adoption News and Views

April 2014

**Adoption News and Views** is a quarterly e-newsletter produced on behalf of Adoption Action Inc. It 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 on 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 This is urgently needed to replace the out-of-date Adoption Act 1955 and other adoption laws, so as to bring them into line with the Convention on the Rights of the Child and the anti-discrimination provisions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 the Human Rights Act 1993 and NZ Bill of Rights Act 1990. Adoption developments overseas are also covered.

The Newsletter is sent out three or four times a year. It is hoped that it will provide a forum for people to discuss adoption issues. Back issues can be viewed on the Adoption Action website: [www.adoptionaction.co.nz](http://www.adoptionaction.co.nz)

**Adoption News and Views** is sent to you because you are believed to be a person interested in adoption. If you do not wish 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.

### ANNUAL GENERAL MEETING

Members and non-members are invited to attend the AGM of  
Adoption Action Incorporated, to be held at 1 pm on Monday 12 May 2014  
17<sup>th</sup> floor, State Insurance Tower, 1 Willis St, Wellington

To become a member of Adoption Action for 2014/15, or to renew your membership, please print and complete the membership form at the end of this Newsletter and post it with the membership fee of \$10 to:  
Adoption Action Inc, PO Box 30-397, Lower Hutt

Robert Ludbrook and Dr Anne Else - Editors  
[r\\_ludbrook@hotmail.com](mailto:r_ludbrook@hotmail.com)

## Adoption Action's Claim to Human Rights Tribunal

This claim came on for hearing in November 2013. Adoption Action claims that the government is in breach of the anti-discrimination provisions in the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990, in that it has allowed to remain on the statute books adoption laws which treat some classes of person unfairly, on the grounds of their:

- marital status (3 points of claim)
- sex (2 points of claim)
- sexual orientation (2 points of claim)
- race or ethnic origin (1 point of claim)
- age (2 points of claim).

The claim was heard by the Human Rights Tribunal in Wellington, commencing on 18 November 2013. The hearing ran over eight days, but because of the unavailability of some Tribunal members, it then had to be adjourned until 13 January 2014, when it ran for another two days. Robert Ludbrook presented the case on behalf of Adoption Action, in his capacity as a committee member. The claim was defended by Crown Law Office senior counsel and two other Crown counsel. They had the huge resources of their own office and the Ministry of Justice at their disposal.

As the case is still sub judice, we cannot comment in detail on the merits of the claim. However, the Human Rights Commission supported our claim (other than on the race ground, where the point of claim concerned indirect discrimination). Frances Joychild QC, one of New Zealand's top human rights lawyers, made detailed submissions on our behalf, and must have spent many hours absorbing and analysing the mountains of documents disclosed by the Crown on discovery, and the huge number of cases referred to by the Crown. The Children's Commissioner filed a report supporting our points of claim in relation to age discrimination.

The Tribunal has not yet given its decision, indicating the complexity of the issues involved. Adoption Action made it clear throughout that its aim in bringing the claim was to put pressure on government to give priority to adoption law reform. This needs to involve updating both the Adoption Act 1955 and the Adult Adoption Information Act 1985, in order to bring them into line with current social attitudes and values, and to remove or amend provisions that are inconsistent with the human rights principles established in its own legislation and/or in the international human rights conventions to which New Zealand is a party.

Adoption Action found it surprising that the Ministry of Justice and the Crown opposed the claim so vigorously, as the documentation disclosed on discovery showed that senior Ministry of Justice officials and several Ministers of Justice had accepted that parts of our adoption laws are discriminatory and in breach of New Zealand's international human rights obligations. Detailed proposals for reform were put before Cabinet Committees in 2003 and subsequently, but the proposals were never adopted by Cabinet, and work on reform was discontinued.

Half way through the hearing, the Crown advised the Tribunal that an Adoption Reform Bill had been drafted by Parliamentary Counsel's Office in 2006. This draft Bill had never been made public, and did not appear in the Crown's long list of documents produced on discovery. Adoption Action had no prior knowledge of its existence. No information was given as to why, when the reform process had reached the stage of drafting new legislation, it had then come to a halt.

Had a Bill been introduced in the form of the draft Bill disclosed during the hearing, all except one of Adoption Action's claims of discrimination would have been addressed.

Researching and presenting the Part 1A claim involved a great deal of dedication and hard work by members of the Adoption Action Committee and many others, who freely gave of their time and expertise. Particular thanks must go to Sylvia Bell of the Human Rights Commission and Frances

Joychild QC, counsel for the Commission, without whose expert assistance we would have been struggling. Russell Wills, the Commissioner for Children, and John Hancock of his office, also made a large contribution to the claim in filing a comprehensive report to the Tribunal.

A great vote of thanks must also go to Victoria University law students, including Emma Smith, Tim McGuigan, and Walter Hillyer-Brandt, who researched and drafted submissions in respect of four of the heads of claim, through the Wellington Community Justice Project. Professor Mark Henaghan and Dr Abby Susz of Otago University researched and drafted the claim on two grounds. Dr Claudia Geiringer and Professor Bill Atkin of Victoria University also offered very helpful advice, as did retired Family Court Judge Paul von Dadelszen. Finally, our inspirational Chairperson Fiona Donoghue and committee members Mary Iwanek, Charlotte von Dadelszen, Dr Anne Else and Susan Atkin all attended the hearings and assisted in many other ways, and Louise Brazier also provided valuable assistance.

All of these people contributed their time and specialist skills without remuneration, because they share our view that adoption law is urgently in need of reform. The only cost to Adoption Action was the cost of paper, photocopying, stationery and parking charges for the hearing.

## ADOPTION NEWS

### Adoption statistics 2012/13

#### *Domestic adoptions*

Data collected in respect of domestic adoptions for the year 2012/13 shows that:

- 130 adoption orders were made in 2012/13, compared with 74 in 2011/12. By contrast, 640 orders were made in 1995/96
- 50 adoption orders were made in favour of non-relatives of the child in 2012/13, compared with 21 in 2011/12, and 131 in 1996/97
- 50 adoption orders were made in favour of relatives of the child in 2012/13, compared with 39 in 2011/12, and 133 in 1998/99
- One adoption order was made in favour of a foster parent of the child in 2012/13. There were no such orders in 2011/12, and 28 in 1996/97
- 17 adoption orders were made in favour of a parent and the parent's spouse or partner (step-parent adoption) in 2012/13, compared with 14 in 2011/12, and 240 in 1994/95
- 12 adoption orders were made in favour of commissioning parents in surrogacy arrangements in 2012/13, the first year in which such orders have been recorded separately

#### *Intercountry adoptions where order was made by New Zealand Family Court*

There were seven intercountry adoptions by non-relatives in 2012/13, and six in 2011/12. The number of intercountry adoptions by relatives of the child was 19 in 2012/13, and 18 in 2011/12.

#### *Intercountry adoptions where orders made overseas were recognised in New Zealand*

In 2012/13, a total of 369 adoptions made overseas were recognised under New Zealand law. Of these, only 45 were adoptions of children from a Hague Convention country, so that the adoption order was recognised by New Zealand under s 11 Adoption (Intercountry) Act 1997. The remaining 324 were overseas adoptions recognised in New Zealand under s 17 Adoption Act 1955.

### UNICEF report highlights need for adoption reform

In February this year, UNICEF New Zealand marked the 20th anniversary of the ratification by New Zealand of the United Nations Convention on the Rights of the Child by releasing the report *Kids Missing Out: It's time to make progress on children's rights*. This report looks at New Zealand's progress in implementing the rights conferred on children by the Convention, and concludes that New Zealand's performance has been "patchy and too slow". The report lists adoption reform as an important area in which successive governments have failed to respond to the recommendations of the United Nations Committee on the Rights of the Child. It points to the lack of any mechanism whereby children whose adoption is being considered by the Family Court can have a say in respect of their adoption, or the adoption application. It is also critical of the fact that children and young adults under the age of 20 years have no legal right to access their original birth certificate or other information about their biological parents. Copies of the report are available from: <https://www.unicef.org/nz/Reports/Kids-Missing-Out>

### Judge describes Adoption Act as "sadly anachronistic"

In April 2014, the New Zealand Law Society held a conference on International Adoption and Surrogacy. While the main focus of the conference was on assisted human reproduction and surrogacy issues, a New Zealand Family Court Judge commented on the failure of successive governments to give priority to adoption reform.

Family Court Judge Margaret Rogers concluded her paper on the intercountry adoption of children with these comments:

*"When the Adoption Act 1955 was passed, New Zealand was essentially a monocultural country only just beginning to awake to its bicultural heritage and obligations. The nuclear family was the norm and adoptions were seen as somehow shameful and secretive arrangements.*

*Today we live in a vibrantly diverse country where not only Maori and Pakeha values but also the values of a vast number of other cultures need to be considered and respected. On 4 March 2014 the New Zealand Herald reported that there are now more than 200 different ethnic groups living in Auckland alone, which makes Auckland more culturally diverse than London or Sydney.*

*The ways in which children are born and raised have become equally culturally diverse and dynamic. The secretive closed adoption is no longer the norm, and our obligations pursuant to the United Nations Convention on the Rights of the Child and the Hague Convention on Intercountry Adoption highlight the need to consider a child's biological and cultural heritage.*

*Almost 60 years after its passage, the Adoption Act 1955 is sadly anachronistic. If adoptions are to continue (and that itself is a highly debatable question) then the statutory basis for adoption orders needs to be brought into line with 21<sup>st</sup> century realities and our international legal obligations."*

### Act of Parliament needed to get mother's partner's name onto child's birth certificate

As research on adoption and the need for reform makes clear, there are good reasons for an adopted child's birth certificate to include the names of both the adoptive parents and the birth parents. The Law Commission, in its ground-breaking report *Adoption and its Alternatives: A Different Approach and a New Framework* (September 2000), proposed that a second birth

certificate be issued for an adopted child, showing the names of both the birth parents and the adoptive parents (see paras 477, 482). It would also show the child's original names and the date of the final adoption order. This long form certificate would be available only to the adopted person, the adoptive parents and the birth parents. The Law Commission proposal obviously found favour with the Ministry of Justice because, in an Adoption Bill drafted by Parliamentary Counsel's office in 2006, provision was made for a second birth certificate along these lines (referred to as the "amalgamated birth certificate") to be issued (Subpart 6 cl A1). That Bill was never made public and, as with so many other changes needed to update New Zealand adoption law, there has been no further progress on this issue.

In April 2013, a New Zealand woman, Rowen Sullivan, succeeded in getting a private member's Bill passed into law, permitting her to add her name to the birth certificate of a child conceived with the sperm of an anonymous male donor and subsequently born to her female partner, who had since died. During their relationship the couple could not legally marry, and were thus unable to adopt the child jointly.

If Ms Sullivan had adopted the child, the name of her partner would no longer be on the officially available birth certificate, because the effect of the adoption would be to make Ms Sullivan the child's sole legal parent, as if the child had been born to her.

The only way that the names of both Ms Sullivan and her partner could appear on the child's birth certificate was by Act of Parliament. A Member of Parliament was willing to introduce a private member's Bill to overcome this difficulty, and this was passed as the Sullivan Birth Registration Act 2014. The Bill declared that both women were for all purposes the parents of the child.

The Rowen Sullivan dilemma is another example of the anomalies that adoption "1955 style" can cause. It is possible that a birth mother could seek to have her name inserted on the birth certificate of a child who was born to her and later placed for adoption. She could do so by finding a Member of Parliament willing to introduce a private member's Bill, in order to ensure that her role in the child's life is formally recognised.

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**17<sup>th</sup> floor, State Insurance Tower, 1 Willis St, Wellington**

**TO APPLY FOR MEMBERSHIP OR RENEW YOUR MEMBERSHIP OF ADOPTION ACTION**  
**INC, PLEASE PRINT OUT AND COMPLETE THE FORM ON THE NEXT PAGE, AND POST IT**  
**WITH YOUR \$10 ANNUAL MEMBERSHIP FEE TO:**  
**ADOPTION ACTION INC, PO BOX 30-397, LOWER HUTT**



**APPLICATION  
FOR MEMBERSHIP OF  
ADOPTION ACTION INCORPORATED**

Please post the completed form and fee to: **Adoption Action Inc, PO Box 30-397, Lower Hutt**

I wish to apply for membership / renew membership of Adoption Action Incorporated.

I have enclosed a cheque made out to Adoption Action Inc (or cash) for the membership fee of \$10 for the period ending 31 March 2015.

**OR**

I have made a direct credit to Adoption Action Inc bank account  
**12 3140 00410806 00**  
for the membership fee of \$10 for the period ending 31 March 2015.

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

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**EMAIL:** \_\_\_\_\_

**PHONE OR MOBILE:**

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**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**Optional:**

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

\_\_\_\_\_

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ADOPTION NEWS AND VIEWS  
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