

Adoption Action

Adoption Law Reform

CHRONOLOGY OF MOVES TO REFORM ADOPTION LAWS OVER THE LAST 40 YEARS

January 1979 Justice Department Review of the Law on Adoption (Webb Report) made a number of recommendations for reform of Adoption Act 1955. Patricia Webb commented that “adoption is a legal fiction and legal fictions, while they may bring about a solution of some problems, inevitably create others. No amount of legal juggling with the facts of the biological relationship can create, though it may serve to foster, the sound psychological relationship between adoptive parents and child that is the child’s basic need.”

1985 Adult Adoption Information Act became law, after seven years of Parliamentary debate. It provided limited rights for adopted people and birth parents to identify and contact each other.

1985 Legal academic Iain Johnston asserted that developments over the years had altered the social character of adoption without changing its legal character, and that the basic statutory concept was no longer appropriate for most situations. He recommended that the legal nature and consequences of adoption be revised to bring it in line with the best interests of the child principle, with social work practice, with informed public expectations, with current judicial attitudes, and with a new emphasis on greater openness and flexibility.

1987 Review of Adoption Act 1955 by Inter-Departmental Working Party was conducted by the Department of Justice. It made a number of proposals for reform.

September 1988 Puaoteata-tu (Day Break), the Report of the Ministerial Advisory Committee on a Māori Perspective, Department of Social Welfare commented that adoption, as understood by Western countries:

“is a totally alien concept, contrary to the laws of nature in Māori eyes, for it assumes that the reality of lineage can be expunged, and birth and parental rights irrevocably traded”.

August 1990 Report of Adoption Practices Review Committee: a report commissioned by Department of Social Welfare, while not asked to comment on law reform issues, it made 28 specific recommendations for changes to the Act and adoption practice.

1993 Review of Adoption Law – Māori Adoption, a report by the Social Policy Agency (a unit within Department of Social Welfare), made recommendations for change to adoption law to take into account Māori cultural values.

April 1993 United Nations Convention on the Rights of the Child was *ratified by New Zealand*. Article 21 of the Convention states that countries that allow adoption of children shall ensure that the best interests of the child is the paramount consideration (art 21) and that parental consent shall be an informed consent given after counselling. It also required that, as far as possible, children shall have the right to know and be cared for by their parents (art 7.1) and, if separated from a parent, shall have the

right to maintain personal relations and direct contact with that parent unless that is not in the child's best interests (art 9(3)). The Adoption Act 1955 does not comply in these and other respects. New Zealand did not enter a reservation on these matters and so is bound to comply.

1996 Parliament's Commerce Select Committee (although outside its terms of reference) referred to submissions received on the Adoption Amendment Bill (No 2) and, in its report to Parliament, advised that, for many New Zealanders, adoption had a negative impact on their lives. The Committee:

“strongly recommended that an urgent inquiry be undertaken into adoption practices in New Zealand over the past 50 years”.

20 years on, no such inquiry has taken place. It also recommended an “immediate full review of the Adoption Act 1955”, taking into account the results of its inquiry.

June 1997 Minister of Social Welfare Hon Roger Sowry, in opening a conference on *Adoption and Healing*, stated that:

“The (National-led) Coalition Government acknowledges that the Adoption Act 1955 is an old Act and in need of review and that work was progressing on this and he was personally committed to seeing it included on the legislative programme in the next 12 months.”

1998 Law Commission Review of Adoption legislation

The Minister of Justice requested the Law Commission to review the Adoption Act 1955 and the Adult Adoption Information Act 1985 and to make recommendations on how the legislative framework should be modified to better address contemporary social needs. The 16 specific issues that the Law Commission was asked to consider included four in relation to access to adoption information, including the issue of “At what stage should an adopted child be entitled to information about his or her identity”.

October 1999 Law Commission Discussion Paper *Adoption: Options for Reform*

This provided a comprehensive review of current adoption legislation and included information about possible areas for reform. It elicited a wide response from individuals, organisations, government departments and Family Court Judges.

June 2000 Government Administration Committee was delegated to inquire into New Zealand's adoption laws in the light of the Law Commission's report with particular focus on (i) changes in attitudes towards adoption with increased focus on children's interests (ii) the unique character of New Zealand society including Māori and other cultural values and needs. It was also asked to consider whether changes were necessary arising from past adoption practices and to look at the role of accredited organisations in intercountry adoptions.

September 2000 Law Commission Report: *Adoption and Its Alternatives*

This report provided an excellent blueprint for adoption reform, placing strong emphasis on the rights and interests of children and proposing additional protections for birth mothers to avoid their being pressured to consent to the adoption of their child. The report proposed that adoption law be integrated with general law as to the care of children in a Care of Children Act. The report made over 100 recommendations for reform of adoption law.

Late 2000 Ministry of Justice response to Law Commission Report

The Ministry of Justice gave an initial response to the Law Commission report, supporting most of its recommendations including its proposals as to who may adopt and increased access to information for persons affected by adoption.

December 2000 New Zealand's 2nd report to the UN Committee on the Rights of the Child

NZ's official report *Children in New Zealand* annexed the Law Commission report and advised the Committee that adoption law would be reformed after a Parliamentary Select Committee had considered the options set out in the report.

31 August 2001 Parliamentary Administration Select Committee issued an interim report *Inquiry into Adoption Laws* after its widespread consultation with interested individuals and organisations had supported most of the Law Commission recommendations. The report noted that there had been calls for the reform of the Adoption Act 1955 over a lengthy period of time from a wide range of interest groups and that changing social needs and expectations had prompted reviews of the Act in 1979, 1987, 1990 and 1993, but that none of these reviews had led to legislative change. It commented "that, despite these reviews, adoptions were still conducted in accordance with law that was drafted over 45 years ago, and which did not represent contemporary social needs and values."

The Parliamentary Committee recommended that (i) adopted persons should be provided with two birth certificates one of which would give details of the birth parents as well as the adoptive parents; (ii) there should be no age restriction on access to adoption information; (iii) the system of vetoes on adoption information be abolished within five years; (iv) adoption records (including court records and social welfare records) be opened to inspection as of right by adopted persons, adoptive parents and birth parents: see recommendations (85), (86), (88) & (90).

December 2001 Direction by Ministers of Justice and Social Development

Hon Margaret Wilson (then Associate Minister of Justice) and the Minister of Social Development directed officials to report to them setting out proposals for adoption reform.

2002 Associate Minister of Justice Hon Lianne Dalziel indicated that an Adoption Bill giving effect to the Law Commission's recommendations would be introduced later in 2002. No Bill was introduced.

10 July 2003 Cabinet Policy Committee considered a paper submitted by Associate Minister of Justice, Hon Lianne Dalziel, containing detailed provisions for reform of adoption law but she was asked to review the proposals and provide an amended paper for Cabinet. POL Min(03) 29/9.

October 2003 UN Committee on the Rights of the Child, in its observations and recommendations on NZ's 2nd report, welcomed the government's intention to reform adoption laws and recommended that children of a certain age should have to give their consent to their adoption and that adopted children should, as far as possible, have access to information about their biological parents.

12 November 2003 Cabinet Policy Committee considered a paper recommending that the Adoption Act 1955, Adult Adoption Information Act and Adoption (Intercountry) Act be repealed and replaced with a new Adoption Act that incorporated a number of proposed amendments based on the Law Commission report 2000. The Committee Minute notes that Associate Minister of Justice, Lianne Dalziel had withdrawn her paper and had been invited to review the proposals and recommendations in the light of discussions at the Committee meeting. No detail is given.

March 2004 Cabinet Memorandum by Associate Minister of Justice to Cabinet Social Development Committee

Hon David Benson-Pope recommended that the Adoption Act 1955 and the Adoption (Intercountry) Act 1997 be repealed and replaced by a new Adoption Act. The Memorandum had 97 paragraphs containing detailed proposals for reform. The matter appears not to have been considered by Cabinet.

February 2005 Human Rights Commission National Plan of Action on Human Rights

This Action Plan identified 30 priorities for action on human rights, including the need to ensure that children's voices are given due weight in court proceedings and that the consent of children from the age of 12 onwards be required before any order is made for their adoption. **The current National Plan of Action (February 2017) contains 153 recommendations for action but makes no reference to adoption and the need to make changes to adoption law.**

2006 Ministry of Justice Statement of Intent 2006/07 asserted that the Ministry ensures that laws remain acceptable and relevant to changing societal needs by providing research and supporting the government's legislative reform. It further stated that the Ministry works to ensure that laws within its area of responsibility are aligned with New Zealand's international obligations. There was no specific reference to adoption reform.

3 July 2006 Assurance by Minister of Justice

Hon Mark Burton met with a group of professionals who had expressed their concern at the lack of action on adoption law reform. The Minister expressed support for the need for reform and said he would try to get adoption reform included in the 2006/07 Ministry of Justice Work Programme. He assured the group that as long as he was Minister, communication would improve. Adoption reform was put back on the Work Programme later that year but dropped off again soon afterwards without explanation being given.

3 July 2006 Cabinet Minute of decision on reform of adoption laws noted that the Ministry of Justice had undertaken policy work on possible reform of the Adoption Act 1955 but that it had been unable to advance the work because of other priorities. Cabinet invited the Minister of Justice to report to Cabinet Policy Committee, by 2 August 2006 if possible, indicating progress to date on adoption reform, and options for advancing reform: POL Min (06) 15/13.

14 July 2006 Paper for Cabinet Policy Committee, signed by the Secretary for Cabinet, referred to Cabinet's consideration of adoption reform on 3 July 2006 and its request to the Minister of Justice to report on progress and options for advancing reform. The paper noted that (i) progress on adoption reform was discontinued in 2003 due to other legislative priorities but that the reform of adoption law could be progressed relatively quickly with an Adoption Bill being introduced in March/April 2007; (ii) a single coherent piece of legislation would make adoption laws more accessible and would eliminate inconsistencies between the three Acts; (iii) key problems with the current regime included changes to social conditions since 1955; (iv) legal loopholes exposed children adopted from overseas to risk; and (v) there was discrimination against couples in de facto or civil union relationships (both same-sex and opposite-sex) and against single males in some circumstances. It mentioned that these provisions fall short of NZ's international obligations as regards children adopted from overseas. The paper annexed a report signed by Rick Barker on behalf of Hon Mark Burton, Minister of Justice which comments that "Substantive reforms to NZ's adoption laws were initiated but discontinued in 1979, 1987, 1988, 1990 and 2003". It contained a timetable setting December 2006 and February 2007 as the dates for drafting an Adoption Bill and March/April 2007 for introduction of the Bill.

25 July 2006 Cabinet Policy Committee Minute of Decision on Update of Adoption Laws (POLMin (06) 15/13) stated that the Committee: (i) declined to agree to recommendations in the above paper; (ii) noted that current adoption laws are fragmented, do not reflect current best practice, are discriminatory, and fall short of NZ's international obligations concerning children adopted from overseas;

(iii) invited the Minister of Justice to bring developed proposals for an update of adoption laws to Cabinet Policy Committee by 30 November 2006.

2006 (date unknown) Parliamentary Counsel Office drafted an Adoption Bill on the instructions of the Ministry of Justice to replace and reform New Zealand's adoption legislation. The Bill was never released publicly for reasons that have never been divulged. It was never introduced into Parliament.

2007 Judge Walsh in *Re C (2007) 26 FRNZ 612 (FC)* commented that:

"The Adoption Act 1955, is widely regarded as outdated and in need of reform. ... It is one of the oldest statutes in New Zealand to still be applied on a relatively regular basis. Despite ongoing calls for reform by commentators and Judges alike, this has not happened."

June 2007 Ministry of Justice Statement of Intent 2007/08 stated that one of the major initiatives to be progressed in 2007/08 was:

"Reforming adoption laws to create a single, coherent piece of legislation to make adoption laws more accessible, eliminate inconsistencies between current legislation and to better reflect current practice and New Zealand's international obligations."

16 August 2007 Shadow Attorney-General Christopher Finlayson, in a letter to Robert Ludbrook, stated:

"I agree that the adoption laws are overdue for reform". He indicated the need for a fundamental look at all statutes concerning family and relationships and the development of "a comprehensive code that brings together all relevant statutes."

2007 Ministry of Justice Paper for Cabinet Policy Committee stated that there are legal and social reasons why NZ's adoption laws need to be changed, adding that current legislation is fragmented, perpetuates discriminatory practices and creates a system which is open to abuse. It also referred to the need to align adoption legislation with New Zealand's obligations under international human rights instruments. It contained detailed proposals for reform, including a comment that the 1955 Act might discriminate against persons on the grounds of their disability. For reasons that have not been disclosed the Paper was never considered by Cabinet.

November 2007 Ministry of Justice Briefing to Incoming Ministers Under the heading *Ensuring the Relevance of Laws and Regulations*, the first issue to be identified is listed as:

"Reforming adoption laws to create a single, coherent piece of legislation to make adoption laws more accessible, eliminate inconsistencies between current legislation and to better reflect current practice and New Zealand's international obligations."

June 2008 Ministry of Justice Statement of Intent 2008/09 to 2010/11 Adoption reform does not appear in the list of priorities, nor is there reference to adoption reform in the Ministry's *Annual Reports* for 2008/09 or 2009/10.

December 2008 New Zealand's combined 4th and 5th report to the UN Committee on the Rights of the Child offered no explanation for the lack of movement on adoption reform in relation to the recommendation of the UN Committee made five years earlier. It stated that:

"The Government has begun the process for a comprehensive reform of adoption laws with the Ministry of Justice conducting targeted consultation in 2003. A key objective in reviewing adoption legislation is to update the legal frameworks to better align with modern adoption practices, contemporary society structures, and values and obligations contained in international instruments. Due to other work programme priorities, the review was placed on hold for a period. Work on the reform recommenced in 2006. A considered and comprehensive approach is being taken to reviewing these complex issues."

2009 Minister of Justice Simon Power advised that adoption reform was not a priority for the National-led government in 2009.

August 2009 Family Court Judge Paul von Dadelszen described the Adoption Act as “outdated and unjustly discriminatory” and based on “the values of white Anglo-Saxon society of the time”.

2010 Human Rights Commission Report *Human Rights in New Zealand* formulated a National Plan of Action that identified 30 areas of priority for action. These included the need to review adoption legislation and procedures (Right 21) and the need to increase avenues for children to participate and have their views heard (Right 22).

September 2010 Adoption Action is incorporated Its primary object is to propose and promote changes to adoption law that would eliminate discriminatory provisions in current law and reflect current social attitudes and values.

February 2011 UN Committee on the Rights of the Child report on New Zealand

The combined 3rd and 4th report on New Zealand’s progress in meeting its Convention obligations expressed regret that the review of adoption legislation foreshadowed by government in October 2005 was on hold. It again raised the need for children to give consent to their adoption and for the age at which adoptees have access to adoption information to be lowered to at least 18 years.

July 2011 Adoption Action Inc. files claim with Human Rights Review Tribunal

The application sought a declaration under Part 1A Human Rights Act that the Adoption Act and the Adult Adoption Information Act discriminate on a number of grounds (sex, marital status, disability, race, age and sexual orientation) on which discrimination is unlawful under the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. The government asked for the claim to be referred to mediation but no settlement could be reached. The claim was heard in November 2013 and January 2014 (see below).

September 2011 Reviewing the Family Court, this 90 page public consultation paper circulated by the Ministry of Justice contained no specific reference to adoption processes in the Family Court and the need for reform, despite submissions by Adoption Action Inc pressing the urgent need for reform.

October 2011 Ministry of Justice Annual Report 2010/ 2011 had no reference to adoption reform. It stated that one of the Ministry’s aims was to ensure that NZ meets its international justice obligations.

October 2011 Valedictory speech of Minister of Justice The retiring Minister of Justice, Hon Simon Power, spoke strongly of the need for Parliament to address difficult issues.

"It is our job to tackle the tough issues, the issues the public pays us to front up to and come to a view on. There are many, many debates that Parliament does not want to have, for fear of losing votes or not staying on message: abortion, adoption law, children’s rights, and sexual violence issues. I do not share this timid view. The truth is if we do not have those debates here, where will we have them?".

February 2012 Briefing Paper to the Incoming Minister The Ministry of Justice 42 page Briefing Paper released on 2 February 2012 contained no reference to adoption reform.

Mid-2012 New Justice Minister, Hon Judith Collins indicated on several occasions, that she had no plans to give priority to adoption reform.

July 2012 Cabinet Paper released by the Minister of Justice proposed major changes to Family Court laws and procedures but with no reference to the need to reform adoption laws and procedures, despite adoption being one of the matters falling within the jurisdiction of the Family Court.

15 October 2012 Care of Children (Adoption and Surrogacy) Amendment Bill was placed by Green Party MP Kevin Hague in the Parliamentary ballot as a private member's Bill. If enacted, it would have repealed the Adoption Act 1955 and the Adoption (Intercountry Act) 1997 and would move adoption laws into the Care of Children Act as recommended by the Law Commission in 2000. Many of its provisions gave effect to Law Commission recommendations made in 2000 and accepted by Ministry of Justice officials in 2003 and 2006. The Bill had the support of National MP Nikki Kaye but was not selected in the ballots and never introduced to Parliament.

27 November 2012 Family Court Proceedings Reform Bill introduced by the government proposed major changes to Care of Children Act 2004 and changes to six other family law statutes, but included no amendments to Adoption Act 1955 or other adoption laws.

19 April 2013 Marriage (Definition of Marriage) Amendment Act was passed on a conscience vote and gave same-sex and trans-gender couples the right to marry and, if married, to apply to adopt a child. It was introduced as a private member's Bill by Labour MP Louisa Wall. It came into force on 19 August 2013.

7 June 2013 The Family Court Proceedings Reform Bill was reported back from Select Committee but made no changes to adoption law or practice.

24 September 2013 The Care of Children Amendment Act (No 2) 2013 made sweeping changes to the Care of Children Act and other family law statutes but included no amendments to the Adoption Act.

18 November 2013 The claim by Adoption Action Inc against the Attorney-General was heard by the Human Rights Tribunal in Wellington over a period of ten days in November 2013 and January 2014. The Human Rights Commission joined the proceedings in support of the claim, and the Children's Commissioner filed a report for the Tribunal in support of aspects of the claim affecting children. It was defended by Crown Law on behalf of the Ministry and the Attorney-General. Advice was given that no decision could be expected until early 2016.

22 November 2013 Adoption Bill 2006 revealed Crown Law lawyers representing the Attorney-General on behalf of the Ministry of Justice announced halfway through the hearing of Adoption Action's claim to the Human Rights Tribunal that Ministry officials had found an Adoption Bill drafted by Parliamentary Counsel Office in 2006. Had the Bill been introduced and passed it would have resulted in major reform of adoption laws along the lines of the recommendations of the Law Commission in 2000. The Bill had not been disclosed on discovery in the proceedings or in response to earlier Official Information Act requests.

February 2014 A booklet published by UNICEF New Zealand *Kids Missing Out: It's time to make progress on children's rights* was critical of New Zealand's lack of progress in harmonising its domestic law with its obligations under the United Nations Convention on the Rights of the Child. It cited the failure of successive governments to update the Adoption Act as an example of such failure.

9 April 2014 At a New Zealand Law Society conference on *International Adoption and Surrogacy*, Family Court Judge Margaret Rogers observed:

"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 Māori 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 obligation pursuant to the United Nations Convention on the Rights of the Child and of the Hague Convention on Intercountry Adoption highlight our obligation to consider a child's biological and cultural heritage."

She added:

"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 21st century realities and our international legal obligations."

September 2014 General election No party included in its advertised election policy a commitment to reform New Zealand archaic adoption laws.

October 2014 Ministry of Justice Annual Report 2013/14 broke with tradition by including colourful captions and illustrations as well as statistics on its various functions. Under the heading "*Maintaining the integrity and improving the responsiveness of the justice system*", it stated that:

"The Ministry is driving change to improve accessibility, quality and speed of New Zealand's justice services. Our focus on modernisation and operational improvement has led to better service delivery, and provided more effective tools to support the public, the judiciary and justice outcomes."

Later, under the heading "**Modernising the justice system**", it advised that:

"The Ministry is committed to providing modern tools and ways of working that lift performance and improve justice services for New Zealanders."

There is no reference to adoption laws and the need to update the 1955 Act.

30 October 2014 The United Nations Committee on the Rights of Persons with Disabilities, in its Concluding Observations on New Zealand's initial report under the Convention on the Rights of Persons with Disabilities recommended (at para 48) that section 8 of the Adoption Act 1955 (which deals with dispensation of the consent of birth parents to the adoption of their child), be amended so that parents with disabilities are treated on an equal basis with other parents in this regard. In making this recommendation the Committee was responding to the recommendations of the report to the Committee Independent Monitoring Mechanism New Zealand, which included representatives of the Human Rights Commission, and the Ombudsmen, as well as disabled persons' organisations.

November 2014 Ministry of Justice 2014 Briefing Paper for new Minister Amy Adams noted in an Appendix that the Adoption Act 1955 is administered by the Ministry but is otherwise silent about adoption law and the need for reform. It contains some high-flown mission statements, including:

"Our mission of providing modern, accessible, people-centred, justice services recognises that we are here for New Zealanders and ensures we focus on what we do for them. It puts the people who need or 'use' justice – the public of New Zealand at the heart of our work. We can provide services differently for people and in ways that are better for them."

There is no mention that the Ministry in 2002 and 2006 advised Cabinet that the Adoption Act 1955 was seriously out of date and in need of reform, that the Act was discriminatory in several respects and breached NZ's obligations under Human Rights treaties it had ratified. Nor is there mention of the fact that the Ministry's inaction had been challenged in proceedings before the Human Rights Tribunal and that, because that Tribunal was under-resourced, a year had passed with no decision handed down. There is no mention that the lives of many New Zealanders had been and continue to be blighted by outdated adoption laws.

7 November 2014, Human Rights Review Tribunal, in reply to an inquiry from Adoption Action when a decision was likely to be given on its Part 1A claim, advised that it was anticipated that the Members of the Tribunal would have some time over the Christmas/New Year period 2014 and it was likely that a decision would be given then.

9 December 2014 Minister of Justice, Hon Amy Adams, in response to a request for a meeting made on 7 November 2014 replied that the meeting should take place only after the release of the Human Rights Review Tribunal's decision in the *case Adoption Action Incorporated v Attorney-General* and any subsequent release of the government's response.

May 2015 New Zealand's 5th periodic report to the United Nations Committee on the Rights of the Child contains only four lines on adoption reform:

“Review of adoption legislation CRC/C/NZL/CO/3-4, para 34
120. A review of adoption law is on hold because of competing priorities for law reform in the justice sector. The matters raised by the Committee will be considered when the legislation is reviewed”.

This bald statement overlooks that New Zealand advised the Committee in 2002 of its intention to reform its adoption laws (an assurance the Committee welcomed in its October 2003 report) and that the Committee expressed regret in its February 2011 report that the review of adoption legislation had been put on hold recommending that NZ revise its adoption laws to bring them into line with the Convention, and referring to specific aspects of adoption law that were inconsistent.

May 2015 The New Zealand Law Society marked the 60th anniversary of the entry into force of the Adoption Act 1955 with an article in *Law Talk* 865 in which Massey University School of Psychology lecturer, Dr Denise Blake; Chair of the Law Society's Family Law Section, Dr Allan Cooke; Law Professor, Bill Atkin; and Green Party MP, Kevin Hague were critical of the archaic state of the 1955 Act and the failure of governments to move on adoption reform. Points made were:

- The Adoption Act is outmoded and needs to be brought up to date. The Act was passed well before New Zealand ratified the United Nations Convention on the Rights of the Child and does not take into account the cultural and ethnic background of the child being adopted. Children may be denied the right to enjoy their own culture and language and trace their lineage. Also, children who want to know who they are and where they have come from cannot get access to their original birth certificate until they attain the age of 20 years. They are thus deprived of knowledge of their natural family and the right to maintain personal relationships with them. There is no provision for the voice of the child to be heard as the Act does not allow for the appointment of lawyer for child: Dr Allan Cooke;
- The “unjust, inhumane and archaic” Adoption Act 1955 created a legal fiction with regard to an adopted person's identity, and it also severed any ties with birth families, Adoptees have a constructed identity where they are “born to” a new family, which renders their birth parents as insignificant. The legislation fails to recognise the child's relationship with his/her birth parents – it was an attempt to overcome illegitimacy: Dr Denise Blake;
- The 1955 Act has, at its heart, a wrong assumption. It effectively fossilises attitudes towards children that prevailed in the 1950s. Children are treated in law as the property of their parents, and the process of adoption is constructed in the manner of a property transaction. There are two reasons why successive parliaments have not dealt with adoption reform. The first is the slow

evolution of societal values over the last 60 years rather than any specific “incident” that has demonstrated the failure of the law. The other reason is that (at least until 2013) politicians from both Labour and National have been scared of the issue because of the highly polarised views about adoption by same-sex couples: Kevin Hague Green MP.

10 August 2015 The Human Rights Tribunal In response to a further inquiry concerning the delay in the handing down of a decision in Adoption Action’s Part1A claim stated that the Tribunal would require a substantial block of uninterrupted time to draft the decision and that no block of time was likely to be available until the 2015-2016 Christmas/New Year period. The Tribunal is funded through the Ministry of Justice and is seriously under-resourced, having only a part- time Chairperson and members.

August 2015 The Ministry of Justice Annual Report 2014/15 stated that:

“Since 2012, the Ministry has been working with the judiciary to modernise courts and tribunals to get people through the justice system quicker. We started this work because our services were old-fashioned and not what the government and New Zealanders expect from a modern, accessible, people-centred justice system. ... Processes will be fast and easy to understand, and the most serious cases will receive the most attention and support.” “Our goals [include] to: reduce the time it takes to hear and resolve matters”.

1 November 2015 The Human Rights Commission in its Report to the UN Committee on the Rights of the Child stated that:

“the Adoption Act 1955 is long overdue for reform”

and that:

“no substantive progress has been made since 2011 in reforming the Act and adopting the Law Commission’s recommendations made in 2000.”

2 November 2015 The New Zealand Law Society (representing 12,000 lawyers) took the unprecedented step of submitting a “shadow” report to the UN Committee on the Rights of the Child. The report deals with various areas of NZ family law that do not comply with the Convention on the Rights of the Child (UNCROC) that NZ ratified in 1993. In particular, it described the Adoption Act 1955 as being “overdue for reform” and stated that the Act does not comply with UNCROC in a number of significant respects (articles 3, 8, 9(1), 9(2), 9(3), 12, 20, 21, 21(a), 24(1) and 30). More specifically, it pointed out that under the 1955 Act:

- The process of adoption does not take into account the cultural and ethnic background of a child being deprived of family background. Children should not be denied the right to enjoy their own culture and use of their own language, and should be able to trace their own lineage (articles 8, 20, 21 and 30).
- The legal fictions created by adoption deny children the right to know their genetic and medical background and as a result they may not be able to have the highest attainable standard of health (article 24(1)).
- The adopted child’s original birth certificate cannot be accessed before the age of 20 years. This deprives the child of knowledge of their natural parents and other family members and therefore the right to maintain personal relations and direct contact with both parents and family members (article 9.3).
- The Act does not contain the paramountcy principle ie that the welfare and best interests of the child shall be the paramount consideration (articles 3 and 21).

- There is no mechanism in the Adoption Act to appoint a lawyer to represent the child and therefore give the child an independent voice in respect of that child's views and the opportunity to be heard (article 12).
- For an adoption to proceed, the birth mother must give her consent, as must the birth father (if known). There are no provisions that require the consent of the child to an order for his/her adoption. Other family members are not given an opportunity to participate in the proceedings or to make their views known (article 9(2)).

24 November 2015 The President of the Law Commission, Sir Grant Hammond, in the Commission's Annual Report for the year 2015/16, stated his concern at the lack of progress on some historic Law Commission recommendations that could deliver significant benefits to New Zealand.

1 January 2016 John Chadwick was made a Member of the New Zealand Order of Merit (MNZM) in the 2016 New Year honours for his contribution to the law. He stated that he wanted to see the law of adoption changed, observing that NZ's adoption laws operate under a legal fiction that "something exists - when it doesn't".

10 January 2016 Auckland University of Technology lecturer Rhoda Scherman, speaking at an Auckland Conference, stated that NZ's adoption laws are "antiquated" and need to be changed. She stated that most current NZ adoptions have a high degree of openness influenced by the value Māori place on their connection with whanau. However, the 1955 Adoption Act still reflects the old closed adoption system including the sealing of adoption records and severing ties of the adopted child with the birth family. At the conference an adopted person, said it was important to know where you came from, and that closed stranger adoptions did not fit well with Māori values or perspectives and that, amongst Māori, "there is this very strong feeling that adoption is abhorrent. It disrupts whakapapa." Radio NZ News 12 January 2016.

2016 The Human Rights Commission released a new *National Plan of Action* to replace its 2010 National Plan of Action (see above). The new NPA (which was based on recommendations made by other countries as part of the Universal Periodic Review 2013 process) makes no reference to the need to update adoption laws and procedures identified in the 2010 NPA as one of 30 priority areas for action on human rights.

11 January 2016 New Zealand's official report to the UN Committee on the Rights of the Child dismissed the issue of adoption reform in two lines, failing to heed the strong recommendations of the Committee made in response to New Zealand's previous two reports:

"102. A review of adoption law is on hold because of competing priorities for law reform in the justice sector. The matters raised by the Committee will be considered when the legislation is reviewed"

January 2016 New Zealand's non-government organisation report to the United Nations Committee on the Rights of the Child prepared by Action for Children and Youth Aotearoa stated:

"Despite numerous calls for reform, adoption law has not been updated and the legal fiction that a child's connection with his or her birth family is severed by adoption continues. Other arrangements can be used to provide security of care whilst preserving appropriate family connections. Use of these is variable and the implications for children's identity are not well articulated."

The report recommended that New Zealand prioritise a review of the Adoption Act 1955 as part of its law reform programme for the justice sector.

7 March 2016 The Human Rights Review Tribunal, after two years, handed down its unanimous decision in the claim brought by Adoption Action Inc, under Part 1A of the Human Rights Act 1993. It found that the government (in particular, the Ministry of Justice) was in breach of its obligations under the Human Rights Act and the New Zealand Bill of Rights Act 1980 in seven different respects. The Tribunal made the only order available to it - a declaration that the Adoption Act 1955 (in six respects) and the Adult Adoption Information Act 1985 (in one respect) are inconsistent with fundamental human rights, many of which are rights under United Nations Conventions that New Zealand ratified years ago. The provisions found to be discriminatory were:

Adoption Act 1955

- s 3(2) discrimination on grounds of (1) marital status and (2) sexual orientation
- s 4(1)(a) discrimination on grounds of (3) age
- s 4(2) discrimination on grounds of (4) sex
- s 7(2)(b) discrimination on grounds of (5) marital status
- s 7(3)(b) proviso discrimination on grounds of (6) sex and (7) marital status (8)
- s 8(1)(b) discrimination on grounds of (9) disability

Adult Adoption Information Act 1985

- s 4 discrimination on grounds of (10) age

The Tribunal made a strong statement about the urgent need for reform, stating:

“All contemporary commentators are in agreement that the 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...”

It added that:

“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...”

8 March 2016 The Chief Human Rights Commissioner, David Rutherford, wrote to the Minister of Justice, Hon Amy Adams, alerting her to the Tribunal’s declarations of inconsistency and commenting that:

“it is clear that legislative reform in this area is well overdue and I urge you to make the necessary legislative changes to remove the discriminatory provisions of these laws and to ensure that our adoption related legislation reflects societal norms and expectations.”

16 March 2016 Hon Amy Adams gave the keynote address to the United Nations Human Rights Council in New York. In her address she stated:

“Creating institutions and ratifying conventions is important, but the true test lies in our actions – the degree to which we live up to our obligations and commitments on a daily basis. And this is incumbent on all of us. No country is perfect in the implementation of its obligations under international human rights law nor is it an easy task. The promotion and protection of human rights requires constant political courage, foresight and commitment.

It is ironic that this speech was given days after the New Zealand Human Rights Tribunal declaration of findings that adoption law breached the Human Rights Act in seven different respects and that multiple calls for reform had been ignored.

6 April 2016 Any appeal against the **Human Rights Tribunal** decision released on 7 March 2016 had to be filed before this date. No appeal was filed by the Crown and, as a result, the Minister of Justice was required before August 2016 to report to Parliament advising members of the declaration of inconsistency and of the government's intended response to the declaration. It is clear that the "intended response" is the steps government must take to repeal or amend the discriminatory provisions.

April 2016 Former **Family Court Judge Paul von Dadelszen**, in an analysis of the Human Rights Tribunal decision, commented that the Tribunal, in making seven of the eight declarations sought, "delivered a resounding rebuke to the Government."

7 April 2016 The final report of the **Expert Advisory Panel** chaired by Paula Rebstock, *Investing in New Zealand's Children and their Families*, December 2015, was released by the Ministry of Social Development. It proposed a number of changes to laws and policies relating to children including a recommendation that:

"The major overarching shifts in the law to support the new operating model include: ...updating the fragmented adoption legislation by repeal and consolidation of current legislation and to (sic) new primary legislation."

August 2016 Minister of Justice Amy Adams made the required report to Parliament following the Human Rights Tribunal decision. She advised that:

- adoption reform was not a priority
- the Tribunal had got it wrong on two heads of claim [Such a position is impermissible, in that the Ministry's arguments on these grounds had been rejected by the independent Tribunal, and the Ministry had chosen not to appeal the Tribunal's decisions]
- the Ministry of Social Development and the Courts could interpret the Act in a manner that avoided discrimination to the groups affected. [Such a position is untenable, as the Courts and Ministry (now Oranga Tamariki) must work within the limits set by the legislation. Only Parliament can repeal or amend the discriminatory provisions. It is fundamentally wrong to rely on public servants and the Courts to work their way around discriminatory and out-of-date laws. Judges and lawyers who have to deal with the 1955 Adoption Act have regularly pointed out how antiquated those laws are.]
- the government has an ambitious justice legislative programme and it is not in a position to undertake large scale reform of the Adoption Act at the present time. Under National, three Ministers of Justice refused to accord priority to adoption reform. Reform of legal provisions that have been found to breach fundamental human rights must surely be an urgent priority.]

30 September 2016 The **United Nations Committee on the Rights of the Child** in its 5th report on New Zealand's progress towards bringing its laws and practices into line with the Convention on the Rights of the Child (UNCROC), welcomed the New Zealand Human Rights Review Tribunal decision declaring provisions of the Adoption Act 1955 and the Adult Adoption Information Act 1985 to be discriminatory on seven different grounds. The Committee recommended that NZ promptly review its adoption legislation to align it with UNCROC, noting that earlier reform proposals had been on hold since 1993. It made particular reference to the need to make the welfare and best interests of the child the paramount consideration, the need for the voice of children who are to be adopted to be heard, and children to be

given access to information about their biological parents, their culture and their identity: CRC/C/NZL/CO5 at para 29.

October 2016 Green Party MP Kevin Hague resigned from Parliament. His Adoption Reform Private Member's Bill had been taken out of the Ballot some time before. As at August 2018, neither the Green Party nor any other party has been willing to restore the Bill to the Ballot.

November 2016 In *A Constitution for Aotearoa New Zealand*, Sir Geoffrey Palmer and Dr Andrew Butler referred to the Executive's and Parliament's refusal to repeal or amend adoption laws to remove the seven provisions found to be discriminatory by the Human Rights Review Tribunal as a strong argument in support of the need for a New Zealand Constitution.

March 2017 A Petition to Parliament by Maggie Wilkinson and numerous supporters pressing for a government inquiry into past adoption practices was heard by the Social Services Parliamentary Committee on 15 March 2017. The Petition asked that the government "Undertake a broad and full inquiry into the practice of "forced adoption" in New Zealand during the 1950s to the 1980s, and that the inquiry include and acknowledge the abuse, pain, and suffering caused by the State-sanctioned practice of forced adoption." The Committee set a further hearing date (25 May 2017) at which further evidence and submissions were heard, including submissions from the Ministry of Social Development and the Ministry of Justice.

1 April 2017 Statutory changes came into effect which moved the duties and powers previously held by Child, Youth and Family in relation to child protection and adoption to a new Ministry, the Ministry of Vulnerable Children Oranga Tamariki (MVCOT).

The Regulatory Impact Statement in the Bill stated that the reforms are "designed to move from direct service delivery by employees of [CYF] to strategic partnerships over time."

One of the aims of MVCOT was to "outsource" child protection and adoption services to non-government organisations and private sector child care professionals. This sudden change of direction seemed likely to further delay any move by government to reform adoption laws.

October 2017 Labour Party's policy priorities for the Justice area for the 2017 election included a statement under the heading *Modernising adoption law*:

"The Adoption Act is now over six decades old, and is badly in need of overhaul. To address issues that have arisen in the operation of the existing legislation Labour will review and reform the adoption system in New Zealand.

It added that Labour would ask the Law Commission to update its review of the adoption law, and started that it would then replace the Adoption Act, ensuring the rights of the child are at the heart of the new legislation. By August 2018 there was no evidence that the new government had taken any steps to implement this commitment.

24 October 2017 The Labour Party's coalition agreement with New Zealand First set out a number of priorities that NZ First wanted to progress with Labour's agreed support. These did not include adoption reform. Labour also entered into a confidence and supply agreement with the Green Party, which had for more than a decade been a strong advocate for adoption reform.

26 October 2017 A Labour-led coalition government came into power under Prime Minister Jacinda Ardern. Ms Ardern had long been a supporter of adoption reform. The new

Minister of Justice is former Labour Justice spokesperson Andrew Little. Labour's coalition partners are the Green Party and New Zealand First.

29 October 2017 The Labour Party released a programme of actions it intended to take during the first 100 days. There was no mention of adoption reform.

8 November 2017 In the **Speech from the Throne**, the Governor-General, Dame Patsy Reddy, outlined the new government's priorities. These had an emphasis on the welfare and rights of children and reduction in poverty levels. The new government has stated that it would be one of inclusion so that all New Zealanders are entitled to respect and dignity, to meaningful lives, and to care and compassion. The Speech also emphasised that the new government would be one of transformation. There was no specific reference to adoption reform.

14 December 2017 New Labour Party **Member of Parliament, Paul Eagle**, met with representatives of the Law Commission and Adoption Action. In his maiden speech to Parliament he had indicated that he was adopted as a child, how important his first meeting with his birth mother had been to him, and how he wanted adoptions to be more open. He is also an adoptive parent. He advised that he hoped to press for adoption reform issues as an MP.

December 2017 Ministry of Justice *Briefing to the incoming Minister of Justice* made no specific reference to adoption reform but did state general principles that will underpin the work of the Ministry. Relevant principles are:

- We aim to strengthen the public trust in the justice system;
- We administer fundamental cross-cutting legislation such as the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990;
- We also advise government where changes are needed to keep these laws fit for the purpose in a changing environment;
- The Ministry acts as a steward to ensure that the justice system is modern and fit for the purpose to deliver services to New Zealanders;
- The Ministry's priorities include that legislation is reviewed regularly and updated if necessary to maintain public trust confidence.

The neglect of adoption reform over many years by many different governments and at least 20 Ministers of Justice is hard to reconcile with these principles.

6 April 2018 Prime Minister Jacinda Ardern stated that adoption reform was a priority for the Labour-led government at a ceremony to mark the 25th year since New Zealand ratified the UN Convention on the Rights of the Child. Despite this, there has been no official announcement by the responsible Minister, Andrew Little, of what action is to be taken to honour the election manifesto assurance to give priority to adoption reform despite inquiries made by Adoption Action and others.

16 September 2018 A list of policy priorities for the Labour-led government released by the Prime Minister made no mention of adoption reform

20 September 2018 Minister Andrew Little in giving the opening address at Family Law conference in Auckland made no reference to adoption form in his address but in answer to a question by

Margaret Casey QC he indicated that work on reform was anticipated not this year or next year but in 2019. He stated that MPs Paul Eagle and Louisa Wall were doing some work on the issue.

END