Adoption Action

Adoption Law Reform

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Submission to Ministry of Justice
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1. INTRODUCTION

Acknowledgement

1.1 Adoption Action Inc wishes to express its thanks for the work undertaken, and ongoing, by the Ministry of Justice Adoption Law Reform Group. There are many competing positions, views, and considerations in reforming the Adoption Act 1955 (1955 Act). Not least, the need to reconcile the legal, procedural, political, cultural and economic ramifications of legislative change, Aotearoa New Zealand's international commitments, and importantly, the personal experiences shared by people impacted by the current Act when reforming adoption law.

1.2 We are encouraged to see the work being done to reform adoption law in Aotearoa New Zealand and we thank the Ministry for this opportunity to make a further submission.

1.3 We are happy to meet with the Ministry to discuss any topics raised in our submission, points not covered in our submission or Adoption Action Inc's work generally.

1.4 Our submission begins with background information about Adoption Action Inc, followed by a section on critical issues not covered in the Ministry of Justice second Discussion Document on adoption law reform, released in June 2022 (referred to here as DD2), then goes on to consider a selection of the questions to which submitters were asked to respond.

2. BACKGROUND TO ADOPTION ACTION INC

2.1 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, adoption writers, lawyers, law students and others with an interest in adoption law reform.

2.2 We believe adoption law in Aotearoa New Zealand is no longer fit for purpose and strongly support adoption law reform.

2.3 Adoption Action's position:

- Adoption Action strongly supports the spirit of openness and believes New Zealand legislation relating to the care of children that need permanent parenting by those other than their family or whānau should be based on openness and transparency and hold the rights and best interests of the child paramount.
- We would like to see all Aotearoa New Zealand's child care legislation be consistent with both the Law Commission's recommendations[1] for legislative reform of the Adoption Act 1955 (the 1955 Act) and the United Nations Convention on the Rights of the Child.
- We understand that social norms have changed greatly since the 1955 Act was enacted, and that there are now many diverse ways to create a family in this globalised, digitised, and technologically advanced world. However, humans have not evolved beyond the need to belong to a family group to survive, and, informed by advances in cognitive

[1] Law Commission *Adoption and its alternatives: a different approach and a new framework* (NZLC R65, 2000).

neuroscience, we understand there is no relinquishment and adoption without trauma.[2] Our libraries, universities, museums and screens are evidence of humans' deep need to know 'who are my people, where do I come from, how did I get here, who am I?' This is why we ask that any new law reflect and respect these human needs, and that adoption be seen as a residual process, applicable only in rare situations, if at all.

2.4 This year we have worked with the Wellington Community Justice Project on the issues of intercountry and overseas adoption. We support the position and points raised by them and have appended their document: Intercountry and Overseas Adoptions (Appendix 1).

Human Rights Tribunal decision on the Adoption Act 1955

2.5 We ask that the Ministry of Justice Adoption Reform Group note Adoption Action's 2011 claim to the Human Rights Tribunal that the 1955 Act 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.[3] The Tribunal declared that seven provisions in the 1955 Act are inconsistent with the right to freedom from discrimination affirmed by s 19 of the New Zealand Bill of Rights Act 1990. The decision found that the 1955 Act discriminates on the grounds of sex, sexual orientation, marital status, disability, and age, and that a section of the Adult Adoption Information Act 1985 discriminates on the ground of age.

2.6 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.

3. CRITICAL ADOPTION REFORM ISSUES NOT COVERED IN DD2

Alternatives to adoption

3.1 A New Adoption System for Aotearoa New Zealand, the second Discussion Document on adoption law reform, released in June 2022 (referred to here as DD2) states that 'We [Ministry of Justice] still think there is a place for adoption in Aotearoa New Zealand' (DD2 p7).[4] No justification for this statement is given. Rather, DD2 assumes that a new stand-alone adoption statute, albeit reformed, is a given, going forward.

3.2 However, the Ministry of Justice's Summary of Feedback states that the Family Court Judges suggested in their submission that:[5]

[2] Links to evidence-based research in this area available on request. One example is: www.youtube.com/watch?v=PX2Vm18TYwg&ab_channel=iCAADEvents
[3] *Adoption Action Incorporated v Attorney General* [2016] NZHRRT 9, [2016] NZFLR 113; a copy of the findings is published on the Adoption Action website.
[4] Ministry of Justice *A new adoption system for Aotearoa New Zealand* (June 2022) at 7.
[5] Ministry of Justice *Summary of feedback on Adoption in Aotearoa New Zealand: Discussion Document* (June 2022) at 10.

> …consideration could be given to the option of removing the term "adoption" from the statute books and replacing it with a new process under the Care of Children Act 2004 (COCA) involving the Family Court making a declaration of permanent parenting.

3.3 The Family Court Judges' suggestion aligns with the findings of the Law Commission's thoroughly researched, widely consulted on, and well considered report Adoptions and its Alternatives (2000). In addition, informed by that report, in 2015, the Draft Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill was submitted by the former MP Kevin Hague.[6] The Hague Bill presented the best option at the time, for an alternative to a stand-alone Adoption Act as adoption law reform was not a Government priority, and therefore not on its work programme. The Hague Bill was a Member's Bill that was never drawn from the ballot.

3.4 By not presenting an alternative to adoption for submitters to comment on in DD2, the Ministry of Justice has removed the opportunity for any meaningful consideration and discussion of alternatives for children in need of ongoing, permanent parenting by persons other than their family and whānau.

3.5 We have given our responses to DD2 as it stands, but we wish to object strongly to the lack of alternatives to adoption presented, particularly given the well supported Family Court Judges' suggestion of permanent parenting declarations, which align with recommendations in the Law Commission's 2000 report Adoption and its Alternatives.

3.6 We ask that the Ministry refer back to Adoption Action's Issue Papers 1 and 2[7]. These cover the options on whether adoption is still needed as a permanent care option for children. This is highly relevant, as the current reform work aims to ensure that the rights and best interests of the child are paramount (as captured in the new proposed Guiding Principles).

3.7 We ask that the Ministry of Justice provide us with, and make public, the rationale for not including in DD2 any consideration of alternative mechanisms to adoption when a child needs permanent parenting by persons other than their parents.

Comment on Ministry of Justice consultation process

3.8 The Ministry commissioned targeted consultation with Māori, Samoan communities, and young people. Given that any new legislation would control adoptions in the future, we commend that level of consultation with these groups. However, people already impacted by an adoption order who are not defined as 'young' have not had their experiences recorded in such an in-depth way. We believe this is an oversight as it does not acknowledge that a person's adoption narrative changes over time. There is much evidence and research from neuroscience and models of trauma-informed therapy[8] which demonstrate that adoption and relinquishment are traumatic events that can take many decades to process and emerge from.

3.9 We note that focus groups were held where 'older' people impacted by an adoption order were able to attend.

[6] Kevin Hague "Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill 2015".
[7] The Adoption Action Issues paper were made available to the Ministry of Justice in 2021, however, links have been imbedded in our submission to ease accessibility.
[8] https://www.youtube.com/watch?v=PX2Vm18TYwg&ab_channel=iCAADEvents

3.10 We ask that Malatest International's report on all the focus groups they undertook (online and in person) be made publicly available once received by the Ministry of Justice.

Data

3.11 Data is essential for understanding need, for developing resources and support, targeting resources, informing policy and practice, and importantly, to identifying red flags.

3.12 The Ministry of Justice is responsible for legal adoption and is therefore capable of compiling comprehensive data on legal adoptions. Dispute this, no such data, past or present, is provided, and DD2 says nothing about its absence.

3.13 This lack of data means that no clear picture of adoption, past or present, emerges. The proposed options therefore appear to have been formed in a vacuum of factual knowledge about the use of adoption in Aotearoa New Zealand, even in recent years.

3.14 From Adoption Action's previous communications with the Ministry about available data, we understand that highly relevant information, such as whether the adoptive parents are or are not related to the child, is not currently collected for domestic adoptions. We note this information has been available in the past and is still collected for intercountry adoptions.

3.15 We ask that work be undertaken to improve the collection of, and access to, adoption statistics going forward, and to ensure that all adoption statistics are publicly available.

3.16 Our 2021 submission, sections 8.7 to 8.10, sets out the type of data that must be publicly available.

Terminology and Definitions

3.17 We support the terminology being updated due to the harm the term 'adoption' has caused. There are certain phrases used in the 1955 Act and in DD2 that we believe should be reviewed and omitted. We believe adopted people and their parents should be consulted on the appropriate terminology.

3.18 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.

3.19 As above we endorse the Family Court Judges' suggestion in the Summary of feedback on Adoption in Aotearoa New Zealand of instead using a phrase such as 'making a declaration of permanent parenting' rather than 'adoption'.[9] Bearing in mind that adoption is about legal parenthood, and in law, recognises a lifelong relationship between the adopted person and the adopting parents. Alternatively, a permanent parenthood type order, could be developed that provides a means for the relationship between the child and those parenting them to persist over decades and strengthen their spirit of whanaungatanga[10].

[9] Ministry of Justice, above n 5, at 10.
[10] Whanaungatanga is about relationship, kinship and a sense of family connection. It is created through shared experiences and working together and provides people with a sense of belonging. It comes with rights and obligations, which serve to strengthen each member of that whānau or group.

3.20 Should intercountry adoption continue under the Hague Convention for Intercountry Adoption, a suitable term can be agreed and submitted to the Permanent Bureau at the Hague that would satisfy the legal requirements of sending countries.

3.21 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. It should also be noted that parents cannot be called 'birth parents' until an adoption order is made. Under the new options for the legal effect of an adoption order as set out in DD2, they would continue to be the legal parents along with the adopting parents after an adoption order is made.

3.22 For consistency with the DD2, this submission will use the term 'birth parents', 'birth mothers' and 'birth fathers'. These terms do not appear in the 1955 Act, but we ask the Ministry to reconsider the terminology used in all materials produced as part of the Law Reform Project. We note that the terminology used also needs to be inclusive of the Rainbow community. We support 'birth parents' being consulted on the appropriate terminology to be used.

3.23 Throughout DD2, the phrase 'after an adoption' is used. However, as there is no period which can accurately be described as 'after adoption', due to the impacts of an adoption order being lifelong on all concerned, we ask that this phrase be replaced with 'after an adoption order'.

Obligations under te Tiriti o Waitangi

3.24 DD2 states in its Introduction that the proposed new system aims 'to give effect to our [i.e. the government's] te Tiriti o Waitangi ('te Tiriti') obligations and uphold children's right to culture'.

3.25 The options acknowledge the adopted person's culture and whakapapa as taonga and a key part of their identity, requiring protection under Article 2. The options enable the child to stay connected to their culture after an adoption order, and recognise wider family and whānau interests. Allowing people to access adoption information will also help people to preserve their identity (DD2 p.7). [11]

3.26 Whakapapa is defined as 'the multi-generational kinship relationships that help to describe who the person is in terms of their mātua (parents), and tūpuna (ancestors), from whom they descend' (DD2 p.6). [12]

3.27 In the feedback to the 2021 Discussion Document (DD1), 'Nearly everyone agreed that the Government has te Tiriti obligations to Māori in relation to adoption... We heard that the adoption process should be more consistent with te Tiriti' (DD2 p.17).[13] The Ministry of Justice's separate summary of feedback and targeted engagement documents provide more information about feedback on this point, particularly from Māori:[14]

> Almost half of the people we engaged with spoke about te Tiriti o Waitangi, and almost all (Māori and non-Māori) considered that the Government had obligations to Māori under te Tiriti regarding adoption. We heard that:

[11] Ministry of Justice, above n 4, at 7.
[12] At 6.
[13] At 17.
[14] Ministry of Justice, above n 5, at 32.

- the Crown should acknowledge the past harm caused by breaches of te Tiriti in adoption law and practice
- te Tiriti requires a partnership approach to adoption policymaking and allowing processes for rangatiratanga
- Tiriti-consistent adoption processes would require significant changes to allow adoption laws to respect the inalienability of whakapapa, the centrality of whānau, hapū and iwi, the rights of adopted persons to their whakapapa and the importance of culture. (Summary doc para 32.)

3.28 However, despite the high level of support, no Guiding Principle and no proposed option in DD2 refers specifically to te Tiriti and the government's obligations in relation to it.

3.29 We strongly recommend that te Tiriti be included as a principle, following consultation with Māori on this vital aspect of law reform – particularly as it is evident that Māori have been so severely harmed by the exercise of an adoption order made under the 1955 Act.

Prohibited marriage

3.30 We consider it important to remind the Ministry of Justice Adoption Reform Group that consideration must be given to safeguarding people from entering prohibited relationships should any form of non-disclosure or 'sealed records' be accommodated for in a reformed Act. We direct you to the following research on this matter by Keith Griffith.

3.31 Keith Griffith, in his epic 2006 work New Zealand Adoption History and Practice – Social and Legal 1840-1996 wrote:[15]

> 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.

3.32 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.

3.33 The chances of adopted persons entering a prohibited marriage relationship are generally small, unless (as has already occurred) a sperm donor is makes multiple unrecorded donations, 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

[15] Keith Griffith *New Zealand Adoption: History in New Zealand – Social and Legal 1840–1996,* 2006. Keith Griffith's research and publications were donated for safekeeping to the Hocken Archives Library, University of Otago.

Court's consent, the marriage is void from the start. This has significant effects on their children and on their rights of inheritance.

3.34 Refer to Issues Paper 15, which covers prohibited marriage, prohibited relationships and incest in further detail.

Exclusion of the harms of past adoption practice in Adoption Law Reform project

3.35 The DD2 states explicitly:[16]

> The discussion document doesn't have options that directly address the harms of past adoption practice. Past adoption practice is being considered by the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-Based Institutions ('the Royal Commission'). The Royal Commission is due to report back on its findings in 2023. (DD2 p. 9)

3.36 There is now a large body of evidence and research, including from cognitive neuroscience and models of trauma-informed therapy which demonstrates that adoption and relinquishment are traumatic events that can take many decades to process and emerge from. This is partly why some of those affected by an adoption order regard it as state abuse, although fundamental issues of justice are also at stake.

3.37 Many voices of people impacted by adoption will not be heard through the Royal Commission Inquiry even though the Royal Commission's remit was extended to include adoption voices, and even though the Adoption Reform Group within the Ministry of Justice are directing those impacted by adoption to the Royal Commission.

3.38 Reasons why many voices will not be heard, include: the Inquiry being named as 'Abuse in Care and Faith Based Institutions'; it has not been made clear that the Royal Commission wishes to hear the voices of those adopted under the 1955 Act in the Terms of Reference; and, the inclusion of adoption in the Royal Commission's remit has not been publicised to reach a wide audience.

3.39 Given the points above, if the examination of and conclusions about past adoption practice is left entirely up to the Royal Commission many voices across the complex landscape of adoption will not be heard.

3.40 We ask that the final report to the Minister of Justice suggest there be an investigation into the value of a separate inquiry specifically to examine past adoption practices and the question of redress. Should this be agreed to, we ask that people impacted by adoption be included in establishing the terms of reference of such an inquiry.

3.41 Bearing in mind many people impacted by adoption have been asking and waiting for decades for recognition of the harm caused by the 1955 Act, and for redress, we ask that steps be taken urgently to address this.

[16] Ministry of Justice, above n 4, at 9.

Rainbow cases

3.42 As we noted in the Adoption Action submission to the 2021 DD1, 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.

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

3.44 Interestingly the adoption framework has also been avoided by members of the Rainbow community; the legal effect of adoption being the perverse severing of all ties with the birth (and likely but not always) the biological parent, and replacing it with an order reinstating this together with that person's partner. Many in this situation have opted for joint guardianship and parenting orders (for day-to-day care) in order to replicate the legal effect of an adoption order. Something that simply being named as 'parent' on the birth certificate will not as a matter of law, afford. These examples again exemplify the way that the outdated adoption laws cannot cater for the very different ways families are now created.

4. RESPONSE TO SPECIFIC QUESTIONS IN DD2

Question 1: Purpose of adoption

4.1 The DD2 proposes that the purpose of adoption might be that it:[17]

- is a service for a child, and is in their best interests
- will create a stable, enduring and loving family relationship, and
- is for a child whose parents cannot or will not provide care for them.

4.2 This draft purpose has changed considerably since DD1, but the new proposal remains confusing and has included wording that, in our view is inappropriate and may cause harm to the child and the child's family or whānau.

4.3 The wording could be offensive to adopted people and birth parents. For an adoption to occur, it must be judged to be in the child's best interests, but it must also be recognised that an adoption order, for a child, results in complicated developmental trauma. Further, there is no guarantee that an adoption order will result in being in the best interests of the child, when viewed later. Adoption may be able to create an enduring family relationship, but whether it is and continues to be 'stable and loving' is not possible to foresee.

4.4 The reasons that parents even consider adoption today are usually complex, often involve lack of resources and support, and cannot be simplistically summed up as being because the child's parents 'cannot or will not' provide care.

[17] Ministry of Justice, above n 4, at 15.

4.5 Adoption can only be described as being one option for the permanent care of a child whose parents are unable to care for them (for whatever reasons). As several other options imply, all alternative forms of care, particularly those which will enable a child to remain within the existing whānau/family, should be considered before this option proceeds.

4.6 We strongly encourage you to reconsider the proposed wording of the 'purpose of adoption' and revisit Keith Griffith's detailed list covering 43 purposes of adoption, drawn from the period during which adoption has been legal in New Zealand.[18] 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.

Questions 2-4: Principles of adoption

4.7 If seven of the guiding principles for adoption as set out on page 16 of DD2 are adhered to (with the exception of the second point, which refers directly to adoption), there would be no need for adoption. Therefore, we agree with seven of the principles (excluding point 2) and suggest that alternative legal mechanism for providing permanent parenting for a child be considered, such as those suggested by the Family Court Judges in the Summary document, and the Law Commission report 2000. Bearing in mind that adoption is about legal parenthood, and in law, recognises a lifelong relationship between the adopted person and the adopting parents. Alternatively, a permanent parenthood type order, could be developed that provides a means for the relationship between the child and those parenting them to persist over decades and strengthen their spirit of whanaungatanga[19].

4.8 Children's views should be heard relating to a proposed adoption order impacting them.

4.9 The child must be given reasonable opportunities to express views on matters affecting them and any views the child expresses (either directly or through a representative) will need to be taken into account.

4.10 All children impacted by a proposed adoption order of any age should be provided with their own legal representation.

4.11 Children over a certain age impacted by a proposed adoption order should have access to appropriate independent counselling to ensure their views can be properly heard.

4.12 Please refer to responses to Question 15-18 for further discussion on children's involvement.

Question 5: Who can be adopted?

4.13 We support the option that a person aged under 18 years old can be adopted. This would match other family law and international agreements. However, 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 of *Norman v Attorney-General* concerning three

[18] Keith Griffith, 2006, Vol. 1, pp. 319-320.
[19] Whanaungatanga is about **relationship, kinship and a sense of family connection**. It is created through shared experiences and working together and provides people with a sense of belonging. It comes with rights and obligations, which serve to strengthen each member of that whānau or group.

Ethiopian children, the unfortunate position of the oldest child being unable to be adopted (because of the three years it took before the final decision, she had turned 20) would be avoided.[20]

Question 12: Placement of child before an adoption order is made

4.14 While 30 days is an improvement on the 1955 Act, current research on post-partum unwellness informs us that mothers may experience difficult emotions following the birth of their child beyond 30 days. Accommodation for this must be made regarding a mother's consent.

4.15 The DD2 does not discuss who will care for the child during those 30 days, if the child's legal parents or family and whānau are not able to provide care. Another option states that: 'The social worker may approve the placement of the child with the prospective adoptive parents before an adoption order is made' but only after the birth parents' consent has been given – i.e. after the 30 days has elapsed.[21]

Questions 15-18: Children being adopted

4.16 Far more detailed consideration must be given to children's participation in the adoption process and their consent to an adoption order. We recommend that:

4.17 If a child is over 7 years of age they should be consulted with, and expect to have their views heard, on:

- **Their consent (or otherwise) to the proposed adoption order** – after the child has received counselling from a person trained or accredited for adoption counselling and the counsellor has provided a letter to the Court confirming that the counsellor has explained to the child and the child understands the effect an adoption order will have on them and on their relationship with the parents, and relatives traced through them; and the child consents to the making of an adoption order, should an adoption order be able to be made;
- **Name change** - the legal effect of the proposed adoption order in relation to any name change.

4.18 If the child is under 7 years of age, a lawyer should be appointed to act on the child's behalf to ensure the child's best interests are met.

4.19 Unless the child is incapable of understanding the procedure and of giving their views as to consent to the adoption order, an adoption order may not be made in respect of a child of or over the age of 7 years unless the child has indicated their consent to the adoption order and if there were any proposed name change, to that change as well.

4.20 Please refer to responses to Questions 2, 3 and 4 for further discussion on children's involvement and Questions 43, 44 and 45 on changing children's names.

[20] *Norman v Attorney-General* [2021] NZCA 78
[21] Ministry of Justice, above n 4, at 23.

Questions 19-24: Who can have a say

4.21 We broadly agree that the 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 father would clearly not be appropriate, for example in cases involving rape or violence). Allowing or requiring mothers and, where appropriate, 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.

4.22 Requiring both parents to consent 'regardless of their relationship or guardianship status' (DD2 p.28), where there are no specific reasons not to do so, recognises that 'primary responsibility for the child's care lies with their family and whānau. It would also support decision-making on whether the adoption order is in the child's best interests (DD2 p.28) and reflects point six in the proposed Principles of Adoption (DD2 p. 16).

4.23 The period of 30 days, similar to that in most Australian states, is said to give the parents 'space and time to fully consider the implications of the adoption, taking into account the psychological and physical impacts of pregnancy and childbirth' (DD2 p.28). It could also 'help protect against the parents being pressured to agree during a vulnerable time' (DD2 p. 28).

4.24 A 30-day period before an adoption can be legally consented to would also enable alternative care arrangements to be considered by the whānau and family of the child and the child's mother and/or father. The current Act allows for only 10 days, which is totally insufficient time for a mother and her family or whānau to make such a permanent life altering decision.

4.25 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.

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

Question 31: Adoption support from Oranga Tamariki

4.27 Private' adoptions: One feature of existing law which has been repeatedly criticised is that it explicitly sets out:[22]

> …a court may, upon an application made by any person whether domiciled in New Zealand or not, make an adoption order in respect of any child, whether domiciled in New Zealand or not.

4.28 The only involvement Oranga Tamariki has so far had in such arrangements (which were often made during the era of closed stranger adoption) was to report to the Court hearing of the application for an adoption order. By that time, even if obvious problems surfaced, it was highly likely that the order would be granted anyway. The DD2 also comments that in such arrangements, 'timeframes for the suitability assessment are shortened, which we have heard ... can compromise quality' (DD2 p34).

[22] Adoption Act 1955, s 3(1).

4.29 There is no data provided in DD2 on how many such arrangements continue to be made, whether the applications are made by other family members or 'strangers', and how many result in orders being granted,

4.30 The option on p. 34 of DD2, that 'Adoptive applicants are required to engage with Oranga Tamariki before making an application to the Court" would effectively improve the situation by ensuring that Oranga Tamariki is involved before the prospective adoptive parents apply for an adoption order.

Question 34 and 35: Social worker reports

4.31 The social worker report must include: what options for permanent parental care were considered; the process used for considering the options; all the people engaged in those conversations; the process followed to plan that engagement with others and family and whānau; the outcomes of the discussions, consultation/engagement; all parties views on the care options discussed with particular responses about how the option proposed was considered to meet the rights and best interest of the child. The social worker report must include what the best interests and rights of the child were held to be i.e. the definition of best interest and rights, and how the decision meets te Tiriti obligations.

4.32 Should an adoption be considered the most appropriate form of care for the child, the reasons for that decision must be clearly recorded in detail. Bearing in mind that this information will be available to the child at some stage, it must be a full and true record of the efforts made to meet the child's best interest and rights, the reasoning for the decisions made, and the names and relationship to the child of all the parties involved.

4.33 We wish to see the criteria used to access the suitability of prospective adopting parents being made evident in the social workers report, and also the requirement that there is an additional report that documents the reasoning for the placement of a child with a particular person or persons.

4.34 The impact of these records must never be underestimated or treated as purely administrative. They form a crucial part of an adopted child/person's identity and story. We consistently hear from adopted people that the truth, no matter how bad, is better than living with a lie, half-truth, or silence. To know where we're going, we need to know where we've come from.

4.35 Due to the permanent life changing implications of an adoption order on the child, we wish to see the criteria for suitability to adopt be set down under regulations as this will allow for consistent practice, and regular review and amendment. Without the application of a consistent set of criteria for suitability, there may be occurrences of bias and omissions in a report.

Question 36: Access to other information

4.36 We agree that the Courts should be able to order additional reports or information to inform their decision-making, including, but not limited to cultural, medical, psychiatric and psychologist reports.

4.37 The final decision rests with the Court, therefore, all relevant information must be presented.

Question 37: Alternative care arrangements

4.38 See also discussion above, under 'Comment on the lack of any option based on introducing an alternative to adoption' in response to Question 37.

4.39 There is no clear understanding in any of the Ministry of Justice's public adoption law reform documents or in communications with the Ministry of Justice, about why it is considered that 'there is still a place for adoption' (as stated on p7 of the DD2) and therefore the ongoing basis for law reform... The DD2 states (p40) that the options being considered in the DD2 would mean that the child 'would retain connection to their birth parents', but also that an adoption order will 'still permanently alter the adopted person's legal status'.

4.40 Where a child is in need of care by person(s) other than their family or whānau, yet continues to retain connection to their birth parents, then an adoption order does not usually seem necessary. It is permanent parental care that is critical for the child, rather than the legal relationship created by an adoption order. This is the case even if adoption would no longer legally sever the child (and the child's children and grandchildren etc) from their family and whānau.

4.41 However, should adoption be presented to the Court as the only option for a child, then it is imperative that the Court be fully informed of: all the other care arrangements that were considered; who was involved in the discussions around those other care arrangements; and what the comprehensive rationale was for rejecting those alternative care arrangements. If the Court is not satisfied that all care arrangements were considered, or not comprehensively considered, then the Court, if it wishes, should be able to order further information before making a final decision.

Question 40: Legal effect of adoption

4.42 DD2 proposes the final adoption order would transfer legal guardianship from the birth parents to the adopting parents, meaning that they would acquire all the associated rights and responsibilities of guardianship. They would also become additional legal parents. The adoption order would simultaneously remove the guardianship of the birth parents. However, they would retain their legal parenthood status.

4.43 We welcome the proposed changes. As Anne Else and Maria Haenga-Collins state:

> 'This would effectively achieve the major change which has been so consistently called for, especially by tangata whenua, adopted people, birth whānau/family members and some adoptive parents: it would do away with the "legal fiction" created by the Adoption Act 1955, where the adopted child is deemed to become the child of an adopted parent "as if the child had been born to that parent in lawful wedlock", with a new birth certificate based on that fiction.'[23]

4.44 The proposed option also means that an adoption order would no longer artificially remove the legal relationship between adopted people and their birth whānau/families. The proposed

[23] See Anne Else with Maria Haenga-Collins (forthcoming, 2022). *A Question of Adoption: Closed stranger adoption in New Zealand 1944-1974,* new digital edition updated to cover adoption, state care, donor conception and surrogacy, 1975–2022, BWB, Chapter 22. Internal quotes: Adoption Act 1955, s 16 (2a).

option enables them to legally be the child of both sets of parents, or in the case of an adoption order by a single person, by three parents.

Question 41: Inheritance

4.45 Under the current law, an adopted child becomes the legal child of the adopting parents, and gains inheritance rights as a result. The child loses inheritance rights with respect to the birth parents, for example on an intestacy or under the Family Protection Act 1955.

4.46 The Ministry proposes that both the adopting parents and the birth parents should be recognised as legal parents of the adopted person. The short-term consequences of legal parenthood – guardianship and child support obligations – will switch to the adopting parents alone but long terms consequences such as citizenship will apply to both adopting and birth parents.

4.47 In the view of Adoption Action Inc, inheritance is a long-term matter, not a short term one. It is something that usually applies after the adopted person has become an adult, and more than likely much later in life. If the proposed change to legal parenthood is really to mean anything, it should apply to inheritance. Indeed, this would be the status quo. For example, under section 3 of the Family Protection Act 1955, an adopted person would be a child of a deceased birth parent without any need to amend the Act. The same is true of the intestacy provisions of the Administration Act 1969 (where "issue" is used). To repeat, this is on the basis that the birth parents do not lose legal parenthood.

4.48 We acknowledge that disputes over paternity may arise. For example, the deceased birth parent's non-adopted children may challenge the parentage of the adopted person by seeking a non-paternity order under section 10(3) of the Status of Children Act 1969. This would be unfortunate, but sadly disagreements among family members are not unusual when a person's estate is being divided.

4.49 In summary, our view is that, if the proposal that birth parents remain legal parents following an adoption order, then no change to inheritance rights should be made: the adopted person, in addition to any explicit provision in the will, would retain the right to inherit from their birth parents. They would also retain the right to inherit from their adoptive parents as well.

Question 42: Adopted people's birth certificates

4.50 Birth certificates should be a factual statement of the birth of a child and contain all information. Currently, the only birth certificate available to an adopted person to use is a legal fiction.

4.51 As the proposed options recognise, it should be possible for everyone, including adopted people, to obtain a birth certificate which gives an accurate and correct statement of the child's links to the adults who created the child, who have parental responsibility for the child, and/or who have close family relationships with that child. All of this must be recorded on the birth register.

4.52 Should a second or subsequent adoption order(s) be made for care of a child, the child's legal relationships with the persons already named on the record should not be removed from the record. Rather, each family, whānau, or legal connection in the child's history must be

recorded and recognised, so that there is a pathway for the child to maintain those relationships.

4.53 As the options suggest, the full birth certificate will not always be required. We recommend further work be undertaken to establish how a digitised record can be produced that will enable the flexibility for a birth certificate to be assembled to order from the full information on the birth record, depending on the purpose for which the document is required.

4.54 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, as proposed, from the provisions for applying for a full birth certificate under new legislation. This should be retrospectively applicable to those people impacted by the 1955 Act. All adopted people must have the same rights to access all their adoption information.

Questions 43-45: Changing children's name in adoption

4.55 Article 8 of the Convention on the Rights of the Child states that ratified countries must '…respect the right of the child to preserve his or her identity, including nationality, name and family relations…'.

4.56 We wish to see this upheld and that a child, in all circumstances, must retain their name unless they wish to change it themselves when they are adults. We also acknowledge the importance of retaining a child's name (all given names) as a name carries the family history and whakapapa of a person, and is integral to their identity.

4.57 Aotearoa New Zealand has a diverse population, and no one should need to change their given name(s) because their name was given to them by the family they were born to in another country. Pronouncing names correctly is an activity Aotearoa has committed to honour under te Tiriti o Waitangi, and this respect ought to be extended to other cultures and languages.

4.58 Names are an important aspect of a person's identity and therefore should only be changed by the person themselves. While a sense of belonging is important to a child, so is remaining truthful, and respectful of a child's heritage and family. If the truth is considered 'problematic' by the adults in a child's life, then support must be freely available for the adults to support them to understand their concerns.

4.59 There is provision for a non-disclosure direction to be placed on a birth certificate as a safeguard should a child or adopted adult be in danger if their identity is known.

Questions 46-49: Ongoing contact

4.60 Existing law provides no support for either pre- or post-adoption contact between the two families or whanau. However, in practice families are encouraged to maintain contact, and case law does permit a parenting order by way of contact between birth parents and the child.

4.61 DD2 sets out the options being considered for post adoption contact agreements between the child's family and proposed adopting family, stating that maintaining contact between both families and whānau after an adoption 'protects an adopted person's best interests, their right to family connection, and reflects the openness of the new adoption process'. (DD2 p48).

4.62 A reformed law needs to provide legal backing for agreements on ongoing contact between the birth parents and the adoptive family (subject to safeguards, for example in cases involving rape or violence). 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.

4.63 As research on open adoption has shown,[24] ongoing contact does not solve every problem related to adoption. Open adoption is a very complex process which adopted people may find extremely difficult to navigate, especially as tensions can and do arise and persist between the two families and between each family and the adopted person. This is one reason why having access to suitable support available before, during and after the adoption order has been granted is so important.

Questions 51 and 52: Access to support

4.64 We wish to restate the following point from our 2021 submission: **There is no 'finalising' or 'after an adoption' or 'end' to adoption for those affected.** It needs to be understood and recognised …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**.

4.65 We know that people impacted by an adoption order cannot predict when an event will trigger an adoption related need for support. Therefore, as stated in our 2021 submission (p12) we consider all people impacted by adoption (whenever that adoption took place) should have the appropriate support available to them and their family/whānau. This would include, but not be limited to, trauma-informed counselling, psychological and/or therapeutic support, access to support groups, advocacy, research and information.

4.66 We have heard from people who have taken adoption issues to Oranga Tamariki where social workers and government officials say they are unable to provide some or all the information or support being asked for as they are bound by New Zealand's adoption laws. We constantly hear that these agencies do not demonstrate compassion or an understanding of the impacts of adoption to the person they are replying to. It can sometimes take many years of fear, followed by a huge amount of courage for a person to make a request for information relating to an adoption order to one of these agencies.

4.67 These encounters have generated a mistrust of Oranga Tamariki and government officials by many people, and others report feeling too intimidated to seek help or support from a government agency. In addition, by not being able to provide people impacted by adoption with their information, New Zealand is not upholding its obligations under the international treaties it has signed up to, including the Convention on the Rights of the Child, the Universal Declaration of Human Rights, New Zealand human rights legislation, and importantly te Tiriti o Waitangi.

[24] See, for example, Olivia Potter (2020), 'Open adoption narrative: Snapshot into adoptees' adoptive and birth mother relationships', MA Psychology thesis, Massey University.

4.68 It appears that these agencies are, by design or default, operating to serve what they see as the interests of the adopters and not those of the child, or the adopted adult person and their families. Nor can these agencies support siblings, and wider family/whānau, to connect with or learn about their adopted people or family members.

4.69 There are also unnecessary impediments to obtaining information from the Courts about a person's adoption, and DIA records. Once again, no advocacy is available to help and support people through these processes.

4.70 There is currently no centralised trusted/neutral place for people to reach out to with adoption related questions or to find trauma-informed counselling with adoption expertise, to access adoption related information or to find the support that comes from connecting with other adopted people.

4.71 We ask that: support services be established that are:

- accessible to all people seeking advice, information, advocacy and support;
- that this service has an online and in-person presence;
- that it be provided at no cost to those accessing the service / support; and
- that no time or resource limits are imposed on a person accessing the service and support.

4.72 We recommend that the service and support are not attached to a government agency or a government accredited adoption agency under the Hague Convention, as these are not neutral, given the fact of their duties to effect and administer adoptions.

4.73 To establish a clear separation between those implementing and enabling adoptions to take place, and those supporting adopted people and their family/whānau, we suggest an office similar to the Children's Commissioner,[25] that is outside government and has a role to advocate and support good practice regarding all Acts and practices relating to adoption. Such an Office could provide the centralised portal that currently does not exist, where people can find support groups, access to trauma-informed therapy options, family and adoption counselling, and provide a clearing house for research, peer reviewed papers and information about adoption. Importantly, such services must be provided free to ensure equity.

4.74 When the value such a service could bring to the over 100,000 people adopted under the 1955 Act (and their multiple sets of parents, grandparents, siblings, cousins etc) is compared with the long-term costs of doing nothing, it is hard to justify not providing such a government funded service. To date, various support services have been run throughout Aotearoa New Zealand since the early 1970s and some still operate today on an 'as needed and as able' basis. All these support and information services are run for free by people who struggle to find accessible, affordable, informed support for the people that contact them.

[25] We understand that the Office of the Children's Commissioner is being disestablished, however it provides an example of the role a support service could take.

4.75 **We ask that an external Working Group be established** and funded by government to develop a support service model that meets the needs of those who reach out for support on all matters relating to adoption and, where research, information, and the history of adoption in Aotearoa New Zealand be housed. We consider that the Working Group would not include government agencies or government adoption accredited bodies, but rather that these agencies be available to the Working Group to provide information when required.

Questions 53, 54 and 55: Adoption information

4.76 A central tenet of the DD2 is to reform adoption law to accommodate 'open adoption' and protection of identity. Therefore sealed, or closed records would be antithetical to this principle. 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 already impacted by adoption and will facilitate steps toward removing the stigma and shame generated by the 1955 Act.

4.77 Adoption is a trauma imposed on an adopted person which is remembered, but not recalled. Therefore, accessing adoption records can be a critical part in many adopted people's understandings of themselves and their history. Adopted people, including those adopted under the 1955 Act, must have access to their records when they wish. This is a right non-adopted people have so by allowing adopted people the same right will bring parity to adopted people. Support services should be offered free should people wish to access them, and not be made a requirement for accessing records of any kind.

4.78 We are aware that some adopted people have spent years trying to access their adoption information, but have been repeatedly turned away, or alternatively been able to see only heavily redacted documents. We ask that the proposed principles (DD2 p16) are applied to access to information and that this access be extended to descendants, siblings and both families, in parity with non-adopted families.

4.79 Provision must be made for the family and whānau of people adopted under the 1955 Act and those adopted in the future to access the records of the adopted person. There is provision for a non-disclosure direction to be placed on a birth certificate as a safeguard should a child or adopted adult be in danger if their identity is known.

4.80 For a person to request information, they must first be clear about what it is they are asking for. Currently there is no list of documents held by agencies involved in adoption. This makes it difficult for people to be confident that they have been provided with all the documents pertaining to an adoption. Therefore, a full list of the type of records and documents held relating to an adoption must be collated and made public. This includes adoption records held by Oranga Tamariki, DIA, the Courts and agencies accredited under the Hague Convention on Intercountry Adoption. This list must include past and current records and be added to as new processes are established.

4.81 It is also important to recognise that adopted persons ought to have the same rights to their information as non-adopted people. Requiring extra hurdles and imposing greater costs for any reason, to access adoption records solidifies adoption as 'other' and reinforce the ideas of privacy and shame that adopted people and birth parents have faced historically.

4.82 We support the removal of any set age for access to adoption information. The current age of 20 for accessing an 'original' birth certificate makes little sense. There are benefits in having access to information about personal genealogy from an early age, including nourishing a sense of culture and connectedness. It also makes little sense to have an age limit in 'open adoptions', where the adopted person already knows their 'birth family' but would be unable to access certain records when they wanted to if there was an age limit.

4.83 In most circumstances birth parents and wider whānau of the birth parent/s and the adopted person should have unrestricted access to original birth information (see response to Qs. 42).

4.84 We strongly agree with the court being able to grant access to the court adoption records if it is satisfied that the person has a genuine interest in the record. 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.

Questions 56 and 57: Vetoes

4.85 Continuing the veto system in any form re-traumatises those who place a veto and those who have been vetoed. Vetoes perpetuate and sanction the shame, loss and grief of adoption by continuing the secrecy surrounding a birth and adoption.

4.86 The critical element of this attempt to reform adoption law in Aotearoa New Zealand is to ensure openness in adoption practice, therefore we do not agree that vetoes be able to be placed or renewed. However, once vetoes are removed and no longer able to be placed, it is critical that free and accessible support is available to the around 200 people (DD2p.54) whose vetoes currently exist. This number equates to about 0.2% of adoptions made under the Adoption Act 1955.

4.87 At this point, please note that again, that there is provision for a non-disclosure direction to be placed on a birth certificate as a safeguard should a child or adult adopted person be in danger if their identity is known.

Questions 60-67: Discharging adoption orders

4.88 An adopted person, having reached adulthood, must be able to have the right to have their adoption order discharged as of right, in an uncomplicated straight forward process.

4.89 Given the set of Guiding Principles for adoption in the DD2 are agreed, there ought to have been a rigorous and thorough process undertaken before an adoption order was determined to be the only care option available for the child. Rather than a focus on what to do when an adoption 'breaks down', we recommend:

- that the front-end process be improved considerably to ensure that the latest knowledge and understanding of the cognitive development of adopted children are understood by the parties involved.
- that trauma-informed specialists be part of the education process for all parties; and
- that an adoption should not proceed if a high bar is not reached.

4.90 For further Adoption Action Inc information on discharging an adoption order please see Issues paper 13.

4.91 We consider:

- 16- and 17-year-old adopted people ought to be able to discharge the adoption order placed on them should a court agree with their request.
- it is not necessary for the Attorney-General's consent be required for an adopted adult to reverse and adoption order.

4.92 We do not see that any 'filters' are necessary for an adult adopted person to have their adoption order discharged.

Wellington Community Justice Project

Submission to the Ministry of Justice: Intercountry and Overseas Adoptions

Author: *Jack Roberts*

Date: 4 August 2022

I Introduction

1.1. This submission was written by Jack Roberts (LLB/BA majoring in International Relations and Political Science) as part of the Law Reform team of the Wellington Community Justice Project.

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 on and behalf of Adoption Action Inc.

II Overseas Adoption

2.1 We agree with the Ministry of Justice's suggestion that the law should define an overseas adoption as ones where both the child and adoptive parents do not live in Aotearoa New Zealand.

2.1.1 As mentioned in our submission last year, the current overseas adoption framework, governed by Section 17 of the Adoption Act 1955, currently allows parties to circumvent the Hague Convention by obtaining an overseas adoption order and then travelling back to New Zealand. For example, in *T v District Court at North Shore (No 2)*, the adoptive parents, Indonesian citizens but living in New Zealand at the time, successfully gained an Indonesian adoption order which passed the Section 17 test.[26] This was in spite of Indonesia not being a signatory to the Hague Convention.

2.1.2 The Section 17 test is procedural in nature, with its three steps being:

a) Whether 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.
b) 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.[27]

2.1.3 Resultantly, this test does not include the numerous safeguards that are provided for in the Hague Convention. The loophole exposed by *T* would be closed by introducing a statutory definition of an overseas adoption as one that is done by parents living overseas at the time of the adoption, ensuring that would-be adoptive parents living in New Zealand instead used the intercountry adoption process.

2.1.4 As mentioned in our previous submission, living overseas under the new statutory definition of overseas adoption should be further defined as a minimum domicile period of two years in a country outside of New Zealand. This would prevent New Zealand-based parties from going overseas for a short period of time to circumvent the intercountry adoption process and particularly the Hague Convention.

[26] *T v District Court at North Shore (No 2)* [2004] NZFLR 769 (HC) at [21].
[27] Adoption Act 1955, s 17.

2.2 We believe that significant additional criteria should be introduced in order for an overseas adoption to be recognised in Aotearoa.

2.2.1 In *Henderson v Attorney-General* Whata J found that whether a child had a sufficient connection with New Zealand was not a necessary requirement in determining whether an overseas adoption should be recognised in New Zealand law.[28] In that case Section 11 of the Adoption Act 1955 was considered to be a sufficient immigration filter when its criteria were applied rigorously.[29] However, as mentioned in our previous submission, the Section 11 factors are general and mandatory relevant considerations should be introduced in order to prevent Section 11 being applied differently on a case-by-case basis.[30]

2.2.2 The criteria we recommend be introduced are considerations of 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. These criteria would not supplant Section 11 but instead inform its application.

III Intercountry Adoptions

3.1 We agree with the Ministry of Justice's suggestion that an intercountry adoption should be defined as when the adoptive applicants live in New Zealand and the child lives overseas.

3.1.1 As with the above recommended definition of an overseas adoption, this definition would ensure that would-be adoptive parents who are habitually resident in New Zealand used the intercountry adoption process instead of taking advantage of the adoption laws of other jurisdictions.

3.2 We recommend that intercountry adoptions with non-contracting states to the Hague Convention be governed by statutory guidelines to ensure that the best interests and welfare of the child are best upheld.

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[28] *Henderson v Attorney-General* [2015] NZHC 1971, [2016] NZFLR 687 at [63].
[29] At [58].
[30] *Submission: Intercountry and Overseas Adoptions* at [5.5].

3.2.1 The new legislation should include recognising the principle of subsidiarity, which ensures that a child is raised by their birth family or extended family if possible and then considers any options within the country of origin before consideration of intercountry adoption.[31]

3.2.2 We are conscious that under the current law, intercountry adoptions with states that are not signatories to the Hague Convention can be more easily recognised than Hague Convention adoptions, as happened in *GI v PAI* where the lack of a child study report from the state of origin was found to not be a barrier to adoption as it would have been under the Hague Convention.[32]

3.2.3 Accordingly, we recommend that the mandatory relevant considerations be introduced which provide as much context as possible for whether an intercountry adoption is in the best interests of and promotes the welfare of the child. As mentioned in our previous submission the factors mentioned by the Court of Appeal in *Norman v Attorney-General* are helpful, including, inter alia:[33]

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.

3.2.4 Additionally, we recommend that the informed wishes of the child, and consent if applicable, are also included as a mandatory relevant consideration in the new legislation to more closely mirror the Hague Convention.[34]

[31] 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.
[32] *GI v PAI* [2013] NZFC 2983, [2013] NZFLR 93 at [139].
[33] *Norman v Attorney-General* [2021] NZCA 78 at [145]-[148].
[34] Convention on Protection of Children and Co-operation in Respect of International Adoption, Art. 4.

3.2.5 These changes would make the legislation governing non-Hague Convention intercountry adoptions more akin to the Hague Convention as has been recommended by the Law Commission.[35]

3.3 We recommend that non-Hague Convention stranger intercountry adoptions are proscribed by the new legislation to reflect the practice of the Family Court.[36]

3.4 We agree that the law should continue to facilitate intercountry adoptions through the Hague Convention. However, we recommend that Oranga Tamariki be required to release an annual report on the quantity of Hague Convention adoptions, the countries of origin and the compliance of the adoptions with the Hague Convention. As mentioned in our submission last year, this should provide greater transparency of the intercountry adoption process and uphold public confidence that intercountry adoptions are compliant with New Zealand's international obligations.[37]

[35] Law Commission *Adoption and Its Alternatives* (NZLC R65, 2000) at 122.
[36] Oranga Tamariki, "Adopting a child from overseas" <https://www.orangatamariki.govt.nz/adoption/adopting-a-child-from-overseas>
[37] At [3.1.5].