

ISSUE PAPER 11

Names of adopted child and religious conditions imposed on adoptive parents

NAMES OF ADOPTED CHILD

Once a final adoption order is made, the adoptive parent(s) have an unfettered power to discard some or all of the names given to the child at the time of registration of the child's birth and replace them with a new surname and forenames. This power is exercisable even where the adoptee is a teenager or a young adult under the age of 20 years and/or (i) is accustomed to using the name given at birth; (ii) has had no say in the replacement of the existing names with new names; (iii) is likely to lose his or her links and cultural connections with members of his or her extended family, whanau, hapu, iwi or other family group.

Adoption Act 1955

Under s16(1), an adoption order shall confer on the child a surname and one or more given names chosen by the adoptive parent(s).

UNCROC 1989

Article 8.1 states that parties to the Convention shall respect the right of the child to preserve his or her identity, including name and family relations, without unlawful interference.

Article 12.1 adds that all under 18s shall have the right to express their views freely in all matters affecting them.

United Nations Committee on the Rights of the Child

In its 2nd report (2003) the Committee recommended that New Zealand ensure the right of adopted children to maintain one of their original forenames: para 34(c).

In its 3rd & 4th report on New Zealand (2011), the Committee expressed regret that the government's review of adoption legislation had been on hold for 8 years: para.33.

Care of Children Act 2004

Under s 21(1)(c) & (2)(a) a child's guardian can change the name of an older or more mature child only "with the child" or "with the "help of the child".

Adoption Action

Adoption Law Reform

June 2021

ISSUE PAPER 11 – Names of adopted child and religious conditions imposed on adoptive parents - continued

Kevin Hague Bill 2016

A different approach is taken in this draft Bill. The proposed new s169(7) Adoption Act provides that:

(7) The court on making an adoption order may at the request of the proposed adoptive parents confer on the child the family name of the adoptive parents and the child's family name will then be changed by the adoption order provided that, if the child is of or over the age of 8 years, the court will have regard to the views of the child before making such a change.

RELIGIOUS CONDITIONS

Under the Adoption Act, a birth parent can on the making of an adoption order place a religious condition binding on the adoptive parent(s). This is the only condition that a birth parent can impose. The condition will require the adoptive parent(s) to bring up the child in the specified religious denomination and practice: s 7(6) Adoption Act 1955.

Current adoption practice means that in most adoptions, the birth parent(s) get to choose the adoptive parent(s) on the basis of information made available to them by Oranga Tamariki about available adoptive parents, including information about those parents' religious affiliation and practice.

There are still some private adoptions that take place by agreement between the adoptive parent(s) and the birth parent(s), where the involvement of the government agency is restricted to writing a social worker's report and monitoring the child's care during the period of an interim order. Compliance with a religious condition after the final order is almost impossible to monitor or enforce. Oranga Tamariki could in theory apply to rescind the adoption order for failure to comply, but this is most unlikely.

A religious condition breaches the adoptive parents' rights to freedom of religion under s.15 New Zealand Bill of Rights Act 1990 and s 21(1)(c) & (d) of the Human Rights Act 1993, and arguably also breaches the rights of the adopted person to have a say in what if any religious denomination or practice s/he is to follow.

UNCROC 1989

Article 12 gives under-18s the right to express their views freely on matters that affect them, and the opportunity to be heard in any judicial proceedings that affect them.

Law Commission Report 2000

Thirty years ago the Department of Justice recommended that this provision be removed from the Act, and in 2000 the Law Commission took the same view: paras 459 to 444.

Ministry of Justice draft Bill 2007

This does not include a religious condition. It provides as follows:

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ISSUE PAPER 11 – Names of adopted child and religious conditions imposed on adoptive parents - continued

Written plan for contact, etc

A social worker must assist the birth parents and intending adopters to prepare a written plan for nurturing the intended adoptee's cultural and linguistic heritage, through contact, and through assisting him or her to learn about, for example, his or her birth family's whakapapa, ancestry, ethnic origins, and spiritual beliefs.

It does not include any means by which the agreed plan should be included as part of the adoption order, or how it might be enforced.

Kevin Hague Bill 2016

This Bill makes no reference to religious conditions attached to the consent of a relinquishing parent. Section 171(8) of the draft Bill provides that:

The birth parents, prior to granting consent for the adoption of a child, must have the right to be provided with information about the identity of the prospective adoptive parent or parents and must be informed of this right, and the form of consent must contain the full names of the prospective adoptive parent or parents.”

Presumably a birth parent who had strong views about the child's religious upbringing would ascertain the views of any prospective adoptive parents on this issue.