

Associate Minister of Justice, Hon Nicole McKee

Cc Minister of Justice, Hon Paul Goldsmith

**Adoption law reform: Background information and work to date**

|      |               |                |  |
|------|---------------|----------------|--|
| Date | 27 March 2024 | File reference |  |
|------|---------------|----------------|--|

**Action sought**

**Timeframe**

|   |                     |
|---|---------------------|
| <b>Note</b> the contents of this briefing.  | At your convenience |
| <b>Share</b> this briefing with the Minister of Immigration, the Minister of Internal Affairs, and the Minister for Children. | At your convenience |

**Contacts for telephone discussion (if required)**

| Name                     | Position  | Telephone   |          | First contact                       |
|--------------------------|---|-------------|----------|-------------------------------------|
|                          |   | (work)      | (a/h)    |                                     |
| Sam Kunowski             | General Manager, Courts and Justice Services Policy | 04 913 9172 | s9(2)(a) | <input type="checkbox"/>            |
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**Minister's office to complete**

- Noted   
  Approved   
  Overtaken by events  
 Referred to: \_\_\_\_\_  
 Seen   
  Withdrawn   
  Not seen by Minister

**Minister's office's comments**

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### Purpose

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1. This briefing provides you with background information on the regulatory system for adoption and work to date on potential system reform.

### Key messages

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2. Your delegations as Associate Minister of Justice include responsibility for adoption policy. This briefing provides you with contextual information on the adoption system and recent work on adoption reform.
3. The Adoption Act 1955 is the principal piece of adoption legislation in New Zealand. The Act has not been substantially updated since it was passed and is no longer fit for purpose, including not reflecting trends in intercountry adoption, or modern adoption practices. The Act also does not comply with our international obligations and is not consistent with other domestic child-centred legislation.
4. The Ministry of Justice began to review adoption legislation in 2019 and undertook two rounds of public and targeted engagement in 2021 and 2022. We heard feedback from a range of individuals with experience of the adoption system. There is significant public interest in, and general support for reform.
5. Work on adoption law reform is currently paused due to competing work programme priorities, including those related to court timeliness. s9(2)(f)(iv)

### The adoption system is part of the Family Justice system

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6. You have been delegated responsibility for adoption policy as part of your Associate Minister of Justice delegations. Adoption policy links closely with your delegation for surrogacy policy, as parentage for surrogacies are currently recognised through the Adoption Act.
7. Adoption policy is part of the broader Family Justice system which includes the Family Court, and the legislation which governs the formation and dissolution of families and the care of children. The Family Justice system has increasingly focused on ensuring the best interests of children and improving accessibility for a wider range of families and whānau. There is also significant interaction between the Family Justice system and the care and protection system, which sits with the Minister for Children and is administered by Oranga Tamariki.
8. Along with other parts of the Family Justice system, adoption policy remains an area with a steady level of interest from the public, as well as from other government

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agencies and international bodies. This area is periodically subject to media requests, Official Information Act requests, and letters from the public.

9. Past adoption practice is also being considered by the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-Based Institutions. The Royal Commission is currently scheduled to report back on 26 June 2024.

### **The Ministry of Justice has primary responsibility for adoption legislation**

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10. New Zealand's adoption laws are administered by the Ministry of Justice and provide for the transfer of legal rights and responsibilities from birth parents to adoptive parents. Once an adoption order is made, the law treats the child as if they were born to the adoptive parents.

### ***Adoption laws sit across three pieces of legislation***

11. The Adoption Act 1955 (the Adoption Act) sets out the substantive law on domestic adoptions and legal recognition of overseas adoptions. The Adoption Act's provisions set out who may adopt and be adopted, when an adoption order may be granted, the effect of an adoption order and related matters. Legal recognition of overseas adoptions creates a pathway to immigration and citizenship for children in other countries who have been adopted by New Zealanders.
12. The Adoption (Intercountry) Act 1997 gives effect to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention'). It provides that where an applicant is resident in New Zealand and wishes to adopt a child from another country also party to the Hague Convention, that adoption must comply with the safeguards of the Convention.
13. The Adult Adoption Information Act 1985 enables access to adoption information by adult adopted persons and their birth parents. Adoptees aged 20 years or older may access the name, address, and occupation of a birth parent, unless that birth parent has imposed a veto. The Adult Adoption Information Act provides for counselling to be provided to the adopted person and enables adoption information to be released on medical grounds.

### ***Operational responsibilities sit with other agencies***

14. Oranga Tamariki and the courts hold primary responsibility for operationalising the Acts. The Department of Internal Affairs (DIA) facilitate aspects of the adoption process related to the birth registration system and granting New Zealand citizenship. Immigration New Zealand also plays a role as they process the Visas of children adopted overseas who enter the country via the Dependent Child Visa.

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15. We therefore recommend you forward this briefing to the Minister for Immigration, the Minister of Internal Affairs, and the Minister for Children.

### **Our adoption legislation is nearly 70 years old and does not reflect modern society**

#### ***The Adoption Act reflects the values of the era in which it was enacted***

16. The Adoption Act 1955 has not been substantially updated in nearly 70 years. From the 1950s until the 1980s there was a prevalent view that it was best for children born to unmarried or single women to be placed for adoption. Adoption was intended to avoid the stigma for women of having a child outside marriage, prevent the child being labelled as 'illegitimate', and provide the child with the stability of a two-parent family.
17. The Act was based on a 'clean break' between the birth and adoptive families. Upon adoption, the child acquired a new identity, and birth families had no further role in the child's life.
18. From the 1960s, more single mothers began keeping their children. In 1969 the Status of Children Act removed the legal significance of birth outside marriage. The Domestic Purposes Benefit for sole parents was introduced in 1973, and attitudes toward single motherhood began to change. Methods of contraception and abortion became more widely accessible during this time, and numbers of domestic adoptions steadily declined.
19. In the last three decades there have also been changes to the types of familial relationships being formed and the way those relationships are recognised, such as the passing of the Civil Union Act 2004. Marriage and birth rates have continued to trend down, and it is now common for people to have children outside of marriage.

#### ***Domestic adoption numbers have dropped over time...***

20. Adoption numbers peaked in the early 1970s, with 3,967 children adopted in New Zealand in 1971. The number of adoptions has steadily declined since then. In 2022/2023, the Family Court granted only 98 adoptions.<sup>1</sup>
21. While the number of domestic adoptions in New Zealand today is low, the importance of adoption law and its effect on adopted people and their whānau remains significant. Given the large numbers of children adopted between 1950 and 1980, many families in New Zealand that continue to be affected by our adoption laws.
22. In addition, domestic adoptions are often more complex, including the Courts taking a more nuanced approach to the best interests of the child (for example, when considering cultural background, or whether adoption is the best option). Surrogacy arrangements are also subject to adoption proceedings as the only way to create a

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<sup>1</sup> This includes adoptions used to formalise surrogacy arrangements.

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parentage relationship between a surrogate born child and the intended parents is through adoption.<sup>2</sup>

### ***...but international adoption numbers have increased***

23. Intercountry adoption was not a significant part of adoption practice in New Zealand until the late 1980s. However, today intercountry adoption numbers far surpass domestic adoption numbers.
24. International adoptions take three forms:
  - 24.1. Intercountry adoptions under the Hague Convention (16 granted in 2022/23):<sup>3</sup> The Hague Convention process allows for people in New Zealand to adopt children from overseas countries where the other country is also signed up to the Convention, and New Zealand has an agreement with that country.<sup>4</sup> The adoption laws of the other country also apply to the agreement. The Hague Convention has safeguards which ensure that all parties to the adoption are freely consenting and that the adoption is in the best interests of the child.
  - 24.2. Non-Hague intercountry adoptions: Our current law also allows intercountry adoptions to take place that fall outside of the Hague Convention process. These intercountry adoptions can be made either by the New Zealand Family Court, or adoption orders made in overseas courts which are subsequently recognised by New Zealand.
  - 24.3. Overseas adoptions: New Zealand recognises adoptions made in overseas countries if they meet the criteria set out in section 17 of the Adoption Act.<sup>5</sup> Overseas adoptions that meet these criteria will have the same legal standing in New Zealand as adoptions made in New Zealand. Legal rights such as immigration and citizenship can flow from that recognition.
25. In 2023, the Department of Internal Affairs approved 547 applications for citizenship by descent following an overseas or non-Hague intercountry adoption. 422 of these citizenship applications (or 77%) were for children adopted in Samoa by New Zealand citizens and/or residents. Children adopted via intercountry processes can also enter New Zealand on a Dependent Child Visa. The Dependent Child Visa allows parents

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<sup>2</sup> Surrogacy is no longer within scope of the Ministry's work on adoption law reform. A briefing on options for surrogacy reform was provided to your office on 7 March 2024.

<sup>3</sup> [a4590986-a162-4191-9032-09433ac30782.pdf \(hcch.net\)](https://www.hcch.net/a4590986-a162-4191-9032-09433ac30782.pdf).

<sup>4</sup> New Zealand is not a sending State, meaning that children in New Zealand are not adopted overseas under the Hague Convention.

<sup>5</sup> The criteria are that the adoption is legally valid in the country where it occurred, gives the adoptive parents the right to provide day-to-day care of the child, and gives the adoptive parents an equal or greater right than the birth parents to inherit the child's property as next of kin.

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to bring their children (including adopted children) to New Zealand as a visitor or a resident.

### **A number of known issues stem from the current adoption legislation and operational measures can only partly address these issues**

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26. Over time, a number of issues with the current adoption system have become evident. For example, the New Zealand Law Commission's 2000 report, *Adoption and its Alternatives*, recommended substantial reform of New Zealand's adoption laws. Comparable jurisdictions, including Australia, Canada, and the United Kingdom, have also reviewed and updated their adoption laws several times since the 1950s.
27. Operationally, some measures are being taken to address the identified issues, but operational solutions cannot fix the problems in the underlying legislative framework.

### ***The framework for international adoption has gaps in protections and can endanger children's welfare***

28. The interrelation of our adoption laws with domestic adoption legislation in other jurisdictions means that New Zealand regularly recognises adoptions that may have been made without appropriate safeguards. Oranga Tamariki have informed us that there is a particular risk in relation to overseas adoptions that are not subject to the safeguards of the Hague Convention.
29. In some cases, New Zealanders with criminal histories or significant Oranga Tamariki care and protection records relating to children in their care have been able to adopt children in an overseas court. Those adoptions are then able to be recognised in New Zealand under the current law.<sup>6</sup>
30. The Adoption Act also enables a person to make an adoption application in the Family Court, regardless of where the applicant or child to be adopted reside. There can be difficulties obtaining or verifying the legitimacy of information where an applicant or child, or both, reside outside of New Zealand. Allowing adoptions to occur based on unverified information, or without considering the views of children, risks the making of adoption orders that are not in the child's best interests or welfare.
31. Oranga Tamariki is working to mitigate these risks through operational practice as much as is possible within the current system. In 2018, they established the Children Across Borders working group, following the identification of risks relating to the irregular movement of children across borders. The Ministry of Justice is a member

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<sup>6</sup> The case of Joseph Matamata demonstrates the harm that has been caused through the current adoption system. Joseph Matamata was convicted in March 2020 of 10 counts of trafficking in persons and 13 counts of slavery. Three victims were Matamata's adopted children who had been brought to New Zealand from Samoa after obtaining Dependent Child Category visas. Samoa is not a party to the Hague Convention.



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of this group.<sup>7</sup> The group works to develop a cross-agency approach to respond to issues arising in inter-country adoptions involving non-contracting States to the Hague Convention.

32. The group has several ongoing pieces of work, including s6(a)
33. New Zealand and Samoa signed a Statement of Partnership in February of this year, building on an earlier Statement signed in February 2019. One of the points agreed to in the Statement is to develop joint processes and practices to identify and respond to challenges arising from inter-country adoptions.

### ***Our adoption laws do not meet New Zealand's domestic and international obligations***

34. Our adoption laws fall short of our domestic and international obligations, particularly in relation to human rights. In 2016, the Human Rights Review Tribunal declared seven provisions of the Adoption and Adult Adoption Information Acts discriminatory on the basis of sex, marital status, sexual orientation, disability, and age.
35. Our laws have been criticised internationally for not meeting our obligations under international instruments such as the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities. The lack of legislative reform in response to these instruments has been repeatedly raised in reports from the United Nations Committee on the Rights of the Child.

### ***Adoption laws have life-long effects for adopted persons' right to identity***

36. Our adoption laws fail to recognise adopted persons' right to identity (as enshrined in the United Nations Convention on the Rights of the Child). In particular, current adoption laws present barriers to accessing identity information. For example, adopted persons must wait until they are 20 years old to access copies of their original birth certificate with their birth parents' details.<sup>8</sup>
37. A small number of parties to an adoption cannot access their original birth certificate at all. For adoptions that occurred before 1 March 1986, birth parents and adopted persons can place a "veto" on the disclosure of their identity information. There are

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<sup>7</sup> Other agencies involved include the Department of Internal Affairs, the Ministry for Business, Innovation and Employment (Immigration New Zealand), New Zealand Police, the Ministry of Foreign Affairs and Trade, the Ministry for Pacific Peoples, and the Ministry of Education.

<sup>8</sup> See sections 2 and 4 of the Adult Adoption Information Act 1985. "Adult" is defined in the Act as a person who has attained the age of 20 years.

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currently 123 active vetoes in place.<sup>9</sup> The majority of these (104) are held by birth mothers.

38. For more recent domestic adoptions, however, although not a legal requirement, most adoptions that take place in New Zealand today are “open” adoptions, where children retain some contact with their birth families.

### ***Our adoption laws do not currently reflect multicultural concepts of family formation***

39. Due to when they were enacted, current adoption laws do not reflect non-Western cultural values or concepts. Because adoption removes a child’s legal ties to their birth family and whānau, connections to their culture, heritage, and language may also be lost. For tamariki Māori, this can also impact on their whakapapa and whanaungatanga connections.

### **Significant steps have been taken to progress adoption law reform**

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#### ***There have been several attempts to reform adoption laws in New Zealand***

40. There have been a number of attempts to reform adoption laws in New Zealand that have been paused or discontinued. These include:
- 40.1. A review of the Adoption Act following the Government Administration Select Committee's consideration of the Law Commission’s report *Adoption and Its Alternatives*. The Committee released their interim report in 2001 which made 93 recommendations for reform. The Ministry of Justice subsequently worked with the Ministry of Social Development and the Department of Child Youth and Family Services (now Oranga Tamariki) to review the Adoption Act until reform was discontinued in 2003 due to competing legislative priorities.
- 40.2. A further review of adoption laws commenced in 2006-7 leading to a Bill being drafted but not introduced.

#### ***We have completed two rounds of public and targeted engagement on adoption law reform***

41. The most recent adoption reform project, which is currently paused, began in 2019 and is now well advanced.
42. In August 2021, the Ministry completed its first round of engagement on adoption law reform, asking for people’s views on the current law. We released a discussion Document, *Adoption in Aotearoa New Zealand*, and summary document alongside an online CitizenSpace survey. The Ministry received 271 written submissions and

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<sup>9</sup> Information provided by the Department of Internal Affairs, current at 28 February 2024.



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met with 27 individuals and groups. We also commissioned MartinJenkins to carry out targeted engagement with Māori individuals, the Samoan community, and young people impacted by adoption.

43. In August 2022, the Ministry completed its second round of engagement on options for reform using the insights gained from the first round of engagement. During this engagement, the Ministry received over 140 written submissions and attended over 20 in-person and online engagements with interested groups. These groups included people impacted by adoption, young, adopted people, Māori, Samoan communities, and other Pacific communities. We heard general support for the options set out in the discussion document *A new adoption system for Aotearoa New Zealand*. A copy of the Discussion Document and a summary of engagement is included at Appendix 1.
44. The National Iwi Chairs Forum Pou Tikanga, in collaboration with Ināia Tonu Nei, held a Māori-led wānanga on whāngai in August 2022.<sup>10</sup> The general view at the wānanga was that further work on whāngai should be separate to adoption reform and led by Māori. The Ministry therefore is not progressing work to provide specific legal recognition of whāngai at present, however, has recommended that further inter-agency work is carried out to scope and address operational barriers to the practice of whāngai.

### ***We are close to finalising a package of policy proposals for adoption law reform***

45. Following the second round of public engagement in 2022, the Ministry worked closely with Oranga Tamariki and other relevant agencies to develop a package of policy proposals for a new adoption law system.
46. Work on this project was slowed down in early 2023 and is now paused due to competing work programme priorities, specifically including those related to improving court timeliness. s9(2)(f)(iv)

### **Other areas of work are underway that relate to adoption**

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#### ***Surrogacy is progressing as a separate workstream***

47. Currently, adoption is the only vehicle for creating a parentage relationship between a surrogate-born child and the intended parents. A Government Bill – the Improving Arrangements for Surrogacy Bill – is currently before the Health Select Committee.<sup>11</sup>

<sup>10</sup> Whāngai is the Māori customary practice by which a child is raised by kin members other than their birth parents. Section 19 of the Adoption Act states that whāngai is not legally recognised.

<sup>11</sup> The details of this Bill, and options for progressing it, are discussed in further detail in the surrogacy briefing that was provided to your office on 7 March 2024.

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***The Royal Commission of Inquiry into Abuse in State and Faith-Based Care is considering past adoption practice***

48. The Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-Based Institutions is investigating what happened to children and adults in State and faith-based care in New Zealand between 1950 and 1999, this includes forced adoption practices. The Royal Commission is due to report back on 26 June 2024. The outcome of the report may spark renewed interest in adoption law reform.

**Next steps**

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49. s9(2)(f)(iv)
50. We understand that Oranga Tamariki also intends to brief the Minister for Children on the issues regarding the current adoption settings. Given the implications for other agencies, we recommend that you provide this briefing to the Minister of Immigration, the Minister of Internal Affairs, and the Minister for Children.

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**Recommendations**

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51. It's recommended that you:

1. **Note** the background information provided in this briefing on the adoption system, including current issues and potential for reform.
2. **Forward** a copy of this briefing to the Minister for Children, Minister of Internal Affairs, and Minister of Immigration.

YES / NO



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Naomi Stephen-Smith  
**Policy Manager, Family Law**

APPROVED      SEEN      NOT AGREED

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Hon Nicole McKee  
**Associate Minister of Justice**

Date    /    /

**Attachments:**

- *A new adoption system for Aotearoa New Zealand: Discussion Document (2022)*
- *Adoption Law Reform: Summary of feedback on 2022 engagement (2022)*