

# Adoption Action

## Adoption Law Reform

### CURRENT ADOPTION LEGISLATION: BRIEF SUMMARY OF ISSUES

The Adoption Act 1955 was developed many years ago, when attitudes to children, relationships and families were very different from today. It is monocultural and contains many assumptions and provisions that are now unacceptable. A number of its provisions have been found by the Human Rights Review Tribunal<sup>1</sup> to be discriminatory and in breach of the Human Rights Act and the NZ Bill of Rights Act.

The whole context of adoption has also changed. The number of New Zealand children becoming available for adoption by unrelated strangers has dropped sharply over the last four decades. Mothers parenting alone have options which mean they do not feel forced to consent to adoption. Many adoptions are now in-family adoptions by step-parents or members of a birth parent's family. Childless individuals or couples can now conceive as a result of assisted human reproduction through egg or sperm donation or embryo donation. A "surrogate" – that is, a woman who provides gestation and birth, and in some cases also the egg – may be involved. Births through surrogacy require transfer of the child through adoption.

#### Objects and principles

It is now accepted practice in New Zealand and elsewhere for family law statutes to contain an objects and principles section to guide government agencies and the Courts in applying the provisions of the Act. In an area such as adoption, where there have been significant changes in community attitudes and values in the 63 years since the Adoption Act 1955, an objects and principles clause is particularly apt.

- Should new adoption legislation include a set of objects and principles and, if so, what should these be?

#### Children's rights and best interests in adoption

Under the Adoption Act 1955, the welfare and interests of the child to be adopted are only one matter on which the court must be satisfied - they are not the paramount consideration.

- Should children (especially older children and young adults) have a right to have a say in adoption proceedings, to be a party to the application, and/or to be legally represented at the hearing?
- What should be the effect of adoption on laws regarding forbidden marriages and incest?
- Should the Court make a final order in the first instance unless there are good reasons not to do so?

#### Who should be able to be adopted

Under the Adoption Act, an adoption order may be made in respect of any person under the age of 18 years. If there is an interim adoption order in force, a final order may be made despite the adoptee being over the age of 18 years.

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<sup>1</sup> **Adoption Action Inc v Attorney-General** [2016] NZHRRT

There is currently no restriction on the residency or domicile status of the child to be adopted. An applicant resident or domiciled in any overseas country can apply for an adoption order in respect of a child, notwithstanding that the child and/or the adoptive parents are neither resident nor domiciled in New Zealand.

- Should there be a cut-off age after which no one can be adopted?
- What should the adoption rules be regarding children and/or applicants resident or domiciled outside NZ?
- Should adoption of a human embryo be permitted (as is the case in some other countries)?

### **Who should be able to adopt a child**

Currently an adoption order can be made on the application of: any person whether or not s/he is domiciled in NZ; two spouses jointly; the mother or father of a child either alone or jointly with his or her spouse; the mother or father of a child either alone or jointly with his or her spouse.

- What changes should be made regarding who is able to adopt a child?

### **Consents to adoption**

Current adoption legislation does not clearly provide for the right to fully informed consent or to withdrawal of consent, which is very difficult to exercise in practice. The major issues to do with consents include:

- Whose consents should be required (e.g. both natural parents, spouses or partners of natural parent, siblings, whanau/family members, young person to be adopted)?
- What provisions are required to ensure that all consents to adoption are fully informed and freely given?
- What should be the period after the birth of a child that parents are able to give consent? (It is currently 10 days.)
- Should it be possible for consent to be withdrawn once given, and in what circumstances?
- On what grounds (if any) should the consent of the parent(s) or guardian(s) of a child be able to be dispensed with?

### **Adoption orders**

Adoption currently removes all the adopted person's legal relationships to the birth parents and their families, and replaces these with legal relationships to the adoptive parents and their families. A new birth certificate is issued, showing the adoptive parents as the birth parents.

- What should be the effect of an adoption order on the child's relationships with birth parents, step-parents and birth family/whanau members?
- What changes should be made to the child's guardianship status before a final adoption order is made?
- Should there be an alternative care status to adoption (e.g. an enduring guardianship order)?
- Should all those involved in the child's birth be recorded on the birth certificate, as well as the adoptive parents?

## **Cultural issues**

Cultural issues concerning adoption law include the monocultural nature of current adoption law, and in particular the effect of an adoption order in severing the child's links with all blood relatives traced through the birth parents. Such severance is an alien concept in relation to Maori identity, where whakapapa, encompassing iwi, hapu and whanau connections, is fundamental.

- Is there a need for special rules where adoption involves Maori, as now exist in Australia regarding Aboriginal people?

## **Openness in adoptions**

There are many reasons for moving to open adoptions, and this is recognised in all English speaking countries where adoption is a part of family law. There is today little support for the notion that children should not be told the truth about their adoption. We now know that adopted people generally have a strong desire to know about (and usually to meet or stay in contact with) their biological parents and other members of their birth family, while relinquishing parents generally want to know what has happened to the child they have lost through adoption, and usually want to meet or stay in contact. There is currently no legislative support for openness in adoption.

- Should adoptions be fully "open", with adopted people and all biological parents having knowledge of and/or opportunities for contacting each other?
- Should the Family Court have power to, or be required to, approve an open adoption plan as part of the adoption process, and should such plans be enforceable?

## **Adoption and human assisted reproductive technology**

Should changes be made to adoption and ART legislation to clarify the legal parenthood and status of children conceived and or born as a result of assisted reproductive technology (ART), including surrogacy arrangements, and all other related issues, such as fully informed consent, recording of information, access to information, and future contact?

## **Other issues**

Other issues arising from NZ's existing adoption legislation include:

- Power to discharge or vary an adoption order
- Names of adopted child
- Religious or other conditions relating to an adopted child's upbringing
- Effect of adoption on wills, inheritance rights, and rights to NZ citizenship and residency
- Effect of adoption on laws regarding forbidden marriages and incest.