ADOPTION ACTION INC

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ADOPTION NEWS AND VIEWS 2-14 June 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This is urgently needed to replace the out-of-date Adoption Act 1955 and other adoption laws, so as to bring them into line with the Convention on the Rights of the Child and the anti-discrimination provisions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.

It is hoped the newsletter will provide a forum for people to discuss adoption issues. Contributions are invited, including reviews of books, films, and so on touching on adoption. While the aim is to provide an open forum, the editors reserve the right to decline or abridge any contributions offered.

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**

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 wish to become a member of Adoption Action, or to renew your membership, please print out and complete the membership form at the end of this Newsletter and post it with the membership fee of $10.

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EDITORIAL

The recent disclosures about the conditions in which mothers and children were kept in a mother and baby home in Tuam County, Galway, Ireland are a reminder of the shocking treatment of women who gave birth to a child out of wedlock in the 1920s to the 1960s. The bones of nearly 800 babies were discovered recently in a sewage tank on the site of the home, which was demolished in the 1970s. The plight of young mothers who were sent to such homes in Ireland had been brought to light in movies such as *The Magdalene Sisters,* and more recently in the book and movie *Philomena*. Information from Ireland suggests that there were other abuses, such as multinational drug companies paying the homes to carry out medical research on the children. The home is also alleged to have sold children to prospective adoptive parents.

While the evidence coming out of Ireland is extreme, there is now a large amount of information from other English speaking countries on cruel and punitive attitudes and practices. The Australian Senate referred the issue of past adoption practices to its Community Affairs Committee. After commissioning extensive research and hearing a large amount of evidence, in 2012 the Committee published a 275 page report, *Former Forced Adoption Policies and Practices,* which made 20 recommendations. Much disturbing information came out about the treatment of mothers in mother and baby homes and hospitals. This resulted in formal apologies being made by the Federal government and most State and Territory governments.

There has never been a similar inquiry in New Zealand, despite a strong recommendation from a Parliamentary Committee in 1996. The Commerce Select Committee, in its report to Parliament, stated:

> "*We strongly recommend to the Government that an urgent inquiry be undertaken into adoption practices in New Zealand over the last 50 years. Further, we strongly recommend that once the inquiry is completed an immediate review of the Adoption Act 1955 be completed taking into account the results of the inquiry.*"

Despite such strong recommendations and the stress on the need for urgent review of the Act, 18 years have since passed without any inquiry being held or any action being taken to reform the 1955 Act.

Dr Anne Else, in *A Question of Adoption: Closed Stranger Adoption in New Zealand 1944-1974* (1991), cites evidence in respect to two "mother and baby homes" in which the prevailing objective was to "reform fallen girls" who were sometimes labelled "sluts". Pregnant women were treated like children, fathers were not allowed to visit and other visitors were restricted. The mothers were not allowed to leave the home, no phone calls were allowed, and mail was censored. They were required to rise at 5.30am and spend the day working in the laundry, scrubbing floors and cleaning windows. By the 1970s, things had improved, but there is considerable evidence that young unmarried mothers were routinely pressured to give their babies up for adoption, on the basis that they had a duty to make amends for their shameful behaviour, and should give their baby the opportunity to be brought up in a secure home by a loving married couple.

Unlike Ireland, where a full inquiry is to be conducted into the situation in the Tuam Home, and Australia, which has conducted comprehensive inquiries into the treatment of unmarried mothers and their children, New Zealand has chosen not to look into past practices and has resisted numerous recommendations to find out the truth about the treatment of single mothers. Successive governments have deliberately eschewed amending the legislative framework in which those practices prevailed.

Attitudes towards unmarried pregnancy have changed profoundly since the 1950s, but the law on adoption of children is still regulated by an Act passed in 1955. Many aspects of the Act reflect the attitudes towards pregnancy, unmarried motherhood, childcare and identity which prevailed at that time.

Robert Ludbrook

ADOPTION ACTION NEWS

Adoption Action 2014 AGM

The Annual General Meeting of Adoption Action Inc was held on 12 May 2014. All members of the Committee were re-elected and Louise Brazier (who gave invaluable help at the hearing of the Part 1A claim) was elected as a new member of the Committee. The Committee for 2014/15 is Fiona Donoghue Convenor, Robert Ludbrook Treasurer, Committee Members Prof Bill Atkin, Dr Anne Else, Mary Iwanek, Charlotte von Dadelszen and Louise Brazier.

Our Convenor, Fiona Donoghue, in her annual report made the important point that archaic adoption laws are the cause of considerable anxiety and distress to those affected, stating:

> *"It is a privilege to work with the people who have given so freely of their time to Adoption Action Inc in its push for much needed legislative reform. In my roles as contact person for Adoption New Zealand, Adoption Support for Adopted People and Adoption Action, I receive correspondence and phone calls from people affected by this legislation. It is hugely important that legislative change is made for the people for whom the current laws impact on many aspects of their lives, often on many occasions over the course of their lives. Adoption law reform is vital and urgent and is needed to bring openness, honesty and integrity to the lives of these people and others yet to be affected by adoption legislation - including parents and their children, siblings, grandparents, grandchildren, aunties, uncles, nieces, nephews and cousins."*

The meeting discussed the Adoption Conference for which Adoption Action has received funding from the J R McKenzie Trust. It was decided that a date for the conference should be set after the decision on the Part 1A claim had been handed down. The annual subscription for membership of Adoption Action Inc remains at $10.

You can help Adoption Action's campaign for adoption reform by becoming a member. An application form is provided at the end of this newsletter.

Decision in Part 1A claim

Five months have passed since the hearing of Adoption Action's Part 1A claim to the Human Rights Tribunal was completed and no decision has yet been handed down. A special issue of Adoption News and Views will be sent out when the decision is given.

Adoption First Steps secures approval to write intercountry adoption Home Study reports

An important activity of Adoption Action in 2013/14 was the preparation and filing of a submission in opposition to an application by a non-government organisation, *Adoption First Steps Inc* (AFS), for approval to undertake education and assessment of potential New Zealand adoptive parent(s) seeking to adopt an overseas child, and the writing of Home Study reports on a fee for service basis Despite opposition from Adoption Action and other individuals and organisations, AFS was, in September last year, granted accreditation.

Adoption First Steps (AFS) originally applied for accreditation in August 2010 (nearly three years earlier) but their application was declined after careful consideration by the Ministry of Social Development, for reasons set out in detail in an 18 page Memorandum, Application by Adoption First Steps for Accreditation under the Adoption Intercountry Act 1997, and an Assessment Report, Assessment 51584, dated 28 November 2011.

Adoption Action successfully opposed the first application. The repeat application was made in virtually identical terms to the first application. Adoption Action's grounds for opposition can be summarised as

follows:

- Accreditation should be the responsibility of the New Zealand Central Authority for the Hague Convention and not that of the Ministry of Social Development Approvals Section, which made the decision.
- Accredited agencies under NZ's Intercountry Adoption Act are limited to writing reports in relation to adoption of children from countries that are parties to the Hague Convention. The terms of AFS accreditation appear to extend to adoptions of children from overseas countries that are not parties to the Convention.
- New Zealand's laws governing intercountry adoption are outdated and inconsistent with this country's obligations under international human rights treaties to which this country is a party. In a detailed Memorandum, *Reform of Adoption Laws,* provided by the Minister of Justice to Cabinet Committees in 2003 and again in 2006, the Minister recommended that adoption laws, including the Adoption (Intercountry) Act 1997, be repealed and replaced with a new Adoption Act. The Minister highlighted three significant areas of intercountry adoption law that were in need of reform.
- The Memorandum referred to above indicated (para 108) that "Pre-adoption assessment services are intended to foster the best interests of the child, fitting within the range of family-focussed government-funded services". It recommended that "*Child, Youth and Family should remain the only organisation allowed to assess prospective adoptive parents for both domestic and intercountry adoptions*." This recommendation has never been implemented.
- NZ's intercountry adoption laws are inconsistent with the United Nations Convention on the Rights of the Child. In February 2011, The UN Committee on the Rights of the Child recommended that New Zealand complete its promised review of adoption laws to bring them into line with the Convention on the Rights of the Child and the Hague Adoption Convention. This has not been done.
- While only not-for-profit organisations can be accredited, an accredited agency is able to charge fees to prospective adoptive parents. Accreditation of AFS will result in a dual system under which some prospective adoptive parents will have their assessment and report undertaken without cost by Child, Youth and Family social workers, while others will have to pay a substantial amount for the same services. Traditionally, the government has subsidised adoption applications - presumably on the basis that people who are willing to assume parenthood and undertake responsibility for the upbringing of other people's children should be encouraged. No fees are payable for adoption court proceedings, nor for services provided by Ministry of Social Development adoption social workers. It is clear from its name and documentation that AFS has links with an American commercial organisation, "First Steps", which (according to its website) provides commercial services for people or organisations seeking a child to adopt via a domestic adoption. It offers help to prospective adoptive parents, assisting them to advertise for a child to adopt (which is illegal in NZ) and to prepare a personal profile which will be attractive to parents considering placing their child for adoption.
- Those involved in AFS appear to be mainly adoptive parents and there is a risk of lack of objectivity and/or conflict of interest when it comes to writing home study reports in intercountry adoption cases.

ADOPTION NEWS – New Zealand

Children's Commissioner supports view that adoption laws breach children's rights

The Children's Commissioner has a statutory power, where there are issues before any court or tribunal that relate to the United Nations Convention on the Rights of the Child (UNCROC) or to the rights, interests or welfare of children generally, to present a report on such issues to the court or tribunal. This power has seldom been exercised, but the Commissioner filed a report with the Human Rights Review Tribunal supporting the grounds of age discrimination and race discrimination in Adoption Action's Part 1A claim, namely:

- section 4(1) of the Adult Adoption Information Act 1985 that prevents persons aged under 20 from obtaining a copy of their original birth certificate, thus unlawfully discriminating against young persons aged between 16-19 years, on the grounds of their age;
- section 16(2)(a-c) of the Adoption Act 1955 that does not enable or require a record of a Maori child's whanau, hapu and iwi affiliations, thus unlawfully discriminating against Maori children, on the grounds of their race or ethnic origin.

Access to information

Commissioner Russell Wills considered that UNCROC clearly provides children with the right to access information about their birth parents, as far as is possible and in consideration of their best interests. In support of this view he took into account the relevant Articles of UNCROC, in particular Article 7 (child's right to know his or her parents), art 21 (child's best interests to be the paramount consideration), and the UN Committee on the Rights of the Child's assessment of New Zealand's implementation of the Convention.

He also relied on Article 9 of the UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally, which provides that:

> *"The need of a foster or an adopted child to know about his or her background should be recognised by persons responsible for the child's care unless this is contrary to the child's best interests"*

The Commissioner further noted that the Privacy Act 1993 provides all people, regardless of their age, with the presumptive right to access information held about them by an agency. He considered that the denial of access by under-20s to information about their natural parents is at odds with New Zealand's information privacy laws

Lack of access to information about child's Maori identity

The Commissioner referred to art 8.1 (right of child to preserve his or her identity**,** including, name and family relations), and art 30 (right of indigenous child to enjoy his or her own culture). He added that the concept of a child's 'identity' under Article 8.1 has been interpreted broadly to include cultural and ethnic affiliations and that the duty upon the State to "preserve" the child's identity, has been described by UNICEF as implying:

> *"…both the non-interference in identity and maintenance of records relating to genealogy, birth registration and details relating to early infancy that the child could not be expected to remember*."

The Commissioner argued that art 30 underpins the rights of indigenous and minority culture children to enjoy and maintain their cultural identity and, in the New Zealand context, reinforces the rights of Maori children under Article 2 of the Treaty of Waitangi.

He also referred to art 20.3 of UNCROC, which places a specific duty upon States Parties to pay due regard to the cultural and ethnic background of any child permanently or temporarily deprived of their family background, which must include children who are deprived of these through adoption.

In addition, Commissioner Wills made reference to the UN Declaration of the Rights of Indigenous People, signed by the New Zealand Government in 2009, which further reinforces a positive obligation on States Parties to ensure that mechanisms are in place to protect indigenous people, including children, from being deprived of their cultural identity. Article 8.2(a) provides:

> *States shall provide effective mechanisms for prevention of, and redress for…any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities*.

He further noted that the need to ensure that children maintain cultural continuity and connection following family separation had long been reflected by New Zealand's child protection laws. The Children, Young Persons and their Families Act 1989 provides for the principle that children removed from their families should be entitled to a placement "in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained." The importance of cultural identity and continuity is also recognised by the Law Commission in its 2000 report, where it noted that "much of the criticism levelled by Māori and other cultural groups at the Adoption Act relates to lack of input into decision-making and the restrictions placed upon access to information."

A copy of the Children's Commissioner's report to the Human Rights Tribunal can be accessed on the Adoption Action website, or a hard copy obtained from Adoption Action.

Pioneers in adoption reform – Joss Shawyer

Since the 1970s, Joss Shawyer has been a forthright advocate for the rights of single mothers, and a critic of adoption laws and practices which have disadvantaged and damaged single women who were pressured to give their babies in adoption. Her book *Death by Adoption* (1979) is a classic, far ahead of its time.

In 1973 Joss founded the *Council for the Single Mother and Her Child* (CSMC), an organisation established to provide information and support for single mothers under pressure to place their child for adoption. It published an information booklet, *Everything a Single Mother Needs to Know,* which went into three editions. She later started Jigsaw, to help adopted children and birth families to find each other.

It is helpful sometimes to look back to New Zealand in the 1970s. Joss has kindly contributed for *Adoption News and Views* her recollections of that era and the decision to set up CSMC. Joss has Diplomas in Social Work and Community Work, and was awarded the Queen's Service Medal in 1990 for her work in raising the status of women in New Zealand. She now lives in Queensland.

Joss writes:

> *"The Council for the Single Mother and Her Child (CSMC) was founded and incorporated in Auckland in 1973 by myself and two other single mothers. The catalyst for its creation was talkback radio, where listeners were encouraged by radio hosts to abuse and denigrate unmarried mothers for daring to "keep" their infants rather than relinquish them for adoption. The organisation grew quickly because key journalists in popular media sought us out and published our stories of social and financial hardship. Although the Domestic Purposes Benefit was introduced for unsupported parents in 1973, single mothers were routinely excluded from making applications by prejudiced Social Welfare Department employees unwilling to accept our eligibility. In fact, single mothers were only included in eligibility qualifications after we wrote and complained to the then Prime Minister, Norman Kirk. He ordered civil servants to include single mothers in DPB criteria. However, it took another three years or so before applications by single mothers were able to be lodged without encountering extreme hostility and multiple refusals.*
>
> *Before that, single mothers were excluded from receiving government assistance by the "morals clause" in the Social Security Act. It allowed deserted wives and widows to receive financial support, but excluded single mothers on the grounds of immorality. At the same time, successive governments had provided financial support to church and private institutions for the purposes of*

incarcerating unmarried mothers until the baby's birth, at which time the baby was adopted as rapidly as possible, and the mother forced to sign an adoption "consent" before she was ej4ected from the facility. Families, communities and solicitors colluded with institutions and hospitals to ensure that the natural bond between mother and infant was severed as rapidly as possible. The Adoption Act 1955 underpinned the destruction of the mother/infant relationship. The mother was obliterated and replaced by the contrived adoptive "family" that took her place. Public hospitals colluded and such was the wholesale separation of mothers and infants that entire wards were set aside exclusively to accommodate babies available for adoption as a result of government policies and legislation.

When an unmarried mother was six months pregnant in 1969 (the year my twins were born), she could apply for a Sickness Benefit ($13 a week). Payment was continued for 12 weeks after the child was born if the mother was breastfeeding. A mother needed a doctor's certificate to prove she was breastfeeding. However, most unmarried mothers were not allowed to see their babies, let alone breastfeed, so it was part of the universal New Zealand strategy of forced adoption that had started in the 1950s and remained in force well into the 1970s, when single mothers became eligible for the DPB. Even then, a condition of a DPB being granted was that the single mother had to access maintenance from the child's father, which led to lurid court cases where men brought their friends to court to testify that they all had had sex with the mother and therefore paternity could not be established. Where no maintenance order was made, the mother remained ineligible to receive the benefit. Only where a paternity order was obtained or the father signed the birth registration papers was paternity established. The difficulties and delays involved led, of course, to more forced adoptions because of the government not providing financial support."

Joss has strong views on adoption terminology and the need for the New Zealand government to make an apology to women who lost their children to forced adoption. These views will be published in a later issue of *Adoption News and Views*.

A new Family Law concept of Special Guardianship

The Vulnerable Children Bill, which was reported back to Parliament by the Social Services Parliamentary Committee in March 2014, is an "omnibus" Bill containing a miscellany of different provisions aimed at assisting "vulnerable children". These range from the development of plans at a high policy level, to policies on reporting child abuse, to safety checks of employees, to a range of amendments to the Children, Young Persons, and Their Families Act 1989. The Bill has nearly completed its passage through Parliament.

One of the new concepts in the Bill is "special guardianship". The new provisions on this will soon be found primarily in ss 110, 110A, 113A and 113B of the Children, Young Persons, and Their Families Act 1989.

Readers may recall that the Law Commission, in its report *Adoption and its Alternatives* in 2000, floated the idea of "enduring guardianship". It was thought that this could operate as an alternative to adoption without cutting all the legal ties of parenthood with the birth parents. The Commission's proposal would have had consequences running into adulthood, just like adoption.

Special guardianship is very different from enduring guardianship. Like ordinary guardianship, it ceases when the child reaches 18. It is not designed for situations such as step-parents considering adoption or in-family situations such as whāngai. Instead, it is aimed at foster parents who are permanent caregivers of children who have been removed from their homes. While adoption is used in other countries for providing homes for children in care, it is rarely used in New Zealand. So special guardianship is not going to be a genuine alternative to adoption in practice.

Nevertheless, the purpose of special guardianship is not unlike adoption, in that it will give special guardians greater security in the upbringing of the child. Regular reviews, which occur at the moment under the Children, Young Persons, and Their Families Act, will cease. The birth parents, assuming they have been guardians, will in general be unable to challenge the continuing existence of the special

guardianship order or the way in which the special guardians are bringing up the child. The birth parents cannot seek a variation or discharge of the special guardianship order unless they get the leave of the court, which in turn is based on a "significant change" of circumstances.

Special guardians may obtain sole guardianship, as with adoption, but not necessarily so. The court may choose to appoint them as additional guardians, along with the birth parents, but with certain rights as specified in the order being exclusively for the special guardians. Unlike adoption, the special guardianship order "must specify the access and other rights" that the birth parents will have.

In contrast to adoption, there are no consent rules. This extends to the child, who is likely to be old enough to understand what is going on. In fact, reference to the views of the child are noticeably missing. The child's wishes get a sparse mention in s 5(d) of the existing Act, but surely special guardianship calls for something more.

The test for appointment as a special guardian is very tight, ironically much more so than under the Adoption Act 1955. First, the appointment must provide the child "with a long-term, safe, nurturing, stable, and secure environment that enhances his or her interests" (s 113A(1)(a)). I am not sure I can recall another family law statute that has so many adjectives. What do they all mean? What do they add to the existing section 6, which makes the welfare and interests of the child paramount?

Secondly, in most instances, an applicant for a special guardianship order will need leave of the court under s 110A. This is an overly complex section. Leave will not be easy to get. Essentially the birth parents must have been acting in such a disruptive fashion that the permanent carers cannot carry out their responsibilities properly, and this must be causing the child's welfare to be "threatened or seriously disturbed". In addition, the "mechanisms" under the Care of Children Act 2004 must have been exhausted, which, since the changes in March this year, includes "FDR" or mediation. Will this always be appropriate for permanent placement situations?

So, special guardianship, as a half-way house between guardianship and adoption, is a good idea. However, unlike the equivalent UK legislation, the legislation is drafted in such a convoluted way and has such a narrow focus that it is likely to be used only in rare situations. It is an opportunity lost.

Contributed by Bill Atkin, Professor of Law, Victoria University of Wellington

As a comparison, see the information about Permanent Care Orders available in the Australian State of Victoria, discussed below.

INTERNATIONAL NEWS

Victoria, Australia: *Permanent Care Orders* as an alternative to adoption

Permanent Care Orders (PCOs) have been available in the Australian State of Victoria since 1992, for children whom the Department of Human Services (DHS) deem not able to live safely with their birth families. All attempts at birth family reunification are exhausted before a PCO is sought. They are made by the Children's Court under the Children, Youth and Families Act 2005 (Vic) and give the alternative carers custody and guardianship of the child. Applications for a PCO are usually made by (i) members of the child's extended family who have been caring for the child for some time; (ii) approved long term foster carers; and (iii) individuals or couples who apply directly to one of the nine Care and Adoption teams in Victoria.

PCOs are seen as having advantages over adoption orders, in that:

- the legal connection between birth parents and child is retained, unlike an adoption order, which severs those legal ties. This allows for ongoing connection between child and birth parent, which is seen as a more honest and open arrangement;
- a PCO does not require the consent of the birth parents;
- a PCO does not lead to confusion by conferring on the child a new set of extended family relationships. Under adoption law, grandparents who adopt their grandchild become the child's parents and the biological parents become, in law, strangers to the child. When a PCO is made, the birth parents remain the child's legal parents and their names remain on the birth certificate.

There are perceived to be some disadvantages in having a PCO order rather than an adoption order, including that children subject to a PCO:

- do not automatically inherit from their carers or other members of the PCO family. The child's right to Inherit from their birth family remains intact;
- do not have PCO parents' names included in their birth certificate. They can apply to the Births, Deaths and Marriages Registry for a name change, but the Registry has the discretion to approve or refuse the application;
- do not automatically acquire Australian citizenship through their PCO parents, which may lead to problems in obtaining a passport for the child.

There is a potential lack of security for families who have obtained a PCO, as birth parents can apply for a revocation of the order or for variation of agreed contact arrangements, and PCO parents may have to attend court on such applications and meet the legal costs involved.

The above draws on a paper by Dan Barron, "Carers' Perspective on Permanent Care: Is there a Third Way between Permanent Care and Adoption?" (*Australian Journal of Adoption* Vol 8 No 1, 2014). The Journal is an independent open access forum for people affected by or involved in adoption.
For further details see **http://www.nla.gov.au**

ADOPTION VIEWS

The urgent need for adoption reform - Robert Ludbrook

New Zealand's adoption laws are based on the Adoption Act 1955, which was passed nearly sixty years ago. Not surprisingly, it reflects the attitudes and values of the era in which it was drafted. Marriage was seen as the only proper foundation for the procreation of children; unmarried women who became pregnant were seen as fallen women who were unfit to have the care of their child. They were often sent away from home and expected to give birth in the anonymity of a mother and baby home, some rural hideaway or an overseas country, and immediately to give their child up for adoption. The adoption process was shrouded in secrets and legal fictions: for example, an adopted child was deemed to have been born to the adoptive parents as if the child was their natural child. While a single woman could adopt a child, the child was nevertheless deemed to have been born in "lawful wedlock": She was provided with a phantom husband! This meant that the child was cleansed of the stigma of "illegitimacy".

Young unmarried women were pressured to sign their consent to the adoption when the child was ten days old, even though they were still suffering from the effects of childbirth and being constantly reminded of the shame and guilt of bearing a child outside marriage. They were told that they could put this disgrace behind them by signing an adoption consent and forgetting all about the child they had carried for nine months and given birth to.

The child's relationships with siblings, grandparents, uncles, aunts and other whanau members were severed irrevocably without their having any say in the matter. Often, the child was adopted without the knowledge or consent of the father. These aspects of adoption have not changed.

Any contact between the birth parents and the adoptive parents was strongly discouraged and information about the other set of parents was hidden from the birth parents behind a virtually impenetrable wall. The adoptive parents, however, could often see the name of the birth mother in the adoption papers.

Attitudes have changed over the sixty years since the Act was passed, but there have been only minor changes to adoption law. Adopted persons who have reached the age of 20 have since 1985 been entitled to a copy of their original birth certificate with the name of their birth mother (and in some case that of their natural father), but the birth mother can veto disclosure of this information. Similarly, adopted persons can veto disclosure of their new identity to the birth mother. Important information, such as a child's ethnic identity and the tribal affiliation of a Maori child, was often not recorded.

It has been accepted for many years that our adoption laws are seriously outdated and no longer reflect the attitudes and values of contemporary society. Despite this broad acceptance and a great deal of research and analysis carried out by the Law Commission and Ministry of Justice staff, adoption reform has not progressed. For details of the various failed moves to draft and introduce new adoption laws, see the Chronology sent with this Newsletter.

Law Commission Report 2000

After widespread consultation and the circulation of a comprehensive discussion paper, the Law Commission in 2000 released a detailed report, *Adoption and its Alternatives: a different approach and a new framework,* setting out more than 100 recommendations for new adoption laws. There has been broad acceptance of these recommendations.

Research and consultation by Ministry of Justice

Most of the necessary background work was in fact done by the Ministry of Justice in 2006. Those pressing the need for adoption reform have lobbied successive Ministers of Justice to achieve the required legal reform. Earlier, Labour's Justice Ministers, Lianne Dalziel and Mark Burton, presented detailed proposals for adoption reform to Cabinet in 2003 and 2006, but these were not acted on. The

previous Minister of Justice, Simon Power, in his valedictory speech, voiced regret that during his term as Minister, the government had not been willing to confront certain controversial issues, referring particularly to adoption law. The current Minister, Judith Collins, has flatly refused to give priority to adoption reform. Her lack of enthusiasm for adoption reform is particularly puzzling because, while she was a lawyer in private practice, she had been strongly critical of adoption law and had pressed for change.

Is adoption reform controversial?

The reasons that successive governments have not moved on adoption reform are unclear. It was thought that the recommendation by the Law Commission that there should be no restrictions on who could apply for an adoption order, and that otherwise suitable adoptive applicants should not be disqualified on the basis of their sex, age, marital status or sexual orientation, might meet with widespread disapproval because gay couples could adopt a child. The Marriage Amendment Act passed last year enables same-sex couples who are married to jointly adopt a child. A 2012 court decision opened the door for unmarried heterosexual couples in a stable long term relationship to adopt a child.

An Adoption Reform Bill was drafted by Parliamentary Counsel's office in 2006, but it has never been introduced into Parliament or circulated for discussion. It was based on sixty pages of recommendations for reform submitted to Cabinet by the then Minister of Justice

2014 is election year. Everyone concerned about the sorry state of our adoption laws has the opportunity to lobby their local MP and the various Parliamentary parties. Now is the time to act!

Robert Ludbrook

HUMAN RIGHTS AND ADOPTION REFORM

New Zealand out of line with international opinion and human rights treaties

New Zealand governments have said time and time again that "it is New Zealand's policy that a treaty is ratified or acceded to only once any legislation required to implement it has been passed". The Government has on numerous occasions advised international bodies charged with responsibility for monitoring compliance of ratifying countries with various United Nations Covenants and Conventions that it takes its obligations seriously.

The reality is, sadly, that New Zealand regularly ratifies a range of human rights conventions despite it being glaringly obvious that its laws are non-complaint. One example of this failure is New Zealand's ratification of the Convention on the Rights of the Child (UNCROC), despite it being aware that New Zealand's adoption laws were in several respects inconsistent with its obligations under UNCROC.

At the time of ratification, Rt Hon Don McKinnon, New Zealand's then Minister of Foreign Affairs and Trade, stated that:

> "*Although no legislative changes were necessary to enable the Government to take this step [of ratifying UNCROC], future policy development affecting children – including proposals for new legislation – will need to be considered in the light of the Convention. The Convention will ensure that the interests of the children are fully considered in the future*".

These were reassuring words, but the reality is that the New Zealand government had not then (and has not since) undertaken an audit of all laws and policies affecting children to identify any areas of inconsistency with UNCROC rights. Furthermore it has stubbornly refused to develop a plan of action to identify and rectify any areas of non-compliance. UNICEF New Zealand in February this year released a publication, *Kids Missing Out: It's time to make progress on children's rights,* which commented that New Zealand's "progress in the implementation of UNCROC has been patchy and too slow". It gives adoption law as one example:

> "*Adoption law is based on an Act passed in 1955 which is out of touch with modern attitudes and values and which, in several of its provisions, discriminates on grounds which are unlawful under the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. The Law Commission, the judiciary, and persons affected by adoption have all called for reform. Despite this, and recommendations for reform made in 2003 and 2011 by the [UN Committee on the Rights of the Child], the changes needed to bring adoption legislation into line with UNCROC have not been made.*"

Specific criticisms made in the report include:

- Under 18s have no say in relation to their adoption and an adoption order can be made extinguishing their relationship with their parents and with all members of their birth family without their knowledge or consent;
- The child's welfare and best interests are not the paramount consideration when an adoption order is made;
- In the case of adoption of Maori children, the views of members of the child's whanau, hapu and iwi do not have to be ascertained and family members have no say in relation to the adoption;
- Under-18s have no right to obtain information about their biological parents and any natural siblings, step-siblings, grandparents or other relatives;
- Adopted children are in almost all cases given new names by their adoptive parents and have no say in the new names conferred on them;
- Adoption laws governing intercountry adoptions are not fully compliant with the Hague Convention on Intercountry Adoption to which New Zealand is a party.

The New Zealand delegation that attended the 2003 meeting with the UN Committee gave the Committee an assurance that it intended to reform adoption legislation to bring it into conformity with UNCROC. This assurance was welcomed by the Committee. Eleven years on, no new legislation has

been introduced, despite detailed proposals for reform being put to Cabinet in 2003 and 2006 and despite the previous Minister of Justice, Simon Power, stating in his valedictory address in 2007 that he regretted that no move had been made on adoption reform.

Kids Missing Out can be viewed on the UNICEF website **https://www.unicef.org.nz/Reports/Kids-Missing-Out** or a hard copy can be obtained on request from Adoption Action Inc.

Universal Periodic Review of New Zealand's Human Rights Record 2013/14

The Universal Periodic Review (UPR) is a process by which a range of member countries of the United Nations review progress made by other member countries in meeting their human rights obligations under UN Covenants and Conventions. The second review of New Zealand's track record took place in 2013 and 2014. While there is no specific reference to adoption in the recommendations of other member countries, some of these are directly relevant to adoption reform in New Zealand.

New Optional Protocol to UN Convention on the Rights of the Child

UPR Recommendation 11 - New Zealand should ratify the Optional Protocol on a Communications Procedure to the UN Convention on the Rights of the Child

Explanation
This Optional Protocol would give New Zealand individuals and organisations affected by a violation by government of any of the rights assured to children in UNCROC the right to bring their claim to the notice of the UN Committee on the Rights of the Child. A complaint can be filed only if domestic remedies have been exhausted. On receiving notice of the claim, the UN Committee on the Rights of the Child must seek an explanation from the government and assist the complainant and the government to reach a friendly settlement. The Communications procedure would also allow claims from victims in respect of the breaches of the Optional Protocols on the Sale and Trafficking of Children, Child Prostitution and Child Pornography.

NZ government's response
New Zealand will consider the implications of signing and ratifying the Optional Protocol as part of its commitment to UNCROC.

Editor's comment
NZ ratified UNCROC 21 years ago and has failed in many respects to make changes to its laws and policies to bring these into line with the Convention. The UN Committee on the Rights of the Child in 2003 and again in 2011 pointed out to the NZ delegation that this country's adoption laws were inconsistent with UNCROC in several respects. Eleven years on, adoption reform remains stalemated. For the government to tell the international community that it would take the opportunity when reviewing existing legislation to embed UNCROC rights in new laws is disingenuous, since it has steadfastly refused to make changes to adoption law and youth justice laws, amongst others, to align NZ law with UNCROC.

New Zealand Bill of Rights Act (NZBORA)

UPR Recommendations 29, 31, 32, 33, 34, 35. All these recommendations, while worded differently, urge New Zealand to incorporate in its domestic legislation (and, in particular, in the New Zealand Bill of Rights Act 1990).rights in UN Human Rights instruments to which New Zealand is a party and, in particular, in the New Zealand Bill of Rights Act 1990 (NZBORA).

Explanation
NZBORA included in domestic law most of New Zealand's obligations under the United Nations Covenant on Civil and Political Rights which NZ had ratified December 1978. While NZBORA included no enforcement mechanism, the Courts have held that in some circumstances the rights are enforceable. It would not be difficult to include rights to which New Zealand is committed under other

international human rights treaties, in particular, the International Covenant on Economic. Social and Cultural Rights (ICESCR) ratified in 1978) and the UN Convention on the Rights of the Child (ratified in 1993). Many other countries have done this.

NZ government response
The government accepted the general recommendations that NZ enshrine its international human rights obligations in domestic law, but indicated that it was awaiting the outcome of the deliberations of the Constitutional Review Panel before making a decision about including economic, social and cultural rights in NZBORA or in any future constitutional document. The Panel reported in December 2013 that a range of views had been expressed on the desirability of a formal constitution, but proposed that government take steps to add economic, social and cultural rights to NZBORA and improve compliance with ICESCR. There has been no move on this recommendation.

Editor's comment
New Zealand's strategy in dealing with accusations of its failure to honour its international human rights obligations is to give the impression that it is working on the issues, but then not to take any effective action. This response lacks credibility when ICESCR was ratified 36 years ago and UNCROC was ratified 21 years ago. UN Committees have on many occasions pointed out areas of non-compliance.

Alignment of NZ domestic law with UNCROC obligations

UPR Recommendation 54
New Zealand should ensure that all national legislation currently in force relating to children is in conformity with the Convention on the Rights of the Child, guaranteeing that the principles and provisions of that Convention and its protocols are applicable to every child in its territory.

NZ government's response
New Zealand continues to progress towards greater compliance with the principles and provisions of UNCROC. Where inconsistencies exist, New Zealand will take the opportunity, when creating or reviewing policy and legislation, to further embed the Convention's principles and provisions.

Editor's comment
New Zealand ratified UNCROC 21 years ago and has failed in many respects to make changes to its laws and policies to bring these into line with the Convention. The failure to do so with regard to adoption laws has been outlined above. The NZ delegation gave an assurance the UN Committee on the Rights of the Child in 2003 that it intended to reform its adoption laws (an initiative welcomed by the Committee). Shortly afterwards it abandoned work on such reforms and lamely explained to the Committee in 2011 that this was because of "other priorities".

Other issues raised in government's response

The government's response indicates that the Human Rights Commission is developing a second national human rights action plan. This is a welcome assurance but it fails to explain that the first action plan covered the period 2005 to 2010, and many of its recommendations have not been implemented, One designated priority for action was to "ensure that child's and young person's voice is given due weight in court and tribunal proceedings that affect them.". Children whose adoption is under consideration in the Family Court do not have a lawyer to represent their interests and have no mechanism by which their views can be placed before the Judge, who is making a decision that will sever their relationship with their parents and all relatives. Similar recommendations were made in the Human Rights Commission 2010 report *Human Rights in New Zealand*.

There have been some 17 reports over the last 35 years advocating reform of our adoption laws, but no progress has been made by government on the important issues highlighted in these reports.

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:

_____

_____

SIGNATURE:

_____

DATE: _____

Optional:

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

_____

PLEASE NOTE: Members receive, by email, the quarterly newsletter *ADOPTION NEWS AND VIEWS*
If you do NOT wish to receive this newsletter, please tick the box below.

❑ **PLEASE DO NOT EMAIL THE NEWSLETTER TO ME**