Adoption Action

Adoption Law Reform

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1. INTRODUCTION

Background

1.1 Adoption Action was incorporated in September 2010. Since our inception we have endeavoured to lobby successive governments to propose and promote changes to adoption laws, policies and practices. Our committee consists of adopted people, academics with specialist expertise, lawyers, law students and those with an interest in adoption law reform.

1.2 We believe adoption law in New Zealand is outdated and no longer fit for purpose. We strongly support the reform of New Zealand's adoption laws.

1.3 Adoption Action's position:

- Adoption Action strongly supports the spirit of openness and believes New Zealand adoption legislation should provide a framework, processes and provisions based on openness and transparency, with the best interests of the child paramount.
- We would like to see New Zealand adoption legislation that is consistent with both the Law Commission's recommendations for legislative reform of the Adoption Act 1955 and the United Nations Convention on the Rights of the Child.
- There have been many attempts to reform adoption law, but there have been no significant changes to adoption law since the Adult Adoption Information Act in 1985 and the Adoption (Intercountry) Act 1997. A comprehensive new law is long overdue. It must take account of the many changes in society and the different perspectives on social and family values compared with 1955. There have also been shifts since 1985 and 1997. The practice and understanding of adoption itself have changed remarkably. The new law must reflect this. Adoption should be seen as a residual process, applicable in rare situations.

1.4 Adoption Action (led by Robert Ludbrook) prepared issues papers that identify issues that require consideration when drafting new adoption legislation. There are 15 issues papers covering issues we consider to be significant. We strongly encourage the Adoption Law Reform Project to consider these issues papers. The papers can be found on our website www.adoptionaction.co.nz

1.5 We have worked with the Wellington Community Justice Project on the issues of whāngai and intercountry and overseas adoption. We support the position and points raised by the Wellington Community Justice Project. We therefore **append** the two documents as written by members of the Project on the issues of: (1) whāngai and the consultation process with Māori (Appendix 1); and (2) intercountry and overseas adoptions (Appendix 2).

1.6 We note that there are many issues with the current state of adoption law. We have not tried to address all the issues in this submission. Rather, this submission covers some of the key issues.

1.7 We are encouraged to see the work being done by the Ministry of Justice on adoption law reform and we thank the Ministry for the opportunity to make a submission. We are happy to meet with the Ministry to discuss any topics raised in our submission, or any of our work more generally.

Human Rights Tribunal claim

1.8 In July 2011 we filed proceedings with the Human Rights Tribunal claiming that the Adoption Act 1955 discriminates on a number of different grounds in respect of which discrimination is unlawful under the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. The Human Rights Commission supported our claim (other than the claim of indirect discrimination based on race, which was found to be not made out through lack of evidence and was dismissed). The Tribunal released its findings in favour of Adoption Action on 7 March 2016.[1] The Tribunal declared that seven provisions are inconsistent with the right to freedom from discrimination affirmed by s 19 of the New Zealand Bill of Rights Act 1990. The decision finds that provisions in the Adoption Act discriminate on the grounds of sex, sexual orientation, marital status, disability, and age, and that a section of the Adult Adoption Information Act discriminates on the ground of age.

1.9 We took this case to the Human Rights Tribunal after many years of unsuccessfully lobbying government for adoption law reform. We hoped that it would serve as a mechanism to bring about change. We were open about our motives during the Tribunal hearing. We also noted that there were many other issues with the legislation besides discrimination.

Terminology

1.10 We support the terminology being updated in the new Act. There are certain phrases used in the Act and in the Ministry of Justice *Adoption in Aotearoa New Zealand Discussion document* (the **Discussion Document**) that we believe should be updated in the new Act. We believe adopted people and others should be consulted on the appropriate terminology.

1.11 We recognise that the term 'adoption' is, for many, tied to the old form of closed adoption with sealed records under the 1955 Act and the veto system under the Adult Adoption Information Act 1985. We believe the practice of adoption would be better reflected by a phrase such as 'permanent parenthood order', 'lifelong parental status order' or 'child status order'. These are not perfect, and our group does not have a preferred option. Variations may be possible. We note that the word 'permanent' could be confused with 'permanent caregiver' under the Oranga Tamariki Act 1989. 'Lifelong' is better, but adoption has effects even after an adopted person's death, for example when dealing with their estate as well as impacts for future generations. 'Parenthood' and 'parental' focus on the parents rather than the adopted person, and yet 'child status' does not capture the fact that a person remains adopted into adulthood.

1.12 We recognise that 'adoption' may need to be retained for certain legal purposes such as the Hague Convention on Intercountry Adoption. However, otherwise we submit that the terminology should, where possible, be updated.

1.13 The phrases 'birth mother' and 'birth parent' are also, for many, inadequate descriptions of the role which the 'birth parents' play in the child's life. For consistency with the Discussion Document, this submission will use the term 'birth parents', 'birth mothers' and 'birth fathers'. These terms do not appear in the 1955 Act, but we encourage the Ministry to consider the terminology of 'birth parents', 'birth mothers' and 'birth fathers' in the new legislation, and in any material produced as part of the Law Reform Project. We believe the Law Reform Project is a good opportunity for thought to be given

[1] *Adoption Action Incorporated v Attorney General* [2016] NZHRRT 9, [2016] NZFLR 113.

to the terminology that should be used going forward. We note that the terminology used needs to be inclusive of the rainbow community. We support 'birth parents' being consulted on the appropriate terminology to be used.

2. WHAT THE NEW ACT SHOULD COVER

2.1 We support adoption law remaining separate from the Status of Children Act 1969, the Care of Children Act (COCA) and the Oranga Tamariki (OT) Act. We believe it is not appropriate to combine it with the COCA or the OT Act because these statutes relate to the care of a child up to the age of 18, whereas adoption is a permanent lifelong status.

2.2 It is our view that the Adoption Act 1955, the Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1997 should be combined and adequately updated in line with modern practices.

3. PURPOSE OF ADOPTION

3.1 The Discussion Document states that 'Providing a purpose would make it clear when and why adoption should be used.' We note that adoption has been used in a range of circumstances and thought will need to be given to what the 'purpose' of adoption will be going forward.

3.2 We strongly encourage you to consider Keith Griffith's detailed list covering 43 purposes of adoption, drawn from the period during which adoption has been legal in New Zealand.[2] As he points out:

> They are each well documented in New Zealand adoption history. The diversity throws some light on the intense and often conflicting mixture of positive and negative, thoughts and feelings, about adoption. It also helps explain the difficulty of defining our motivations and objectives in adoption policy and practice.

3.3 In the past, one of the main reasons mothers put their babies up for adoption was due to the societal pressure on unmarried women. In those circumstances the purpose of adoption was to meet the cultural and societal expectations of the time. This took the form of placing a child permanently with a heterosexual married couple who would become the new legal parents, erasing the child's origins.

3.4 Guardianship, special guardianship, and parenting orders can often provide the legal scaffolding need for permanent care of minors. For example, these care arrangements should be all that long-term parenting by grandparents needs.

3.5 However, these options do not serve the purpose of providing a lifelong status of legal parenthood. This is what is needed (or wanted) in rare situations. It does not need to require that the child's origins are permanently severed. We outline some of the reasons for adoption that have been raised in cases below.

Culture

3.6 We recognise there have been situations where an adoption is sought and agreed to in a manner consistent with tikanga Māori. We refer to the case of *Re M (Adoption)* [1994] 2 NZLR 237 where whānau and Te Puni Kokiri supported an adoption of a child by a family member. An adoption would still, on these facts, legally sever the child from their natural parents. The High Court granted the

[2] Keith Griffith *New Zealand Adoption: History in New Zealand – Social and Legal 1840–1996,* 2006 vol 1 History and Rational 5A at 319-320. KeithGriffith's research and publications were donated for safekeeping to the Hocken Archives Library, Otago University

order, but we note that the Family Court judge considered a custody and guardianship arrangement to be more suitable. We note there may also be situations arising in other cultures such as Pasifika where adoption is sought for customary arrangements.

3.7 We recognise that there may be situations where an adoption is sought to ensure there is a legal relationship that endures after the child turns 18. We believe any mechanism for this needs to be done in a manner which does not legally sever the child from their natural parents, a process which has been judicially described as 'the statutory guillotine'.

Family recognition and surrogacy

3.8 Adoption is also currently used in surrogacy situations, most notably altruistic gestational surrogacy where at least one of the applicants is a genetic parent (although this is no longer required in New Zealand). While the Law Commission has proposed an alternative mechanism for dealing with such cases, we note that it is a long way off any legislative reform. It is our view that surrogacy should be dealt with under a separate framework.

3.9 Adoption has also been used in situations where a sperm donor is involved. The case of *Re Application by AMM and KJO to adopt a child* [2010] NZFLR 629 involved an anonymous sperm donor (a practice that is effectively not permitted under the Human Assisted Reproductive Technology Act 2004). In this case, adoption was used to give parental status to the mother's partner.

3.10 The recent case of *Re Gordon* [2020] 2 NZLR 436 demonstrates how an adoption order may be sought to legally recognise 'the reality of the relationship'[3] and to ensure that the relationship is legally recognised past the time when the child turns 18. In this case the foster carers were divorced and yet continued over many years to care for the girl, now a teenager under 18. The appeal concerned whether the foster parents were 'spouses' for the purpose of a joint application to adopt the girl.

3.11 In the case of *Re Gordon*, the Chief Executive argued

> …there were important reasons that justified limiting joint applications to those living in a stable, committed and exclusive relationship. That limitation is said to be justified because of the very significant effect of adoption in terminating a child's legal relationship with her biological parents.[4]

3.12 The Court allowed the appeal in this case, but we believe this case demonstrates the need to be able to rely on legislation rather than on case law.

Rainbow cases

3.13 We recognise that adoption is used in the rainbow community to create legally recognised families in instances where there are donors and/or surrogates. We believe that the new Act must allow for legally recognised families to be created in a manner which does not require severing existing legal relationships.

3.14 We note the case of *Re Pierney* [2016] NZFLR 53 in which a de facto male couple applied to jointly adopt two children who were both born through a surrogacy arrangement reached between the applicants and the surrogate mother, with one of the applicants being the biological father of both

[3] *Re Gordon* [2020] 2 NZLR 436 at [9].
[4] *Re Gordon* [2020] 2 NZLR 436 at [25].

children. We believe this case highlights some of the issues and challenges the rainbow community faces under the current adoption framework.

Humanitarian reasons

3.15 We recognise there may be instances where adoption has been used for humanitarian reasons. A very good example is the case of *Norman v Attorney-General* [2021] NZCA 78. This concerned an application for the adoption of Ethiopian children by their aunt, who lives in New Zealand. The children's parents had disappeared some years ago and were believed to be dead. The judgment allowed the adoption (except for a girl who was too old): the focus was heavily on the welfare of the children in their dire situation, and the immigration aspect was downplayed. The aunt provided the family and cultural connection.

International reasons

3.16 *Norman* illustrates how adoption can be vital in cross-border situations, in that case enabling the children to come to New Zealand and gain citizenship, with all the benefits that go with citizenship and nationality. Adoption may also be important in the reverse situation: where families want to travel overseas for work reasons, emigration, tourism, and keeping in touch with family located overseas. Some countries may require proof of adoption rather than some less permanent legal arrangement.

Unforeseen situations

3.17 The recent history of adoption shows that there are circumstances totally beyond the contemplation of those enacting the 1955 Act where legal status has had to be clarified. A legal process has been needed. The same may well arise in the future, possibly in situations similar to the scientific developments, as we have seen with assisted human reproduction.

4. PURPOSES AND PRINCIPLES

4.1 The Discussion Document helpfully sets out the objectives in reviewing the law (at 6) and the purpose of adoption (at 11-12). The objectives make sense. The 'purpose' is useful, but we consider that it is better to refer to 'purposes' rather than trying to find one purpose only. Adoption in the future – as at present – is likely to be multi-faceted and serving several purposes (including the reasons for adoption listed above).

4.2 Where the 'purpose' refers to 'a new permanent family for the child' (at 12), it should be made clear that permanence means 'lifelong', unlike the meaning in the context of the Oranga Tamariki Act. Under a remodelled law, this change of status is about an additional family, and it would not exclude the original family or whānau.

4.3 The document states that 'Providing a purpose would make it clear when and why adoption should be used.' In fact, most of the examples of 'purpose' given in the Discussion Document say nothing about 'when or why adoption should be used', or the circumstances or reasons which may now appropriately lead to a child's being adopted. In the past, the main reason for a child's becoming available for adoption was simply being born to a mother who was not married to the father, though this was not clearly stated in the law. The purpose of adoption was to deal with this by enabling a married couple to become the new parents, erasing the child's origins. Today the varied reasons for adoption are more to do with the individual situations of those concerned.

4.4 Any statement of the purpose of adoption must include some definition of why a permanent transfer of parenthood is judged to be necessary for a child, for example:

> Adoption or 'a permanent parenthood order' is a service for a child. Its purpose is to establish legal parents who will provide permanent parental care, and have parental responsibilities and rights, for a child who cannot be cared for by their birth parent/s, in order to promote and protect the lifelong wellbeing and best interests of that child.

4.5 We consider it to be essential that the future legislation include a set of principles, not simply objectives and purposes. We propose the following, with comments in square brackets:

(1) The paramount consideration must be the welfare and best interests of the child or 'the adopted person'. [The inclusion of this principle acknowledges the fact that New Zealand is bound by the UN Convention on the Rights of the Child, Article 21 of which reads:

> 21. States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.

While the adopted person will be a child when adopted (subject to any change allowing for adoption of adults), the paramount consideration applies lifelong.]

(2) The safety of the child who is the subject of an application must be protected and, in particular, a child must be protected from all forms of violence (as defined in sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the child's family, family group, whānau, hapū, and iwi. [This is similar to COCA, s 5(a)]

(3) The person's rights must be respected and upheld, including those in the United Nations Convention on the Rights of the Child, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Declaration on the Rights of Indigenous Peoples, and the United Nations Convention on the Rights of Persons with Disabilities. [As the change of status is lifelong, Conventions other than UNCROC are relevant.]

(4) A person's right to identity and to knowledge of that identity, including whakapapa, must be preserved and strengthened [COCA, s 5(f)].

(5) A person who is the subject of an application must be given reasonable opportunities to participate in any decision affecting them. [This is the same as the new principle (g) in s 5 of COCA to be inserted by the Family Court (Supporting Children in Court) Legislation Act 2021 when it comes into force, with 'person' replacing 'child']

(6) The dignity and mana of the original parents, of the new legal parents, and of the respective families and whānau must be respected, and, except in circumstances where this would be clearly contrary to the person's interests, these relationships must be preserved and strengthened [cf COCA s 5(e)].

(7) Adoption legislation must provide a framework, processes and provisions based on openness and transparency, with the welfare and best interests of the child paramount.

(8) Where Māori are involved, the principles of Te Tiriti o Waitangi are to be observed, and services and processes are to be provided in a culturally appropriate way.

(9) Adoption orders are to be made only in circumstances where other legal processes do not meet the needs of the parties.

(10) Procedures are to be as inexpensive, simple and speedy as is consistent with justice and the previous principles. [Property (Relationships) Act 1976 s 1N(d).]

5. IMPACTS OF ADOPTION

5.1 It is difficult to separate out the impacts of adoption into a few categories, or to consider them in isolation, as they are so deeply intertwined in the lived experience. For adopted people, there are impacts from birth and continuing throughout their lives; for relinquishing parents and family or whānau, there are impacts from the time of relinquishment for the rest of their lives; and for adopting parents and family or whānau, often prior to the time of consent and placement, there are impacts for the rest of their lives.

5.2 The Discussion Document terminology does not recognise that the impacts of adoption affect people for their entire lives. This is also true of the current legislation.

5.3 The child's rights, best interests and welfare need to be protected throughout their life, including their right to identity. In our view, a mechanism to enforce those rights should be available. The current Act's effect of severing the adopted person's entire birth connections must be done away with. The adoptive family connections should be added to the birth connections, rather than replacing them.

5.4 A person's views on the impacts of adoption are likely to change depending on where they are in their life journey. An adopted person at age 18 may have different views on reaching their 30s, and beyond. Events such as starting one's own family or the death of an adoptive parent can be catalysts to developing views. Mothers and fathers may also change their views as they go on to have subsequent children and other life experiences.

5.5 The impact of the deep lifelong effect that legislation has on people affected by adoption is hugely significant. While annual adoption statistics are important, the numbers involved are less important than the impact the legislation has on those individuals.

5.6 In lived experience, there is no 'finalising' or 'after an adoption' or 'end' to adoption for those affected. It needs to be understood and recognised in new legislation that there are lifelong effects for a person being raised outside their family or whānau, and legislation that supports this to happen has lifelong and intergenerational impacts.

5.7 The Adoption Act 1955 defines anyone who is the subject of an adoption order as remaining an 'adopted child' irrespective of their age. This is an unnecessary discrimination, as other children become full adults at age 18 or 20.

6. RIGHTS IN ADOPTION PROCESS

6.1 As the Discussion Document states**,** ensuring that children's rights are at the heart of the adoption process is a key focus of adoption reform. Our Principle 1, above, states that the child's welfare and best interests are paramount, thereby 'setting out an overriding duty in our adoption laws to ensure that the adoption and other decisions affecting the child are made in the child's best interests'

(Discussion Document). This section considers aspects of other rights, which the Discussion Document summarises as provision, protection and participation rights.

Definition of child

6.2 We agree with the option of changing the definition of child, for the purposes of adoption, to mean a person aged under 18 years old. This would match other family law and international agreements. However, we believe the law should enable people older than 18 to be adopted in some circumstances. This could be achieved by fixing the relevant age as being that at the time of the Family Court hearing. Doing so would mean that, in situations such as the Court of Appeal case concerning Ethiopian children (*Norman v Attorney-General* [2021] NZCA 78), the unfortunate position of the oldest child would be avoided.

Child's participation and right to be heard

6.3 We agree with including new provisions which ensure the child's right to be heard. Where the child who is the subject of an application is of an age to have an understanding of the issues involved (applying what is known as the *Gillick*[5] principle), the child's voice must be heard and any views expressed taken into account. Section 6(2) of COCA provides a precedent:

> '(2) In proceedings to which subsection (1) applies, -
>
> (a) a child must be given reasonable opportunities to express views on matters affecting the child; and
>
> (b) any views the child expresses (either directly or through a representative) must be taken into account.'

However, those views should not be determinative of the outcome.

6.4 To aid the process referred to in principle 5, a lawyer must be appointed to represent the child who is the subject of the application. Unlike the provision in s 7 of COCA, this should be mandatory.

Child's consent to adoption

6.5 We agree with the option on requiring a child's consent to adoption. The discussion above about the child's age is also relevant to this requirement.

Child support

6.6 We agree with the concept of new provisions which would preserve the child's legal connections with the birth family, and enable the birth parents to remain the child's parents but without the rights and responsibilities of parenthood. These would be fully transferred to the adoptive parents. As the birth parents would then have no parental rights or responsibilities, it would not be appropriate for them to be liable for child support.

Inheritance

6.7 The Discussion Document asks about whom the adopted person could inherit from, in the situation where relations with both families continue to exist. If the law enables this change, adopted people should be able to inherit from both their birth families and their adoptive families.

[5] Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112.

Birth parents' rights not covered elsewhere

Consent

6.8 The period of 10 days after the birth (in practice, 12) allowed for signing consent to adoption is too short to genuinely comply with the conditions for fully informed and freely given consent. Moreover, the form of consent itself also needs to comply with these conditions. We agree with the option for making this period longer.

6.9 Mothers are asked to sign an affidavit at the time of consent making certain undertakings around informed consent. This affidavit is heavily weighted against a natural mother maintaining contact with her child especially when there is no provision for a contact agreement being signed at the same time.

6.10 The grounds on which Courts can dispense with consent before the hearing need to be very carefully considered and redefined.

Involvement with adoption process

6.11 We broadly agree that the birth parents should, in general, both be recognised as the child's legal parents at birth, and have the right to be much more involved in the legal process for adoption (subject to safeguards where involving the birth father would clearly not be appropriate, for example in cases involving rape or violence). Allowing or requiring birth mothers and, where appropriate, birth fathers to attend the hearing would ensure that if there are rare circumstances where dispensing with their consent is being considered, their point of view is heard.

Open adoption

6.12 A reformed law needs to provide legal backing for agreements on ongoing contact between the birth parents and the adoptive family. For example, the social worker's report should focus strongly on the importance of agreement on future plans in relation to contact and openness, in order to ensure that the child is brought up, wherever possible, to know their full whānau and family connections.

Access to information and ongoing support

6.13 In the spirit of openness and transparency, access for birth parents to information about their adopted child should parallel that of adopted people, rather than being more restricted, as it is at present. As noted below, ongoing support should be available for birth parents and members of birth families in relation to the impacts of adoption as well as accessing information.

7. IDENTITY, IDENTITY DOCUMENTS AND ADOPTION

Birth certificates

7.1 In our view, birth certificates should be a factual statement/record of birth and legal parenthood, permanently recording all those involved. Consideration could be given to the purpose of the birth certificate. What is the birth certificate's purpose for the person whose birth it records? What is the birth certificate's purpose for the parents involved? For example, a purpose of a birth certificate for an adopted person may be for identity whereas for the parents involved it may be related to parenthood (blood tie/parenthood responsibilities).

7.2 The compulsory counselling required under the Adult Adoption Information Act 1985 in connection with obtaining an original birth certificate is unnecessary and discriminatory, and should be removed from the provisions for applying for a full birth certificate under new legislation.

7.3 Consideration should be given as to how already established legal relationships would continue to be recognised in identity documents where one adoptive parent enters into a new relationship (e.g. after death or divorce) while the child is still young, then seeks to include the new partner as a joint legal parent. Under the Adoption Act 1955, on the granting of a second adoption order, the child's legal relationships with the former partner's family are then severed. This must not happen under new legislation. If each family or whānau connection continue to be recognised, the pathways for the child to maintaining relationships remain open.

Adoption support services

7.4 There is a need for a dedicated support services for all people impacted by adoption. Such a service would recognise that the impacts of adoption include adopted people, mothers, fathers, siblings, partners, wider family and whānau, and people supporting others in the adoption circle.

7.5 The shift in practice towards open adoption has not removed the desire for people to contact or reconnect with their siblings, or wider family, or connect with their whakapapa or tīpuna. Therefore, it is timely for a service to be established. There is also a growing understanding of the intergenerational, and lifelong impacts of adoption which goes beyond the immediate parent/child relationships.

7.6 We believe it important that a free non-government support service exits to assist people navigate adoption issues throughout their lives. We do not want to see a time limit imposed on the number of hours a person can access such a service.

7.7 The service may need to support people who have different experiences of adoption including, closed adoption, open adoption, step-parent adoption, whāngai, customary, international, intercountry adoption.

7.8 In our view, these services should sit outside Oranga Tamariki.

Access to adoption information

7.9 The current position on access to adoption information is inadequate. Its roots are in legislation created as an 'add on' to a closed adoption system. It is consequently not fit for purpose. The current mechanisms for accessing information about adoption are at odds with modern views of adoption; this was also true in the 1980s, when views on adoption had shifted far from the traditional closed structure, and this contributed to the introduction of the Adult Adoption Information Act 1985. In the past 36 years our knowledge and views around adoption, related information and access have shifted further.

7.10 Some fundamental issues with our current adoption regime that have often been highlighted are the secrecy and separation from knowledge of or connection to the adopted person's origins, or information about their origins. Strengthening and correcting the current provisions on access to information are a vital part of any adoption reform. Not only will this assist in the cases of 'adoption' going forward, it will also be beneficial for those who have already been adopted.

7.11 It will also facilitate steps toward a more 'open' adoption process and work towards avoiding further perpetuation of stigma around adoption.

7.12 When considering what changes need to be made, it is important to look at who can access adoption information and how they can do so:

- Children and people who have been adopted
- Birth parents
- Birth family and whānau
- Whether age restrictions are necessary
- Link/interest in information restrictions
- 'Original birth certificate' requirements and restrictions on accessing court and OT documents.

7.13 The exact boundaries of adoption information access may lack consensus. In deciding on the changes that are to be made, we propose that decisions should be guided by our proposed principles outlined earlier in this submission, specifically:

- The welfare and best interests of the child are paramount.
- Origins, family connections, whakapapa and identity are to be preserved (along with recognition of the importance of being able to grow up with these/knowledge of these).

7.14 We note that those who argue against increased access rights to adoption information would likely cite privacy as their core argument, specifically the privacy of the 'birth parent/s', but also, to a certain extent, the privacy of the adopted person. When considering the privacy of the adopted person, it is important to note that the Privacy Act 2020 includes, under s 22 on information privacy principles, at principle 6, a principle of access to a person's own personal information where it is held by an agency. This highlights that, although there may be a competing right of privacy of the 'birth parent/s', being able to access one's own information also forms an important component of privacy.

7.15 Furthermore, we note that even though there is a potential for conflict between the privacy rights of an adopted person and of their 'birth parent/s', privacy can be seen as fundamental by many, and it must not outweigh the welfare and best interests of the child, which are to be paramount.

7.16 It is also important to consider, when choosing a new direction to take for access to adoption information, what access for non-adopted persons to similar or the same information looks like. Requiring extra hurdles and imposing greater costs due to the increased administration involved in relation to adoption records can solidify an 'otherness' or reinforce the ideas of privacy and shame that adopted people and birth parents have faced historically.

Options discussed in Discussion Document:

7.17 **Lowering or removing the current age restriction**

We agree. As noted in the Discussion Document, a change to the age restrictions that are currently in place is required. The current age of 20 for accessing an 'original' birth certificate makes little sense. As has been noted, there are benefits in having access to information about personal genealogy from an early age, including fostering a sense of culture and connectedness. It also makes little sense in situations that are already defined as an 'open adoption', where the adopted person already knows their 'birth family' but would be unable to access certain records on it if they wanted to.

7.18 **Allowing birth parents and wider whānau of the birth parent/s or person who was adopted to access original birth record**

We agree. In most circumstances this should be consistent with our outlined principles of the welfare and best interests of the child and preserving whakapapa and family connections. It is of course possible that there may be particular situations in which it is undesirable for certain people to access information. However, the access referred to here is limited to the original birth record.

7.19 **Phasing out or removing the veto system made before 1 March 1986**

We agree with this suggestion. Although it may not be justified under the welfare and best interests of the child principle, given the individuals involved will no longer be 'children', our principle of preserving whakapapa and family connections support an affirmative answer.

7.20 **Removing the requirement to provide an 'original birth certificate' to access identifying information on Oranga Tamariki records**

We agree. This adds an unnecessary hurdle for people who want to access information that can be very important and meaningful to them. It further perpetuates the secrecy and layers of administration that have been a feature of adoption to date. As we have mentioned throughout, secrecy and shame is to be discouraged in new laws.

7.21 **Allowing the court to grant access to the Court's adoption records if it is satisfied that the person has a genuine interest in the record**

We agree. This is a further tool that will assist people in making connections and help affirm principles of connectedness and preserving whakapapa and/or family connections.

7.22 **Creating a separate system for storing and sharing information about the identity of a person who has been adopted that could sit alongside the birth certificate process**

This option is less favoured by Adoption Action than some of the others proposed, as creating a dual system enforces a sense of 'otherness' which may link to ideas of secrecy and shame. It may instead be worth considering a birth certificate system that would include all the relevant details of the adopted person's origins and legal parenthood, but applies to all people equally.

8. ADOPTION STATISTICS

8.1 The Discussion Document notes that 'only 125' people are adopted annually. This does not reflect the true number of people affected by adoption. For many adoptions there are 5 or more people directly affected, as parents and adopted person, and there may also be birth family or adoptive family siblings and grandparents. Māori whānau would include many more affected people.

8.2 There are currently difficulties accessing important statistical information. Currently there is little option but to request statistics under the Official Information Act.

8.3 Under an OIA made by Adoption Action in September 2017 for statistics information, we were advised that the information provided to us in response would be published on Oranga Tamariki's website 'shortly'. To the best of our knowledge this did not happen. The information provided did not include important details, such as number of adoptions by unrelated adopters.

8.4 It would be a vast improvement to have one point of publication of up-to-date statistics. It is cumbersome having three agencies providing these (Ministry of Justice, Department of Internal Affairs, and Oranga Tamariki). One point of publication online would be sensible.

8.5 It is important that detailed annual adoption statistics be recorded and published annually. We would like to see this up-to-date information available publicly.

8.6 In the past the New Zealand Yearbook contained social development tables with detailed adoption statistics on *Access to adoption information* and *Adoptions granted or recognised by New Zealand*. We would like online public access to that information and for that information to be updated annually.

8.7 Useful statistics would be:

- New Zealand domestic adoptions
- Intercountry adoptions where the adoption order is made in New Zealand, showing the same information;
- the number of children adopted overseas who are given citizenship
- Access to adoption information.

New Zealand domestic adoptions

8.8 Data on children adopted in New Zealand domestic adoptions contained in the yearbooks each year to date, including:

- number of domestic adoptions (adoption of a child in New Zealand);
- a breakdown of domestic adoptions into (i) adoptions by a sole applicant; (ii) joint adoptions by a parent and step parent; (iii) joint adoptions by married or civil union couples; (iv) adoptions by same-sex couples; (v) adoptions involving related and unrelated adopters; (vi) ages of the adopted persons at the time of their adoption
- discharge of adoption orders, showing (i) applicant party (ii) age of applicant where the applicant is the adopted person (iii) ground for discharge.

Intercountry adoptions

8.9 Data on children that have been adopted in New Zealand through intercountry adoption each year to date, namely:

- number of intercountry adoptions (adoptions of children born overseas adopted in New Zealand by New Zealand citizens and permanent residents), showing the countries from which these children come
- numbers of children adopted from each country
- numbers of adoptions involving related and unrelated adopters
- ages of the children at the time of their adoption.

Access to adoption information

8.10 Data on access provided by Oranga Tamariki on the provision of adoption information in the form previously produced by Statistics NZ on its website (Social development tables), namely, for each year, showing numbers of:

- original birth certificates issued to adopted people;
- original vetoes placed by adopted people;
- renewal vetoes placed by adopted people;
- vetoes cancelled by adopted people;
- birthparent applications for identifying information;
- original vetoes from birthparent(s);
- renewal vetoes from birthparent(s).
- vetoes cancelled by birthparent(s);

9. PROHIBITED MARRIAGE

9.1 Keith Griffith, in his epic work *New Zealand Adoption History and Practice – Social and Legal 1840-1996, 2006*, wrote: 'Where parties to a marriage are related to one another within the prohibited degrees of consanguinity or affinity, whether through whole blood or half-blood, the marriage is void ab initio whether or not an order declaring it to be void has been granted, if the parties are within the prohibited degrees of relationship and no order is in force dispensing with the prohibition.' Griffith made the point that, while the onus to ascertain whether the intended spouse or civil union partner is not within the prohibited degrees is on the person planning to marry, they are often unable to access the necessary information, as a result of the limitations on access to adoption records. Marriage celebrants can access adoption records, but where (as is often the case) there is no birth father's name or any details of the birth mother's family relationships, it is almost impossible to identify prohibited relationships. An inevitable consequence of adoption secrecy is that some adopted persons innocently enter into incestuous and/or prohibited marriage or prohibited civil union relationships.

Consequences of entering prohibited relationships

9.2 The chances of adopted persons entering a prohibited marriage relationship are small, but the social and legal consequences are extremely serious. If an adoptee in ignorance marries or enters into a civil union with someone within the prohibited consanguineous blood relationships, or within the prohibited degrees of affinity, without the Court's consent, the marriage is void from the start. This has significant effects on their children and on their rights of inheritance.

9.3 Issues Paper 15 covers prohibited marriage and incest in further detail.

Appendix 1

Wellington Community Justice Project

Submission:
ADOPTION IN AOTEAROA

Submission: Adoption in Aotearoa

Authors: *Claire Downey and Meg Russell*

Date: 24 August 2021

1. Introduction

1.1. This submission is made for and on behalf of the Wellington Community Justice Project ("WCJP") and Adoption Action Inc. This submission was written by Claire Downey (LLB/BA Majoring in English Literature and Art History) and Meg Russell (LLB/BA Majoring in International Relations and Political Science). It was managed by Jack Roberts (LLB/BA Majoring in International Relations and Political Science).

1.2. The WCJP is a student-led charity at Victoria University of Wellington Te Herenga Waka's Law School. The WCJP's goal is to further accessibility to justice in Aotearoa New Zealand. The Law Reform Team aims to improve the quality of legislation and to promote good governance by submitting on bills, discussion documents, and through other avenues.

1.3. Adoption Action Inc is an organisation committed to proposing and promoting changes to adoption laws that reflect current social attitudes in line with national and international human rights standards, and the views of adopted people, natural parents and adoptive parents. Key to their kaupapa is the importance of the rights of the child at the centre of adoption.

1.4. Neither the WCJP nor Adoption Action Inc seek to speak over the voices of Māori on the issues laid out in this submission. The aim of this submission is to comment on the proposed law reform related to whāngai and uplift Māori voices in the process. There will be specific reference made to the submission of Ngā Rangahautira, also known as the Māori Law Students Association of Victoria University of Wellington.

2. Summary

2.1. In this submission WCJP and Adoption Action respond to the "Adoption in Aotearoa New Zealand: Discussion Document" ("the document") released by Tahū o te Ture Ministry of Justice ("the Ministry").

2.2. Overall, this submission is critical of the Ministry's knowledge of whāngai and their approach to consultation and review of the proposed adoption law reform. This submission discusses the history of whāngai in Aotearoa, analysing the impact of colonialism on the legal recognition of the practice and the incompatibility of tikanga Māori Aotearoa's colonial legal system. We also discuss and make recommendations regarding the use of te reo Māori for non-Māori families and the legal boundaries of guardianship at law.

2.3. This submission comments on:

a. The Ministry's demonstrated inadequacy of knowledge on whāngai;

b. The consultation process

c. Whāngai at law

d. Māori-led Reform

e. Guardianship at law

2.4. A summary of our recommendations are:

a. the Ministry carries out adequate consultation with Māori before law reform;

b. sections 18 and 19 of the Adoption Act 1955 should be repealed;

c. whāngai should be placed within the sphere of Māori control, allowing for a Māori-led approach when validating whāngai arrangements;

d. te reo Māori should not be appropriated to refer to English terms inaccurately; and

e. the scope of guardianship should be extended to continue past the arbitrary age of adulthood.

3. Demonstrated Inadequacy of Knowledge

Brevity of discussion on whāngai in the document

3.1. The document discusses whāngai on pages 28 to 29. In relation to other key issues discussed in the document, the discussion of whāngai is extremely brief.

3.2. In the discussion, issues with the current approach are pointed out, such as mātua whāngai (whāngai parents) not having legally recognised parental rights and the flow-on effects of this[1]. However, unlike other sections of the document that point out potential options for change, only one tangible option is given as an example: change to the status of whāngai arrangements so they are legally recognised[2]. The brevity of the whāngai subsection flips the onus of labour back on the public, specifically Māori, to "work with" the Ministry to help them understand the tikanga around whāngai.

3.3. Whāngai is more important than can be articulated in the short text on the topic in the document. The importance of whāngai is elaborated in this submission at 5.8. of this submission.

The Ministry's Role

3.4. We submit that the brevity of the section on whāngai in the document demonstrates the Ministry's clear lack of knowledge of whāngai in general. This document was an opportunity for the Ministry to demonstrate their knowledge of tikanga Māori and the importance of whāngai to Māori communities. Instead, the page and a half dedicated to whāngai highlights the incapability of the Ministry to adequately prepare for law reform that involves depth of knowledge on whāngai as a custom in whānau, hapū, and iwi.

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[1] Discussion document, page 28.
[2] Above at 29.

3.5. Here, we refer you to Ngā Rangahautira's submission at "3. Consultation and review process", where Ngā Rangahautira raises issues regarding the role of the Ministry in this review at 3.4. We support Ngā Rangahautira in their concern with the Ministry's role after their meeting with the Ministry that left them disheartened.

3.6. We recommend that whāngai should be Māori-led, with any law reform in this area led and informed by hapū and iwi perspectives. The Ministry's inadequate knowledge on whāngai shows that they should step back and allow Māori to lead the reform. Without proper knowledge, the Ministry's presence is potentially harmful to the legal standing of whāngai and the wider societal perspective of the practice.

3.7. Please see "6. Māori-led Reform" in this submission for the full elaboration on what we recommend the Māori-led approach could look like.

4. The Consultation Process

4.1. We find it very concerning that the Ministry has failed to consult, or plan to consult comprehensively, with different hapū and iwi within Aotearoa. As mentioned above, the Ministry's demonstrated inadequate knowledge of whāngai makes them ill-equipped to properly carry out the consultation process as it stands, let alone on a greater scale as is necessary for such a topic.

Inadequacy of Consultation

4.2. With reference to points 3.2. And 3.3. of Ngā Rangahautira's submission, it is clear that the Ministry does not plan to adequately consult Māori throughout Aotearoa.[3] This is extremely disappointing, and demonstrates the Ministry's lack of care and understanding of the importance of Māori participation in the review of law around whāngai. In order for this review to hold

[3] Māori Law Students Association of Victoria University of Wellington "Submission: Adoption in Aotearoa" at 3.2 and 3.3.

credibility within the Māori community, and meet their consultation obligations under Te Tiriti o Waitangi, there must be a hui held with each iwi and hāpu within Aotearoa.[4] We are aware that Covid-19 has changed how society must communicate. In light of this, we support Ngā Rangahuatira's suggestion of the possibility of zoom meetings with iwi around Aotearoa.[5]

4.3. With further research and consultation with Māori, the Ministry would have discovered that whāngai practices are not identical between each iwi, hapū and whānau group. Whāngai is much more important than the Ministry has communicated in their discussion document on Adoption in Aotearoa.[6]

4.4. Our suggestion for moving forward with this review is that it is vital to consult every iwi in order to gain adequate knowledge of the disparities between whāngai practices. The variations with whāngai around Aotearoa are extremely important and demonstrate whānaungatanga in practice within different iwi, hapū and whānau around Aotearoa.[7]

Consultation Under Te Tiriti o Waitangi

4.5. We are extremely disappointed that the Ministry has not complied with their obligations under Te Tiriti.[8] In order to uphold the rangatiratanga over taonga, in this case tamariki, there must be consultation with Māori, this is a constitutional foundation of Aotearoa and must be upheld by all sectors of Government.[9] Without upholding Te Tiriti, the Ministry has no jurisdiction for this review at all.[8]

4.6. Subsequently, we suggest the Ministry is not suitable to lead this review of whāngai. We agree with Ngā Rangahautira's submission that this review of Māori issues should be dealt with by a

[4] Nick Platje "Te ao Māori, whāngai, and the law of intestacy: a principled proposal" (2021) 10 NZFLJ 107 at 107.
[5] Above n 3, at 3.2.
[6] Above n 1, at 28.
[7] Justice Joseph Williams "Lex Aotearoa: A Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 WLR 1 at 5.
[8] Above n 4, at 108.
[9] Above at 108.

sector of Government who can give more time to research the importance of whāngai.[10] We support Ngā Rangahautira's suggestion of handing the review to the Deputy Secretary Māori office, or another Ministry with increased cultural competence.[11]

5. Whāngai at law

Historical Standing of Whāngai

5.1. In Aotearoa, the prevailing legal system is that which was implemented during colonisation. The Native Lands Act 1909 outlawed the recognition of whāngai, and whāngai has continued to be suppressed by law, with colonial powers passing enactments that deliberately alienate Māori from their land and tikanga practices[12]. Prior to this point, whāngai was legally recognised under the Intestate Native Succession Act 1867[13] and, later, the Native Land Claims Adjustment and Laws Amendment 1901[14].

5.2. The recognition of whāngai at law has shifted according to societal perspectives enunciated in Aotearoa's law, often dictated by settler-colonial values[15]. The Adoption Act 1955 bears the consequences of colonisation. The Act was passed in an era of law making where Aotearoa's family laws were committed to the policy of assimilation, focussed on suppressing tikanga Māori to uphold the Pākehā majority[16]. This is evident in sections 18 and 19 of the Act that explicitly outlaw whāngai[17].

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[10] Above at 108.
[11] Above n 3, at 3.5.
[12] Nick Platje "Te ao Māori, whāngai, and the law of intestacy: a principled proposal" (2021) 10 NZFLJ 107 at 110-111.
[13] Above at 110.
[14] Above at 110.
Arani v Public Trustee (1918) NZLR 633 (SC) at 635.
[15] Above n 3, at 110.
[16] Jacinta Ruru "Chapter 2 Kua tutū te puehu, kia mau: Māori aspirations and family law policy" in Mark Henaghan and Bill Atkin (eds) *Family Law Policy in New Zealand* (5th ed, LexisNexis, Wellington, 2020) 57 at 65.
[17] Law Commission *Adoption and Its Alternatives; A Different Approach and a New Framework* (NZLC R65, 2000) at [208].
Above n 3, at 110.

5.3. Presently, whāngai is recognised in a limited sense at law under the Te Ture Whenua Māori Act 1993. This Act allows for legal recognition of whāngai for succession of Māori land. This does not, however, ameliorate all issues related to whāngai in Aotearoa, just one.

5.4. Again, we refer you now to Ngā Rangahautira's submission at "4. Whāngai in Aotearoa" where the author, Toni Wharehoka, speaks to her lived experience being barred from connecting to her Māoritanga until later in her life. We support Ngā Rangahautira's perspective on how barring whāngai can affect future generations and submit that Wharehoka's experience is an extremely important example of the extent to which the suppression of whāngai can deeply affect Māori.

Incompatibility of tikanga Māori with New Zealand law

5.5. Despite legal suppression, whāngai has continued to be practiced in Māori communities throughout the 20th and 21st centuries. The endurance of the practice demonstrates the endurance of tikanga Māori in te ao Māori outside of mainstream Pākehā-colonised Aotearoa.

5.6. Māori concepts have been recognised in limited examples, such as the Care of Children Act 2004 and the Oranga Tamariki Act 1989. These Acts refer to whānau, hapū and iwi, but provide no definition which allows Courts freedom to interpret their meanings as is appropriate to the situations at hand[18]. Central to this approach is the application by Courts of Māori concepts according to Māori understanding[19].

5.7. The practice of whāngai is dictated by tikanga Māori, however, tikanga varies for each hapū and iwi, with no uniform tikanga practiced by all Māori[20]. For example, the very words used to describe whāngai arrangements vary, with northern iwi of Tai Tokerau using the term "atawhai", meaning to show kindness or to foster, and iwi of Taranaki use the term taurima, meaning to

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[18] Jacinta Ruru "Chapter 2 Kua tutū te puehu, kia mau: Māori aspirations and family law policy" in Mark Henaghan and Bill Atkin (eds) *Family Law Policy in New Zealand* (5th ed, LexisNexis, Wellington, 2020) 57 at 77.
[19] Above n 9, at 77.
[20] Above n 9, at 59
Law Commission *Adoption and Its Alternatives; A Different Approach and a New Framework* (NZLC R65, 2000) at [181].

entertain or treat with care[21]. Tikanga has developed throughout history and will continue to change in the future.

5.8. Furthermore, whāngai is not paralleled in Pākehā understandings of adoption at law[22]. Aotearoa's current law under the Act is based on the principle of "clean break" closed adoptions, rooted in historical attitudes towards infertility and unmarried mothers[23]. In tikanga Māori, whāngai is an example of whanaungatanga in practice, utilised to reinforce relationships among whānau and hapū, passing on cultural knowledge and tradition[24]. To be tamariki whāngai is not to be abandoned, but to be given an honour[25]. The concept of stranger adoption, as it is in the Act, is abhorrent under tikanga Māori, far removed from the purpose and spirit of whāngai[26]. The closest concept in Pākehā society is guardianship, however, guardianship does not denote the depth of importance attributed to whāngai in Māori communities[27].

5.9. We submit that Aotearoa's legal system is ill-equipped to give full effect to the spirit of whāngai through statutory provision and the court system. Integral to the future of Māori is the protection of Māori from future harms resulting from colonialism. Placing whāngai within statute and requiring disputes arising from this be hashed out in colonial-established courts does little to keep Māori out of the legal system.

5.10. Therefore, considering the disparities between tikanga Māori and Aotearoa's legal system, we submit that ss 18 and 19 of the Act should be repealed and replaced with Māori-led approach. This recommendation is elaborated on at "6. Māori-led reform" in this submission.

5.11. We submit that the repeal of these sections should not affect Māori who want to make an

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[21] Nick Platje "Te ao Māori, whāngai, and the law of intestacy: a principled proposal" (2021) 10 NZFLJ 107 at 110.
[22] Law Commission *Adoption and Its Alternatives; A Different Approach and a New Framework* (NZLC R65, 2000) at [177].
[23] Nick Platje "Te ao Māori, whāngai, and the law of intestacy: a principled proposal" (2021) 10 NZFLJ 107 at 110.
[24] Justice Joseph Williams "Lex Aotearoa: A Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 WLR 1 at 5.
[25] Above n 15, at 5.
[26] Above n 15, at 5.
[27] Above n 13, at [177].

adoption order as opposed to a whāngai arrangement, as adoptions are provided for in the Act and will continue to be provided for under future law reform. Adoption is a distinctly different process to whāngai and therefore neither process should interfere with the validity of the other.

6. Māori Led Reform

6.1. We submit that any review and subsequent reform of laws around whāngai should be a Māori-led process. The review of whāngai laws is an issue which affects the interests of Māori, therefore it is essential that Māori have the ability to lead this review.

Inadequacy of Current Statute

6.2. We submit that the current law, held in s 19(1) of the Adoption Act 1955 ("The Act"), relating to whāngai, must be repealed in order to allow Māori rangatiratanga over whāngai.[28] Section 19(1) of the Act explicitly prohibits whāngai. This is unjust law which is a consequence of the colonisation Māori have faced in Aotearoa. Section 19(1) explicitly prohibits Māori rangatiratanga over their taonga, a clear violation of the Crown's Te Tiriti obligations.[29]

Māori-led Reform Under Te Tiriti o Waitangi

6.3. In relation to the Crown's Te Tiriti obligations, we are concerned there will be a blatant lack of respect for the rights of Māori when regulating laws of whāngai. In order to avoid a breach of Te Tiriti and Tikanga Māori, we suggest that the Crown pay particular respect to the principles of partnership and rangatiratanga.[30]

6.4. The Crown has an obligation to partner with Māori in the governance of Aotearoa. In order to meet this obligation in terms of whāngai, we suggest that this review be left in the hands of Māori. Partnering with Māori on this review will allow for Māori to have increased rangatiratanga of their own cultural practices. Te Tiriti is the constitutional foundation of

[28] Above n 17, at 208.
[29] Above n 4, at 107.
[30] Above n 4, at 107.

Aotearoa and should be respected in all aspects of governance, particularly when regarding issues affecting Māori.[31] Whāngai is a solely Māori practice and should not be determined in law by a Pākeha government.

Te reo Māori in Law Reform

6.5. Te Reo Māori is a very important taonga and should be utilized by Māori for Aotearoa. We are concerned the Crown may take advantage of or appropriate Māori language. When looking to reform adoption law in Aotearoa, it is integral that the Crown does not appropriate Māori language to refer to non-Māori family and family units. For example, it is inappropriate and offensive for the Crown to use the word whakapapa to refer to non-Māori genealogy, as the meaning of whakapapa cannot be paralleled with the Western understanding of genealogy.

6.6. We recommend that a Māori-led approach is taken in this area as well, allowing Māori to help guide the way in which te reo is used in law related to adoption and whāngai. Appropriating te reo to refer to things vastly different than what is originally referred to under te reo Māori in te ao Māori, does harm to Māori culture and identity as it removes te reo from its cultural context. Utilising te reo for things that do not fall within the scope of the te reo word's meaning does not work to uphold the Crown's obligations under Te Tiriti but, rather, tokenises Māori culture for colonial use.

6.7. Such harm can already be seen with the paralleling of whāngai with adoption, despite whāngai being a distinctly different cultural practice. Please see 5.8. of this submission for elaboration on this point.

6.8. We are concerned that through review and reform of whāngai, the Crown will determine and define whāngai incorrectly. Whāngai is a Māori practice and should only be defined by Māori. There are many different aspects to Whāngai throughout different iwi in Aotearoa, therefore Māori should have sole responsibility for reviewing law which greatly affect them.[32]

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[31] Above n 4, at 107.
[32] Above n 1, at 28.

7. Guardianship at law

7.1. At present, under section 28(1)(a) the Care of Children Act 2004 guardianship is terminated when the child turns 18. However, this is inconsistent with the definition of child under section 2 of the Adoption Act 1955, which states that a child is a person who is under the age of 20-years-old. Both the 18-years-old and 20 years-old cut off points for when guardianship ends, and when one is no longer considered a child, are arbitrary ages.

7.2. Whāngai occurs and extends past the arbitrary age of when someone is considered to have reached adulthood. As whāngai is done for the purpose of strengthening relationships, passing on intergenerational knowledge and fostering connection to whenua, among other things, the value of a whāngai relationship is not lost as soon as the tamariki whāngai reaches legal adulthood.[33] Rather, these connections formed by whāngai offer guidance to the tamariki whāngai, allowing for them to find their place in te ao Māori, their whānau, hapū, and iwi[34]. As previously mentioned, while this does not wholly parallel the Pākehā concept of guardianship, it can enrich the way we approach guardianship in law reform.

7.3. We submit that when paralleling guardianship with whāngai, guardianship can be seen to not be limited to just providing for the person before they reach legal adulthood. Instead, guardianship, as found in the Care of Children Act, should not be terminated when the child reaches 18, but extend into adulthood as far as the person under guardianship wishes. While guardianship does not hold the same cultural significance, likewise to mātua whāngai, guardians can help guide the person under guardianship, something which does not become defunct when that person reaches adulthood. Allowing for guardianship to legally extend into adulthood offers stability and consistency to that person who is under guardianship.

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[33] Nick Platje "Te ao Māori, whāngai, and the law of intestacy: a principled proposal" (2021) 10 NZFLJ 107 at 110.
[34] Law Commission *Adoption and Its Alternatives; A Different Approach and a New Framework* (NZLC R65, 2000) at [200].

7.4. Additionally, we recommend that there should be resolution made between the differing ages at which someone is considered legally an adult in both the Care of Children Act and the Adoption Act. Having two different ages for the same concept is confusing and creates ambiguity for no reason.

Appendix 2

Wellington Community Justice Project

Submission:
INTERCOUNTRY AND OVERSEAS ADOPTIONS

Submission: Intercountry and Overseas Adoptions

Authors: *Jack Roberts, Charlotte Carter and Bridgette Chisnall*

Date: 24 August 2021

1. Introduction

1.1. This submission was written by Bridgette Chisnall (LLB/BA majoring in International Relations and Political Science) , Jack Roberts (LLB/BA majoring in International Relations and Political Science) and Charlotte Carter (LLB/BA majoring in International Relations and Public Policy) for the Law Reform team as part of the Wellington Community Justice Project. This submission was also managed by Jack Roberts.

1.2. The Wellington Community Justice Project is a volunteer organisation made up of law students studying at Victoria University of Wellington. The WCJP's goal is to further accessibility to justice in Aotearoa New Zealand. The Law Reform Team aims to improve the quality of legislation and to promote good governance by submitting on bills, discussion documents, and through other avenues.

1.3. This submission is made for and on behalf of Adoption Action Inc, and was assisted in its drafting by Bill Atkin, Susan Atkin, Poppy Donoghue , Fiona Donoghue, Charlotte von Dadelszen, Anne Else and other members of that organisation.

The Objects and Principles of Adoption Law

1.4. We submit that the primary object of future adoption legislation should be to treat the wellbeing and best interests of each child as paramount. This includes recognising the inherent right of a child to have a family, the importance of maintaining the child's connection with their birth

family and culture if at all practicable and to treat adoption as the service of providing a permanent family for a child, not a child for the adoptive family.

Renanaming Adoption

1.5. In line with other parts of Adoption Action's submission, we submit that adoption should now be referred to as permanent parenthood in order to reduce the stigma associated with the word 'adoption' and to demonstrate that the act of permanent parenthood should not lead to unnecessary severance with the child's birth family.

2. Overseas Adoption

Context

2.1. The effect of s 17 of the Adoption Act 1955 is to place children adopted overseas in the same position as children adopted through the New Zealand court system.[1] The Courts will recognise an overseas adoption as being valid in New Zealand law once the relevant statutory criteria are met. Section 17 provides that an overseas adoption will be recognised where:

a) The adoption was valid according to the law of the place where it occurred; and
b) The adoption gave the adoptive parents a right to the day-to-day care of the child superior to the right of the natural parents.
c) It must also be satisfied that either;
   i. The adoption order must have been made by a Court or judicial or public authority in a Commonwealth country, the United States, or a country designated by Order in Council; or
   ii. The adoption has the effect that if the adoptee dies intestate, the adoptive parents would have an equal or superior right to inherit the adoptee's property than the right of the natural parents.[2]

Immigration

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[1] Adoption Act 1955, s 17.
[2] Adoption Act 1955, s 17.

2.2. The section was originally intended to give children adopted by persons migrating to New Zealand the same rights as children born to them in this country.[3] However, since the introduction of stricter immigration criteria for those entering the country there have been concerns that section 17 can be used as a 'back-door' provision in order to enter the country. If a child who is not a New Zealand citizen is adopted by a New Zealand citizen, then that child is automatically granted citizenship.[4]

2.3. There have been several cases in the New Zealand Courts where an adoption order would offer more than just the deeming of a parental relationship, and instead offer a "portal of relationship to a state".[5] The Court has held that when applying for an adoption order, immigration should not be a primary motivation of purpose.[6] In *Re Henderson*, Judge MacCormick raised concerns that whilst there were some benefits flowing to the children from adoption, to grant an order would require a significant shortcut in the process of obtaining a social worker's report.[7] Judge MacCormick highlighted that adoptions which involved international families needed to be approached carefully to both protect against the commodification of children and to uphold the integrity of the processes by which adoption applications are assessed.[8]

2.4. When an application is made to adopt a child in New Zealand, the Court must be satisfied that the child's welfare will be promoted by being a member of a family in New Zealand, rather than the advantages that will flow from residing in New Zealand.[9] An application for adoption is a significant process involving the creation of a parent-child relationship, and should not be used as a substitute for citizenship in New Zealand.[10]

Welfare and Best Interests of the Child

2.5. Adoption criteria in other jurisdictions may not have the same degree of child protections as in Aotearoa New Zealand. As outlined by the Ministry of Justice, the current law on overseas

[3] S Burnhill *Family Law Service (NZ)* (online ed, LexisNexis) at [6.716B].
[4] Citizenship Act 1977, s 3(2)(a).
[5] *Adoption application by V* [2001] NZFLR 241 at [249].
[6] *GI v PAI* [2013] NZFC 2983, [2013] NZFLR 93 at [139].
[7] *Re Henderson* [2014] NZFC 8754 at [41].
[8] At [41].
[9] *Adoption application by T* [1999] NZFLR 300 at [309].
[10] At [309].

adoptions allows New Zealand citizens to circumvent New Zealand laws on adoption by going overseas and adopting in that country rather than using New Zealand processes, potentially risking the welfare, rights and best interests of adopted children.[11] In *T v District Court at North Shore (No 2)* the adoptive parents, despite living in New Zealand at the time, were able to obtain an Indonesian adoption order for the child which passed the aforementioned three-step test set out by Section 17.[12] Indonesia is not a party to the Hague Convention.[13] This allowed the adoptive parents to avoid the application of the principles of the Hague Convention and any consideration of the best interests of the child in facilitating what was essentially an intercountry adoption.

2.6. In 2015, a Parliamentary Member's Bill was drafted: the Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill. If passed, this Bill would have ensured that overseas adoption with non-Hague Convention-contracting countries would only be deemed valid if the adoptive parents to had lived for at least two years in the country where the adoption took place.[14]

Recommendations

2.7. We recommend that the new adoption legislation should provide statutory guidance as to the evidence which should be assessed when reviewing an application for an overseas adoption order. The Court has balanced the considerations of welfare and best interests of the child against considerations of public policy on a case-by-case basis. Providing relevant factors for consideration will ensure a consistent approach for each application. Considerations should include the degree of distortion of family relationships, consistency of the proposed adoption with the culture of the child, religious implications, if any, and the integrity of immigration policy.[15]

2.8. It is also recommended that new adoption legislation requires adoptive parents to live for two years in the country of adoption before an overseas adoption with a non Hague Convention-contracting country will be deemed valid by Aotearoa New Zealand. This would

[11] Adoption in New Zealand: Discussion Document *Ministry of Justice* at 38.
[12] *T v District Court at North Shore (No 2)* [2004] NZFLR 769 (HC) at [21].
[13] *T v District Court at North Shore (No 2)*, above n 12, at [13].
[14] Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill, s 197.
[15] *Adoption application by V* [2001] NZFLR 241 at [241].

prevent would-be adoptive parents from using overseas adoption to avoid a formal intercountry adoption process, which will be discussed below.

2.9. This two-year requirement would be subject to an exception at the discretion of the Court if exceptional circumstances are present.

3. Intercountry Adoptions

Context

Hague Convention and the Statutory Scheme

3.1. The Adoption (Intercountry) Act 1997 only applies to applications for intercountry adoptions where the other state is a Contracting State to the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Intercountry Adoption Convention).[16] The Court can refuse to make an order for an adoption made in accordance with the Hague Intercountry Adoption Convention, "subject to such terms and conditions as it thinks fit".[17] However, these terms and conditions are not specified. The only other forms of statutory guidance are the restrictions stipulated in s 11 of the Adoption Act 1955 which restrict the making of an adoption order generally.

3.2. Where the other state is not a party to the Hague Intercountry Adoption Convention, applications for an adoption order are governed by the Adoption Act 1955.[18] At present, in the context of non-Convention intercountry adoptions, while not directly applicable, the courts apply the convention by analogy.[19] Subsequently, through applying the principles and purposes of the Hague Intercountry Adoption Convention, before making an adoption order, the Court must be satisfied that there are appropriate safeguards and that other options in the home country of the child in question have been considered.[20]

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[16] Section 11.
[17] Section 11(3).
[18] *Norman v Attorney-General* [2021] NZCA 78 at [35].
[19] Jane Mountfort and Claire Achmad "Intercountry adoptions under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption" (2010) 6 NZFLJ 316 at 319.
[20] Mountfort and Achmad, above n 17, at 319; and *P v Department of Child, Youth and Family Services* [2001] NZFLR 721 (HC) at [24]–[25].

Court of Appeal Discussion on Intercountry Adoptions from Non-Contracting States

3.3. The Court of Appeal recently considered the issue of intercountry adoptions from non-Contracting states in *Norman v Attorney-General.* This case concerned an order for an adoption of four children from Ethiopia by their aunt (Ms Norman).[21] Ethiopia is not a party to the Hague Intercountry Adoption Convention.[22] Ms Norman's application was therefore made under the Adoption Act 1955.[23] Despite Ethiopia not being a party to the Hague Intercountry Adoption Convention, the Court allowed three out of the four adoption orders sought, on the basis that it was in the welfare and best interests of those children.[24]

3.4. The Court of Appeal discussed the importance of the welfare and best interests of the child in the intercountry adoption context.[25] Ultimately, "a case-specific consideration of the best interests of the child [is] the paramount consideration."[26] This may mean that an intercountry adoption of a child – for example, by a member of their extended family – is preferable.[27] Intrafamily adoption may lessen any risks of losing family and cultural connections.[28] However, domestic arrangements, if practicable, are more desirable than ones in other countries.[29]

Inconsistency: Case Law on Non-Contracting States of Origin

3.5. Under the current law, there is an inconsistency in how intercountry adoptions with contracting and non-contracting states of origin are treated by the courts. In *U v Attorney General* the Court of Appeal ruled that an intercountry adoption was not allowed due to the failure of the state of origin to follow the processes of the Hague Convention with regard to conducting a child study report.[30] However, in *Gi v Pai*, an intercountry adoption with Russia, a non-contracting state, was allowed to proceed by the Family Court despite a similar lack of a child study report from the Russian Central Authority as it was held that the Hague Convention did not strictly apply,

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[21] Norman, above n 16, at [10].
[22] At [35].
[23] At [35].
[24] At [158].
[25] At [64]–[68].
[26] At [68].
[27] [65].
[28] [66].
[29] Norman, above n 16, at [68].
[30] *U v Attorney General* [2012] NZCA 616, [2013] 2 NZLR 115 at [29].

although its principles were deemed highly relevant.[31] This inconsistency means that New Zealand courts are currently more ready to recognise intercountry adoptions with non-contracting states than those made with contracting states, creating a risk that Family Court adoption orders could be used as a shortcut to intercountry adoption. Another evidential shortcoming in non-Hague Convention intercountry adoption cases can be assessing the wishes of the child. These risks are concerning as the Family Court could allow intercountry adoptions even when it lacks information from the other country relevant to assessing what is in the best interests of the child.

Inconsistency: Article 23 Certificates

3.6. Another inconsistency in the present legislation is the issuing of Article 23 certificates to adoptees. Depending on where they are issued the Article 23 certificate, adopted children may be given New Zealand citizenship by birth (if issued in Aotearoa) or by descent (if issued in another country) which means the children of adoptees may or may not be entitled to New Zealand citizenship..[32] This distinction based on Article 23 certificates is unnecessary and inequitable.
Issues: Circumvention of Adoption Laws

3.7. While rare, the law currently enables people not resident in New Zealand to apply for adoption in the Family Court to circumvent their country of residence's adoption laws.[33] As part of the Adoption Act 1955, the Court is required to assess that applicants are fit and proper persons to care for the child and to bring up, maintain, and educate the child.[34] Allowing for those outside of Aotearoa New Zealand to adopt could present significant evidential issues for the Family Court in making a section 11 assessment of the applicant.[35]

Recommendations

Non-Hague Convention Intercountry Adoptions

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[31] *GI v PAI*, above n 6, at [89]
[32] Adoption in New Zealand: Discussion Document *Ministry of Justice* at 36.
[33] At 37.
[34] Adoption Act 1955 s 11.
[35] Adoption in New Zealand: Discussion Document *Ministry of Justice* at 37.

3.8. That the new adoption legislation includes statutory guidance for the court when refusing to make an order for adoptions made in accordance with the Hague Intercountry Adoption Convention and when making an order for adoptions outside of the Hague Adoption Convention. This set of principles would sit alongside existing restrictions on the making of an adoption order and aid the court in determining the welfare and best interests of the child.

3.9. *Norman* provides a comprehensive set of considerations which can be used for deciding the welfare and best interests of the child in this context. In addition to the views of the children in question,[36] Cooper, Brown and Goddard JJ considered several factors, including:[37]

a) The relationship between the applicant and the children;
b) The age of the children;
c) Existing living arrangements and conditions of the children;
d) The material impacts for the child and the impacts on their psychological and emotional wellbeing;
e) Opportunities for the child (for example, social, educational and healthcare opportunities); and
f) Whether the child will be able to maintain their family and/or cultural links.

3.10. The list is non-exhaustive. However, it provides a framework to guide the Court in reaching a decision to make or refuse an adoption order. It ensures greater consistency in decision making. It ensures that Courts consider existing arrangements before making the decision to uplift children from their home countries. It will also provide clarity and certainty to all parties concerned, while preserving the flexibility of judges to make or refuse adoption orders as appropriate in the individual circumstances.

3.11. Most importantly, it ensures the welfare and best interests of the child in each case is at the centre of the court's inquiry. An intercountry adoption must be happening for or about the child, not the applicant. This approach is consistent with guidance issued by the Hague Conference on Private International Law.[38]

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[36] *Norman*, above n 16, at [152].
[37] At [145]–[148]. This list is a summary of the reasons given.
[38] *Norman*, above n 16, at [65].

3.12. It must be emphasised that the circumstances in which a non-Hague Convention intercountry adoption can occur must be narrow due to the aforementioned evidential issues and the lack of safeguards established by the Convention. Additionally, uplifting children and severing their ties to their culture and communities can have a detrimental effect on their wellbeing and sense of identity.[39] This issue is gaining greater recognition overseas.[40] The Adoption Act 1955 does not currently provide any statutory provision for consideration of options within the child's country of origin.[41] It is imperative that new adoption legislation recognises the importance of the principle of subsidiarity, defined by the Hague Convention as ensuring a child is raised by their birth family or extended family if at all possible, and after that considering other options within the country of origin before consideration of intercountry adoption.[42]

3.13. Our laws must protect children from commodification and trafficking and not facilitate these actions, as required by New Zealand's obligations as a party to the Hague Intercountry Adoption Convention. A solution to the issue of people using the Family Court's powers to circumvent the Hague Convention would be to allow intrafamily adoption for intercountry adoptions with non-contracting countries where it is the best available option as was the case in *Norman,* but to prohibit stranger adoption with non-contracting countries. This would respect the principle of subsidiarity while still ensuring the best interests of the child, including their right to a family, can be considered by the Family Court.

3.14. We also recommend that intercountry adoptions should only be allowed if the applicant(s) is habitually resident in Aotearoa New Zealand to ensure there is less evidential difficulty in assessing whether applicants meet the requirements of section 11.

Hague Convention Intercountry Adoptions

3.15. In the interests of the public and in order to further the principles of the Hague Convention and the Convention on the Rights of the Child, we also recommend that New Zealand's Central Authority, Oranga Tamariki, be required to release an annual report on intercountry adoptions

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[39] Tarikuwa Lemma "International adoption made me a commodity, not a daughter" (31 October 2014) The Guardian <www.theguardian.com>.
[40] See Tarikuwa Lemma "International adoption: I was stolen from my family" (18 September 2013) CNN <www.cnn.com>; and Aaron Nelsen "'I just needed to find my family': the scandal of Chile's stolen children" (26 Jan 2021) The Guardian <www.theguardian.com>.
[41] *GI v PAI,* above n 6, at [107].
[42] Mountfort and Achmad, above n 17, at 318.

within the Hague Adoption Convention, including the quantity of intercountry adoptions, the countries of origin, and the compliance during these adoptions with the Hague Adoption Convention. This should ensure accountability of the Central Authority and provide greater public confidence that intercountry adoptions are conducted in a way that upholds Aotearoa's international obligations.

3.16. In order to ensure consistency between different forms of Hague Convention Intercountry Adoptions, all adopted children should be granted New Zealand citizenship as if it were by birth regardless of where their section 34 certificate was issued.

Intercountry Adoptions in an Overseas Court

3.17. As mentioned in the overseas adoption part of this document, introducing a requirement for adoptive parents to live in the country of adoption for two years for non-Hague convention overseas adoptions to be deemed valid would ensure that overseas adoptions can not be used to avoid the checks are present in the intercountry adoption process. This would avoid situations such as in *T v District Court at North Shore (No 2)*.

4. Statutory scheme

4.1. Overseas and intercountry adoptions are currently governed by two separate statutes. The former is governed by the Adoption Act 1955 and the latter is governed by the Adoption (Intercountry) Act 1997. We recommend that both forms of adoption are included under the same piece of legislation. This will make the law more accessible, clearer and easier to follow.

Appendix 3

PURPOSES OF ADOPTION

ognition to the child's individual rights and perceptions. Adoption is something that is done to children rather than a process in which children participate. See particularly PA3.6, PA5.2, and PA6.16.

The form of adoption provided by the Adoption Act is referred to as "closed adoption". Although there is nothing in law preventing birth parents, adoptive parents, and the adopted child from having ongoing contact, arranging regular access, and exchanging information, there are difficulties and disincentives which inhibit open communication between the two families.

Proposed changes to adoption law in New South Wales and in New Zealand would provide children with detailed rights to participate in the adoption process: see PA11.06.

The nuclear family PA1.3.04

Lexisnexis—The family as a social unit is generally regarded as the foundation of New Zealand society. It provides security, continuity, and a sense of identity for its members and is the natural environment for caring for children and equipping them for independent living: see *Adoption and its Alternatives: A Different Approach and a New Framework,* NZLC R65, September 2000 and the Preamble to the United Nations Convention on the Rights of the Child: Practice and Procedure.

New Zealand's notions of family have been strongly influenced by its British heritage. As biological parents are seen as the natural carers of their children, the law has traditionally focused on their rights. While in practice other family members often assist with child rearing, the role of the biological parents is seen as central. The role of grandparents, siblings and other relatives has received little recognition in law. The focus of New Zealand law has typically been on the mother, the father and their children. This narrow view of the family is often described as the "nuclear family".

Source Lexisnexis 26/8/2005

Social purposes of adoption A.4.01

Trapski— While the fundamental effect of adoption has always been to transfer the rights and responsibilities of parenthood from biological parents to adoptive parents, adoption has shown itself to be very flexible in meeting changing needs and priorities within New Zealand society.

Adoption has been part of New Zealand law since 1881. Society has changed considerably during the intervening period but the fundamental principle of adoption has remained: the transfer of parental status and rights from the natural parents to the adoptive parents. Although the fundamentals have not changed, the social goals to which adoption has been applied have changed...The adoption process has been shaped and modified over the years to meet the perceived social needs of differing generations."

Forty three purposes of adoption

1 Adoption as a way of getting (unpaid) domestic, farm labouring or other help in the home, farm, or business;

2 Adoption as a means of reducing the cost to the public purse of caring for children who have lost the support of their parents or have been abandoned or neglected;

3 Adoption as a means of ensuring that families with whom orphaned or abandoned children are boarded out do not lose the benefit of their investment in the child who has been supported, educated, and trained during childhood and who is expected to make a contribution in the home, on the farm, or in the family business later on;

4 Adoption as a means of giving a child the advantage of a fresh, unblemished new family identity;

5 Adoption as a means of relieving married couples from the embarrassment and lack of personal fulfilment resulting from infertility;

6 Adoption as an attempt to hold together or cement a failing marriage;

7 Adoption as a means by which couples can exercise control over the make up of their family (for example, by ensuring that their child is a healthy child, is a girl (or boy), has certain physical, racial, or personal characteristics);

8 Adoption as a means of relieving a child from the social and legal disadvantages of having been born illegitimate;

9 Adoption is a means of relieving and unmarried mother (and her family) from the shame and stigma of having given birth to a child outside marriage;

10 Adoption as a means of reducing the incidence of abortion- [by providing an alternative to abortion];

11 Adoption as a means of providing committed carers to children with special needs;

12 Adoption as providing greater security or permanency to non-parental carers and to children out of family care;

13 Adoption as a means of having a child without the health risks or disadvantages of pregnancy and childbirth and/or without increasing global overcrowding;

14 Adoption as a means of providing for the needs of an 'unwanted' child or rescuing third world or underprivileged children from their situation.

15 Adoption as a means of securing permanent residence in New Zealand or immigration status for a child;

16 Adoption as a way of helping a child who would not otherwise have a family, and who would benefit from family life, become a member of a family which is able to give him or her love, care, protection, and the security which comes from a permanent nurturing relationship."

Source Robert Ludbrook 1995 *Trapski's Family Law* Vol 5 'Adoption' A.4/01 Brookers. To this list may be added—

17 *Griffith*— Adoption as a means whereby one birth parent can shut out the other birth parent, usually the birth father, from having right of access to their child by stepparent adoption. The 'shut out' parent loose all parental rights.

18 Adoption as a means of relief from the liable parent financial responsibility. Demanding payments of money can and is used as a very successful lever to obtain adoption consents from reluctant birth parents.

19 Open adoption as a means of providing a secure

adoptive relationship while retaining ongoing access between all parties concerned.

20 Adoption as a means to provide a clear line of inheritance and maintain the family name for childless couples. Has also been used to reduce estate death duties.

21 Adoption as means of making guardianship permanent. Guardianship can be subject to a court appeal at any time. It is very difficult to discharge an adoption order.

22 Adoption as a means of overcoming insecurity of fostering. Gets any birth parent off your back and avoids any interference, repossession or blackmail.

23 Adoption as a means of income in baby farming in 1880-1920s. Taking children for a lump sum payment and then adopting them out at a profit.

24 Adoption as a means of gaining clear undisputed entitlement to a child in complex family situations, created by divorces, deaths and traumatic events.

25 Adoption as a means of breaking inherited diseases links. Huntington's Chorea, Haemophilia, Tay Sacks or Sickle-Cell Anaemia and many other genetic conditions.

26 Adoption as a means of creating a bicultural or multiracial family.

27 Adoption as a rapid replacement for a dead child in an attempt to alleviate grief.

28 Adoption as a means of falsifying a birth certificate with statutory approval. Since 1962 new birth certificates of adopted persons normally name the adoptive parents as the birth parents of the child, in most cases this is falsification. This has also been used to conceal the fact of adoption from the adoptee and deceive them of their true status.

29 Adoption as providing a 'statutory guillotine' to cut off a child from their birth origins and relegate the birth parents to 'as if' dead status.

30 Adoption as a means of creating an impenetrable wall of secrecy between the child and its natural parents.

31 Adoption as a means of disposing of surplus babies particularly exnuptial ones. And in times of shortage a means of driving prospective adopters to despair on waiting lists.

32 Adoption as a means of providing homosexual or lesbian couples, and single people with a family .

33 Adoption as a means of legitimating surrogacy. By adopting the child, the receiving couple become the child's parents and the donor can make no further claim.

34 Adoption as a means of concealing an adulterous or incestuous relationships. The child conceived is secretly adopted. Adoption can also used as means of disposing of children conceived by incest or rape.

35 Adoption as providing a 'legal fiction' as a basis of transferring of parental rights.

36 Adoption as a means of providing a healthy caring environment to overcome defects of heredity.

37 Adoption as a means of denial of difference between adopted and natural families.

38 Adoption as a means of providing care and company for old age. - a Maori custom.

39 Adoption as a means of strengthening or extending tribal links.- a Maori custom.

40 Adoption as a means of redistributing children within the Whanau. - a Maori custom.

41 Adoption as a factor in family planning, a logical way to fill any unintended age gaps among the children.

42 Adoption as a means to refill the 'empty nest'. Some marriages retain their purpose and stability dependent on a continuing supply of children to nurture.

43 Adoption as a means to achieve a sex balance of boys and girls in the family.

Thus adoption motivations are many and varied
None of the above adoption motivations can be ignored. They are each well documented in New Zealand adoption history. The diversity throws some light on the intense and often conflicting mixture of positive and negative, thoughts and feelings, about adoption. It also helps explain the difficulty of defining our motivations and objectives in adoption policy and practice.

Source Griffith KC' "New Zeaalnd Adoption: History and Prasctice- Social and Legal 1840-1996. 1997 pp19-21.

Recent overseas initiatives A.4.02

Trapski— There have been recent moves in the US and Britain to fast-track adoptions as a means of reducing the government's responsibility for children whose parents are unable to provide them with adequate care. British Prime Minister, Tony Blair, announced on 17 February 2000 that he would chair a new Cabinet committee to consider a radical overhaul of adoption laws to make it easier for prospective adopters by overcoming "hurdles". His aim was to reduce the number of children in children's homes. An Adoption of Children Bill has since been introduced.

Emotional impact of adoption PA1.4
Emotional consequences of adoption PA1.4.01

Lexisnexis— The point has been made earlier that adoption holds a unique position in family law because it breaks the child's legal and family links with the biological parents, severs the biological parents' relationship with their offspring, despatches into legal oblivion one set of relatives and replaces them with a new set of relatives, and creates the legal fiction that the adoptive parents are the child's natural parents. While other family law processes effect a readjustment of the care responsibilities between people who already have a close relationship with the child, stranger adoption gives the rights and responsibilities of biological parenthood to persons who have no prior connection with the child.

Adoption has been described as a "statutory guillotine" and, while such a description may be seen as emotive, it is a reminder that the severance of the child from his or her birth family and grafting of the child onto a new family tree can be a source of trauma and dislocation for the people involved.