

ISSUE PAPER 3

Objects and principles

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

Arguments for statutory principles

It is now accepted practice in New Zealand and other jurisdictions for family law statutes to contain a 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, a principles clause is particularly apt.

Law Commission Report 2000

The Commission recommended that any new adoption legislation include a guiding principle that placement of a child within extended family is preferable to placement with a stranger, and that the welfare and best interests of the child should be the paramount consideration when making any decisions about children.

New Zealand family and social legislation passed from the mid-1980s onwards has usually contained objects and principles to guide decision-makers exercising powers under the Act – for example, see Children, Young Persons and their Families Act 1989 ss 4–6; Care of Children Act 2004 ss 3–5. The Adoption Act 1955 does not have objects or principles, nor do the Adult Adoption Information Act 1985 or the Adoption Intercountry Act 1997, although the 1997 Act applies the comprehensive set of principles in the Hague Convention on Intercountry Adoption, which is included as a Schedule to that Act.

Comparable sets of principles in NZ and other jurisdictions

The most recent set of principles in New Zealand children's legislation is that in s 5 of the Oranga Tamariki Act 1989 as amended. These are particularly strong in relation to Māori cultural values and are consistent with the rights conferred on those under the age of 18 by the UN Convention on the Rights of the Child.

Oranga Tamariki Act 1989 Guiding Principles

s5 Principles to be applied in exercise of powers conferred by this Act

(a) the principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:

(b) the principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:

ISSUE PAPER 3 – Objects and principles - continued

(c) the principle that consideration must always be given to how a decision affecting a child or young person will affect (i) the welfare of that child or young person; and (ii) the stability of that child's or young person's family, whanau, hapu, iwi, and family group:

(d) the principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:

(e) the principle that endeavours should be made to obtain the support of (i) the parents or guardians or other persons having the care of a child or young person; and (ii) the child or young person himself or herself—to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:

(f) the principle that decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the child's or young person's sense of time:

(g) the principle that decisions affecting a child or young person should be made by adopting a holistic approach that takes into consideration, without limitation, the child's or young person's age, identity, cultural connections, education, and health.

Ministry of Justice early draft Bill 2007

The Ministry's draft Bill contained a principles section requiring anyone making decisions under the Act to take into account the following principles:

(a) adoption to be used only when in the best interests of the child;

(b) children should be given the opportunity, either directly or through a representative, to express views on matters affecting them, and those views must be taken into account;

(c) all other options for ongoing care of a child should be considered before an adoption order is made;

(e) intercountry adoption is an alternative means of providing a child with a family if the child cannot be cared for in their country of origin;

(f) children benefit from preserving and strengthening their identity in an environment that supports their cultural and linguistic heritage;

(g) decisions should be timely, having regard to the urgency of the case and the child's sense of time;

(h) wherever possible, information should be made available to the child about his or her birth family or whakapapa.

Adoption Action

Adoption Law Reform

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ISSUE PAPER 3 – Objects and principles - continued

Kevin Hague Bill 2016

The draft Bill had a separate adoption principles section, s 165:

s165 Principles and objects of adoption process

In making decisions on the administration and application of all proceedings that relate to the adoption of a child, all parties must have regard to the following principles and objectives:

- (a) the welfare and best interests of the particular child in his or her particular circumstances, both in childhood and in later life, are the paramount consideration in adoption law and in practice;
- (b) adoption is to be regarded as a service for the child in order to provide that child with permanent legal parents where that child's parents, family, or whānau are not able to care for the child;
- (c) adoption law and practice in New Zealand must comply with New Zealand's obligations under the Hague Convention, the United Nations Convention on the Rights of the Child, and other relevant treaties and international arrangements;
- (d) the equivalent standards and safeguards that apply to children adopted in New Zealand must apply to children adopted from overseas countries;
- (e) adoption law and practice in New Zealand must encourage openness in the adoption process;
- (f) an adopted person must be assisted in knowing and having access to information about his or her personal, racial, cultural, religious, linguistic, genetic and other heritage as far as is practicable and appropriate.

New South Wales Adoption Act 2000

This Act includes the following principles:

- (1) In making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles:
 - (a) the best interests of the child, both in childhood and in later life, must be the paramount consideration,
 - (b) adoption is to be regarded as a service for the child,
 - (c) no adult has a right to adopt the child,
 - (d) if the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances,
 - (e) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved,

ISSUE PAPER 3 – Objects and principles - continued

(f) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child's welfare,

(2) In determining the best interests of the child, the decision maker is to have regard to the following:

(a) any wishes expressed by the child,

(b) the child's age, maturity, level of understanding, gender, background and family relationships and any other characteristics of the child that the decision maker thinks are relevant,

(c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity,

(d) any disability that the child has,

(e) any wishes expressed by either or both of the parents of the child.

United Kingdom Adoption Act

Ss 1(4)(f) & (5) of the Adoption Act contain principles providing that an adoption agency, in placing a child for adoption, or the court, on making an adoption order, must have regard to a range of matters, including:

- the child's particular needs
- the effect on the child (throughout his or her life) of having ceased to be a member of his/her original family
- the relationship the child has with relatives, including (i) the likelihood of such relationship continuing and the value to the child of doing so (ii) the ability and willingness of any such relatives to provide the child with a secure environment and meet his/her needs (iii) the wishes and feelings of those relatives
- in making any placement the agency must give due consideration to the child's religion, racial origin and cultural and linguistic background:

Arguments against statutory principles

None known.