ADOPTION ACTION INC

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Aotearoa New Zealand

Adoption News and Views June 2016 ANV16 2

Adoption News and Views is an occasional 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. 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 submitted.

Adoption Action has been pressing for major reform of New Zealand's adoption laws since it was formed in September 2010. Members of the group that formed the nucleus of the incorporated society had earlier lobbied three Ministers of Justice without any progress being made despite Ministerial assurances. With the intention of putting pressure on the National-led government, Adoption Action filed of a claim with the Human Rights Review Tribunal in July 2011 claiming that, in eight different respects, New Zealand adoption laws discriminate on grounds on which it is unlawful to discriminate under the Human Rights Act 1993 and NZ Bill of Rights Act 1990. Seven out of the eight claims were supported by the Human Rights Commission and two affecting children and young people were supported by the Children's Commissioner. As reported in the last issue of Adoption News and Views, the Tribunal rejected nearly all of the arguments relied on by the Crown lawyers. It upheld seven of the eight points of claim and made declarations of inconsistency on each of those seven matters. The declarations require the Minister of Justice to report to Parliament on the action it intends to take to remedy the discriminatory provisions. The only possible remedy is legislation to amend or repeal the discriminatory provisions of the Adoption Act 1955 and the Adult Adoption Information Act.1985. The Crown had 30 days to appeal the Tribunal decision, but have chosen not to do so. They now have until 8 August 2016 to inform Parliament that they have allowed adoption laws that are riddled with discriminatory provisions to remain on the statute books and to advise what steps they propose to take to remedy the situation. There are many other provisions in these Acts that are archaic and out of touch with contemporary attitudes and values. Adoption Action has always made it clear that the proceedings were initiated to put pressure on government to undertake a comprehensive review of our adoption laws.

It has been a long battle, and in this Newsletter we take the opportunity to thank the many people who have helped with the drafting and the presentation of the claim. In particular, we thank:

- The Human Rights Commission for supporting our claim, especially Sylvia Bell, and their counsel Frances Joychild, whose specialist expertise and strong submissions were invaluable in advancing our claim;
- The Children's Commissioner, Dr Russell Wills, and in-house lawyer John Hancock, who made strong submissions on the two grounds affecting children;
- Professor Mark Henaghan, Head of the Otago University Law School, and faculty member Abby Szush, who drafted our submissions on some of the heads of claim. Mark also expertly handled media inquiries;
- Members of Victoria University Community Justice Project, especially Tim McGuigan, who drafted submissions on some heads of claim;
- Our Convenor, Fiona Donoghue, and members of the Adoption Action Inc Committee, who provided input and support at every step of the way;
- The people who made donations to help us with the claim, especially Diana Grant-Mackie.

Robert Ludbrook and Dr Anne Else – Editors
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Adoption News and Views is sent out several times each year. It 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: r_ludbrook@hotmail.com

Back issues can be viewed on the Adoption Action website: www.adoptionaction.co.nz

ADOPTION ACTION NEWS

Annual General Meeting 2016

The Annual General Meeting of Adoption Action Inc was held on Thursday 12 April at 12.30 pm. Officers elected for the year to 31 March 2017 are Fiona Donoghue (chairperson), Louise Brazier (Secretary), Robert Ludbrook (Treasurer), Bill Atkin, Anne Else, Mary Iwanek and Charlotte von Dadelszen. It was voted that annual membership fees remain at $10 per person. An application for membership for the year to 31 March 2017 can be found at the end of this Newsletter.

Following the AGM, a meeting of those present agreed that Adoption Action should now turn its mind to the content of new adoption legislation. We received funding some time ago from the McKenzie Foundation to hold a conference and we anticipate that the conference will be held in Wellington in September or October 2016. By then we should know what action the Ministry of Justice plans to take as a result of the Tribunal's declarations of inconsistency.

Comments on Human Rights Review Tribunal decision and its implications

Background to Adoption Action's tribunal claim

Dr Anne Else (author of *A Question of Adoption* and Adoption Action Committee Member)
Originally published online in Werewolf

Adoption has been back in the news recently. In March 2016 the Human Rights Review Tribunal issued an important decision on a long-running claim by Adoption Action Inc. This lobby group works to bring about reform of New Zealand's seriously outdated adoption legislation. The goal is to arrive at updated law that enhances the rights and well-being of children, reflects current social attitudes and values, and accords with national and international human rights standards.

Adoption Action isn't alone in calling for the law to be overhauled. This campaign has an incredibly long history. For at least three decades, individuals and expert groups have been trying to get the 1955 Act reformed, to bring it into line with later legislation on the care of children, and with contemporary concepts of what works best for children and families of all kinds.

Underlying the Adoption Act 1955 were two key presumptions: that adopted children and their unmarried birth mothers would be best served by a "clean break", with no future knowledge of or contact with each other; and that this clean break was also required by adoptive parents, in order to make the adopted child fully their own, as if born to them. The Act mentions the child's interests only once, and those interests are not paramount.

In 1978 Jonathan Hunt introduced the first Bill designed to allow adult adoptees and birth mothers to identify each other, and Fran Wilde continued his work. Two years after the Adult Adoption Information Act came into force in 1986, close to 11,000 adopted people (around one in four of those eligible) had used it, as had over 2,500 birth parents. Yet the Adoption Act itself remained unchanged. Unlike other statutes on the care and protection of children, the Adoption Act comes under the Ministry of Justice (formerly Department of Justice), which published its first review of the Act in 1979. It was followed by a long string of reports putting forward recommendations for change. The most comprehensive re-think came in 2000 when, after consulting widely, the Law Commission produced a report called *Adoption and Its Alternatives*. It proposed that adoption law be integrated into a Care of Children Act, and made over 100 recommendations for detailed reform.

At first, the report seemed to have made an impact. In 2002 the Associate Minister of Justice, Hon Lianne Dalziel, indicated that an Adoption Bill giving effect to the Law Commission's

recommendations would be introduced later that year. But it was not. A lengthy sequence of reconsiderations, suggestions for change and promises of imminent reform followed. Regardless of which party was in power, none of this commentary led to any changes to the Act.

The 2013-14 hearings of Adoption Action's claim revealed something surprising: back in 2006, a Bill had in fact been drafted by Parliamentary counsel, although it wasn't clear who had asked them to do this. For reasons that have not been divulged, it was never released publicly, and never brought to the House.

By then, the United Nations and the Human Rights Commission had repeatedly noted how far out of line with human rights law our adoption statutes were. The law is inconsistent in many respects with New Zealand's obligations under the United Nations Convention on the Rights of the Child and the Convention on the Rights of Persons with a Disability. Judges and lawyers who had to deal with the 1955 Act were regularly pointing out how outdated it was. They were well aware that the kinds of adoptions it was being called on to legitimise were more diverse than ever.

What most people still think of as "traditional" adoption (although in fact it became the norm only in the 1950s) is a married couple adopting a New Zealand baby who is unrelated to them by birth. By 2006, this type of adoption had already shrunk to well below 100 a year (and was down to 21 in 2012). This decline was in line with most other developed countries. In general, mothers "choose" stranger adoption only when they see no other option.

Instead, the courts were dealing with:

- step-parent adoptions, which – in legal terms – cut off one side of the child's birth family completely;
- adoptions by New Zealand residents of children born in a changing range of other countries, most of which had not signed up to the protective Hague Convention;
- increasing numbers of adoptions involving children born at the behest of the intending parents to a "surrogate" mother, in or out of the country. This has occurred in the wake of the passing of the Human Assisted Reproductive Technology Act 2004. In some cases the "surrogate" was also the child's genetic mother.

The calls for reform and the UN expressions of concern continued, but the catalogue of delays, broken promises and refusals even to put adoption back on the Justice work programme (because it was "not a priority") simply grew longer.

One reason for the inaction was obvious: any reform programme would have to cover what was believed to be the highly controversial issue of adoption by same-sex couples, either of existing children or of children created with the assistance of others.

The Homosexual Law Reform Act had been passed in 1986, but the Adoption Act specified that only "two spouses" could adopt jointly. When the Legalise Love campaign was launched in August 2011, it promoted equality in both marriage and adoption. Since same-sex couples became able to marry in 2013, if they do so they are also able to adopt jointly.

By 2011, six separate government committees and two Parliamentary Committees had recommended comprehensive reform. In July that year, Adoption Action Inc lodged a claim with the Human Rights Tribunal under Part 1A of the Human Rights Act. This was supported by the Human Rights Commission and (on two heads of claim alleging discrimination against children on the grounds of their age) by the Children's Commissioner.

The claim alleged that various provisions in the Adoption Act 1955 and the Adult Adoption Information Act 1985 directly discriminate in eight respects, and on six prohibited grounds. Seven of the allegations involved the grounds of sex/gender, marital status, sexual orientation, disability and age. There was also a claim of indirect discrimination on grounds of race, alleging that Māori were particularly disadvantaged by adoption. Discrimination on all these grounds is illegal under the Human Rights Act 1993 and under the New Zealand Bill of Rights Act 1990.

Adoption Action was frank about the fact that it was bringing the claim in order to bring pressure to bear on the Government over adoption law reform. However, these human rights claims could highlight only

a small proportion of the problems with the Adoption Act and the Adult Adoption Information Act. Many other important issues (such as the lack of any genuinely informed consent and the way the Act severed all legal relations with birth families) could not be addressed in terms of discrimination. While the claim did try to address the clash between Māori concepts of whakapapa and the adoption legislation, this was difficult to deal with through this process.

Over a year of mediation with the Crown was unsuccessful, and the case was heard in December 2013 and January 2014. This was a complex case involving very large numbers of disclosed documents, and Tribunal members are funded to serve only part-time. (The Tribunal is funded from Vote Courts, which is the responsibility of the Minister of Justice.) So it was not really surprising that the Tribunal took over two years to reach a decision.

The Tribunal handed down its decision on 7 March 2016. It found in favour of Adoption Action on all the claims except indirect discrimination based on race, which was found to be not made out through lack of evidence. It issued seven declarations that provisions in the law were "inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990', on the grounds of:

***Gender*:**
A sole male applicant wanting to adopt a female child must prove special circumstances. A sole female applicant wanting to adopt a female or male child does not have to prove special circumstances.

Marital status and gender:
Birth fathers: The consent of the birth mother is always required, regardless of her marital or relationship status, unless there is proof of circumstances such as abandonment or neglect (or she is disabled – see below). But if a birth father is not married to the mother of the child and not otherwise a guardian, his consent is not required unless the court sees it as "expedient".

Marital status and sexual orientation:
Joint applicants: According to the 1955 Act, only "spouses" can jointly adopt a child. "Spouses" covers all married couples, and this now includes married same-sex couples. So all married couples can jointly adopt. Opposite-sex couples in a de facto relationship can jointly adopt too – because in a court case, the judges ruled that "spouses" included them if they could show they were in a long-term committed relationship.

But opposite-sex or same-sex couples in a civil union, and same-sex de facto couples, were not able to adopt jointly (although one of the partners could adopt a child as a sole applicant and the other could obtain guardianship and parenting orders). (However, in late 2015, another court decision did allow same-sex de facto couples to be defined as "spouses".)

Sole applicants:
If only one partner in a marriage applies to adopt, the consent of their spouse is always required. But the consent of an unmarried partner is not required, even where the couple are living together at the time of the application. The consent of a civil union partner is not required either.

Disability:
The consent of a disabled parent or parents to the adoption of their child can be dispensed with on the grounds of that parent's physical or mental incapacity. In other words, the court can simply decide that the disabled parent(s) will be unable to care for their child and grant an adoption order without their consent. There is no proof that this has actually happened, but the law does make it possible.

Age:
No one under 25 years can adopt unless the child is a relative or there are other special circumstances. Adopted persons have to be 20 before they can access their original birth certificate with information about their biological parents. The offspring of donors can get information when they are 18, and can apply to get it earlier, at 16 or 17. The Crown did not contest this last point, but Adoption Action still had to make the case against it.

What happens now?
The only actual "remedy" available through the Tribunal is these declarations of inconsistency. But as a result, the Minister of Justice must present a report to Parliament, bringing the declarations to the notice of MPs. The report must also contain "advice on the Government's response to the declaration".

The time for the Crown to appeal against the decision has now expired. This means that the Minister is required to file her report by 15 August 2016.

The Tribunal stressed how important this case was:

> *The points raised by Adoption Action are not technical or of little practical relevance. They go to the heart of the circumstances in which an adoption order can be made. Adoption Action has established that both in relation to the giving of consent to adoption and in the making of adoption orders, the rights of birth parents and of would-be adoptive parents are directly affected. Most importantly, the best interests of the child, [when that is] treated as the paramount consideration in the adoption context, are also directly affected.*

It also made a very clear, strong statement about the urgent need for reform:

> *All contemporary commentators are in agreement the [Adoption] Act is now seriously out of date, reflecting as it does the values and practices of its day. Massive social changes have occurred in the 61 years since it was enacted…While several amendments have been made… these changes have been piecemeal, without a fundamental re-appraisal of its underlying assumptions and without a clear statement of the Act's purpose and of the values and interests it is to reflect in the second millennium.*

Commenting on the decision, retired Family Court and District Court Judge Paul von Dadelszen [see full article below] says that it "delivered a resounding rebuke to the Government":

> *This decision by the Human Rights Tribunal sends a clear message to the Government that it cannot delay any longer the updating of the 1955 Adoption Act. It is not now good enough for any Minister to say that there are other priorities. The Government has a number of options. It could introduce as its own legislation the bill drafted by the Green Party member, Mr Kevin Hague, currently languishing, waiting to be pulled from the ballot box. It could introduce the draft prepared by its own Ministry of Justice ten years ago. Or, preferably, it could start again with a new law that reflects modern expectations and which cures not only the ills identified by this important decision, but also the many other outdated aspects of the 1955 Act. But there is one option that it does not have – to do nothing.*

Summary and commentary on Adoption Action Inc v Attorney-General

Paul von Dadelszen QSO (former Family Court and District Court Judge)

This article attempts to summarise and comment on the significance of the 62 page decision of the Human Rights Review Tribunal delivered on 7 March 2016. The Tribunal ruled on an application by Adoption Action Inc brought against the Attorney-General (effectively the Government) for declarations under the Human Rights Act 1993 that certain provisions in the Adoption Act 1955 and the Adult Adoption Information Act 1985 (AAIA) are inconsistent with the right to freedom from discrimination provided for in s.19 of the New Zealand Bill of Rights Act 1993 (NZBORA). The application was supported by the Human Rights Commission and **as to two heads of claim affecting children** by the Children's Commissioner.

In making seven of the eight declarations sought, the Tribunal delivered a resounding rebuke to the Government. Now that these declarations have been made, the Minister of Justice is required under section 92K of the Human Rights Act to present within 120 days two reports to the House of Representatives: first, bringing their attention to the House and secondly, containing the Government's response.

The decision followed a ten day hearing which took place between 18 November 2013 and 14 January 2014. The fact that it took over two years for the Tribunal to give its decision is of obvious concern, but that is not the focus of this article.

The particular provisions in the Adoption Act that attracted criticism were:

Section 3(2)
An adoption order may be made on the application of 2 spouses jointly in respect of a child.

Section 4(1)(a)
(1) Except in special circumstances, an adoption order shall not be made in respect of a child unless the applicant or, in the case of a joint application, one of the applicants —
(a) Has attained the age of 25 years and is at least 20 years older than the child.

Section 4(2)
(2) An adoption order shall not be made in respect of a child who is a female in favour of a sole applicant who is a male unless the Court is satisfied that the applicant is the father of the child or that there are special circumstances which justify the making of an adoption order.

Section 7(2)(b)
(2) The persons whose consents to any such order in respect of any child are required as aforesaid, unless they are dispensed with by the Court under section 8 of this Act, shall be —
(b) The spouse of the applicant in any case where the application is made by either a husband or a wife alone.

Section 7(3)(b)
(3) The parents and guardians whose consents to any such order in respect of any child are required as aforesaid, unless they are dispensed with by the Court under section 8 of this Act, shall be,—
(b) In any other case where there is no adoption order in force in respect of the child, the mother or (if she is dead, and the guardianship concerned has not been terminated, for example, by the child turning 18 years of age) the surviving guardians or guardian appointed by her: Provided that the Court may in any such case require the consent of the father if in the opinion of the Court it is expedient to do so.

Section 8(1)(b)
(1) The Court may dispense with the consent of any parent or guardian to the adoption of a child in any of the following circumstances:
(b) If the Court is satisfied that the parent or guardian is unfit, by reason of any physical or mental incapacity, to have the care and control of the child; that the unfitness is likely to continue indefinitely; and that reasonable notice of the application for an adoption order has been given to the parent or guardian.

The claim of indirect discrimination based on race was found to be not made out through lack of evidence and was dismissed. **This head of claim asserted that children and young people under the age of 20 years cannot obtain a copy of their birth certificate**, thereby denying **them** access to information about their parenthood and personal identity **which, in the case of Māori children and children of other ethnic groups denies them information about their whakapapa and tribal connection**.

The relevant part of s.19 of the NZBORA reads:
(1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.
By s.3 of that Act, this provision only applies to “the legislative, executive, or judicial branches of the government of New Zealand” and “any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.”
Except where noted, all references to legislative provisions are to those in the Adoption Act.

The Attorney-General opposed each of the claims apart from that relating to s.4(1) of the Adult Adoption Information Act in respect of which the Crown abided the Tribunal's decision on both liability and remedy.

The decision commenced with an introduction which recorded the relatively recent history of, first, comments which note the fact that being now 61 years old, the Adoption Act is out of date and, secondly, reports of the Law Commission on the topic. The decision then gives an overview of the claim. That can be summarised in this way:

Sex (s.4(2)) – unlike a solo female applicant, a sole applicant wanting to adopt a female child must prove special circumstances.

Sex and marital status (s.7(3)(b)) – a birth father who is not married to the child's mother and who is not a guardian is not required to consent to the adoption unless the court decides that it is "expedient" to require his consent.. Birth mothers (married or not) must always consent unless certain circumstances such as abandonment or neglect are proved.

Marital status and sexual orientation (s.3(2) and s. 7(2)(b)) – unmarried partners (opposite or same sex) are unable to adopt. The consent of unmarried opposite or same-sex partners is not required. On the other hand, the consent of a spouse of a married applicant is always required.

Disability (s. 8(1)(b)) – a birth parent's consent can be dispensed with if there has been parental dereliction. But if a birth parent has a physical or mental disability, consent can be dispensed with on the established ground that the parent is unfit to have care and control of the child and such is likely to continue indefinitely.

Age (s. 4(1)(a)) – an applicant who is under 25 years of age or, in the case of a joint application, one has attained the age of 25 and is at least 20 years older than the child cannot adopt unless there are special circumstances. No special circumstances are required for couples 25 years of age and over. Age (s. 4(1) of the AAI Act) – young persons aged 16 to 19 years of age are discriminated against because those under 20 cannot obtain a copy of his or her original birth certificate. This means that access to information about parenthood and identity is denied to that younger age group.

Race – it was claimed that the effect of an adoption is to expunge the ancestry and lineage of Māori children, such being contrary to the cultural values of those peoples**.** This claim was dismissed, not on its merits (as the Tribunal pointed out) but on the basis that insufficient evidence was produced to establish a factual foundation.

As the Tribunal pointed out, **each** allegation by Adoption Action Inc had to be determined on the basis that **each legislative provision was** inconsistent with the right to freedom from discrimination affirmed by s. 19 of the NZBORA. That inconsistency is established if the act or omission limits the right to freedom from discrimination and is not a justified limitation on that right.

In analysing the claim, the Tribunal used the six step framework set out by the High Court in *R v Hansen* [2007] 3 NZLR 1 at [92]:
Step 1. Ascertain Parliament's intended meaning.
Step 2. Ascertain whether that meaning is apparently inconsistent with a relevant right or freedom.
Step 3. If apparent inconsistency is found at step 2, ascertain whether that inconsistency is nevertheless a justified [limitation]
Step 4. If the inconsistency is a justified limit, the apparent inconsistency at step 2 is legitimised and Parliament's intended meaning prevails.
Step 5. If Parliament's intended meaning represents a unjustified [limitation] the Court must examine the words in question again … , to see if it is reasonably possible for a meaning consistent or less inconsistent with the relevant right of freedom to be found in them. If so, that meaning must be adopted.
Step 6. If it is not reasonably possible to find a consistent or less inconsistent meaning, [the NZBORA] mandates that Parliament's intended meaning be adopted."

The Tribunal framed these steps by saying that the claims could only succeed "if the ordinary meaning of the relevant provisions infringe section 19 of the [NZBORA] and is not justifiable … and it is not reasonably possible to give to the provision a meaning consistent (or less consistent) with the rights and freedoms in the [NZBORA]."

It was agreed that the test for discrimination under the NZBORA was that there must be, first, "differential treatment or effects as between persons or groups in analogous or comparable situations on the basis of a prohibited ground of discrimination and, secondly, "a discriminatory impact (meaning that the differential treatment imposes a material disadvantage on the person or group differentiated against)."

In short, whether or not there is any limit on the right of freedom from discrimination depends upon whether there is a purpose sufficiently important to justify curtailment of that right or freedom.

The meaning (or interpretation), must be determined in accordance with the standard principles of statutory interpretation. Of importance in the context of legislation that affects children is the point made by the Tribunal that there is a presumption of statutory interpretation that legislation should be interpreted in such a way that is consistent with New Zealand's international obligations, in particular, those under the United Nations Convention on the Rights of the Child.

Much of the Crown's case centred on the proposition that the use of the term "special circumstances" means "when in the best interests of the child". But the Tribunal made the point that the best interests of the child are not the only interests that must be recognised.

The Crown's argument that subsequent decisions of the Family Court had the effect of updating the Adoption Act was rejected mainly on the main basis that the question before the Tribunal was whether the relevant provisions of that Act were inconsistent with the right to freedom from discrimination. That question was not one with which the Court was concerned. For the purpose of this article it is unnecessary to address the reasoning for the finding made in respect of each of the seven successful claims in detail. The Tribunal went through the six step process in *R v Hansen* and generally found that there is discrimination and that the relevant sections in the Act cannot be given a meaning consistent (or less consistent) with the right to be free from discrimination.

Having made the "discrimination" finding, the Tribunal moved to consider the only available remedy to it, namely, a declaration that under s.92J of the Human Rights Act 1993 that "the enactment that is the subject of the finding is inconsistent with the right to freedom from discrimination affirmed by section 19 of the [NZBORA]." The Crown's argument that granting relief would breach "the fundamental common law principle of comity: that the courts and Parliament must respect, and not impinge unreasonably upon, each others' constitutional roles" was rejected on the basis that the legislature had given the Tribunal the power to find discrimination and to grant a remedy, namely, the declarations sought. The Crown's request for a further remedies' hearing was also rejected because the Attorney-General must have known what the case was and what remedy could be sought.

This decision by the Human Rights Tribunal sends a clear message to the Government that it cannot delay any longer the updating of the 1955 Adoption Act. It is not now good enough for any Minister to say that there are other priorities. The Government should recognise that new legislation is required to **reflect** changes in social norms, as it did in enacting the Civil Union Act 2004, for example.

The Government has a number of options. It could introduce as its own legislation the bill drafted by the Green party member, Mr Kevin Hague, currently languishing, waiting to be pulled from the ballot box. It could introduce the draft prepared by its own Ministry of Justice some 10 years ago. Or, preferably, it could start again with a new law that reflects modern expectations and which cures the ills identified by this important decision. But there is one option that it does not have – to do nothing.

The decision [2016] NZHRRT 9 is reported in New Zealand Family Law Reports as *Adoption Action Inc v Attorney-General* [2016] NZFLR 113.

INTERNATIONAL NEWS

Australia

ARMS (Association of Relinquishing Mothers (Vic) Inc is this year pressing the government of the State of Victoria to revise the Adoption Act.1984 as promised in the most recent election. In their February 2016 Newsletter, the ARMS Convenor argues that all mothers should have independent legal representation before signing anything to do with their child. She points out that women engage lawyers when they purchase or sell a property, but not when handing over a part of themselves. She mentions several so-called "open" adoptions which “went wrong”, with mothers no longer being "allowed" contact with their child

United Kingdom

Motions on forced child adoption were tabled in the UK Parliament on 26 October 2015 by Allen Graham (primary sponsor) and five other Members of Parliament.

“That this House recognises the suffering caused by forced child adoptions during the 1950s, 1960s and 1970s, which took place due to social pressures on women who had children outside of marriage;”

“That the House notes the unacceptable adoption and care practices of the past, such as not giving information about welfare services, including housing and financial help which were available at the time, and not questioning whether women putting their children up for adoption had given informed consent; further recognises the negligence of previous governments with regard to ensuring that the care provided for unmarried mothers was appropriate and that they and their children were not mistreated or discriminated against, resulting in many women suffering traumatising pre- and post-natal experiences, and children being denied contact with their birth parents; and calls on the Government to apologise in order to go some way toward helping the parents and children who were victims of these practices.”

RECENT COURT DECISIONS

Family Court refuses adoption order despite finding parents had failed to exercise the normal duty of care and parenthood

There is a general community attitude that adoptive parents are deserving of uncritical respect and support for taking on the demanding task of caring for children who are not their own natural children. Sometimes, the importance of the child’s links with birth parents and members of the wider family or whanau are overlooked. In a 2015 case, Judge Geoghegan refused to dispense with the consent of both [birth] parents to an adoption order, despite finding that they had failed to exercise the normal duty of care and parenthood, on the basis that the adoption of their child would create distortions in family relationships and might make it harder for the birth parents and other relatives traced through them to have regular contact: *Application by B & B* [2015] NZFC 4600 [10 June 2015].

Landmark decision granting adoption orders in favour of unmarried same-sex partners

The Family Court granted adoption orders in respect of two young children on a joint application by two men in a same-sex relationship in *GP & JH* [2015] NZFC 9404 [30 October 2015]. The children had been born through a surrogacy arrangement reached between the applicants and the biological mother who was supportive of the adoption. JH was the biological father of both children and was so named on their birth certificates (although it was accepted that, pursuant to the Status of Children Act 1969, he was not their legal father). GP had been appointed an additional guardian of the older child but had no legal status in relation to the younger child. The applicants had raised the children from birth and were

their intended parents at the point of conception. The social worker's report recommended that the joint application be granted

On the jurisdictional issue, Judge McHardie accepted a submission that Parliament's action in amending the Adoption Act to enable de facto couples to jointly adopt a child provided the basis for a wider interpretation to be given to the word "spouses" in s 3(2) of the Act. His Honour made the point that the Family Court was not bound by the dicta in the High Court decision in *Re AMM* that urged a cautionary approach towards extending further the liberal interpretation of the term "spouses".

His Honour concluded that there was no jurisdictional bar to the Court making adoption orders in respect of a couple in a same-sex de facto relationship, whether they were male or female. He saw that outcome as being consistent with the right not to be discriminated on grounds of marital status and/or sexual orientation. A final adoption order was made in the first instance on the basis that the applicants had cared for the children since birth.

Request from Jigsaw

I would like to contact anyone who was in the Campbell Johnstone Maternity Unit at Hamilton/Waikato Hospital between 1960 and 1963 and whose child was removed from them against their wishes. I am hoping to instigate a legal matter against this hospital for their behaviour towards single women, and their babies, in the hospital care.

Please contact Sue Atkinson: nzjigsaw@yahoo.com

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 2017

OR

❑ I have made a direct credit to the Adoption Action Inc bank account **12 3140 0410806 00** for the membership fee of $10 for the period ending 31 March 2017

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):

_____

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**