

ADOPTION PRACTICES REVIEW COMMITTEE

REPORT

TO THE

MINISTER OF SOCIAL WELFARE

AUGUST 1990

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CHAPTER 1 - INTRODUCTION AND ACKNOWLEDGMENTS

The Adoption Practices Review Committee was established by the Minister of Social Welfare in April 1990. The Committee consisted of Ephra Garrett, recently retired Senior Lecturer in Social Policy and Social Work, Massey University, Margaret Tucker, Principal Social Worker, North Harbour District, Auckland Area Health Board, and Bill Atkin, Senior Lecturer in Law, Victoria University of Wellington (Chair). The terms of reference of the Committee were:

- 1 To examine present practices regarding adoption within the Department of Social Welfare with a view to determining whether or not they best meet the needs of:
 - (a) prospective adoptive children
 - (b) birth mothers (and birth fathers); and,
 - (c) prospective adoptive parents.
- 2 To present an interim report to the Minister of Social Welfare by 30 June 1990, and a final report on such later date as may be determined by the Committee, in consultation with the Minister.

The Committee made an interim report to the Minister on 30 June setting out the progress which had been made, the principles upon which the Committee was basing its work, and the Committee's initial findings.

This final report sets out the evidence which was presented to the Committee, discusses the issues which face adoption work in New Zealand today and outlines the Committee's recommendations. The Committee has drawn heavily on the submissions presented to it. Although many of these submissions raise individual grievances, the Committee has not seen it as its function to comment directly on particular cases. Such cases have however informed the Committee's deliberations and have thus been taken into account.

The intention of the Committee is not to judge the rights and wrongs of past incidents but rather to be forward-looking, practical and realistic. We do not pretend to have come up with all the answers nor deny that more development and consultation will be necessary. We hope nevertheless that our recommendations will set the path for adoption practices in the immediate and longer-term future.

Our findings and recommendations concentrate on adoption practices as required by the terms of reference. This report is not a blueprint for law reform (much of the work for this was done by the interdepartmental committee which reported in 1987), nor does the report examine such wide ranging issues as access to adoption records, inter-country adoptions, and new birth technologies. Inevitably however submissions and our own deliberations covered some of these issues. We comment very briefly on them. The question of law reform is a rather more substantial matter. The Committee has taken the view that, while a comprehensive review of adoption law was not within our brief, where present and future adoption policy and practice depart from the current law, then changes to the law should be recommended. We make recommendations that the Adoption Act 1955 should be amended as soon as possible to take account of the now common practices of open adoption and the appointment

of counsel for the child by the Family Court. The Committee has had preliminary consultations on both of these amendments and been encouraged by initial responses.

The Committee met regularly and travelled to many different parts of New Zealand. Given the time frame, it was not possible to visit every Department of Social Welfare district but we believe that we gleaned ample information upon which to deliberate. The Committee took the initiative in approaching certain groups, agencies and individuals with an interest in adoption and child welfare. Public submissions were also invited, and despite the short deadline which the Committee was forced to impose, the Committee was impressed by the quality and number of submissions received. A list of agencies and groups contacted or who made submissions is appended to this report. Submissions from individuals, other than experts, have been summarised in categories in order to preserve confidentiality.

The Committee realises that there may be other people who have not had the opportunity to write or speak to us. We hope that the publication of the report will still give them the chance to make their input directly to those who have to make implementation decisions.

The Committee has been very grateful for the assistance it has received. It wishes to record the hospitable way it was received at Social Welfare district offices and at agencies such as the Bethany Centre in Auckland and Catholic Social Services in Christchurch. The Committee especially appreciates the time and wisdom it received from Dr Ian Hassall (the Commissioner for Children), Ann Corcoran (Director of Wellington Catholic Social Services), Judge Mahony (Principal Family Court Judge), Judge Borrin and the other judges of the Wellington Family Court, and members of the Law Reform Division of the Justice Department. The Committee could not have functioned without the help of Mr John Knox of the Secretariat of the Department of Social Welfare Head Office and for the typing assistance of Carol Spencer.

CHAPTER 2 - SUMMARY OF FINDINGS AND RECOMMENDATIONS

FINDINGS

The following are our findings presented in summary form. They are developed more fully in the rest of the report.

- 1 Social work practice differs markedly from district to district, and differs within offices with different social workers. The areas where some of these differences are evident are:
 - + The level of resources devoted to adoption and the priority it receives
 - + The underlying attitudes and philosophies relating to adoption and especially stranger adoption - some social workers appear to be opposed to adoption as a concept
 - + Whether social workers specialise in adoption or not
 - + Whether courses for adopting parents are run
 - + Whether there is a "pool" of potential adoptive parents, whether the "books are closed off", and arbitrary rules about the age of adoptive parents
 - + Whether profiles of adopting parents are prepared
 - + The rules on "matching" birth parents and adopting parents
 - + Variations from semi-closed styles of adoption to very "open" ones
 - + How birth mothers are prepared for making the decision about the future of the child
 - + The extent to which the birth mother's choice is accepted, without recourse to the family
 - + The interpretation of Puaoteata and the Treaty of Waitangi, mainly with regard to the process of decision-making and the determination of placement, especially concerning children of mixed ethnic origins.
- 2 Social workers in the adoption field often feel isolated and unclear about departmental policy. They experience a lack of training and of consultation.
- 3 There is no current up-to-date departmental policy on adoption. The existing manual is universally regarded as out of date and is largely ignored. There is a lack of a coherent philosophy and no modern national guidelines to deal with practice.
- 4 There is a lack of national and ongoing training.

- 5 The Department is carrying out many different functions which stretch the resources, commitment and time which are devoted to adoption. Some of these functions overlap.
- 6 Social workers have a sense of confusion following the advent of the Children, Young Persons, and Their Families Act 1989. While it is recognised that the Adoption Act 1955 is out of date and needs revision, there is also uncertainty to what extent the 1989 Act is appropriate or should be used in adoption cases. While some submissions argued that adoption should be brought under the 1989 Act, many other submissions took quite the contrary approach. Clearly, the interrelationship between the two Acts has not been thought through at the legal, policy and practice levels. This has exacerbated the discrepancies in practice throughout the country.
- 7 There is a feeling in parts of the Maori community that Puaoteata and the Treaty of Waitangi have not been taken sufficiently into account in adoption. The main points at issue are the process of whanau decision-making and the placement of a child within its own whanau, hapu or iwi. The problems become acute when the Maori birth parent/s do not want the whanau involved or the mother is Pakeha and wishes to exercise her choice over the placement of the child.
- 8 Similar questions arise for Pacific Island people, with the addition that Pacific Island birth mothers sometimes have less say and adoption may be seen as a solution to the shame of pregnancy.
- 9 "Open" adoption is generally considered very positively by birth parents and adoptive parents alike. Where they have had adequate preparation, their reactions are enthusiastic, even though they will also acknowledge that there are perfectly natural difficulties in making open adoption work well for all concerned. Most people consulted consider that there is a need for ongoing support and legal back-up for open adoption.
- 10 Many good courses have been offered in various parts of the country, often run by community groups. Some of these are directed to prospective adoptive parents, others to the issue of infertility. Counsellors in the community are also offering an important service in some places. In a number of instances, people feel more comfortable going to a non-governmental group or agency rather than the Department and in some places the departmental social workers prefer not to do such work.
- 11 Submissions from adoptive and birth parents (predominantly from the former) have ranged from those who were complimentary about the service offered by the Department to those who claimed that they had been treated with hostility and rudeness by social workers, some of whom were pushing their own ideologies. Most of the adverse comments related to the way in which information was conveyed, letters were answered, and phone enquiries received. There were claims of procrastination, "blocking" of a desire to adopt, and the failure to give adequate reasons for decisions. A number of people commented on the "power" which is in the hands of the social worker, the absence of a real process of accountability and the lack of a complaints mechanism. We

acknowledge the genuineness of feeling in these submissions. We would also point out however that some of the experiences may be due to the findings above, about the lack of resourcing, training, and policy guidance, as well as the fact that there are far fewer babies placed for adoption these days compared with the number of people seeking to adopt.

- 12 Infertility is a problem in its own right distinct from adoption and is becoming more apparent. The rise in infertility and the fall in the number of babies for adoption highlight the issues in the public mind and have a big impact on departmental practices.
- 13 The highest quality of service which we came across relating to the preparation of birth and adopting parents was at the Bethany Centre in Auckland and Catholic Social Services in Christchurch.
- 14 While more birth fathers appear to be involved in the adoption decision than in the past, some fathers are reluctant to come forward to the Department because of the possible financial implications. In one city where the Department saw few fathers, a voluntary agency saw almost all of them.
- 15 There are several different kinds of "private adoption" - ones arranged through the family, ones arranged by the birth mother or her family, and ones set up through a intermediary such as a doctor or lawyer. The statistical base offered by the Department appears to be unreliable, as our information is that there is a significant trend towards private adoptions. In some centres, doctors, particularly obstetricians, are heavily involved. Social workers recognise the risks in private placements, especially where the adopting couple have not been approved or had adequate preparation, but they also accept that in a number of cases the placement is quite appropriate. Often the social worker is involved too late in the process and there is a feeling that they are rubber-stamping a fait accompli.
- 16 The preponderance of views on step-parent adoption is that guardianship and custody orders should normally be used. The judiciary would like to seek social worker reports and are aware of the option of guardianship.
- 17 There is no statutory power to appoint counsel for the child in adoption cases but in several instances counsel to assist the court have been appointed.
- 18 Adoption of special needs children is often being done through the processes of the Children, Young Persons, and Their Families Act 1989 but the holding of a family group conference in these cases can sometimes be an extra and unnecessary pressure on those involved. There is also a fall-off in financial and other support for the child once it has been adopted, even though its needs remain considerable.
- 19 Most adult adopted persons are not unhappy about their having been adopted but regret the lack of information about their birth and origins.
- 20 Much of the work of adoption social workers is taken up with the Adult Adoption Information Act 1985, which is inundating some offices. Many

enquiries about information are received from teenagers under the age of 20 who do not come within the 1985 Act.

- 21 While some argue for the abolition of adoption, there is still widespread support for "the new adoption" as a proper option for people to consider.

RECOMMENDATIONS

The following is a summary of the Committee's major recommendations:

- 1 There should be an adoption service which is a flexible combination of government departments, area health boards, the Family Court, private and voluntary agencies, bound by national guidelines and standards (chapter 5).
- 2 The Department of Social Welfare needs to re-commit itself to its statutory functions and to the provision of a good adoption service (chapter 5).
- 3 A greater role may be found under contract for community agencies and private counsellors to fulfil some of the tasks needed for an excellent adoption service. The statutory functions should however still be carried out by the Department of Social Welfare and the Iwi Transition Agency (or its successor) (chapter 5).
- 4 The role of area health boards in relation to birth mothers may be extended and co-ordinated with the Department and other agencies (chapter 5).
- 5 The Commissioner for Children should have an important role in review, accountability, monitoring, education, advocacy, and liaison, and generally to ensure the promotion of the welfare of children (chapter 5).
- 6 Birth mothers should be recognised as the principal decision-makers about the care of their child, but on the basis of information and counselling which has presented all the options and their likely outcomes (chapter 6).
- 7 Birth fathers should be encouraged to be involved subject to the best interests of the child and the safety and welfare of the birth mother (chapter 6).
- 8 Counselling of the birth parent(s) should explore the desirability of consulting the birth family/whanau but the ultimate decision should rest with the birth mother, as it does under the present law (chapter 6).
- 9 Adoption should remain a distinct service. Adoption should not be incorporated into the Children, Young Persons, and Their Families Act 1989 (chapter 11).
- 10 There should be adoption training, which is national, ongoing, available to adoption workers outside DSW, and planned in consultation with the Iwi Transition Agency (or its successor), the Commissioner for Children, and people and agencies with experience of adoption (chapter 7).

- 11 An up-dated manual for a distinct adoption service is needed, prepared in consultation with the Iwi Transition Agency (or its successor) and the Commissioner for Children (chapter 7).
- 12 There should be education and guidelines for all the professions involved in the adoption process (chapter 8).
- 13 Complaints about adoption practices should be handled by the Commissioner for Children where a child is involved (chapter 9).
- 14 Where there is no child involved, complaints should be handled by (i) an internal DSW regional review officer and (ii) if necessary, the Ombudsmen (chapter 9).
- 15 Open adoption should be encouraged as the norm in practice (chapter 10).
- 16 The Adoption Act 1955 should be amended as soon as possible to provide for the filing of an open adoption plan with the Family Court before a final adoption order is granted. The counselling resources of the Family Court should be available to assist people to negotiate and re-negotiate their plans (chapter 10).
- 17 All involved in adoption should be made aware of the importance of whakapapa and cultural heritage (chapter 12).
- 18 The Iwi Transition Agency (or its successor) must employ enough qualified Maori community officers to carry out Maori adoptions and to report to the Court, as required under the Adoption Act 1955 (chapter 12).
- 19 Any changes to law, policy and practice should proceed only after full consultation with Maori organisations and groups (chapter 12).
- 20 New directions in adoption policy should be set only after consultation with the Pacific Island communities (chapter 5).
- 21 To alleviate concerns about private adoptions, there should be an open adoption plan (see recommendation 16) and training and education for the intermediaries (chapter 13).
- 22 Guardianship should be considered as an option for child care, not to be confused with adoption, and may be especially valuable in step-parent and intra-family situations (chapter 14).
- 23 Ongoing support, including financial support, should normally be available for special needs children who are adopted (chapter 15).
- 24 A statement of rights (or information sheets) for prospective adoptive parents should be considered (chapter 16).

- 25 Community agencies and groups should be encouraged to undertake the counselling and preparation of prospective adoptive parents, covering among other things the question of infertility (chapter 16).
- 26 The Adoption Act 1955 should be amended to allow for the appointment of counsel for the child (chapter 17).
- 27 Birth certificates should include the names of both birth and adoptive parents (chapter 17).
- 28 Research into adoption and permanent placement should be encouraged and promoted by the Department and the Commissioner for Children with funding where necessary (chapter 17).

CHAPTER 3 - THE EXTENT AND NATURE OF ADOPTION IN NEW ZEALAND TODAY

TRENDS

The number of children available for adoption has reduced steadily over the last decade; stranger adoptions of babies totalled 254 in 1988, barely a third of the figure for 1980 (715). Contributing factors are probably :

- + a greater acceptance of single motherhood.
- + that the public generally endorse the right of women to choose when and whether they will have a child.
- + the continued increase in the number of abortions and the use of contraception (a world-wide trend).
- + That the domestic purposes benefit (DPB) allows a mother to support her child financially.

One could speculate that suggested changes to the age entitlement of the DPB may have an impact on the future number of adoptions.

A large proportion of current adoption work within the Department of Social Welfare is to do with the Adult Adoption Information Act 1985. Placement of babies with strangers is 30% of the work of DSW; another third of placements reported in 1988 were step-parent adoptions - adoptions which formalise an existing family of one birth parent and spouse. There appears to be an increasing number of family and private adoptions, ie those which take place informally within the family or elsewhere, and those arranged by an intermediary such as a pastor, doctor, or lawyer.

A misleading impression may be gained by the small statistical totals. In fact a large number of people are involved in each adoption, including the birth parent(s), and their families, a number of prospective adoptive parents and their families, the baby or adopted person, and social workers, counsellors and other professionals.

Most prospective adoptive couples at present are infertile couples. The rise in infertility rates and the fall in the number of babies for adoption highlight the issues in the public mind and have a big impact on the practices of the Department and other agencies. Adoption remains an emotive issue and one which arouses intense public interest.

CHRISTCHURCH CHILD DEVELOPMENT STUDY

The Committee was fortunate to receive a research paper especially prepared for this review. This paper, "The Outcomes of Adoption: A 12 year longitudinal study", is by D M Fergusson (Ph D), L J Horwood (BA MSc) and M Lloyd (BA Hons), a summary of the findings of the Christchurch Child Development Study on differences in the family background and development of children who entered single parent families, two natural parent families and adoptive families.

For the children in this study adoption was generally more advantageous than disadvantageous. Adopted children were clearly exposed to advantaged high quality home environments and appeared to benefit from this experience by improvements in measures of cognitive ability and, to a lesser extent, social adjustment.

However, to quote the study, "it is important to recognise that differences in the outcomes of adopted children and children in single parent families were not large and it was not the case that all children in adopted families fared better than all children in single parent families. Rather the results suggest that adoption has a modest influence on the child's subsequent social and cognitive development".

It will be interesting and informative to follow these children through to adulthood to see whether or not the adopted children do have difficulties establishing their identity in adolescence and young adulthood.

UNITED NATIONS CONVENTION

The United Nations Convention on the Rights of the Child (1989) states that

"Parties which recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration" (Article 21).

In regard to adoption practice and policy, Article 21 continues:

"that they shall-

(a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary."

We understand from this that :

- Adoption is an internationally recognised option for the permanent placement of children.
- It must be carried out by authorised bodies.
- For consent to be informed, good counselling must be provided.

CHAPTER 4 - PRINCIPLES

The following principles are ones which the Committee has settled upon after holding discussions with many people and assessing the evidence and submissions.

- (1) The deciding principle is the best interests (or "welfare") of the child.

We understand the best interests of the child to mean looking at each case on its merits, making an assessment of the needs of each child and not relying on broad generalisations, but nevertheless being aware of some overall guidelines such as the importance of ethnic background, bonding, ability or preparedness to parent and openness in relationships.

The child has the right to be raised by birth parents or birth family/whanau/hapu/iwi in so far as this is in the child's best interests. The best interests principle should operate, wherever possible, so that the rights and needs of all parties in the adoption process are preserved and protected.

This principle is in line with Article 21 of the United Nations Convention on the Rights of the Child.

- (2) Retention of a sense of belonging and identity in relation to genetic forebears and relatives (including receipt of information, acceptance of origins, and open adoption).
- (3) Love and acceptance by the adoptive family (not to be seen as lesser than natural children).
- (4) Permanency of placement - adopted parents should be able to parent their adopted child without fear of disruption.*
- (5) The child has a right to legal or other representation to protect the child's interests.
- (6) Adoption has changed. "The new adoption" is a process rather than an event, the new relationships are likely to be an ongoing reality, the closed and secretive style of the past is largely going.
- (7) New Zealand is a bicultural country (and becoming multicultural) and different cultural perspectives, especially those of the tangata whenua, must be incorporated into adoption practice. The Treaty of Waitangi and Pua-te-Ata-Tu are the foundation documents.
- (8) The holding of whanau and family meetings may be valuable in reaching a decision for the future of the child, subject to the best interests of the child. Birth parents should be encouraged to involve families but ultimately the wishes of the birth mother are protected by legislation.

* The first four principles are drawn from the submission of the Commissioner for Children.

- (9) Social work practice should be professional, neutral, non-judgmental, co-operative and flexible; not doctrinaire or rigid, and neither should it promote particular ideologies. Adoption social work should be seen as a specialism, backed up by qualifications and appropriate and ongoing training. This should ensure a similar quality of service throughout the country.
- (10) The counselling of birth mothers (and where possible, birth fathers) should be sensitive and non-directive. The availability of all options, including keeping the child, looking to the whanau/family for the care of the child, guardianship and adoption should be discussed and presented objectively.
- (11) The counselling of adopting parents and those enquiring about adoption should be sensitive and objective.
- (12) Transparency in decision-making (and avoidance of conflicts of interest), accountability and a review mechanism.
- (13) Screening of adopting parents, according to regular and public standards.

CHAPTER 5 - ADOPTION ROLES AND PRACTICE

Within the process of adoption, a number of professionals may perform different roles. These roles have developed over time to meet the needs of adoption participants and the requirements of the Act. Other professionals who may have a role to play in particular adoptions are doctors, nurses, medical social workers, counsellors, lawyers, and occasionally ministers of religion.

Under the Act, social workers employed by the DSW are required to "provide approval for a child to be placed in a home for adoption", "provide the Court with a report prior to the granting of an interim order of adoption", and "provide a report to the Court before a final adoption order is made".

This sounds straightforward enough but because DSW can be held accountable for its performance, the practice associated with the legal requirements for administering the Act is complex and many faceted.

RESPONSIBILITIES AND ROLES OF SOCIAL WORKERS

Adoption social workers have to undertake the following tasks.

- 1 They must have a thorough knowledge of the Act, its amendments and regulations and be equally conversant with the Adult Adoption Information Act 1985 so as to be able to give clear, accurate information to birth mothers, adoption applicants, and adopted persons who are seeking information about their origins.
- 2 Painstaking effort goes into the paper work required. It is essential that such a momentous matter as the legal alteration of a child's status and basic identity is properly recorded and that appropriate files are kept.
- 3 Birth mothers, and perhaps fathers, as well need information about what choices are available to them. Communication and counselling skills of a high order are needed. Social work objectivity and a professional obligation not to impose the social worker's own values, but to assist the birth parent(s) in making their own choices are required of an adoption social worker.
- 4 Adoptive applicants also need information about adoption, including being told about the likelihood (or not these days) of being able to adopt. Group meetings (of three or four sessions) are held for adoptive applicants to encourage them to explore the issues involved. Office interviews are held to explore applicants' feelings about their infertility, their motives for adopting, their expectations of a child, attitudes towards mothers who adopt a child out, and proposed size of family. A home visit has to be made, the applicants' personal qualities and relationships assessed, and their financial circumstances explored. This aspect of adoption social work needs first-class counselling skills, as many adoptive applicants are still feeling grief and anger about their infertility.

The social worker also has to organise the police check, the medical report and take up the references asked for, then keep in regular contact with applicants while they are on the waiting list.

Sometimes the social worker has the difficult task of informing prospective applicants that their application has been declined.

- 5 The social worker should visit the birth mother in hospital and liaise with the hospital staff. The next task is working through the consent to an adoption. This requires careful work so that the birth mother is really sure of whether she wishes to go ahead with an adoption. Ideally the social worker will provide support and counselling for the birth mother after the placement of the baby has been made.
- 6 A paediatric examination has to be arranged for the child.
- 7 As well, assistance is given to prospective adoptive parents to put together their profiles, the profiles which provide photos and information about themselves. Birth mothers are given profiles so that they can choose among them for the adoptive parents for their child.
- 8 A great deal of work has been generated by the Adult Adoption Information Act 1985. In the larger offices this is a full-time job on its own.

This is merely a cursory look at the roles and practice in DSW, but it should be a sufficient indication of the complexity of the roles that adoption social workers have to perform. Their role is also a very powerful one.

- 9 A report to the Court has to be prepared. Our advice from judges is that these reports are invaluable and skilfully done.

FACTORS INFLUENCING ADOPTION SOCIAL WORK PRACTICE

Adoption services are delivered differently in different districts according to the resources that are available, the size and organisation of an office, and the philosophy and skills of a particular adoption social worker. Comment has been made that:

"if social workers hold particular views, we consider their responsibility is to seek their acceptance as policy. What we do not accept is their right to apply those views in individual practice."

Adoption social work practice has to keep changing to meet changing circumstances, attitudes, ideas and needs. The Adult Adoption Information Act 1985 has in part met the need for adopted persons to have information about their birth family, and for birth parents to have information (at last) about their children. Those social workers working with the Adult Adoption Information Act have been made aware that an adoption may have gone well but that the secrecy that was part of closed adoptions is no longer acceptable to most adopted persons and birth mothers.

There are other major influences that have had an impact on practice.

- 1 There are now few babies for 'stranger' adoption but an increase in infertile couples wishing to adopt. These couples need expert counselling and assistance to come to some resolution of their feelings of grief and anger at being infertile. Resources for this vary throughout the country. In some areas they can be

referred to an Infertility Society or to a voluntary agency which provides specialist counselling. In some areas there are no such facilities, and these are the very areas in which DSW may have insufficient trained specialist staff to provide such counselling. One suggestion made is for adoption services to be offered on a regional basis with specialist staff in the main centre who can travel to other offices in the region. This could go some way to providing the same quality of service to country and small town clients.

- 2 Birth mothers can now be more insistent about the conditions they want for their children such as a particular sort of family and an open adoption. Birth mothers have usually been relatively powerless but regularised open adoption would enable them to be recognised as partners in the adoption process.

When open adoption does become regularised, again the ability and training needed to assist birth mothers and adoptive parents to negotiate a flexible plan for whatever degree of openness suits both parties, will vary among adoption social workers according to their philosophies and skills, unless there is national on-going training.

- 3 The DSW general social work scene is now set by the Children and Young Persons and Their Families Act 1989 (CYP&F Act) with its emphasis on empowering families of those children needing care and protection, or who have offended against the law, to meet and come up with some decisions about what should happen to those children, and who among the extended family should be responsible for them. A lot of resources have had to be used in the retraining of social workers to accept the philosophy and policies of this Act and to work within it.

Some confusion exists between the way of working under the CYP&F Act and under the Adoption Act. Some adoption social workers are using the procedures of the CYP&F Act when undertaking adoptions even though they have no legal mandate to do so. The compulsory family group conference is not in the interests of birth mothers who have good reason for not having their families involved. It is a form of coercion which could raise an outcry among women's groups. Already in one instance where the CYP&F Act procedures were used, the birth mother refused to attend and the matter went to the High Court.

"The involving of families may have some dangers and mothers may conceal the birth and move overseas."

As has been suggested elsewhere good counselling can present the options to the birth mother, including that of consulting her family, and then she can choose what to do.

- 4 Among some people an anti-adoption ideology has developed. This is probably due to the secrecy of closed adoptions which often had traumatic consequences for birth mothers and for adopted people growing into adulthood. Some birth mothers and some prospective adoptive parents have reacted very negatively to DSW adoption social workers who express these views, views which are not held by all adoption social workers.

"We are not suggesting that social workers do not have the right to views. For those with experience, that experience should entitle them to views. In many cases we either agree with the views or accept that they have some foundation. What we question is:

- (a) their right to advance those views where they may not have general acceptance; and
- (b) the ability of the social workers concerned to actually communicate those views.

We have sometimes felt threatened by the fact that we did not accept or agree with social workers' views and we think that that is a common experience which is summed up in the conception that social workers have too much power."

It would be equally foolish to become doctrinaire about open adoption. It needs perhaps to be accepted as a principle that some degree of openness is in the best interests of the child (unless well planned longitudinal research shows otherwise), but there should always be room to apply the principle case by case and not as a general cure-all recipe (see Chapter 10).

- 5 Due to the principles of Pua-te-ata-tu which are part of the DSW corporate plan, there is an increased awareness of differing ethnic values and perceptions surrounding the family/whanau and the importance of access to a culture, if that culture is part of a child's birthright. However there have been instances in which they have been found difficult to apply in adoption practice. This area of practice needs teasing out and guidelines set and then DSW can consult with other ethnic groups about how to adapt practice to take into account their values.
- 6 The Adult Adoption Information Act has created much more work in the adoption area. Hopefully as adoptions become more open this work will diminish. In some areas many teenagers are seeking information and care and sensitivity is needed in interviewing them.

Other factors which affect adoption practice are the size of a district office, and whether adoption social work is done by a social worker who is part of a general team, by members of a Permanency Planning Unit, or a specialist adoption unit or by a social worker working part-time and doing only adoption work.

Smaller district offices have difficulties in providing an adoption service.

The one social worker may have to perform all the roles of assisting birth mothers in careful decision making, interviewing, checking on, assessing and interviewing adoptive applicants, approving them, approving placements, and writing the report to the Court.

If these social workers are also part of a general social work team then they will also be working with the CYP&F Act and may find it difficult to keep the boundaries separate. It may be impossible to provide more than just a basic adoption service.

One such social worker said there was not enough time to spend counselling young women considering adoption so they were going to medical social workers and doctors; group meetings for adoptive applicants could not be held, and there was not enough time to visit those on the waiting list regularly. She felt that adoption social work was a specialist area and more skills were needed in working with adoptive families after the placement of the child had been made. Training was needed. The work loads of a generic social worker did not allow enough time to do adoption practice properly.

That particular office is appointing a part-time social worker for adoption only.

But other problems emerge for the lone adoption workers. They have to undertake all the roles in adoption practice. Such a diversity of roles can lead to a possible conflict of interest, and some DSW staff talked of feelings of frustration and vulnerability at being required to provide "a service which protects the interests of all the parties to adoption". It is probably better for all parties if there is some separation of roles.

PACIFIC ISLAND ADOPTIONS

DSW is required to be all things to all peoples. As New Zealand becomes more multi-ethnic, more flexibility in procedures and practices is needed. This can only be attained by consultation with the groups which are going to be affected.

Such consultation needs to be undertaken with the Pacific Island communities. Many issues are involved.

- 1 Immigration issues are often the background to adoption applications being lodged for older children who are relatives. This is an inappropriate use of the Adoption Act.
- 2 "Pacific Island women are unprotected at the moment. Many are overstayers, whether they are married or single they frequently live with relatives who support them and then require them to give up their child. Mothers and partners cannot be assisted by the State and can be coerced by the rest of the family. In some groups there is still a stigma attached to ex-nuptial pregnancy".
(A hospital social worker)

Birth mothers often want complete confidentiality because having a baby out of wedlock may be a matter of great shame. We were told that birth mothers sometimes need protection from their families if violence is part of the family interaction.

- 3 A Pacific Island social worker did not think that the procedures of the CYP&F Act should apply; that for all sorts of reasons Pacific Island women should make their own decisions regarding the baby's future after discussion with preferably a Pacific Island social worker who understood their very real fears and dilemmas.
- 4 It was pointed out that language was often a difficulty for birth mothers. Consent forms should be printed in the birth mother's language, and should be given to

the mother to read and study for a few days before they are signed.. An interpreter might be necessary for interviews with adoption workers, and a birth mother could be encouraged to bring someone she trusts to the interviews. Sometimes, out of politeness, a mother will say she understands, when in fact she does not.

- 5 The role of guardianship needs to be further considered by the Pacific Island communities (see Chapter 14).

This account of DSW procedures and practices is not exhaustive. Eleven DSW offices were visited; namely the four main centres, one other office in the South Island, and six other provincial offices in the North Island; eleven offices in all.

We were impressed with the friendliness with which we were received and with the willingness of adoption social workers to share their philosophies, accomplishments and frustrations. Many DSW adoption staff would have liked to have made formal submissions but could not because of the limited time period in which to make submissions. This was compounded by their heavy workloads.

Finally, a quote from a submission which has a bouquet as well as a brickbat.

"... in the course of our association with Social Welfare, we encountered a number of social workers. For the social worker with whom we had our initial interview, we have the highest regard. We ended that association with the view that even if we were not successful in adopting we had benefitted from the experience of counselling Of the social workers appointed to us, there were some we liked at a personal level, but few we thought were doing a particularly good job."

IWI TRANSITION AGENCY (OR ITS SUCCESSOR)

This agency has an important role in adoption processes when both the applicant and adoptee are Maori, as it is Maori community officers now appointed by the Iwi Transition Agency who are empowered by the Adoption Act to report to the Court on such adoption applications. It will be important that if this empowerment devolves to the Iwi Authorities, that there is some agreed upon uniformity of practice for all iwi. Some training will be needed so that all Maori applicants and children have the opportunity to receive the same standard of service. Maori adoption is given more consideration and thought in chapter 12.

OTHER PROFESSIONAL ROLES AND PRACTICES

For some birth mothers a doctor may be the first point of contact in the adoption process. Doctors do sometimes arrange private adoptions. This is more prevalent in some areas than in other.

Some couples who wish to adopt send letters out to doctors in the hope of finding a baby.

There are some concerns about privately arranged adoptions, expressed elsewhere. (chapter 13)

What should the role of a doctor be in adoption? This should be sorted out by the medical profession itself and through its professional associations by seminars and some written guidelines. It is essential that the birth mother receive the sort of counselling that enables her to look at all the options with no pressure to choose any particular option, using her own guideline of what is best for her child and for her. Do doctors who arrange private adoptions see that this happens? Why are social workers or counsellors not involved in the process automatically and why are they sometimes specifically excluded? What is done to ensure that the adoption is as open as possible? Are arrangements made for the preparation of the adoptive parents to consider their role and duties as adoptive parents?

These are the sorts of questions that need to be considered by any professional person arranging an adoption, not only doctors, but also lawyers and ministers of religion.

HOSPITALS

Hospital social workers can be an early point of contact with a birth mother and with a couple seeking treatment for infertility. For some, this relationship can extend over a period of time. Social workers, medical staff and nurses are frequently seen as less threatening than staff from other agencies, they are assumed to be competent and trained, and the place, viewed as safe, where both the child's welfare and the mother's are considered. As they are not employed as adoption workers, hospital social workers can give mothers (and their families where possible) information on all the options for the child's future care and then, during pregnancy, support her as she makes a choice.

Staff from many disciplines work with couples undergoing infertility treatment; some of these couples, later, decide on adoption. A number of those who have experienced this process at first hand become counsellors in their turn, and provide excellent workshops and courses for a range of people, including prospective adoptive parents.

Pacific Island and Maori women are not always provided for in the hospital system; one large Auckland Maternity Hospital has two whanau workers who are concerned at the individualistic approach of the Unit. They voiced equal concern for Pacific Island women, who have no advocate of their own and who sometimes are not cared for by the State. Ex-nuptial pregnancy can still have a stigma attached to it, in some communities.

Much of the work done in hospitals with those considering adoption is giving information about the responsibilities of DSW, about the requirements of the Court, and about the services provided by various agencies. Social workers facilitate support groups, take ante-natal classes with nurses, and run workshops. They may have more time "to explore with the mother the meaning of each option for her" and are seen as impartial and caring.

We echo the view of some senior staff who spoke to us, that multi-disciplinary teams within maternity hospitals can take a major role in all but the statutory function of adoption. They are ideally placed to do so in terms of the mother, have the trained staff, and also an Area Health Board mandate to foster total maternal health and health promotion.

More specifically, the roles are:

- Information giving and education of birth mothers on all the options, including adoption.
- Skilled facilitation in decision making.
- Support of the birth mother during this process and the provision of total ante-natal care.
- Encouraging family discussions if the birth mother wishes. Maori workers, in particular, perceive this as a critical role.
- Liaison with DSW social workers. A good working relationship between hospital and DSW staff allows the birth mother to move between the two agencies as she wishes, and encourages flexibility of choice that is advantageous.

At birth and after, the social work role is one of support and advocacy, ensuring that the birth mother and her family have time and the circumstances to make their final considered decision. Other hospital staff can be part of this process, and the mother is encouraged to breast feed (in most hospitals) and to be with her baby as often or whenever she wishes. Young women who have been part of the Bethany programme usually return to Bethany for the same care in a similarly positive environment.

Hospital Social Work staff could possibly extend the role they have beyond that which they have with birth mothers, by providing parenting programmes for adoptive parents or linking them with community groups who provide such training. A proportion of the concerns and needs of adoptive mothers are identical to those of birth mothers. The adoptive parents need assistance to learn the skills of baby care.

Giving birth is a life event which affects the future of the mother, and the child, mentally, emotionally and physically. If birth is approached not as the "delivery of a child" but holistically, and the whole process is a good one, then reliance on the health system (on medical intervention) can be minimal. For a woman who, in addition to giving birth, is making a decision about the future parenting of her child, the need for a holistic approach is crucial. She must be given respect, time to make a decision and all the information and support she requires, in an atmosphere of calm, care and acceptance. Good maternity staff are ideally suited to provide such a service.

Earlier referrals by doctors to hospital ante-natal care, an environment which encourages this and discourages the secrecy of private adoptions, regular training of multi-disciplinary teams in hospitals on the adoption process, recognition of individual and cultural differences, and improved links with DSW staff and with community based agencies, would improve the present service.

The aim of one major maternity service is to "achieve the best possible health for all babies and their mothers in the context of their families and communities ... protected and enhanced by skilled health workers". Facilitating and participating in the adoption process sits well with this objective.

ROLE OF THE COMMISSIONER FOR CHILDREN

The office of Commissioner for Children was established under the Children, Young Persons, and Their Families Act 1989. The statutory functions of the Commissioner are very broad and enable the Commissioner to act generally as an advocate for the interests of children. In a narrower sense, the Commissioner can investigate individual complaints about cases under the 1989 Act.

Adoption as a general topic clearly falls within the purview of the Commissioner. Individual cases which have been dealt with under the 1989 Act (eg this can happen with older and special needs children) can be the subject of a complaint to the Commissioner. Ordinary adoption cases, ie ones which have been dealt with under the Adoption Act 1955, are not within the Commissioner's jurisdiction.

We regard the new office as being one of the most important innovations under the 1989 Act. The clear focus of the office is on the welfare of the child. We also believe that, at this formative stage, there should not be restrictions placed upon the scope of the Commissioner's work. There must be appropriate resourcing and support.

In our view, the Commissioner has a crucial role to play in the evolution of new paths of adoption practice. The Commissioner should be seen as a key partner in the development of policy and in the overall operation of good adoption practice. More specifically, we consider that the Commissioner should be involved in the following ways :

- (i) To act as an advocate for children in the development of adoption policy.
- (ii) To monitor the system in a general way on behalf of children, and in this sense be a point of accountability for the Department of Social Welfare and others involved in the adoption process. This includes the fostering of research.
- (iii) To handle individual complaints relating to adoption. This function is a reviewing one and has similarities to the work of the Ombudsmen. The Commissioner could receive complaints from birth parents, adoptive parents, children and others about the way children have been treated by the system. If necessary, this may necessitate a small amendment to section 411(1)(a) of the 1989 Act.
- (iv) To encourage the prompt writing of a new adoption manual for the Department of Social Welfare, to be consulted, and to report to the Minister on progress of this task.
- (v) To encourage and be consulted over the writing by the Department of adoption guidelines and information sheets for key professional groups within the community, including lawyers, doctors, nurses and social workers.
- (vi) To monitor the training to be offered by the Department for DSW social workers and others who may be involved in the adoption process. The Commissioner should play an active part with the Department in ensuring that an adequate training programme is devised and that there is input from a wide range of sources.

The question arises whether prospective adoptive parents should be able to go to the Commissioner in connection with the way they have been treated. For reasons discussed in chapter 9, we do not consider this appropriate unless the approach relates to a specific child.

In summary, the Commissioner's role embraces review, accountability, monitoring, education, advocacy, liaison and generally to ensure that the welfare of children is promoted. Our recommendations are designed primarily to ensure that this rôle is understood to apply to adoption as well as other areas.

THE COURTS

It is apparent that there is a multiplicity of roles including that of the Family Court. It is the Court that makes the interim order and the final adoption order through the reports it receives from DSW social workers and the Iwi Transition Agency Maori community officers. Adoption cases involve the changing of a child's status.

In order to reinforce the best interests of the child, we would like to see the Court given statutory power to appoint a counsel for the child in cases which present difficulties, and in which the Court thought it appropriate.

The Court also has access to counselling services which could be useful in cases which require the re-negotiation of the open adoption plan which we propose should be filed with the Court before the final order for an adoption (see chapter 13).

There is much to consider in the performance of the various roles in the adoption process. These roles need some overall co-ordination. Whose role should this be, and how should it be done?

SUMMARY AND RECOMMENDATIONS

As we have written elsewhere, the process of adoption should be one of flexibility and choice. A possible direction in which to move would be for DSW to restrict its role to one of approving prospective adoptive parents, placement of the child and the writing of the court report. Other approved agencies and individuals could perform the other roles, those in which they have specific expertise and experience. Already this is happening; Catholic Social Services in Christchurch, for instance, works with adoptive applicants and the standard of its work is such that DSW requires only one interview before CSS couples are approved.

Suggestions to the Committee have pointed to the many agencies throughout the country, with considerable competence and experience, who already work with a specific, or a number of, client groups. Many spoke of the ease of approaching "Bethany", or the "hospital Social Worker" or "the Counsellor at Adoption Support Link", in contrast to "fronting up at the Department".

However, diminishing the role of DSW also raises misgivings: "children ... [are] the vulnerable in our society" and should be the responsibility "of the community, through the Government". This submission from the National Council of Women emphasised "the need for the Government to continue in its role of supervisor, monitor and setter of standards ... More important still is the need for all aspects of

adoption to be subject to external and impartial supervision, with ultimate accountability by the elected representatives of the community".

We recommend that DSW should re-commit itself to its responsibilities for providing an adoption service; it has the experience and is accountable to the community, nationally.

Some tasks or aspects of adoption could be contracted out, and be subject to new national guidelines and monitoring systems, drawn up by DSW staff with wide consultation. Monitoring of the practice of both DSW and contracted community agencies needs to be carefully considered.

An adoption service, which is a flexible combination of government departments, Area Health Boards, the Family Court, private and voluntary agencies, bound by national guidelines and standards, may be more responsive to the varying requirements of all those involved, and possibly ensure a more satisfactory outcome for the child.

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CHAPTER 6 - PREPARATION AND COUNSELLING

The Adoption Act 1955, requires that the birth parent(s) and adoptive parents are given information and interviewed (see chapter 5). In fact, Department of Social Welfare (DSW) and other agencies and individuals provide considerably more in terms of preparation and counselling. The recent move towards open adoption has intensified this trend.

BIRTPARENTS

Birth parents (most frequently the birth mother) are told of the range of options available: single parenthood, placement within the extended family, guardianship, and adoption. The implications of each alternative are presented and the parent(s) supported during decision making.

DSW social workers, Area Health Board social workers, doctors and social workers from Community, Family and Church agencies such as Bethany (Auckland), and Barnardo's (Wellington) and Catholic Social Services (Christchurch) generally perform this function. The best of these services have skilled and experienced staff presenting information on care alternatives, and specifically on adoption, and they offer ongoing support to birth parent(s) (and family in some cases) while options are considered and plans made. The stated objective of this preparation and counselling is to enable birth parents to make an informed choice regarding the child's future care.

DSW adoption staff tend to see only those birth parents who are contemplating adoption. They may speak to other family members, and they provide information in both individual and group situations. They arrange for placement of the child, but most have little contact with the birth parents after that time (see chapter 5).

As part of wide ranging services to families, agencies such as Catholic Social Services (CSS), Barnardo's, Bethany and others provide adoption programmes for birth parents. CSS in Christchurch see from 80-100 birth mothers a year, 50% of whom are self referrals. Trained social workers assist birth parents examine all the implications of a decision to adopt, and often now include the wider families in the belief that the child benefits from its family making choices.

Bethany's programme is (or can be) residential; the fact that the birth mothers are all living together means that they are able to offer each other a good deal of emotional support. Education for living is part of the learning programme, as is Mothercraft, parenting skills, and group discussions around decision making.

Hospital social workers provide information for decision making, and they are well placed to give support and counselling, particularly if the birth mother presents early in her pregnancy (see chapter 5).

Some agencies, such as Pregnancy Help, offer advice and practical assistance, and various churches and pastors counsel and then assist church members in arranging an adoption.

The Church of Jesus Christ of Latter Day Saints for instance employs two trained counsellors who liaise with DSW, but take a major role in assisting Mormon birth

parents make a decision regarding adoption, and then are part of the assessment and placement process. Doctors refer birth mothers to hospital social workers, to adoption agencies, and DSW and in some cases, it seems, follow through with private adoptions (see chapter 13).

Private counsellors are sometimes preferred by birth parents for assistance in decision making and for support. They are perceived as 'less threatening'. DSW in particular is sometimes seen as "The Welfare" and its link with benefits and "children being taken into care" increases birth parents' anxiety at least initially.

(In submissions) birth parents stated the value of a service which:

- presented information on all the options available sensitively and objectively;
- was supportive while the decision was being made, at the time of placement and subsequently;
- acted in the best interests of the child;
- assisted in clarifying what type of adoptive family was most suitable, and the degree of openness of the adoption;
- included family in the decision making, or "as we preferred" did not include the family;
- provided skilled counselling when information giving was not sufficient, or "not entirely what we needed";
- was flexible, non-judgmental and available.

Many birth parents valued their participation in groups and they pointed to the strength and support that this provided.

Major concerns expressed by birth parents were;

- that they did not know where to go, or who to consult as "unplanned pregnancies are still a secret";
- the slant of information given and the service received is influenced by what agency or person the birth parents first contact;
- information on placement alternatives was not presented objectively; social workers' personal views were evident and "if we choose wrongly, we would not be helped";
- some options were not presented at all;
- that birth mothers have not always received information on alternatives to adoption, when they seek medical care;

- that some DSW staff state that they "do not do adoptions", that the child should be placed within the extended family, whatever the birth parents' preference;
- that the degree to which 'open adoption' is discussed seems to depend on the personal preferences, or experience of the social worker;
- that few agencies continue supporting or counselling after placement; even in open adoptions the birth parents are experiencing a great loss.

BIRTH MOTHERS

An experienced adoption social worker said that birth mothers have much difficulty in considering the idea of consulting their families about adoption. This is not confined to one ethnic group. Another adoption counsellor was of the opinion that women who are birth mothers should be entitled to choose for themselves whether or not the mother's family is involved. If a young woman has gone through the trauma of pregnancy and childbirth has she not the right to decide what should happen to her child? Pregnancy and childbirth have a dynamic of their own and there can be a feeling of being caught up in an inexorable process. Once through the experience of childbirth, a mother's body and emotions may be in an unstable state. This can be trying enough when all the circumstances surrounding becoming a mother are benign. But to have to face unwelcome family pressure when one is at one's most vulnerable seems inhumane, especially if, with open adoption, adoption may not harm the child's interests. It is likely that if the birth mother was on good terms with her family then she would already have involved them. If after some counselling a birth mother still does not want her family involved then should she be made to consult them?

This is what could happen if adoptions came under the Children, Young Persons and Their Families Act 1989.

Some of the birth mothers are in their 20's and even their 30's and would certainly resist being required to consult their families.

Some birth mothers might simply vote with their feet and undertake a private adoption which by the time the application is made to the Court, is a fait accompli as it is unlikely that the Court would deny an order if all was well with the adoptive family and the child had been there for some time. Or if the adopting family were unsuitable then that child may have to go through the trauma of being uprooted and this would certainly not be in the best interests of the child.

Recent history shows that families do not necessarily know best. New Zealand European single expectant mothers were required by their families to "go up north for a while". That is, in secrecy they were sent away; sometimes to work for the doctor's family while they were pregnant, and then the doctor would arrange the adoption; or they would be taken in by charitably-minded families who provided them with a home and some money in exchange for domestic duties. Then when they had had their babies, they had to pretend that they had indeed just been away for a while, and to pretend that they had never had a baby. Their grief went unassuaged and unrecognised. Some of these women, who now are in middle age finding out what happened to their child, are at last experiencing some easing of their grief and trauma.

Our history contains many instances of the control of women by their families, which was in the interests of the family but in which the women were not allowed choices. It would seem a backward step for women if birth mothers are required to consult families, if after counselling they have decided not to do so.

There have been suggestions that adoption into the extended family can be a strain all round as relationship boundaries become blurred. This is an area which could do with researching.

Though the interests of the child are the prime consideration, it should not be beyond the skill of those working in the adoption area to endeavour to meet the needs of the birth mother as well. Some birth mothers feel pressured by what they perceive as social work attitudes unfavourable to the adoption option.

Finally it would seem that women have by now won the right as birth mothers to receive sound information about the options and with skilled objective counselling come to their own decision about the best interests of their child.

THE QUESTION OF RELIGION

Social workers should draw to the attention of the birth mother her legal right to choose what religion her child can be brought up in. Religion can be part of the child's heritage, part of the family culture and ethnicity, and as such has significance (see chapter 12). The Latter Day Saints Social Services, in their submission, suggested that this requirement should be kept as part of providing an adoption service that suits a wide range of persons and circumstances.

BIRTH FATHERS

The father of a child is required to consent to the child's adoption if he was married to the mother, was otherwise the child's guardian or if it is thought "expedient" for the father to consent. In the common situation, where the child has been born ex-nuptially and the parents were not living together, fathers will not be required to consent unless there is something to bring them within the phrase "expedient".

From many points of view, it is desirable that the father be involved in the adoption process. The main reason for this is that the child has an interest to know its genealogical origins, and its paternal ancestry is just as important as its maternal side. Contact with the birth father opens up the father's family or whanau as well and although this factor will vary widely with different people, it will be very important in some cases.

It appears that fathers are involved more today than in the past. In one voluntary agency, 80-90% of fathers were involved. In DSW-handled cases, the level of involvement is generally much less. This may stem from the fact that DSW also handles benefits and the liable parent scheme, and there may be a reluctance to admit paternity for financial reasons. On the other hand, there will be other fathers who are very interested in the child that they have fathered and take an active and constructive interest. The Committee is aware of cases of open adoption where this has been healthy and rewarding for all concerned.

There are other instances however where the birth father's position is far less straightforward. Sometime the father may be unknown or the putative father may adamantly deny paternity. Further, the relationship between mother and father may be exceedingly strained, even violent and life-threatening. In such situations it would not be good social work practice to allow the parties to confront each other and it may even be necessary to cease enquiries of the birth father.

The practice should:

- (i) Always endeavour to obtain information about the father which can be available to the child and adopting parents.
- (ii) Endeavour to obtain the father's agreement to the adoption.
- (iii) Explore the possibility that the father's family might be able to adopt or care for the child.
- (iv) Make the father a party to the open adoption plan which the parties should draw up (see our fuller discussion of this in chapter 11).
- (v) Explore the possibility of the involvement of the father's family in the decision-making process.
- (vi) The above steps should always be subject to the best interest of the child and the safety and welfare of the birth mother. None of the above steps, except (i), should be taken if there is a risk to the health and safety of mother or child.

FAMILY

A birth mother's decision not to adopt may be due to her belief that her family, possibly the child's grandmother, may assist by taking major responsibility for the child.

This often happened in the past, but now many grandmothers are back at work. As well, the National Council of Women's submission points out that some of the birth grandparents who are left with the responsibility of the child, "all speak of their love for the child but agonise over their inability to ensure even the necessary physical care".

Social workers assisting a birth mother in making a decision about adoption should help her in making a "realistic appraisal of the [family] help actually available", at the time and in the years to come.

We heard of the concern of families, who were unaware of the child's birth, until after the decision to adopt was made. These families expressed feelings of grief and regret, not only at the loss of a family member, but at not having had the opportunity to participate in decision-making regarding the child's future.

Making choices entails a knowledge of all the options and their possible outcomes. Therefore counselling of birth-mothers should include a discussion of the consequences of not consulting the child's grandparents; that is, the grief of these grandparents at not being intimately involved with their grandchild.

PROSPECTIVE ADOPTIVE PARENTS:

Both DSW and other agencies and groups provide information and programmes for prospective parents prior to their being approved by DSW as adoptive parents for a particular child. Generally, these programmes include written and verbal information on adoption procedures, on the role of DSW, on likely numbers of children available for adoption, and on probable waiting time.

Some agencies and groups provide programmes which have a focus on infertility, as currently most prospective adoptive parents are infertile couples. The re-orientation that is required after a couple receive information on their infertility can have a major impact on them personally, as well as on the success of any adoption. One voluntary agency devotes the first of two preparation weekends to examining infertility, its cause, the crisis it is, the different reactions experienced and its relationship to the couples' intention to adopt. Others include sessions led by members of local societies or the NZ Infertility Society.

Comments from adoptive parents on the preparation courses available and their usefulness were generally favourable. The purpose of counselling and some of the techniques, used, were questioned.

- Social Workers had "doctrinaire approaches" - many were "more interested in pursuing their own social theories than in dealing with us as individuals".
- Counselling techniques which "push their own views" are not objective counselling. Comments were made about some "counsellors lack of ability to actually counsel".
- One submission pointed to the confusion between interviewing and counselling for 'matching', and the statutory role of approving adoptive parents. Particularly when difficulties arise, it would seem impossible for one social worker to represent adequately the different, perhaps opposing views of the parties. Adoptive parents frequently felt their views were at worst, not 'heard at all', and certainly often not represented.
- A number of submissions requested that counsellors and agencies prepare adoptive parents for parenting in a type of ante-natal class. "Birth mothers have nine months to prepare, we have ten days".
- One submission suggested independent counselling could be helpful to find out "what sort of feelings thoughts, behaviours and emotions are "normal" for adoptive parents". There is an assumption that birth mothers can have "baby blues", but so too, can an adoptive mother.

Adoptive parents, in general, were as supportive as birth parents of the practice of open adoptions, and made the plea that the level or amount of ongoing contact should be negotiated freely. See chapter 10 for further discussion of our proposals on open adoption.



CHAPTER 7 - TRAINING

As has been said elsewhere in this Report (chapter 5), adoption practices vary considerably among DSW offices and adoption social workers.

- 1 Some of the reasons which contribute most to these variations are the following:
 - (i) The Department of Social Welfare lacks a coherent philosophy and policy concerning adoption. This may be due to the various ideological positions now current about adoption, and the influence of the ideas informing the Children, Young Persons and their Families Act 1989.
 - (ii) There appears to be a lack of commitment to adoption as a worthwhile service, and in consequence an inadequate commitment of resources. This lack of commitment is at the national level and not at the local.
 - (iii) There is no thorough national training for adoption social workers and insufficient opportunities for adoption social workers to get together nationally, share their skills, keep up with the latest developments in the adoption field, and generally discuss what they need from the Department in order to maintain national standards and indeed improve on them if possible.

Training, both initial and on-going, is the most effective way of ensuring some uniformity of practices; the maintenance of high standards of practice; the keeping of practice in congruence with Departmental philosophy and policy, and with social work ethics.

- 2 Some adoption social workers reported that:
 - (i) they felt that adoption work was undervalued by the Department.
 - (ii) they felt professionally isolated. Some adoption social workers are part-time and do adoption work only.
 - (iii) they felt out of touch with some current developments in adoption social work practice, and wanted to get together with adoption social workers from all over the country.
 - (iv) they felt that adoption is a specialised area of social work and needs specialised training.
- 3 National training is important not only for the maintenance of uniform practices and standards but to make sure that all the varied needs are met: those of birth parent(s) and maybe their families; prospective adoptive and adoptive parents and maybe their families; while at the same time never losing sight of the best interests of the child.

The sort of criticisms that we have heard about the practice of adoption social workers could be taken into account in a national training programme which is well informed by a coherent philosophy, and clear policy statements. Some of

the recent articles about adoption in the popular press have not been good publicity for the Department of Social Welfare and must have been very hurtful to adoption social workers, who may be feeling that their needs for further training and consultation have not been met.

- 4 Some adoption social workers have no professional qualifications. Even those with professional training, which provides a sound generic base, may have little or no adoption content in their training, other than perhaps some facts about adoption legislation and some policy issues.
- 5 The most significant current development in adoption is the trend to open adoption. The process of open adoption requires of the social worker, more work, of a higher standard, with more persons and for a longer period than the now old-fashioned closed adoptions. The honest open relationships required for open adoption to work do not just happen. They require skilled preparation for open adoption, clarification of anxieties and uncertainties, conflict resolution skills, knowledge of family and group dynamics, of grief work and child development.

"If open adoption becomes the norm in adoption practices it will require a big change in the way the Department of Social Welfare works. Although it is advocated and is now common practice in some districts in New Zealand it is by no means universal. This type of adoption involves a whole new set of complex relationships that have not existed in the past and the people involved require far more preparation and post-adoption support than is currently available. At the moment people often have to sort out these relationships with little professional input. Because it is a relatively new trend, social workers have little experience themselves to call upon. Either DSW or some other agency should be there to cater for people on any side of the triangle, should relationship difficulties or uncertainties develop. Careful training would obviously be needed to accomplish this." (Adoption Support Link, Auckland)

Open adoption seems to be the most promising development in the adoption field, a development of the utmost importance to adopted persons, especially as they leave childhood behind and during adolescence come to grips with developing their identity and wrestling with the question of "Who am I?".

Therefore all adopted children should have the opportunity to be in an open adoption situation.

This depends on all adoption social workers being well-trained in adoption counselling, and in the mediating and negotiating skills needed to set up and maintain open adoptions.

- 6 Despite the lack of national training we saw examples of adoption social work practice which was objective, non-judgmental, skilled and flexible.

All adoption social workers should have the opportunity to practise in this way and to acquire the knowledge and skills which make for a competent caring service to all clients who are part of the adoption process.

- 7 There are community groups and voluntary agencies already involved in the adoption process. A national training programme set up jointly with such groups and agencies would be mutually beneficial to adoption social workers and their clients. In particular the Iwi Transition Agency (or its successor) and the Maori community officers who are empowered by the Adoption Act 1955 to report to the Court in the case of Maori adoptions need to be part of the setting up of any training programmes.
- 8 The adoption section of the Department of Social Welfare's manual for social workers is in need of revision. In its submission, the Department of Social Welfare acknowledges this but goes on to say that it would intend

"to bring adoption guidelines into greater consistency with practice under the Children, Young Persons, and Their Families Act 1989."

In our view, adoption must, under the present law, be seen as a distinct service. It is not part of the 1989 Act. For reasons discussed in chapter 11 we consider that adoption should remain a service in its own right. The manual must reflect this. When the manual is rewritten, the Commissioner for Children should be consulted (see chapter 5).

There has been mention that perhaps the forms used for prospective adoptive parents are out of date and should be reviewed.

FOR THE FUTURE?

In its submission, the Department of Social Welfare revealed some hesitancy in its commitment to training of adoption social workers:

"Social Work Training is focussed on promoting attitudes and practice which give effect to the objects and principles of the Children, Young Persons and Their Families Act. The dilemma is that training under the Act is incompatible with training for anachronistic adoption legislation".

As we said above in discussing the manual, adoption is different from the 1989 Act. Training for adoption social work should not be confused with training for the Children, Young Persons, and Their Families Act 1989.

- (i) It is suggested that the DSW consult widely and develop a philosophy and a set of policies concerning adoption. Policies should not be set in concrete but accompanied by constant research to see that such policies are firstly in the best interests of the child, but that secondly, birth parent(s) and prospective adoptive and adoptive parents needs are considered as just as important as long as the best interests of the child are not prejudiced. These matters have to be settled before a comprehensive national training programme can be set up.
- (ii) A national training programme needs to be developed in consultation with the Iwi Transition Agency (or its successor) and the other community groups and agencies working in various aspects of adoption. The Commissioner for Children should be involved in this process.

Such a programme could be mixture of face-to-face contact for learning and teaching, and an extra-mural component. The training programme could be contracted out.

- (iii) Training should not be a one-shot effort. It needs to be on-going with, at a minimum, annual national workshops for all adoption social workers (inside and outside DSW). It is vitally necessary for them to be in touch with one another so that they can share problems and come up with solutions.
- (iv) There would seem to be some urgency to develop a module about open adoptions as soon as possible, even before a general national programme has been set up.
- (v) A training programme needs to include resources for research. For example, such research could be into the outcomes of practice. Research into open adoption needs to begin now. Without accompanying research by an independent external agency, an emotive practice area such as adoption may become driven by ideology. This can be a sad state of affairs for the people involved. Ideology may demand that practice fit the ideology rather than be flexible enough to fit the variety of people and circumstances involved.

CHAPTER 8 - PROFESSIONAL AND PUBLIC EDUCATION

In the last chapter, we discussed the prime importance of training for those directly involved in adoption work. This work is not limited to those working for the Department of Social Welfare but the Department's functions form a backdrop for the role of many other people. Training for those in the Department should not be seen in isolation from the rest of the community, but likewise, the rest of the community should not ignore the contribution that the Department can make in improving the overall quality of service.

In our view, continuing education of professional and other groups is necessary. This is essential as patterns of adoption practice are modified. The Department, in consultation with the Commissioner for Children and interested groups should prepare guidelines for professional workers. These guidelines should alert members of those professions, especially law, medicine, nursing and counselling, to the basic principles and procedures which apply to adoption. Separate guidelines for different professional settings may be necessary. These guidelines could be easily disseminated through the professions themselves or where appropriate under the auspices of the Department of Health.

The professions themselves have a responsibility to ensure that their members are brought up to date. Some may be regularly involved in adoption work but others may strike it only occasionally in their practice. Professional education could be done through the medical postgraduate programmes and the College of General Practitioners. The Clinical Schools may have a role to play, along with the Law Society's educational programme. It is the Committee's opinion that interaction between the professions and the Department of Social Welfare could be constructive and positive for all concerned.

There is in our view a lack of widespread public awareness of the facts and nature of adoption today. This can lead to unhelpful expectations and pressures. Obviously public opinion and awareness cannot be changed overnight but we believe that public education should nevertheless be on the agenda for future action.

Public education may occur in several ways. Information sheets for birth parents and adopting parents should be readily obtainable (eg through Citizens Advice Bureaux, libraries, etc as well as the Department and the professions). We discuss the question of a statement of rights further in chapter 16. Up to date information about adoption should also be available for schools and educational authorities, and boards of trustees could be encouraged to incorporate this material in their syllabuses.

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CHAPTER 9 - ACCOUNTABILITY AND REVIEW

Submissions and comments to us frequently talked about "power", the power exerted by one person over someone else. For some birth mothers, power rests with the adoptive parents, sometimes their family and own parents. For some adopted persons, power lies within the system which in the past and still for many today, closes off lines of information about their past. For many adoptive parents and prospective adoptive parents, power lies with the Department of Social Welfare social workers, who control the approval procedures, who can hasten or slow down those procedures and who can choose which profiles to place before a birth mother.

Whether power is exerted in an unwarranted way will depend on different circumstances, personalities and perceptions. Under any system, power will reside somewhere. The least likely wielder of power is the adopted person, especially of course during childhood.

One way of trying to avoid misuse of power, or, just as significantly, the impression that power is being misused, is to have procedures which provide a check on the use of power and which make people accountable. The present system already contains a number of such procedures. The Committee has considered some others as well.

1 THE FAMILY COURT

Formal adoption occurs only as a result of an order from the Family Court. Until the Court has granted the order, the steps taken towards adoption are only preliminary. The Court can grant an order only if it promotes the welfare of the child and to assist it to make this decision, it has the advantage not only of the social worker's report but also submissions from counsel representing the parties. Where there is controversy, counsel to assist the Court may also have been appointed to look at the situation particularly from the point of view of the child. The Court is not bound to follow the social worker's report. Indeed, the Court's responsibility is to make an independent judgment on the basis of all the evidence before it. The social worker can be cross-examined in court.

In the Committee's view, the role of the Court is a vital one in the process. In some instances, especially in step-parent adoptions and private adoptions, the Court may in effect be the first port of call for the parties. It is the Committee's opinion that the Court can play an even expanded role in the adoption area, utilising its already well-established practices and links into the community. Where parties are in need of counselling, the Court ought to be able to make appropriate arrangements, in the same way that it does for other family law cases. In the next chapter, we discuss further the idea of an open adoption plan and the role of the Court in assisting the working out of such a plan. The procedures relating to the plan should provide a form of accountability for adoptive parents, birth parents and those involved in private adoptions.

2 THE COMMISSIONER FOR CHILDREN

The Commissioner for Children has a general responsibility for the welfare of children, and this includes adoption. The Commissioner can also investigate specific complaints under the Children, Young Persons, and Their Families Act 1989. Earlier

we discussed the role of the Commissioner and spelt out more fully how we envisage that role developing (chapter 5).

Wherever a child is involved, social workers, parents, families and other professionals should see themselves as accountable to the Commissioner.

3 REVIEW OF DECISIONS ABOUT ADOPTING PARENTS - THE OMBUDSMEN

Many people have commented that there should be some clearly defined review mechanism relating to those decisions which affect prospective adoptive parents. These decisions relate to approval, removal from lists, and selection as parents in particular cases. Complaints are made about delay, rude treatment, unprofessional assessment, lack of communication and bias. The call for a review body comes from within the Department of Social Welfare (including Head Office) and outside. Most stress the need for review body independent of the Department.

At present, complaints from these sources are sometimes handled by the Ombudsmen's Office and sometimes by the Minister of Social Welfare's Office. The Ombudsmen's functions are broad and enable an investigation of decisions, recommendations, acts or omissions of government departments and other scheduled organisations to take place. Normally the Ombudsmen will examine the procedures followed in a particular case to see whether they are in conformity with existing policy and practice guidelines, but the policy and guidelines themselves can be reviewed and advice offered on their suitability. The Ombudsmen cannot make binding decisions, and in this sense are not a kind of appeal tribunal. However their opinions carry very considerable persuasive value.

In considering the procedure for review, the Committee has looked at several options:

- (i) *The Commissioner for Children.* As mentioned above, the Commissioner has a vital review role, where a child is involved. Where however there is no child involved and the complaint relates only to the treatment received by adults as they seek to adopt, it is inappropriate for the Commissioner to handle these complaints.
- (ii) *A new appeal authority.* In our view, it is not realistic to set up a new body simply to deal with adoption complaints. The size of work would not justify this and our preference is to utilise existing structures. One possibility is to expand the jurisdiction of the Social Security Appeal Authority. There are however two reasons against this move. First, we believe that it is not so much an appeal body which is required for these complaints as a review agency with investigatory powers. Secondly, the Appeal Authority's jurisdiction is clearly in the area of benefits and social security and it would be anomalous to give it a small area of adoption to deal with as well.
- (iii) *An internal departmental review.* This step is one which has obvious advantages. If a matter can be cleared up without bringing in outsiders, it is probably quicker, cheaper and more efficient all round. We have been told that in one region of the Department of Social Welfare, the Regional Executive Officer Social Services acts as an "appeal authority". We believe that this practice should be formalised throughout the country. There should be an officer in each region

who is designated as the "adoption review officer" to be the first port of call for any complaints from prospective adopting parents. The officer must be senior and be independent of the frontline adoption workers. Aggrieved parties must be given an opportunity to be heard and decisions must be given in writing with full reasons.

- (iv) *External review officers.* There is a precedent in the field of Accident Compensation for the appointment of outside people to act as review agents. The difficulty with the suggestion for adoption is its practical operation. It is not expected that the level of complaints will be high or similar to those relating to accident compensation. The review agent would not necessarily be able to build up resources, experience and consistency of approach. We therefore do not favour this suggestion.
- (v) *The Ombudsmen.* The jurisdiction of the Ombudsmen will continue and we consider that this is entirely appropriate as an external enquiry agency. In our view, people should be informed of their right to take a case to the Ombudsmen after they have been through the internal review process. In more controversial reviews or where several complaints raise the same important issue, the matter could perhaps be referred directly by the Department to the Ombudsmen. To facilitate this, we recommend that the Department and the Ombudsmen negotiate convenient and efficient procedures for the handling of complaints and that these procedures be publicly known.

To summarise:

- + Where relevant, the Commissioner for Children should handle complaints.
- + Where no child is involved, there should be two steps in the complaints procedure
 - (a) An internal review by a designated regional officer, operating under a nation-wide policy
 - (b) Application to the Ombudsmen, only where the parties are not satisfied with the result of the internal review or where the regional adoption review officer refers the matter directly.

In our view, the opinion of the Ombudsmen should be accepted as a matter of course and departed from only in very exceptional circumstances.

4 RESEARCH AND MONITORING

External research and monitoring can provide a form of accountability. We discuss this further in chapter 17. As the National Council of Women submission says:

"More important still is the need for all aspects of adoption to be subject to external and impartial supervision, with ultimate accountability by the elected representatives of the community."



CHAPTER 10 - OPEN ADOPTION

THE NEED FOR CHANGE

One of the most significant changes to adoption practice over the past decade has been the introduction of "open adoption". The philosophy of the 1955 Act was that adoption should represent a clean break with the past - the birth mother could hand over the child, forget about it and then get on with her life; the adoptive family could take the child as if the child was its own natural child and no contact with the child's biological past was necessary. The reality, which has been subsequently attested to by many people, is that the past cannot be wiped out in this way. For adopted people the lack of knowledge of their roots could prove to be a major barrier in self-identity. For birth mothers, there would often be the question of what had happened to their child and the sense of guilt at having lost contact.

Open adoption practices developed in part in response to the feelings of people involved in old adoptions. The new process also was more sympathetic to Maori and Pacific Island attitudes to adoption, where openness is the norm.

WHAT IS OPEN ADOPTION?

Open adoption can mean different things to different people and can take different forms. Social work practices differ throughout the country. At one end of the spectrum, it involves nothing more than an exchange of letters and photographs, sometimes through the mediation of the Department. At the other end of the spectrum, it can mean a degree of co-parenting between the birth and adoptive parents. In between, there is a wide range of different styles of contact, co-operation and mutual care. Open adoption may involve not just the parents, but also the families, and we have heard of moving experiences as families get to know each other and share their lives a little.

Whatever the nature of open adoption for particular individuals, it is important to emphasise that everyone should enter upon the process with the right attitude - an attitude of openness, respect and willingness to explore the options in the interests of the child.

POPULARITY OF OPEN ADOPTION

The evidence we have received strongly supports open adoption. This support comes from all quarters - adopted persons, birth parents, adoptive parents, families, social workers, and experts in the field. Although we cannot be sure what effect open adoption will have long-term on adoptive people, given that it is only recently that the practice has begun, we are confident that it provides a more satisfactory basis for the vast majority of permanent placements of children. In our opinion, open adoption should be recognised in any future formulation of adoption law and practice.

Open adoption appears to be in the best interests of the child for several reasons:

- (i) To develop socially, emotionally, physically and intellectually, the child should have a sense of personal identity. Knowledge of genetic inheritance, whakapapa

and roots is a component of identity formation. Open adoption is one of several ways of preserving to varying degrees the child's cultural background.

- (ii) For a child to be accepted fully in the adoptive family, there is a need for the child's origins to be known and accepted by the whole family (Commissioner for Children's Submission).
- (iii) There is research and inherited wisdom that children can maintain more than one relationship simultaneously and indeed may benefit from so doing, provided that there is no threat to the permanency of placement with the principal family.

ONGOING SUPPORT

While the endorsement of open adoption is overwhelming, there are points of concern. Open adoption is sometimes presented as if it were the ideal answer and simple to carry through. The reality is that, even in the best of open adoption arrangements, there can be problems, unforeseen issues, tensions, changes of circumstances and changes of heart. These are all perfectly natural, given that we are dealing with human nature. Sometimes they may stem from the different socio-economic backgrounds of the birth and adoptive parents.

It must be recognised that open adoption needs working at, that the parties sometimes need assistance to make it work, and that each relationship is different. Under "the new adoption", adoption is a process and not an event. It is important therefore that practice does not suddenly end. It is equally as important that the preparation of the parties be realistic, point out the pitfalls as well as the joys, and get people to think long-term about the arrangement that they come to. Sometimes, for example, a birth mother may want minimal contact for the first few years but feel more confident about herself and the relationship with her child later on. The adopted person may not place much store beside contact with birth parents in the first few years of life but feel quite the opposite as the teenage years are lived. It must be remembered that the welfare of the child is the deciding factor, and security and permanency of placement is a principle which we accept.

FLEXIBILITY

Open adoption practice must be flexible enough to meet the variety of different situations which people find themselves in and their emotions and needs in those situations. There is no one model of open adoption which will suit everybody.

SOCIAL WORK PRACTICE

Open adoption is a process which depends on informed decision-making and those involved should have access to competent, trained and sensitive counselling.

- (i) Skilled social workers should ensure that birth parents (and their families if possible) are informed and have sufficient time and preparation to make an informed and unpressured decision about adoption.

- (ii) There should be frequent and ongoing discussion, information exchange, time to reflect, access to those who are adopted and to those who have adopted, and constant and sensitive support.
- (iii) Efforts should be made to involve the birth father in the process where appropriate.
- (iv) DSW and other agencies should be required to provide necessary information in oral and written form, and in a culturally appropriate manner, to all birth parents considering adoption. The information should be straightforward and factual, not full of value judgments.
- (v) Ideally the information should be given before birth and again afterwards.
- (vi) Counselling of birth and adoptive parents should be realistic - it should lay out the benefits of open adoption but also explore the problems which might arise in making open adoption work. Strategies for coping with these problems should be addressed.
- (vii) Preparation should include discussion of different attitudes to parenting, different values, etc. The problem of differing socio-economic status needs to be covered along with the possibility that there may be some considerable geographical distance between birth and adoptive parents.
- (viii) During preparation it should be made clear that the adoptive parents, as guardians, have the responsibility for making day to day and long-term decisions about the child's life. The extent to which the birth parents might be consulted over major decisions (eg schooling) could nevertheless be discussed.

LAW REFORM

A recurrent concern is that there is no legal provision for open adoption. Open adoption has developed under a law which was drafted with closed adoption in mind, and although there is nothing in the law to prevent open adoption, there is ultimately no legal sanction for it either. We have received evidence from birth parents that adoptive parents have not kept to an arrangement about open adoption, and by the same token, we have heard from adoptive parents who have been frustrated in their attempts to get the birth mother to co-operate. Further, "open adoptions" reliant purely on goodwill could in essence be inflexible and virtually closed.

We believe that some legislative reform in this area is urgent and should be given priority in the 1991 parliamentary programme. Because a full-scale reform of the Act will take some time, the changes we recommend should be brought in as soon as possible by way of amendment to the present Act.

The 1987 Interdepartmental report discussed this issue and without coming to a firm position, advanced a possible statutory formula whereby parties to an adoption would have an option to sign a written agreement providing for contact. In Britain, the court can attach terms and conditions to an adoption order and it is now accepted that this can include reference to access by members of the birth family (a recent case granted access to a birth sibling). In Western Australia, the Adoption Legislative Review

Committee has proposed that, as part of the adoption process, there should be a "negotiated adoption agreement", signed and witnessed, registered in court, but not forming part of the adoption order itself.

After discussions with a number of key people in the adoption process, including members of the judiciary and social workers, we propose the following:

- (i) Before a final order is granted, an agreement between the birth mother (and in appropriate cases the birth father, or the whanau or other culturally recognised family group) and the adopting parents be submitted to the Family Court. The agreement would be known as a "plan", similar to the plans developed under the Children, Young Persons, and Their Families Act 1989. If desired by the birth mother, a family meeting could be called to assist in preparing the plan.
- (ii) The Court would have power to dispense with the requirement for a plan in exceptional cases. Examples would be where the birth parent(s) have died, have disappeared, are such that contact would place the child at risk or where there is a total unwillingness by the birth mother to enter into discussions about a plan.
- (iii) A plan would be required in step-parent and relative/whanau adoptions, but it is expected that there may be more instances where the power to dispense would be used.
- (iv) Where on granting an interim order the Court is not satisfied that the parties have been preparing a plan and receiving any assistance and counselling to do so, the Court should refer the parties to counselling. This would be organised through the Family Court Counselling Co-ordinator. The counselling referral need not be to DSW but could be to others in the community with the necessary skills and who are approved by the Court in a similar way to the approval of counsellors for matrimonial and domestic counselling. Where the child is Maori, this should be an important factor in determining what counselling is appropriate. It is envisaged that the Court would routinely refer cases to counselling where the adoption has been privately arranged (see our discussion of private adoptions in chapter 13).
- (v) The purposes of counselling are to ensure that the best interests of the child are considered, that access is flexible and able to be changed when necessary, that possible conflicts of interest and anxieties are addressed, and that all those who should be part of the preparation of the plan have had an opportunity to contribute.
- (vi) The contents of the plan should be entirely flexible. In some instances a form of family group conference or whanau meeting could be the vehicle for reaching a satisfactory plan, but need not be so.
- (vii) The Court should accept the plan, even if the parties have decided on no or minimal contact. The main role of the Court is to ensure that the parties have given some attention to the issue, but the Court should have a residual role to ensure that the best interests of the child are in no way jeopardised by terms in the plan.

- (viii) The plan would be lodged with the Court, but would not formally be part of the order.
- (ix) The plan would form the basis for the parties to return to the Court at some future date, eg when a party considers that the plan has not been actioned or when they desire to amend the plan. As under the Family Proceedings Act, there would be an immediate reference to counselling, where in most instances it is hoped that the matter can be sorted out. A simple procedure similar to section 9 of the Family Proceedings Act could be enough to allow for a referral by the Court. In other cases where counselling did not sort the matter out, a party should have the right to apply to the the Court for directions, as suggested in the 1987 Report. A judge should give directions only after a mediation conference has first attempted to reach agreement.
- (x) Recourse to Court counselling should not be limited merely to birth and adoptive parents. Other family or whanau members may be concerned about contact - eg grandparents, siblings.

The above legislative change has resource implications. However, it builds on existing structures and networks and we consider would involve very modest funding compared to its advantages. It would go a long way towards bringing the law into line with practice. It would also give people more confidence in the present system and would acknowledge the long-term nature of the adoption process. It is a significant and practical way in which ongoing support would be available.

THE MANUAL AND TRAINING

Open adoption should form a significant part of a new manual on adoption and be central to training programmes. Likewise, public and professional education and information sheets should give ample space to open adoption.

BIRTH CERTIFICATES

The process of open adoption draws attention to the need to revise the system of recording birth certificates. We suggest the issuing of only one birth certificate recording date of birth, date of adoption, names of both birth and adoptive parents and the child's name (see chapter 17).

CHAPTER 11 - THE RELATIONSHIP BETWEEN THE ADOPTION ACT 1955 AND THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989

MAJOR DIFFERENCES BETWEEN THE TWO ACTS

The basic law on adoption is found in the Adoption Act 1955. Despite the out of date nature of this Act, it has allowed sufficient flexibility for useful adoption practices to develop as the need has been felt. Leading examples of these practices are the creation of lists of approved prospective adoptive parents and open adoption.

Until very recently, there was no doubt that the initial decision about adoption lay with the birth mother (and sometimes the birth father). The Court as a decision-maker entered the process at a later stage. The passage of the Children, Young Persons, and Their Families Act 1989 has thrown an entirely new light on this issue. That Act replaced the Children and Young Persons Act 1974 and deals primarily with children who have been abused and neglected, and with youth offending.

It contains an extraordinarily large range of objects and principles, with the result that it is not easy to discern exactly what the intention of Parliament was. There is a clear movement away from the "paramountcy" of the interests of the child (a central feature of the 1974 Act and the Guardianship Act 1968) and towards "family" and whanau decision-making and resourcing. The role of the state is less interventionist and more that of a facilitator. The main step in deciding what is to happen to a child is the holding of a "family group conference". Although the Act does not define "family group" in an exhaustive way, the aim is to involve as many members of the whanau or extended family as possible. Parents do not have any special status. The process is particularly suited to Maori and Pacific Island approaches to family life.

The contrast between the 1955 Act and the 1989 Act is stark. The 1955 Act empowers women, the 1989 empowers families. In very many cases, this will not present a problem, as mothers will want to involve members of the family in deciding whether or not to adopt and families will want to resolve matters in a way which is agreeable to the child's parents. However the different philosophies and practices can clash acutely in many other cases. This has led to:

- + confusion among departmental social workers who are becoming more and more imbued with the 1989 Act thinking.
- + differing practices among social workers in different parts of New Zealand.
- + legal uncertainties as to whether adoption can come under the 1989 Act at present.

THE ISSUES

There are two broad questions arising from this:

- (i) To what extent should present adoption practices be modified to take account of the 1989 Act?
- (ii) Should a future reform of the law bring adoption under the 1989 Act?

Underlying both of these questions is a fundamental issue which touches differing community values and standards - where a choice has to be made, do the wishes of the woman or those of the family prevail?

THE DEPARTMENT OF SOCIAL WELFARE SUBMISSION; SOME LEGAL ISSUES

The Department of Social Welfare's submission takes the view that adoption should be incorporated into the 1989 Act. It considers children offered for adoption as being

"children in need of care and ... as children at risk of being detached from the prime source of continuity, whakapapa, identity and unconditional acceptance that is every child's birth right. Ex-nuptial children do not form a "pool" of potentially adoptable children. They already have families and save for exceptional reasons relating to their welfare, they should not be removed from those families."

The Department also says :

"Giving up a child for adoption could technically be seen as an unwillingness or inability to care for the child. This could bring the case under the Act, but this is unlikely to be widely recognised."

The reference is presumably to section 14 of the Act which defines when a child is in need of care and protection. Whether a child offered for adoption is in law a child whom the Court can declare to be in need of care and protection is a matter of legal uncertainty. It certainly cannot apply to a child in utero and arguably cannot apply to a child satisfactorily placed with new parents, because under section 73 the Court cannot make a declaration if there are other means of providing for the child's care and protection. Adoption is such a means. Whether a baby still in the care of its mother is in need of care and protection is more uncertain. With respect to the adoption of older children, the Committee has heard that these cases are sometimes dealt with under the 1989 Act if the child is already in the care of the Director-General of Social Welfare and even in some cases where the child is not already in care. The Committee has examined the transitional provisions of the 1989 Act and notes that while a "plan" must be prepared for the child, there is no requirement for the family to be involved or for a family group conference to be convened.

Our conclusion is that from a legal point of view it is far from certain that ordinary adoption cases can come under the 1989 Act. It is even harder to argue that they must come under that Act, as the law is presently framed. There is no reason why they cannot still be dealt with under the Adoption Act.

The Department in its submission also states in relation to the role of social workers that "the principles that underpin all their actions should be those embodied in the Children, Young Persons and Their Families Act 1989". It also points out :

"It is not departmental policy to override [sic] birth parents decisions about who is consulted. The final decision as to who will care for the child is made by the birth-parent/s."

OTHER SUBMISSIONS

In contrast, the Committee has heard varying attitudes expressed by adoption social workers on the 1989 Act. Some support the use of the Act and its principles in adoption, while others take quite the opposite approach. While some may be under a sense of confusion since the passage of the 1989 Act, others consider that it is not difficult at all to follow different procedures for handling different types of cases.

The Committee has also received evidence that family group conferences have not always been successful when an older or special needs child has been the subject, and that that process may be a hindrance and an added pressure rather than a help.

One submission from a person with direct experience, while being generally supportive of family decision-making, also raised a number of doubts.

"Some families have such dysfunctional dynamics in the extended networks, as well as in the more immediate circles, that they are unable/unprepared to keep the child's best interests paramount.... In my experience in some situations the tension becomes so high that the child's interests are lost sight of."

The submission from the Department of Justice opposed the inclusion of adoption in the 1989 Act. According to the Department:

"[Adoption] is a fundamental change in a child's legal status and family relationships. Once effected it is in most cases irrevocable. As such it needs to be set apart and given appropriately detailed treatment. It would not be satisfactory for it to be just one option, just one element, in a complex piece of legislation dealing with a wide variety of problems. It is a legal, not merely a social welfare, process."

The Department also saw difficulties in applying the family group conference approach too rigidly to adoptions.

The Commissioner for Children stated in his submission that:

"the authority given to family members to make decisions under the provisions of the CYP&F Act rests on a manifest need for intervention of some kind. Adoption rests on a different premise and is best kept separate as a process. However, some of the procedures of the CYP&F Act could be adapted to the adoption process."

ARGUMENTS FOR AMALGAMATION

There are several reasons in favour of bringing adoption under the 1989 Act:

- (i) Adoption is essentially a matter of the care of a child.
- (ii) The 1989 Act covers permanent placement of children in ways other than adoption and so all permanent placement work should be handled in the same way.

- (iii) The 1989 Act reinforces the position that the family should decide what is to happen to a child.
- (iv) The 1989 Act is more consistent with Maori and Pacific Island perspectives.
- (v) The 1989 Act supports the view that a child should not normally be placed outside its family.
- (vi) The family may have hidden resources and knowledge which can be used to the benefit of the child.
- (vii) The 1989 Act is the main vehicle for obtaining funding for community work (including adoption work) which assists children.
- (viii) There is a range of different orders which can be made under the 1989 Act with respect to the care of a child.

ARGUMENTS AGAINST AMALGAMATION

There are also numerous reasons against amalgamation:

- (i) The Adoption Act supports the position of the mother and the rights of women to choose.
- (ii) The mother may have good reasons for not involving her family or not wanting her child placed within the family. Experience of incest or violence is the clearest illustration of this. Another example is where knowledge by the family, because of its strict cultural values, places the woman's safety at risk .
- (iii) The aims of the two pieces of legislation and the respective roles of the state are different. Under the 1989 Act the state is intervening to deal with an alleged failure in parenting which is threatening the child's life or development. In adoption, the state is being asked to assist in the process of arranging a home for the child. In adoption the state is involved only because the parent has asked. Under the 1989 Act it is involved because of a report by a third party. This explains why the rights of the parents are very different under the two Acts.
- (iv) Under the Adoption Act, an adoption must promote the welfare and interests of the child (section 11; recently reinforced by the decision of the Court of Appeal in *Director-General of Social Welfare v L* [1989] 2 NZLR 314) whereas under the 1989 Act the welfare of the child is the deciding factor only where there is a conflict of principles or interests (section 6).
- (v) The 1989 Act is not the only piece of legislation dealing with care of children. The Guardianship Act 1968 is the most obvious other statute.
- (vi) The 1989 Act is still in its infancy and needs to be tested over a period of time.
- (vii) There have been criticisms of requiring a family group conference in every situation.

- (viii) Sometimes family pressure is the reason why adoption is being considered and it might not always be in the child's best interests.
- (ix) Some people are uneasy about placing adoption alongside the "crisis" work under the 1989 Act, where, for example, a child may have been the subject of serious physical and sexual abuse.

OUR RECOMMENDATIONS :

A CURRENT SITUATION

In our view birth parents should always be encouraged to involve their family in decisions about adoption. This encouragement is crucial where the child is Maori for reasons more fully discussed in the next chapter. The possibility of placement within the wider family should be presented to the parents and in this respect, it is important to note that the father's family may contain a couple who would be good parents for the child.

However the ordinary case of adoption should not be confused with proceedings under the 1989 Act. Social workers must keep the two kinds of processes separate and the new manual on adoption must be quite clear on this. Under the present law, adoption comes under the Adoption Act and not the 1989 Act. With appropriate guidelines and training, it should not be difficult for social workers to operate professionally in different ways for different purposes. Much of the present confusion in social workers' minds stems from the lack of clarity brought by the passage of the 1989 Act and the not surprising emphasis that the Department has placed upon that Act.

It follows that under the present law, the decision to involve the family must ultimately rest with the birth parents but should be canvassed carefully and without leaping to conclusions too quickly. Similarly a whanau or family meeting should be held only if the birth parent/s agree. If there is agreement, there is nothing in the Adoption Act to prevent such a meeting, but it must be made clear to the parties that it is not a formal family group conference under the 1989 Act. Any opinion of the family/whanau is still subject to the birth mother's need to consent to adoption.

Where the mother does not want to involve the family, it is no part of the social worker's role to go against that desire. We consider present departmental policy to this effect is correct as the law stands.

B LONGER-TERM REFORM

The relationship between adoption and the 1989 Act is a controversial one. In our view, there should be much more public debate before any significant law reform takes place, particularly over adoptions involving Maori and Pacific Island children.

There are many arguments for and against an amalgamation of the two Acts. On balance however the Committee has reached the conclusion that adoption raises some sufficiently different issues from those in the 1989 Act, that the Acts should not be combined.

Adoption raises the question of legal status. It is also a process which we believe should be subject to flexibility and choice. The 1989 Act legitimates state intervention, whereas in adoption, the state has been asked to be an intermediary. In adoption cases, people come to the state for a special service. In the end we have come to the view that the power to decide should continue to rest with the woman (and where appropriate the father), to be overridden only by the rarely used ability of the Family Court to dispense with consent. Adoption is a distinct service, which requires committed and distinct support from the state and the community. It must not be swallowed up in other aspects of the state's functions.

CHAPTER 12 - MAORI ADOPTIONS

The Maori concept of adoption has a long history. The first person to be adopted was Maui, Maui-tikitiki-a-Taranga, the legendary demi-god of Aotearoa and greater Polynesia. Traditional adoptions were undertaken for reasons such as a couple's childlessness or to provide for children whose parent(s) had died.

The important characteristics of these adoptions were that they were not stranger adoptions but took place within the kin group. The kinship principle operated in order to protect the interests of the child, these interests being:

- (i) the social place of the child
- (ii) the heritage, including physical property such as land
- (iii) the culture and language
- (iv) the self-esteem, mana and tapu of the child.

So adoptions took place within the kin group, usually the whanau. Children not only knew who were their natural parents, grandparents, aunts, uncles and cousins, but usually knew them personally.

A Maori child is born with a whakapapa, an ancestry, a set of social relationships within the context of a hapu, and is born into a culture which designates that child as Maori. With the culture comes a heritage of history, language, art customs, and most importantly a sense of identity, a sense of belonging, a sense of common peoplehood along with other Maori. Maori and Pakeha have different senses of peoplehood because of their different histories, languages, values, experiences and physical appearance.

"The whakapapa which placed individuals within an Iwi (which includes hapu and whanau) gave them the right to be cared for by the Iwi and to the Iwi it gave the concomitant authority to provide that care. The Iwi in fact existed as a political and cultural entity to shelter and care for those defined as descendants through whakapapa."

From 1909 until the Adoption Amendment Act 1962, Maori adoption orders were made in the Maori Land Court, and the Maori had control over their own procedures and placements. At one period during this time proposed adoptions were brought to the notice of the Maori community by way of public notices. These notices gave the name of the birth mother and the prospective adoptive parents and asked if there were any objections. Adoption was a community concern, not an individual one.

THE ADOPTION ACT 1955 (AND ESPECIALLY THE AMENDMENT IN 1962)

This Act is the responsibility of the Department of Justice, but it is the social workers of the Department of Social Welfare who are involved in counselling birth parents, approving the placement of children, assessing prospective adoptive parents, and who are required to report to the Court. The Adoption Act does not recognise the Treaty of Waitangi, nor is it informed by the principles of Pua-te-Ata-Tu, the principles which are part of the corporate plan of the Department of Social Welfare.

- 1 In this Act, "Maori" is defined as "a person who is a Maori within the meaning of the Maori Affairs Act 1953". This Maori Affairs Act defines "Maori" as a "person of the Maori race of New Zealand; and includes any descendant of such a person".
- 2 The Adoption Act treats European and Maori adoption alike except for the provision that in cases where both the applicant(s) and child are Maori, the report to the Court is to be made by a Maori community officer of the Department of Maori Affairs. In the recent restructuring of the Department of Maori Affairs, the Maori community officers' positions were disestablished. This meant that in some Family Courts there were as many as fifteen adoption applications waiting for reports, reports that were required before the applications could be heard by the Court. This has disadvantaged a number of prospective adoptive Maori parents, and children, and resulted in a considerable degree of personal uncertainty for the people concerned. The Iwi Transition Agency has now made some appointments of Maori who can act as Maori community officers for the purpose of reporting to the Court on applications for adoption. We are glad to learn that this is so, as it is vital that the Iwi Transition Agency (or its successor) maintains sufficient Maori community officers for this purpose.
- 3 The Act permits the adoption of European children by Maori, and Maori children by Europeans. Maori children have certainly been adopted by Europeans, but it is doubtful whether, since the inception of this Act, European children have been adopted by Maori. It is interesting to speculate on the likely public reaction if there had been a rush of Maori applying to adopt European children. No doubt there would have been discussion about the unsuitability of cross-cultural adoptions, maybe by the very Europeans who would deny the importance of culture if they wished to adopt a child of another culture.

SOME RELEVANT CULTURAL ISSUES

Under the Adoption Act, the only consent required to the adoption is that of the birth mother and sometimes that of the birth father.

There are two aspects of Maori culture, very important aspects, which were neither recognised nor considered.

- (i) The Maori preference is for communal rights and responsibilities and is exemplified in whanau decision making. The individual is to be seen as part of the whanau, hapu, iwi. The Courts and State departments are based on the Western rights of the individual.
- (ii) Another difference is the understanding of "client confidentiality". Pakeha social workers have a code of social work ethics which is Western based, and which requires them to respect an individual's wishes for confidentiality and privacy. For Maori, confidentiality is a wider concept, family or whanau wide. If young birth parents are involved, their parents would wish to be informed, so that the whanau can be consulted as to what decisions would be in the best interests of the child.

However the issues involved are not so straightforward. All cultures evolve and change because of changes in a people's circumstances and experiences. Maori culture has become more diverse, more heterogeneous because of the influence of European culture, international western culture, and through intermarriage. Some Maori birth parents may not wish to consult their whanau but may desire individual privacy and confidentiality. The birth father may be Maori but the birth mother may be non-Maori. The birth father may have no claim under the Act to give consent to the adoption which the birth mother has decided on. The birth mother may claim her right, according to her cultural background, for privacy and personal confidentiality.

Maori birth mothers have been known to refuse (for good reasons) to consult their whanau about their intention to adopt. Because of their experiences of being brought up in a family which treated its children violently or sexually abused them, the particular birth mother does not think that it would be in the best interests of the child to have anything to do with her whanau. Such reasons should be respected.

Obviously in all cases counselling is important. The issues of cultural identity need to be explored and the Maori view presented so that any choice which is finally made by the birth parents as to whether or not to involve whanau in the future of the child is looked at in the light of the best interests of the child. Such counselling requires knowledge and skill and would probably best be done by a Maori social worker or a Maori community officer. It is important that all workers who may be the first point of contact with a birth mother are aware of this issue and are prepared to take it seriously and refer the birth mother to the appropriate counselling resource. These workers, including doctors, other health professionals, lawyers and workers in various social service agencies, statutory and voluntary, should be informed of this obligation.

It is encouraging that some of these issues are beginning to be reckoned with by workers who have a role in adoption processes.

A pakeha lawyer, Mark Henaghan of Otago University, has submitted that different ethnic attitudes to adoption have become very noticeable in recent cases and that this is going to be the major issue to be addressed. He goes on to say:

"The need to maintain cultural links through placement [of children for adoption] is very important. It is noticeable now that the Courts are very aware of this. Addressing this problem may well overcome some of the fears that children will be lost to a culture. While the need to have wider input on the consent issue is not appropriate in my view, the need to have wider input on the placement issues is. It may be difficult to separate the two issues in practice but it is important to do so. Once consent has been decided, then it may well be appropriate for the wider family to have some say in the kind of environment and home they would like this child to grow up in. The matter of cultural identity has become very central as a social value. Adopted children should not be deprived of that identity by the process of adoption."

Mark Henaghan is pointing out that the issue of consent could be considered separately from the placement of the child. This is worthy of being pondered. Perhaps the birth parent(s) could claim a right to personal confidentiality in making the decision as to whether or not to adopt out the child, but the subsequent placement of that child for adoption could be dealt with by consultation with the whanau.

DEPARTMENT OF SOCIAL WELFARE PROCEDURES

Current DSW adoption procedures in respect of Maori adoptions vary from treating them in a manner similar to European adoptions to using the procedures of the Children, Young Persons, and their Families Act 1989, ie, seeing that the whanau is consulted. Sometimes this is done despite the wishes of the Maori birth mother for the family *not* to be consulted. There is no legal mandate at present for using the procedures of the Children, Young Persons and Their Families Act 1989 as the Adoption Act is still in force. There is certainly no mandate for using the procedures against the wishes of the birth parent(s).

In the Department of Social Welfare there are only two adoption workers who are Maori, and both of them are part-time.

WHAT OF THE FUTURE?

Obviously it is important that any adoption which involves a Maori child should be handled very carefully. It is important that the birth parent(s) are counselled so that they understand the importance of consulting the whanau in the placement of the child.

This counselling is so important that all who do it need to be trained, be they Maori community officers or other Maori social workers who may play a part in the adoption process. These other social workers may be in DSW, but they could also be health social workers, or work as social workers in a variety of statutory and voluntary agencies.

It is also important that the best interests of the child are kept clearly in focus.

At the very minimum the child should have ready access to relevant information. It always has to be remembered that adoption is not just about children. Adoption is for life, and children grow up, and in their teen-aged years one of their developmental tasks is to establish an identity. For this they need to know about their origins so that they can choose which aspects of themselves they wish to develop. A child with Maori ancestry, however minimal, needs to know about that ancestry; to know about his/her whakapapa, iwi, hapu, whanau; turangawaewae, and any land in which that child might have a legitimate interest.

That child may become particularly interested in this information as an adult, and even if brought up outside the whanau, hapu, iwi may wish to re-establish the links and relationships.

The challenge is to evolve legislation and procedures which recognise Maori communal structures, communal rights and responsibilities, but which also recognise that after good counselling, birth parents may still make their own decisions as long as these are in the best interests of the child. It is important that any changes contribute to a system which is flexible enough to encompass the variety of people and situations which could be involved in adoption.

Another suggestion that has been made is that there should be a review authority to look at Maori adoptions if need be, perhaps a Maori colleague of the Commissioner for Children. This is so that litigation becomes a last resort, resulting as it does in much bitterness and big legal bills.

Any changes to the Adoption Act and procedures and practices will require wide and thorough consultation among Maori organisations, groups and individuals. Any changes need to be informed by Maori wairua, hearts, heads and hands.

Ngaki te purapura i te oneone pai,
Kia tipu ake te rakau i te pai.

(As the seed is sown, so grows the tree.)

CHAPTER 13 - PRIVATE ADOPTIONS

The question of private adoptions has arisen in a number of our discussions around the country. The phrase may refer to different things:

- + Adoptions arranged privately by the birth mother and/or father with or without the help of family, the adoptive parents being friends, learnt of through personal contacts, or met casually.
- + Adoptions arranged with other family members. Whanau placements are common among Maori, but family adoptions are by no means uncommon among pakeha and Pacific Island people.
- + Adoptions arranged through a professional person, eg a doctor, obstetrician, lawyer, member of the clergy, etc. The intermediary is likely to know both the birth mother and prospective adoptive parents.
- + Adoptions arranged through a voluntary agency. Where this happens, eg at the Bethany Centre, Auckland or Catholic Social Services in Christchurch, it is usually done in association with the Department of Social Welfare. Our discussion does not really relate to the present good work done by those agencies, which is discussed elsewhere.
- + Step-parent adoptions are a form of private adoption but are usually regarded as a separate category and will be dealt with later in this report.

Official statistics do not indicate that there are many private adoptions in New Zealand. For instance, out of the 867 cases reported upon by the Department in 1988, 25 or 3 % involved placements by private organisations, maternity homes, doctors or other professionals. Our discussions with departmental social workers throughout the country suggest however that these figures may disguise the extent of private placements and that many more such placements are occurring today than in recent years. In one provincial district alone, which was working on only four stranger adoptions arranged by DSW, there were fifteen private adoptions half way through 1990, some already the subject of final orders.

Our conclusion is that private adoptions are on the increase. The nature and extent of this varies markedly throughout New Zealand. In two of the main metropolitan areas, the extent of private arranging, especially through professionals, appears high and is on the increase. Some professionals are known for their "specialty" in this work. On the other hand, in the greater Wellington area, there are very few private adoptions at all. The combined Wellington and Porirua districts reported only one case in the last 15 months.

The reasons for an increase in private adoptions are speculative. Some argue that it is a consequence of attitudes of the Department, others that it flows from the much smaller number of children available through official channels for adoption. It could also relate to the greater awareness of infertility and the involvement of professionals in counselling infertile couples.

Although the official submission of the Department of Social Welfare states that the "department has no defined position on private adoptions", attitudes to private adoptions differ enormously both within and outside the Department. One view is that they should be legally banned, no matter who was responsible for the arranging, although an exception would usually be made for family arrangements. The opposite view is that adoptions should be handled entirely or largely by private agencies established for the purpose. In between these views is a spectrum of opinions. Some support the present situation and even within some quarters of the Department, the position is taken that prospective adoptive parents should be advised that private adoption is a valid option for them to consider.

A number of submissions, from a variety of backgrounds, expressed concerns about aspects of private adoptions. These can be summarised as follows:

- (i) The birth mother may have consented to the adoption without being properly counselled and in a situation of pressure.
- (ii) The adopting parents may not be on the Department's approved list and indeed may not be suitable. We were told of one case where the mother met the adopting couple in casual circumstances and it turned out that on objective criteria the couple were quite inappropriate people to adopt.
- (iii) The adopting couple may be "queue-jumping", ie getting ahead of others who have been waiting patiently for a placement from DSW.
- (iv) The adopting couple may not have been prepared and counselled about the nature of adoption. In particular, the question of open adoption may not have been explored with them and the birth parents.
- (v) There is the risk of commercialisation of adoption. We have heard anecdotal evidence, for which there is no conclusive proof, that money has been exchanged in breach of section 25 of the Adoption Act. Our advice is that any such activities would amount to professional misconduct of a very serious nature.
- (vi) Professionals who become involved are not necessarily well informed of adoption practices and what is in the best interests of all the parties concerned.
- (vii) DSW is required under the Act to report to the court on private placements but often these reports are sought at a late stage after the child has started bonding with the adopting parents and the adoption is a fait accompli. It is hard (but not unknown) for the report to oppose the adoption at that stage.
- (viii) Some placements of babies may be in breach of section 6 of the Adoption Act, under which a baby cannot be placed with prospective parents "for the purpose of adoption" unless a DSW social worker has approved or an interim order has been obtained from the court.

On the other hand, there are also reasons in favour of private arrangements:

- (i) A private placement might be regarded as a person's inherent right. Women, especially, should have the right to choose who is to care for their child.
- (ii) "Private placements by individuals are more protective of a birth parent's privacy" (Justice Department's submissions).
- (iii) Independent arrangements can give contestability to the operations of DSW, and arguably provide an element of quality control.
- (iv) Some people, both birth parents and adopting parents, are suspicious of DSW or any governmental bureaucracy and prefer to use private advisors and agencies.
- (v) Some professionals, especially doctors and religious confidants, may have the trust of the people concerned and may be the natural reference point for them to turn to.

The Committee believes that there are problems with private adoptions which need to be faced. In particular, the issue of appropriate counselling and preparation needs to be addressed. The Committee has considered the question of banning private adoptions. This is the legal position in Britain (except for relative adoptions) but it must also be pointed out that voluntary agencies can register there and a large amount of adoption work is carried out through them. The New Zealand situation is hardly comparable. Banning private adoptions raises issues of civil liberties. It may be hard to define what is banned and then to police it. It will be difficult to know what is to happen if a private placement still occurs - will the child be removed even after bonding has begun? Ways around such a law are likely to be found by determined people, probably to the detriment of the child, eg the child may be adopted informally or the adopting parents may unlawfully register themselves as the natural parents of the child.

On balance, the Committee does not see banning private adoptions as appropriate or as solving the problems mentioned above. Furthermore, any ban would take some time to legislate. In the meantime, there are practice issues which need to be dealt with. Our recommendations therefore relate to the problems themselves and to the current position.

- (i) Central to our recommendations is the need to ensure counselling. Elsewhere we have recommended that a final order should not be granted by the court unless a plan has been submitted by the birth mother and the adopting parents (see chapter 10). In the case of a private adoption, the court through the Family Court Counselling Co-ordinator should routinely refer the parties to counselling at the time when an interim order is sought in order for the plan to be properly prepared. In our view the submission of a plan should ensure that the issues of open adoption, of the practical aspects of adoptive parenting, and of the long-term consequences of adoption for the child are raised with the parties. It might be thought that court ordered counselling will come too late. However, we return to our principles, under which adoption is seen as a process rather than an event. Adoption is a life-long status for the child and the need for contact, etc, may arise at any stage in the person's life. The need for a plan will also be important in those situations where the mother has herself found adopting parents and has

not gone through an intermediary. Counselling may be even more important in this situation.

- (ii) Professional groups involved in adoption, including doctors and nurses, should regard it as a professional obligation to ensure that the parties are aware of the implications of "the new adoption". This may require some form of special professional education. Professional authorities should search for ways of informing their members about the new adoption.
- (iii) Professional guidelines should be prepared for doctors, nurses, lawyers, non-DSW social workers and others who may become involved in the private adoption process.
- (iv) The Department should endeavour to work alongside others in the community, and not see them as antagonists. In this way, where there is healthy interaction, departmental social workers may be able to provide some of the help and counselling which may be lacking if the adoption intermediary has little experience or understanding of adoption. Likewise, professionals should be encouraged to send the parties to DSW as soon as possible, not least to ensure that necessary approvals can be made quickly. Delay can be against the interests of the child. A degree of trust on both sides must be fostered.
- (v) The above recommendations apply to family or whanau placements as well as others. There is no guarantee that just because the placement is within the family that the adopting parents are suitable or that the adoption is in the child's best interests. Clearly, the form of counselling and the nature of a plan will have to take account of cultural and family factors. Also, because it is intra-family, there may be a degree of openness inherent in the situation. But we see no reason to exempt family adoptions from the above processes.

CHAPTER 14 - GUARDIANSHIP

In New Zealand, basic parental rights and responsibilities are captured in the concept of guardianship. Normally, a child's natural mother and father are automatically also the child's guardians. The mother will however be sole guardian of the child if the parents were not married or if they were not living together at the time of the birth. A father who is not automatically a guardian can apply to the Family Court and ask to be made one.

One way of legally establishing rights with respect to the upbringing of a child for a person other than the natural parents is to appoint that person a guardian under the Guardianship Act 1968, or, if the child has been declared to be in need of care or protection, under the Children, Young Persons, and Their Families Act 1989. The guardian may be appointed sole guardian, or guardian in addition to someone else, and if the person is to have possession of the child, the guardian may be granted "custody" of the child as well.

The concept of a child having a non-parent as guardian is not unknown and is familiar in literature. Some people appreciate the possibility of this by appointing testamentary guardians in their will. Often testamentary guardians will be close friends rather than members of the family. Guardianship can be a useful way of giving some standing to the otherwise rather insecure position of foster parents.

The use of guardianship as an alternative to adoption is however a relatively recent innovation. It has a number of attractions:

- (i) It is an option for the parent who is unable to care for a child at present but at some point in the future may be able to do so.
- (ii) It may legally preserve the birth parent's role as a guardian, with a legal say in the child's upbringing.
- (iii) It may "preserve the cultural and familial links between the child and the birth-family" (Department of Social Welfare submission).
- (iv) Guardianship may be particularly appropriate in step-parent and relative adoption situations. Instead of severing a link which has been important in the past (as in the step-parent situation) or instead of creating confusion of family roles (where a close relative is going to parent the child), guardianship keeps the legal ties but allows the social parent to have some legal rights.
- (v) In making a guardianship order under the Guardianship Act 1968, the Court is bound by the principle that the welfare of the child is paramount.

Guardianship and custody may fulfil needs in many more situations than has been previously thought. The promotion of this approach has obvious merit. However there are drawbacks and difficulties about guardianship which both distinguish it from adoption and make it unsuitable where a child is to be adopted. According to the Department of Social Welfare, the principal reason why guardianship orders have not been sought is that they "do not confer on the 'new' parents the absolute powers and finality that it is perceived comes with adoption orders". Where a child has been

adopted, the adoptive parents take on full guardianship rights over the child and thus make decisions about the child's future as if they were the child's natural parents. A guardianship order can be upset at any stage - either by the new guardians relinquishing guardianship, or another guardian (eg a birth parent) seeking custody. There is therefore a very real risk that guardianship will not satisfy the principle offered to us by the Commissioner for Children:

Permanency of placement - adopted parents should be able to parent their adopted child without fear of disruption (see above chapter 4).

From the child's point of view, the child subject to guardianship has not been fully accepted into the new family and we have had some evidence that this could be a cause for resentment on the part of the child. Because of the insecurity for the child, it may not necessarily be in the best interests of the child, especially if there are ways through open adoption for instance of ensuring that original familial and cultural links are preserved. We are aware that the threat of upset to parenting has arisen in a number of cases. The sense of insecurity, which may also exist where the parenting couple are made agents under a High Court wardship order, is real and was compared by one person to the fear that the child would be abducted. Particularly where legal proceedings occur, the situation can be financially and emotionally draining, with a consequent effect on the child.

While in some quarters adoption does not get a good press, the same is also true, according to evidence we have received, of guardianship. A submission from a group containing adopted adults, birth parents and adoptive parents said of the replacement of adoption by guardianship:

"That is a stance that is generally not advocated by group members, particularly the adopted adults. Many of them object very strongly to the notion that their adoption has been a major negative influence in their lives and they have an absolute aversion to the idea of guardianship - a word which denotes to them a second class status that adoption does not."

There are other points about guardianship which need to be considered before it is promoted too vigorously:

- (i) The existence of several guardians (other than cohabiting partners) can create problems for all concerned, including the child, with respect to who makes decisions affecting the child. Marriage breakdown situations illustrate this, with disputes over names, travel, education and so forth.
- (ii) The definition of guardianship compared with custody is legally vague. Generally speaking, a guardian can have a say about education, health, religion, naming, overseas travel and other matters, whereas day to day decisions, including where to live, are matters for the child's custodian. There are difficulties in knowing when the consent of one guardian is sufficient and when all must consent.
- (iii) Any rights which depend upon the status of being a child of a particular adult do not follow from guardianship. These may arise in the inheritance context and we have had evidence that there can be difficulties in the immigration and overseas travel field.

- (iv) A social worker's report is only discretionary in a guardianship application.
- (v) Guardianship applications lack some of the safeguards that apply under DSW handled adoptions - eg the system of approving prospective adoptive parents, the need for the birth mother to consent.

Our conclusion is that the advantages of guardianship should be more widely known and used, especially in step-parent and relative cases. However, it is a different concept from adoption. Open adoption and ultimately a newly drafted adoption statute may in time overcome the perceived drawbacks of both guardianship and old style adoption.



CHAPTER 15 - STEP-PARENT, RELATIVE/WHANAU AND SPECIAL NEEDS ADOPTIONS

STEP-PARENT ADOPTIONS

Many adoptions today involve a natural parent and that parent's new spouse. In 1988, of 867 cases handled by DSW, 376 were step-parent adoptions. Many other such adoptions went through without DSW involvement. Typically, the situation arises after the dissolution of the natural parents' marriage. There may be several different motives for step-parent adoptions.

- They may be a genuine attempt to formalise a de facto situation, ie where the parenting of the child in question is being done consistently by both the natural parent and the step-parent.
- The other natural parent may be unknown, dead or have disappeared, or have abandoned the former family. Adoption gives the child a legal parent and severs the legal link with the other one.
- The adoption may express the step-parent's full acceptance of the child as part of the newly constructed family.
- The adoption may be part of a trade-off in the wind-up of the previous marriage. Consent to adoption may be bought in return for a forgiveness of arrears of maintenance or for a lesser share of matrimonial property.

We have heard that these adoptions can be a time of celebration in which all including the children share. Concerns are however also expressed:

- The severing of the link with the other natural parent may not be good for the child if that parent still has an interest in the child's life. As it was put to us, the adoption may really be an attempt to freeze out a troublesome natural parent. There have been cases where such a parent has had to come back into the child's life technically as a stranger and, for example, seek wardship through the High Court.
- The adoption not only cuts the link with the parent, but it also cuts out that parent's family, especially grand-parents.
- There is concern about what happens to the child if the second marriage also breaks down.
- The Court does not have to call for a social worker's report and finds it awkward to question the adoption when the parties have come to Court for a consent order and for the resulting celebration.
- The motives for the adoption may not necessarily be in the best interests of the child, but rather in the interests of the adults.

The Justice Department submission comments:

"The department's view is that adoption by step-parents, foster parents, and relatives are not, as a general rule, appropriate. Usually the children involved are older and will have had at least some contact with their natural parent/s. The effect of adoption is that legal links are totally severed, which may be very unfair both to the child and the natural parent/s."

The submission of the Youth Law Project Inc states:

"We urge that the Departmental Manual be immediately amended to make reference to the literature and case law on the topic and alerting adoption social workers to the dangers of such adoptions from the child's point of view and the cultural inappropriateness for Maori and Island Polynesian children."

As step-parent adoptions usually come to the attention of the authorities only when an application has been made to the Court, the attitude of the Court is vital. Until recently, the courts in England could not make a step-parent adoption if the matter could be better resolved by a custody order. This rule proved a failure however and was abolished in 1989. It is still possible for English courts to refuse to make an adoption order and instead make an order determining where the child's home is to be.

In our view, a number of moves should be considered in relation to step-parent adoptions:

- (1) Social worker reports should be obtained by the Family Court as a matter of routine. Only in special cases should the Court dispense with this requirement. Future legislation should cover this point. If reports are regularly obtained, this should create an expectation of investigation, which solicitors can automatically advise their clients about.
- (2) The report need not be done under the present law by DSW. It is therefore possible for the Court to arrange for an approved social worker outside DSW to make the report. In particular, where the adopting family is Maori, the report should be sought from the Iwi Transition Agency or its successor.
- (3) The report should be thorough and undertaken with as much seriousness as any other report. Wherever possible, the social worker should meet with the natural parent(s) as well as the adopting parents.
- (4) An open adoption "plan" should be prepared, unless the Court dispenses with this requirement (see chapter 10). Dispensation would normally occur when the natural parent is not available or has abandoned the family. The social worker may assist in the preparation of the plan.
- (5) The Court and the social worker report should consider whether guardianship is a better option for the family, ie the step-parent becomes a guardian of the child, along with the natural parents. This has the advantage of preserving natural ties but it does not alter the child's legal status. It may be appropriate for solicitors to apply routinely for both guardianship and adoption, on the understanding that one of these alternatives will be acceptable.

- (6) There is no express power to appoint counsel for the child, however Family Court Judges have been appointing counsel to assist the Court to fulfil much the same function. We recommend elsewhere that there be an immediate amendment to the Adoption Act to provide for the appointment of counsel for the child (see chapter 17). Counsel can be especially useful in step-parent adoptions where there is a dispute between the parties, or where the child is old enough to be consulted. It is important to note that counsel's role differs from that of the reporting social worker - it is not part of counsel's task to investigate and make recommendations on the basis of findings.

The underlying principle in step-parent adoptions must under the Adoption Act be the promotion of the welfare of the child (see chapter 11). For this reason, it would be wrong to develop hard and fast rules which do not take into account the facts and personalities of each case. But we believe that the above recommendations will go some way to promoting the welfare of children.

RELATIVE/WHANAU ADOPTIONS

These adoptions have a number of similarities with step-parent adoptions. Many of the advantages and disadvantages are the same. Of the 867 cases handled by DSW in 1988, 237 were adoptions by a relative or close friend.

In some respects, these adoptions are ones which truly reflect Maori and Pacific Island culture and practice. Informal adoption within the family has been common for a very long time and, in some ways, allowing that arrangement to be formalised is simply completing the process which has already taken place. On the other hand, adoption of this kind may distort relationships and create confusion of roles more than in any other context. The reason for this is that the birth parent is likely to be living nearby, even in the same household and may even be known still as "mother" or "father" on a day to day basis. In this situation, guardianship rather than adoption may be much more appropriate. Further, it reflects the fact that parenting may be shared by a whole range of people within the whanau.

We understand nevertheless that particularly for some Pacific Island communities formal adoption is regarded as highly important and guardianship is not an acceptable option. We raise the possibility, however, of combining adoption with additional guardianship for the birth mother.

Under the present law, a social worker's report is necessary in relative/whanau adoptions. We believe that this requirement should continue but that the Iwi Transition Agency or its successor should handle Maori cases.

A motive for relative adoptions, especially for Pacific Island families, is to overcome immigration difficulties. Adoption is entirely inappropriate where this is the sole reason for the application, but need not be so where the child has been part of the family for some time. We recommend that further attention be given to this whole question by the Department of Social Welfare and the immigration authorities, in close consultation with members of the Pacific Island communities.

The other recommendations made with respect to step-parent adoptions should also apply to relative/whanau adoptions.

SPECIAL NEEDS PLACEMENTS

Some of the most difficult adoptions are those involving older children who have been in care and children with intellectual or physical handicaps. These placements are not normally straightforward and should not be placed in the same category as other adoptions.

Some very fine work is being done by departmental officers and voluntary agencies. Among many others, we are particularly aware of the work of Barnardo's and IHC. In our view, this work is so important that it should be seen positively as a partnership between the Department and the community. It disturbs us greatly to learn that many of the community agencies are having trouble arranging funding and we believe that departmental funding procedures need to be fast-tracked as a matter of urgency.

We have also learnt that one of the main difficulties in considering adoption is that financial and other support will often (although not always) be cut off after the adoption has been finalised. This may explain why some of these adoptions "fail", and the Department has to try and retrieve the situation at a later date. While adoption is not always appropriate, it is our view that, in the interests of the children involved, it should be a viable option. In some cases, it may provide the necessary sense of security and permanence to enable real progress to be made in parenting the child.

In our principles set out in chapter 4, we stated that the new adoption is a process, not an event. This is even truer in special needs cases. In our view, the whole question of support after adoption should be reviewed by the Department, to ensure that the necessary levels of resources and financing continue after the date of the final order.

Permanent placement work is specialised. The choice of placement is very different from adoptions at birth. Usually, because of the added strains and pressures in caring for a special needs child, the new parents will need to have had children of their own and to be especially skilled in parenting. Offering a special needs child to an infertile couple is normally going to be quite out of place. Often locating a suitable family can take a long time.

Some of these cases, especially where some interim fostering arrangement has to be made before a permanent placement can be found, have to be dealt with under the Children, Young Persons, and Their Families Act 1989 (see chapter 11). We have also learnt of other adoption cases involving an older child, which have been handled under the 1989 Act.

The evidence we have received from experts working in the field is that the family group conference approach is not helpful in these cases. As pointed out above, the process may have taken quite a long time and the birth parents may have had to work through a lot of trauma before deciding that adoption may be best. A family group conference on top of this can be a quite unnecessary pressure. As one submission said:

"We feel that the process for birth parents of handicapped children is discriminatory and consider that if parents of a handicapped child make a decision to place their child for adoption they should not be subjected to a different process simply because a child may need interim care while suitable adoptive parents are located. Parents of

handicapped children have expressed to us that their emotional burden has been exacerbated by having to be involved in the process of a family group conference in order to have their decision ratified and the needs of their children met."

In our view, the system should be sufficiently flexible to allow a family group conference to be called when this may achieve something useful, but one should not be required where the decision to adopt has already been made after careful (and often lengthy) counselling. If necessary the 1989 Act should be amended.



CHAPTER 16 - PROSPECTIVE ADOPTIVE PARENTS

In the context of the reduced number of children available for adoption and the large number of couples wishing to adopt, the relationship between the Department and prospective adoptive parents needs comment.

A large number of submissions were critical of:

TIME

The time taken to process applications and to respond to enquiries is frequently seen as being excessive. It was suggested that an office interview with the couple soon after the initial enquiry would be preferable to "the occasional telephone call", and many months with no contact. Interviews were "frequently not held due to the social worker's heavy workload". Some offices employed temporary staff to cope with these delays. However, many adoptive couples told us they believed adoption "has a very low priority with the Department".

"After approval, a reasonable protocol of ongoing contact between the adoption social worker and the couple should be established so the couple are not left in isolation during the waiting period. Such contacts could be used constructively to update the couple's views on adoption and their current personal situation".

ATTITUDE

Possibly the most common criticism of the Department was of the manner or attitude of some social workers. Submissions reported "uncomfortable conversations with a social worker whose manner was off putting to say the least". Many reported that in both actual and phone contact, prospective adoptive parents are seen "negatively, as the takers of babies rather than parents to be chosen by birth mothers". "She said we had little chance of adopting a baby, but she'd send a form".

FORMS

The "seemingly useless, numerous, out-dated forms" were another concern. Some couples were unsure of how significant the forms were in terms of assessment and approval, or whether they contributed to the "matching process", and commented that "they give an advantage to those of us with considerable written skills".

A clearer explanation of their purpose was requested, and a reworking in line with current practice and knowledge of child development and of necessary parenting qualities.

SOCIAL WORKERS

Many submissions spoke with high regard of their social worker: "even if we were not successful in adopting, we had benefited from the experience of counselling".

However, others told of 16 hours of interviews with a number of social workers, one of whom "had not even read the file!" Social workers were "constantly leaving and

being replaced by others"; they said "they meant to come and visit us, but hadn't quite got round to it".

THE POOL

The position of applicants who had been approved and were waiting in "a pool" was raised by both adoptive parents and some offices.

"The Department strictly has no mandate to act as an adoptive agency and to set up a pool of "approved" applicants. It would be inconsistent with the Act to approve potential placements in advance of a proposal to adopt a particular child" - A defacto practice however has been built up where persons "suitable" to adopt are "approved" to form part of a pool of waiting applicants but not as adoptive applicants under Section 6 of the Act" (DSW Head Office Submission).

Those in the "pool" have needs and expectations, and during this time of waiting, many "put their life on hold" and experience enormous strain. One large office keeps its "pool" small, in order to:

- enable Social Workers to have a comprehensive knowledge of all the couples and be able to present them confidently and comprehensively to birth parents.
- increase the couple's chance of having a baby placed.
- not to give too many couples false hope of a placement.

Current practice is to retain couples in the pool for no more than two years. How couples were "dropped from the pool" was of considerable concern. To be removed was seen as a tacit comment on the couple's suitability to parent, with all the emotion associated with that understanding. Some were told over the phone, others in a standard letter; the couple's feelings of loss at "not reaching the required standard" were seldom attended to.

One voluntary agency alleviated this situation by presenting other options early in their Adoptive Parents' Programme, and some parents chose finally to become involved with various kinds of parent relief work with the agency. Other agencies give information regarding private adoption and inter-country adoptions to the couple.

COUNSELLING

Mention elsewhere has been made of the ineptness of some of the counselling provided by social workers, by the fact that they pursue their own views and expect adoptive parents to accept them. "We have experienced social workers who have used question techniques as opportunities not to elicit our views, but to expand their own". The inappropriateness of the same person counselling and approving prospective adoptive couples was a frequent comment.

"I tried to tell her how desperate and inadequate I was feeling".

"I didn't dare express my anxiety or enquire further for fear she'd not present our file".

The dual role of preparer and examiner is an uneasy one.

The New Zealand Law Society said "there is evidence of a lack of objectivity on the part of some Departmental officers in this counselling function. There are, however, sufficient indications that there is not the necessary atmosphere of complete detachment on the part of some counsellors."

AGE

The Act places no upper age limit on adoptive applicants, but in practice, most offices have an informal limit of 35-37. The general principle for social workers is that the age of applicants should accord with the age at which natural parents could be expected to have a child.

Young birth mothers tend to ask for adoptive couples in their late twenties or early thirties. Submissions suggested that birth mothers should be encouraged to consider older applicants, who "may have the benefit of a long term stable relationship, a more experienced outlook and a richer environment for the child".

INFERTILITY TREATMENT

Others pointed to the incongruity of approving only those under 37, yet requiring adoptive couples to have come to terms with the reality of infertility by terminating other options.

"Just because a couple really wants a baby and wishes to keep all options open to achieving that end, does not mean that they have not dealt with their infertility, nor that they would make unsuitable parents."

Linking the cessation of infertility treatment with the readiness to adopt is a judgment many couples felt was insensitive and showed lack of understanding of the experience and grief of infertility. "This power over people attitude infringes on the couple's rights to decide what is right for them". The resolution of infertility is a life-long process.

"We suggest that this policy be reviewed and that in so doing consultation with both consumers and health professionals in the infertility field be considered".

A new guideline, which is flexible about both age and the cessation of infertility treatment, would provide the birth mother with greater choice and be more in touch with current opinion.

PROFILES

Similarly, the method of preparation of profiles to present to birth parents could be changed. DSW and other agencies, experienced in what birth mothers, particularly, seem to look for, generally direct or guide couples in their presentation.

The couples have to "market" themselves to the birth mother in the profile, and in interviews to the social worker, who will choose, or not, whether their profile is presented.

"Adopting is keenly competitive ... and everyone knows that some couples are more often ahead of others when it comes to the selecting of profiles for the birth mother to consider".

Couples are "on their best behaviour" and some are trying to work out the "sought after personal qualities which will enable them to be chosen".

"You tell me what you want me to be and that's what I'll become". It may not be in the best interests of the child to second guess what qualities it is thought a birth mother will prefer.

One agency believes that a method of self assessment by the prospective adoptive couple is the answer and the social worker is involved only to assist the couple in presenting their own family profile, one that honestly and positively presents them as a couple. This is the only information which birth parents have.

Bethany has adoptive couples and birth parents meeting in informal groups, prior to the birth mother being presented with a number of DSW approved profiles. The ease and informality of these meetings tend to dispel many fears of unrealistic expectations and possibly decrease the "tendency to self-market".

Matching a child to a couple on the basis of written information, interviews, and a profile, is obviously fraught with the possibility of abuse. Some agencies and DSW offices have addressed this issue, yet still, those "with any conception of marketing [have] a potential advantage". A review of other ways of "matching", perhaps relying less on the written word, would be appropriate, as would research to evaluate the process.

One submission wrote of the confusion between the function of interviewing for matching and that of statutory approval and suggested a couple should be able to choose to be represented by either a DSW social worker or one from the private sector.

NATIONAL REGISTER

One submission suggested that a "in the interests of matching, adoptive parents should be registered nationally".

To obtain the best possible match, it would be possible with computers to operate a national scheme, which could supplement "human evaluation; and we are not advocating abandoning the practice whereby the birth parents are offered a short list", rather, adding to its efficacy.

The Committee considers this suggestion worthy of further consideration.

SECOND APPLICATIONS

We hear of some concern, and despair, that couples are unlikely to be successful in obtaining a second adopted child. (This differed markedly; in some areas, a considerable proportion of couples had two children).

The differences seemed to be due to:

- the choice of birth mother; some preferred their baby to go to a couple who already had one child, others to childless couples.
- the influence of the social worker who possibly observed excellent parenting of the first adopted child, and felt compatible with the couple (an observation of a number of submissions).
- the number of couples in the pool and the number of babies available. "I believe that the couple with one adoptive child should have the right to apply for a second placement when they are ready to do so, not when the social worker needs another couple in her pool".

Another concern was with regard to the process of approval being repeated, almost entirely, for the second application. Certainly, if time has elapsed, some form of re-assessment of the family situation, and of relationships, is valid; this would be minimal if ongoing social work contact has been maintained. But we question whether a couple need to be assessed completely from scratch as if they had never been approved before.

STATEMENT OF RIGHTS

Variation in practice, and in standards of practice, social workers who cannot counsel, agencies who provide an insensitive service, subjectively presented information, adoption being regarded as of little importance: what recourse do adoptive parents have, what opportunity to state their case, or disagree? One submission stated that there is a "need for a clear statement of official policy and also a Statement of Rights".

Another possibility is for Information Sheets to be drawn up, giving information about procedures and rights for each of the two major groups - birth parents and adoptive parents.

The information sheet or statement of rights could include, among other things, the following:

- a list of procedures which will be followed.
- details of the roles and responsibilities of each of the professionals and/or agencies with whom there will be contact.
- right of review -
 - (a) within the Department,
 - (b) to the Ombudsmen, and
 - (c) in the case of the child, the Commissioner for Children.

- the right to request another social worker - perhaps from another agency?
- the right "of access to information on personal files".
- "an explanation as to how the Adoption Act differs from or relates to legislation such as the Guardianship Act and the Children, Young Persons and Their Families Act, and their use as alternatives".
- a set of criteria against which the performance of Departmental staff can be measured.

VARIATION IN PRACTICE

A common comment was directed at the variation in standards of social work practice, within DSW offices, and regionally. Staffing shortages, regionalisation and the confusion caused by the differences in the Children, Young Persons, and Their Families Act 1989 and the Adoption Act 1955, all contribute.

Social work staff and consumers spoke of the need:

- for national training.
- for up to date guidelines to ensure consistent practice.
- for accountability measures to monitor and evaluate social work practice.
- for regular contact with others working in adoption.

Prospective adoptive parents (and birth mothers) also spoke of the different ideologies which underpin social work practice:

"We consider that those coming into the adoption process have the right to know the parameters within which the adoption process proceeds. They may then determine whether they wish to proceed."

Open adoption, for example, is encouraged in most offices, though not in all, and yet lacks any official endorsement.

Regular national training, and accountability to new national practice guidelines is urgently needed, as is a current public statement of Departmental policy and philosophy regarding adoption. These are discussed in other chapters in this report.

SUMMARY

There is no doubt that there is much concern among prospective adoptive parents about the way in which they are treated by the Department of Social Welfare. In some ways, dissatisfaction is inevitable. Few babies are becoming available for adoption. Social workers realistically have to tell people what they do not want to hear. Resources are not surprisingly being targeted for children at risk.

Nevertheless, prospective adoptive parents come with emotions, needs, and the distress of infertility. There are ways of being sympathetic to this without in any sense raising false hopes. We believe that some of the problems in ensuring good social work practice towards prospective parents can be overcome by a new national adoption policy, a commitment to training, and clearer lines of accountability. A creative partnership with the community should also lead to an improved atmosphere. Infertility groups, voluntary agencies and community counsellors are all part of a team, along with the Department of Social Welfare, who can provide a service to prospective parents.

In the end, however, the adoption service is there not to provide families for infertile couples, but to enhance the best interests of children.

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CHAPTER 19⁷ - MISCELLANEOUS

1 REFORM OF THE ADOPTION ACT 1955

The 1987 Interdepartmental Working Party recommended the reform of the Adoption Act 1955. Many submissions have supported this and we concur. In many respects the Act reflects an outdated approach to adoption and should be brought up to date. Despite this, the 1955 Act has the ironical virtue of being flexible with respect to the procedures surrounding adoption. The 1955 Act has not been a barrier to numerous developments in adoption practice, the prime example being open adoption, which under a more rigid legal structure might not have been possible.

Although there is widespread agreement that the Act needs reforming, there is no indication that a comprehensive reform is likely in the immediate future. Indeed this report has indicated a number of areas where community attitudes and social work practices are volatile and hasty reform may be unwise. It is for this reason that the Committee presses for amendments to the existing Act to cover the open adoption plan (see chapter 10) and the appointment of counsel for the child.

In any fuller review of the 1955 Act, the Committee recommends that some study be undertaken of recent amendments in Britain. In particular, we draw attention to the change in the effect of an adoption order, by which the adopting parents are stated legally to take on the duties and responsibilities of parenthood. This gets away from the notion that adopting parents are acquiring a child, over whom they have rights at the expense of other people in the child's life.

2 ADULT ADOPTION INFORMATION ACT 1985

The operation of this Act was not within our terms of reference. Inevitably however there were comments about it, most but not all of them favourable. For instance, the National Council of Women reported that responses from their members "were full of praise for the principle but many contained valid criticisms about how it is actually working in ways which are sometimes detrimental. The concern is primarily with the children who get hurt, but instances are given also of difficulties for the birth mothers". We are aware that a great deal of social worker time goes into this Act and in our view this is entirely appropriate.

Much work also goes into accessing information for and counselling of people under the age of 20 who do not come within the ambit of the 1985 Act. Teenage years are often those when questions about birth origins arise most critically. Some submissions have asked that the Act be reviewed with the intention of widening its jurisdiction. We are also aware that some information may be accessible under the Official Information Act and not be covered by the secrecy provisions of the 1955 Act.

3 INTER-COUNTRY ADOPTIONS

A number of submissions related to the question of inter-country adoptions. It was not within our brief to examine this question, but we report that submissions differed in their approach. Some were strongly opposed to inter-country adoption mainly because of the potential for cross-cultural difficulties. Others argued that the needs of children in some countries are such that culture should not take precedence over nurture and

survival and that the Government or a recognised independent agency should actively facilitate adoption in the interests of the care of those children. We draw attention to the provisions of article 21 of the United Nations Convention on the Rights of the Child, which focusses expressly on the question of inter-country adoption.

4 NEW BIRTH TECHNOLOGIES

Again, it was not within the Committee's terms of reference to look at new birth technologies. We note that, where donated gametes are used, some issues similar to those in adoption arise. More public debate is required for instance on the question of the keeping of records on donation and the access to that information by the child and the child's family.

5 COUNSEL FOR THE CHILD

There is no provision in the present adoption legislation for the appointment of counsel for the child. Such appointments are common in all other more modern family legislation. If emphasis is to be placed upon the welfare of the child, then legal representation is essential whenever there is a dispute or whenever the Court is of the opinion that the parties coming to Court for a consent order have not fully examined all the options which may be in the child's best interests (especially in step-parent and intra-family adoptions).

The Family Court has developed the practice of appointing counsel to assist the Court, invoking inherent powers to do so. Counsel's task is not to duplicate the work of the social worker but to ensure from the child's point of view that all enquiries have been made by the appropriate people, that all options have been explored, that the child's wishes have been addressed if the child is old enough, to make submissions to the Court and to examine and cross-examine witnesses.

We believe that the Adoption Act 1955 should be amended as a matter of urgency to allow for the appointment of counsel for the child in the same way as under other legislation. Appointment would be at the discretion of the Court and it is not anticipated that an appointment would have to be made in the majority of cases. This recommendation has funding implications but as appointments of counsel to assist the Court are regularly made at present, we do not envisage that there will be any embarrassment to the exchequer. The recommendation is essentially one to bring the legislation into line with current Court practice. We also point out that the recommendation was also made by the 1987 Interdepartmental Working Party (paras 9.6 - 9.8).

6 LAY CHILD ADVOCATES

The Commissioner for Children has suggested that there should be a system of child advocates in addition to counsel for the child, appointed to back up the work of the Commissioner (letter to the Committee, 8 August 1990). He refers to a team of people who would operate at a local case-by-case level. "I have in mind the people who already act as advocates for children within voluntary organisations and services and in cultural groups." We commend this idea as being worthy of favourable consideration by the Government.

7 BIRTH CERTIFICATES

In the context of open adoption, we suggested that birth certificates should disclose the fact of adoption, the names of both the birth parents and the adoptive parents. We believe that this proposal has merit in its own right and is not dependent upon the recommendation for an open adoption plan being included in amended legislation.

8 RESEARCH AND MONITORING

Several submissions called for greater research and monitoring of adoption. The Commissioner for Children stated that

"Policies must be tested by systematic outcome research. There is too little monitoring of the effect of permanency placement policies...There would appear to be a conflict of ideology, with some social workers believing tht many babies would be better off permanently and legally in the care of someone other than their birth family, and others believing that babies and children are always better off with their birth parents, no matter what the circumstances. There are shades of belief in between. The prevalence of these beliefs should be brought to light and differences openly debated. The debate should be based on well conducted research, rather than hearsay and prejudice."

We endorse this statement. It concerns us that policy and practice may be driven by ideology, rather than principles arrived at after careful thought, based upon research.

One of the main pieces of research in New Zealand is that carried out by the Christchurch Child Development Study, discussed above in chapter 3. That study, which is a longitudinal one, tends to suggest that adopted children are placed in a socially advantaged environment, compared with children in single and two parent birth families. It remains to be seen whether those results continue well into teenage years and beyond. Research is also needed into the perceived advantages of open adoption over the long term, and likewise into the perceived advantages of being placed in the wider family as opposed to being placed with strangers.

The Christchurch Study reminds us of several things. We should not be too ready to leap to assumptions about child placement. Research needs to be conducted over a long period of time. Research needs to be done in New Zealand, because we cannot assume that our legal and social conditions replicate those in overseas countries where research has already been done. Research and monitoring should normally be done by an independent external agency, but the Department of Social Welfare should bear a responsibility for ensuring that such research and monitoring is in fact undertaken.

Our recommendation is that research into adoption and permanent placement options for children be encouraged and promoted by the Department and the Commissioner for Children, with funding where necessary. A Sound data base of statistics is essential. Monitoring of adoption procedures and outputs should be carried out by an external agency. Such an agency should have hands-on, practical experience of adoption and other child care work.

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CONCLUSION

The Committee in its terms of reference was asked to consider whether adoption practices best meet the needs of prospective adoptive children, birth parents, and prospective adoptive parents. This report has ranged widely over many issues impinging upon the process of adoption. In some places; we have raised questions, in others, we have made firm recommendations.

Underlying all our enquiries and deliberations has been the question "What is in the best interests of the children involved?" bearing in mind that decisions to adopt or not to adopt when people are young will remain with them for the rest of their lives. Adults have rights and interests, but in the end they should be subservient to the welfare of the child. In our view, practices which do not properly prepare and counsel birth and adoptive parents will reflect unfavourably on children. A lack of national policies and training, the failure to address a child's cultural heritage and allow for open and honest relationships, and the lack of accountability ultimately affect the child. Practices which are not flexible and professionally objective, geared to meet the widely differing needs and characteristics of those inviting the state to assist, will undermine the confidence of adult and child alike.

Much good adoption and permanent placement work is done throughout New Zealand, often under difficult circumstances. Unfortunately, adoption as a service to the New Zealand people has tended to be sidelined. In part this is understandable, given the small number of adoptions and the need for resources to go into dealing with the crises of child abuse and neglect cases. However the number of people involved in one way or another with adoption and ante-natal counselling is much greater than the formal statistics indicate.

Adoption should not be regarded as the first choice for the placement of a child. Nevertheless, it is still a viable alternative for those who choose it. The profile of adoption has dropped sufficiently in official circles that we believe the situation now needs remedying. What is needed is a national policy, worked out in consultation with the people and agencies who have had experience of adoption and child care. The official approach of the Department of Social Welfare, perhaps caused in part by the diversification of decision-making throughout the regions, does not entirely glow with merit in this regard. Commitment from the top is essential. Both the Department of Social Welfare and the Iwi Transition Agency (or its successor) must assume their proper responsibilities and be appropriately resourced.

The importance to the community of providing a balanced and first class adoption service needs to be reclaimed. We believe that the recommendations in this report will go some way towards ensuring that this happens.

August 1990



APPENDIX

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Auckland Infertility Society	
Ms Chris Baty	
Catholic Social Services	
Christchurch Child Development Study	
Commissioner for Children	
Council for the Single Mother and Her Child	
Department of Justice	
Department of Social Welfare	
Ms A Else (Consultant)	
LDS Social Services (Church of Jesus Christ of Latter Day Saints)	
Maori Development Unit (DSW)	
Dr DJ McDonald (Dept of Social Work, University of Canterbury)	
Prof JG Mortimer (Dept of Paediatrics and Child Health, University of Otago)	
National Council of Women of New Zealand	
New Zealand Infertility Society	
New Zealand Law Society	
New Zealand Medical Association	
Northern Services Office (Social Services Division) (DSW Auckland)	
Society for the Protection of the Unborn Child	
Southland Infertility Support Group	
Wellington District Office, (DSW)	
Youth Law Project (Inc)	

Other consultations

Barnardo's, Wellington
 Bethany Centre, Auckland
 His Honour, Judge Borrin
 Catholic Social Services, Christchurch
 Mrs A Corcoran, Director, Catholic Social Services, Wellington
 Family Law Committee, NZ Law Society
 Mr J Hopkins (Dept of Applied Studies, Auckland College of Education)
 IHC National Office
 Ms M Iwanek (Victoria University of Wellington)
 Horiaana Joyce, Te Wananga o Raukawa
 His Honour, Judge Mahony, Principal Family Court Judge
 Dr Diana Mason (NZ Medical Association)

A group of adopted persons, Auckland
A group of adoptive parents, Auckland
A group of birth parents, Auckland
Two Maori whanau groups, Wellington
A Pacific Islands group, Auckland
Hospitals - Dunedin, Wellington, National Women's and North Shore, Auckland
DSW offices - Dunedin, Christchurch, Nelson, Wellington, Lower Hutt, Levin,
Palmerston North, Napier, Hastings, Napier, Rotorua, Auckland
Officials, Head Office DSW, Wellington