

### ISSUE PAPER 2

## Is there still a need for adoption as a child care option?

If adoption were to be abolished, individuals and couples who wish to take on the permanent care of a child would instead apply for guardianship and day-to-day care orders that would give them all the rights and responsibilities of a natural parent, but would not alter the child's existing legal parentage, nor legally extinguish the child's relationships with the entire birth family.

The New Zealand Law Commission, in its 1999 Discussion Paper *Adoption: Options for Reform*, asked whether adoption as an institution should be retained. Of the 80 individuals and organisations that made submissions in response to the Discussion Paper, 38 proposed that it be abolished. In 2014 a Family Court Judge questioned whether adoption had outlived its usefulness, referring to it as “sadly anachronistic”, and adding that, if retained, its statutory basis needed to be brought into line with the 21<sup>st</sup> century. In the 1970s a group called *Movement Out of Adoption* lobbied strongly for the abolition of adoption.

Many birth mothers who had given birth in the post-war years contend that they were forced to consent to the adoption of their child. Inquiries into past adoption practices in Australia and the United Kingdom have confirmed that unjust, oppressive and sometimes illegal practices occurred in the past, and public apologies have been made at the highest level. Groups in New Zealand continue to press for an inquiry into past adoption practices, but to date have had no success.

### Law Commission Report 2000

The Commission proposed a new care status of “enduring guardianship”, which could be used instead of adoption where care of a child was assumed by a step-parent or family member (paras 117-125). Unlike a guardianship order, an enduring guardianship order would not expire when the adoptee reached the age of 20 years (now, under the Care of Children Act 2004, 18 years), but would continue for the adoptee's lifetime (as adoption orders usually do now). This could create a new set of problems (including issues over children's independent rights), and the proposal has not found favour with the Ministry of Justice nor with other commentators.

### Puao-te-Ata-tu 1988

*Puao-te-Ata-tu (Day Break)*, the report of the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare (1988), stated that Western adoption laws “established a totally alien concept contrary to the laws of nature in Māori eyes, for [they] assumed that the reality of lineage could be expunged and birth and parental rights irrevocably traded”. Several Waitangi Tribunal claims have been lodged raising this issue.

# Adoption Action

## Adoption Law Reform

June 2021

### ISSUE PAPER 2 – Is there still a need for adoption as a child care option? - continued

In New Zealand, there is incontrovertible evidence that adoption as currently expressed in law is an alien concept in the eyes of Māori, in that the child's whanau, hapu and iwi (ties which are fundamental to the Māori child's identity and whakapapa (genealogy), can be legally extinguished without the knowledge or consent of the adoptee or the family members concerned. The same views are held by many non-Māori New Zealanders, who oppose the legal severance of birth relationships by adoption, and its effects on both adopted persons and birth families.

#### **Care of Children Act 2004**

Changes made by the Care of Children Act 2004 have meant that it is easier for step-parents to become guardians of their partner's child, with broad rights and responsibilities for the child's care and upbringing - see ss 21–25, Care of Children Act 2004. The rights and responsibilities of a guardian are defined in detail in ss15 & 16.

#### **Retention of adoption**

While there are powerful arguments for the abolition of adoption, it seems doubtful that any move in that direction would have broad support. Adoption is generally seen as a fundamental (but diminishing) part of child care in New Zealand, as well as a means by which New Zealanders can assume the care of children from overseas countries.