

Adoption Action

Adoption Law Reform

Annual General Meeting Thursday 27 May 2021

Convenor's Report

Caretaker roles April 2020 to April 2021

Adoption Action has been in recess since 1 April 2020 due to COVID-19 and lockdowns. The current committee officeholders have assumed caretaker roles.

Remembering Mary Iwanek

In early April 2019, we received the devastating news from Holland that our fellow board member, Mary Iwanek, had passed away.

Adoption was a huge part of Mary's life. Although adoption was not an element of her personal family life, Mary had a strong empathy with adopted people that stemmed from her being orphaned as a child, and then through her experiences as a nurse and social worker. She well understood the grief of losing parents at a young age.

Mary went on to become the National Manager of the Adoption Unit at Child Youth and Family Services in New Zealand in the 1980s. Mary was a pioneer and instigator of 'open' adoption practices in New Zealand, which she was rightly proud of. Mary referred to her philosophy on adoption as the *spirit of openness*.

Mary recognised the need for adopted people and their natural parents to have access to their information relating to their adoptions. An example of this relates to section 23 of the Adoption Act 1955. Section 23 places strict limits on the '*inspection of adoption records*' which does not allow the people whose lives are impacted by the Act, namely adopted people, their parents and whanau, to access these records about themselves and their family. Mary began the work of educating judges on the harm caused by section 23. Initially Mary faced resistance to her adoption approach, however, with the support of Judge Mahony, Mary's efforts were to be a pivotal factor in interpretive and legislative change. Mary, along with other Adoption Action founding members, Robert Ludbrook, Dr Anne Else, Prof Bill Atkin and the late and legendary Keith Griffith, and others, saw through the passing in of The Adult Adoption Information Act 1985.

For many thousands of adopted people and their natural parents, this Act, in most part, opened the legal gate that had barred them from each other and which had created a legal fiction of adopted people by denying them access to their pre-adoption identity.

The impact of Mary's efforts on the lives of so many adopted people, their natural parents and families can not be underestimated.

Mary remained active on our committee, despite her many other community commitments as well as resuming studies towards a PhD on identity and open adoption.

Adoption Action

Adoption Law Reform

During Mary's time on the committee, I was fortunate to travel with her to adoption meetings and conferences in New Zealand and Australia. On these occasions I witnessed the high regard with which Mary was held internationally due to her commitment to the *spirit of openness* in adoption practice and law.

Mary's expertise assisted Adoption Action in winning our Human Rights discrimination case in 2016. She attended each day of the 10-day hearing in 2014. Mary also financially supported the work of Adoption Action over the past 11 years, including donating funds for our website which were greatly appreciated.

We miss Mary and her contribution to Adoption Action, immensely. I will be forever grateful for her support of the Adoption Action committee and the vast adoption knowledge and experience she brought to the table. For decades, Mary advocated for adoption law reform that would provide a legal framework imbued with *the spirit of openness*. Adoption Action continues that kaupapa.

Court records and special grounds

Via the adoption support network that I administer, there has been an increase in the number of people whose section 23 applications (to inspect their records) are being denied by the courts on the justification that they are unable to satisfy the "special grounds" (s23(3)(b)(iii)) requirement needed. Others simply are unable to follow through with the application because of the distress it causes. Those of us with a lived experience of adoption know too well that the Adoption Act 1955 is a violation and abuse of our whakapapa as it separates us from our whanau and strips us of our true identity. Simply wishing to access our own factual information held by the Courts, ought to be sufficient evidence to satisfy "special grounds" for access. It is unfathomable that society has come so far in understanding the social, psychological, emotional and cultural imperatives around 'identity' that this travesty continues.

Shortly prior to Mary's passing, we were again in discussions around the challenges of access to court records and the inconsistency with the *openness philosophy*. We had begun to explore ways to again challenge the purpose of section 23. Keith Griffith's *Section 23 Handbook*¹ is an invaluable resource.

Recent government moves towards reform

During the 2017-2020 Labour government's first term we saw no movement on adoption law reform from the then Minister of Justice, Andrew Little. This was extremely disappointing given the positive indications from the new Government in 2017 that Adoption law reform was needed.

The October 2020 election gave Labour a majority in the House which gave them sufficient power to enact legislative change without needing support from other parties. The Hon Kris Faafoi now holds the Ministry of Justice portfolio and in the first quarter of 2021 the Ministry of Justice announced Adoption law reform initiatives on its website [Adoption Law Reform | New Zealand Ministry of Justice](#):

An extract of that information is included at the end of this report.

¹ The Hocken Library, Otago, holds an electronic copy of Keith Griffith's *Section 23 Handbook*

Adoption Action

Adoption Law Reform

What will new legislation look like and who will it be for?

Keith Griffith (adopted person, long-time lobbyist for adoption law reform, author of *The Right to Know*) promoted the philosophy of openness, honesty and integrity in adoption. This philosophy continues to guide Adoption Action in pursuing a legal framework that protects a child's right to their identity and relationships with their whanau, from birth. New legislation should at the very least support this right and allow adopted people easy access to the information that pertains to them and their whanau held by the Ministry of Justice, Oranga Tamariki and Department of Internal Affairs. These government agencies may have a kaitiaki role in relation to information, but they are not the owners of information about a person's identity and whanau, and nor do they need to protect adopted people from their own information. A culture of openness needs to be embraced within government agencies, and well-informed legislation will play a large role in supporting the culture shift needed.

Acknowledgements to adoption law reform lobbyists for ongoing commitment

To all who have, for the last 40+ years lobbied successive governments and called for adoption law reform to improve the rights of children, I acknowledge your work and encourage you to continue. This includes adopted people and their whanau, natural parents and people who have adopted children who have spoken out about the need for reform, academics for your research and studies, and all those on the perimeter of adoption who recognise the need for change.

Voices of adoption

Robust legislative reform must be informed by adopted people's voices. The voices of adopted people are diverse and deserve to be heard in a meaningful way. I remain hopeful that the Government will see this 2021 review through to legislative change. I urge the Government to listen carefully to the voices within and around the adoption circle and to take heed of the lessons learnt to date.

While there are similarities in the way adoption has impacted on people lives, there are also many ways that they differ – each experience is a valid voice – some believe their adoption experience was good, while others suffered abuse in their adoptive homes which continues to silence and harm them as adults.

Respect and understanding of a lived experience

I have many years' experience supporting adopted people, their families, siblings, aunts, uncles, grandparents and children. From that place, I know how understanding, respectful and patient we must be when asking these people to share their perspectives on adoption. Many adoption wounds are deep and primal, and sometimes they rise to the surface unexpectedly and immobilise even the most stalwart of people.

I would ask that those people who have the courage to acknowledge their own deep primal wound, be acknowledged, respected and dealt with mindfully, during all stages of the adoption law reform process.

Adoption Action

Adoption Law Reform

Issues papers

The issues papers written by Adoption Action (led by Robert Ludbrook) identifying issues that require consideration when writing new legislation were provided to the Human Rights Commission in 2018. These may be of assistance for other interested organisations and individuals in preparation of their submissions when consultation is sought by the Ministry of Justice.

Wellington Community Justice Project (WCJP)

The WCJP has provided excellent support to and completed meaningful mahi for Adoption Action over the years, including some important research, discovery and other work for the case Adoption Action took in the Human Rights Review Tribunal, as well as other research work and lobbying support. We very much appreciate their support.

We welcome the 2021/22 Law Reform Team Jack Roberts (Leader), Tatiana Warren, Claire Downey, Bridgette Chisnall, Meg Russell and Holly Gower. We very much look forward to working with you this coming year and thank you in advance for your commitment.

Robert Ludbrook stepping down as Treasurer

This year Robert Ludbrook has stepped down from our committee and the role of Treasurer. Robert has kindly given a huge amount of his time to Adoption Action in support of our aims for adoption legislative reform.

Robert has held the office of Treasurer since 2010. During this time Robert ensured the financial records were kept accurately and ensured our society's financial obligations were met accordingly. Robert attended almost every committee meeting. We are hugely grateful for, and very much appreciate of Robert's commitment to Adoption Action.

On behalf of the committee, a heartfelt "thank you!" Robert.

Thank you to our committee

I would also like to express my gratitude to our deeply committed committee members and to loyal members of Adoption Action Inc who continue to support us with hands-on assistance.

The committee is again very grateful to Charlotte von Dadelszen of Buddle Findlay for hosting Adoption Action's meetings.



Fiona Donoghue

Convenor

27 May 2021

Extract from Ministry of Justice website

In the first quarter of 2021 the Ministry of Justice announced on its website [Adoption Law Reform | New Zealand Ministry of Justice](#):

The Government is currently undertaking a review of Aotearoa New Zealand's adoption laws. This review presents an opportunity to modernise all of our adoption laws, including the Adoption Act 1955, which hasn't been substantially updated in 66 years. The Government is committed to ensuring the law aligns with New Zealand's values and protect children's rights. It is also committed to ensuring the law does not discriminate and meets our human rights obligations.

Adoption law reform will be guided by the following objectives:

- 1. To modernise and consolidate New Zealand's adoption laws to reflect contemporary adoption processes, meet societal needs and expectations, and promote consistency with principles in child-centred legislation*
- 2. To ensure that children's rights are at the heart of New Zealand's adoption laws and practice, and that children's rights, best interests and welfare are safeguarded and promoted throughout the adoption process, including the right to identity and access to information*
- 3. To ensure that adoption laws and practice meet our obligations under Te Tiriti o Waitangi and reflect culturally appropriate concepts and principles, in particular, tikanga Māori, where applicable*
- 4. To ensure appropriate support and information is available to those who require it throughout the adoption process and following an adoption being finalised, including information about past adoptions*
- 5. To improve the timeliness, cost and efficiency of adoption processes where a child is born by surrogacy, whilst ensuring the rights and interests of those children are upheld*
- 6. To ensure New Zealand meets all of its relevant international obligations, particularly those in the UN Convention on the Rights of the Child and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.*

The review will be led by Te Tāhū o te Ture - the Ministry of Justice, working closely with Oranga Tamariki and other relevant agencies.

In terms of engagement with stakeholders, the website further states that:

The Government will begin engagement in mid-2021

Public and targeted engagement will take place over three months in mid-2021. Further details will be provided on this webpage once the programme for consultation has been finalised.

It also provides information on the Surrogacy Law Review

Surrogacy Law Review

Te Aka Matua o te Ture | Law Commission is currently undertaking a review of surrogacy in Aotearoa New Zealand. As part of this review, the Commission will look at how the adoption process operates in surrogacy arrangements and consider whether there should be a different process for intending parents to become legal parents.