Auckland Women's Health Council

Submission on:

A new adoption system for Aotearoa New Zealand

The Auckland Women's Health Council responses to the discussion document can be found throughout in dark blue text on a pale purple background.

Introduction

In June 2021 we released a discussion document asking people to share their thoughts about current adoption laws and some ideas for change. We heard from over 270 people and organisations from a range of different backgrounds and experiences. We're very grateful for the time, effort and emotional energy people put into engaging with us. We hope that people can see their feedback reflected in the options set out in this document.

Almost everyone we heard from agreed our adoption laws need changing and that more needs be done to protect adopted people's rights. People told us that adoption shouldn't cut the legal ties between the adopted person and their birth family. They said it's important for people who have been adopted, their parents, and their wider family and whānau, including their descendants, to be able to access information.

This document summarises the discussion document which sets out options we're considering for a new adoption system. The options are forward-looking, and have been developed based on what we heard last year and our own research. Together, the options could create a new adoption system that is child-centred and has practical measures that place importance on the voices of children and safeguard their rights, best interests, and welfare. Adoptive parents would have a legal status to support a permanent and enduring parent-child relationship, while the adopted person's legal and whakapapa connections to birth family and whānau would be preserved.

We want to hear your thoughts on the options in this document. Some options you may agree with; some you may disagree with; and with some you may think we've missed something. We want to hear your views on all of these matters.

The options in this document are not final. Your views will be used to help work out what the final proposals should look like. The Government will then decide whether to progress reform and what changes to make. This might result in new adoption laws.

Ngā mihi nui ki a koe - thank you again for sharing your views with us.

Purpose and principles

Purpose of adoption

We think that the law should set out a purpose for adoption. This purpose will help guide decision-making and reflects good practice for creating laws.

We want to hear your views on the purpose of adoption we are considering, which is that adoption:

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

Auckland Women's Health Council agrees that the child should be the central consideration and that the only purpose of adoption must be as a service to a child in order for the child to be raised in a stable, enduring and loving family. The purpose of adoption should not be considered as a 'service' to adoptive parents to enable them to have a child and create a family, as that removes the focus from the best interests of the child and normalises the view that parenthood is a right, and that it can be facilitated by the severing of the relationship between biological parents and a child.

Principles for adoption

We think that the law should include a set of principles to guide adoption decisions and make the underlying values of the system clear:

- that the long-term well-being and best interests of the child or young person are the first and paramount consideration
- that a child is encouraged and supported to participate and give their views in adoption processes, and that their views are considered
- the preservation of, and connection to, culture and identity
- the protection of whakapapa
- recognition of the whanaungatanga responsibilities of family, whānau, hapū, iwi and family group
- recognition that primary responsibility for caring for a child lies with their family, whānau, hapū, iwi and family group
- that family and whānau should have an opportunity to participate and have their views taken into consideration, and
- openness and transparency.

We want to hear what you think of the guiding principles for adoption we are considering. We also want to know if you think there are any principles missing or whether we need a specific te Tiriti principle.

Auckland Women's Health Council agrees with the principles for adoption and, in particular, believes that "that the long-term well-being and best interests of the child or young person are the first and paramount consideration" be the most important and primary principle, listed first, and that it should over-ride all others.

In keeping with other recent legislation and legislative amendments, we believe that the new adoption legislation should honour and empower Te Tiriti o Waitangi and specific principle or principles that reflect the articles of Te Tiriti would be appropriate. However, the Auckland Women's Health Council is not a tangata whenua organisation and does not speak for or on behalf of Māori, and we believe that Māori should be consulted directly.

Who can be adopted?

We think that adoption should focus on the care needs of children and shouldn't allow adults to be adopted. This is consistent with other family law and the purpose for adoption we have suggested. It also matches our international agreements, for example the United Nations Convention on the Rights of the Child ('the Children's Convention').

We want to hear your views on whether the age limit for people to be adopted should be 16 or 18 years old.

We don't believe adults should be able to be adopted, and the age limit should be consistent with the existing legislation, such as the Care of Children Act 2004, which states that:

"The duties, powers, rights, and responsibilities of a guardian of a child end when the first of the following events occurs:
(a) the child turns 18 years:…"

However, in keeping with the principles set out above, adoption of older children should occur in keeping with the principle that "a child is encouraged and supported to participate and give their views in adoption processes, and that their views are considered." As soon as a child is old enough to understand what adoption is and the implications of that process for them, their views, wants and needs should be considered. The older and more independent a child is, the greater their involvement in the process should be, and by a certain age (this may need to be determined on a case by case basis) the child's expressed views and desire to be adopted or not must be paramount.

Who can adopt?

Who can adopt?

We've suggested that a person should be at least 18 years old to apply to adopt a child. This matches other laws with age restrictions based on a person's maturity.

We don't think people should be stopped from applying to adopt because of their sex or relationship status. We think it's more important to check they're suitable to adopt the child. We also think that step-parents should be able to adopt step-children if it's in the child's best interests.

We want to hear your views on whether a person should be 18 years old before they can apply to adopt. We also want to know whether you think there should be any other criteria.

Once a person reaches an age where they are considered an adult there should be no age-specific restrictions on a person's ability to adopt. Suitability to adopt should be considered on a case by case basis and should hinge on what is in the best interests of the child. There may be cases where an 18 year old has an established adult role model relationship with a child, perhaps within an extended family, and maintaining the stability and consistency of this established relationship is of greater benefit to the child than adoption by an older adult.

The principles of adoption should be the guiding factor not the age of the person wishing to adopt.

Adoptions involving different cultures

We are thinking about whether the law should assume that it is normally in a child's best interests to be adopted by people from the same culture. This would recognise that it can be hard to for adopted people to stay connected to their culture if they are adopted by parents from another culture, but it wouldn't stop cross-cultural adoptions from happening altogether.

We want to hear your views on whether the law should encourage children to be adopted within their own culture.

In keeping with several of the principles of adoption (e.g. the preservation of, and connection to, culture and identity; the protection of whakapapa), it is entirely consistent for the law to encourage children being adopted within their own culture if at all possible.

What happens if a child is placed for adoption?

Social worker to represent the child

We have suggested that a dedicated social worker should be appointed for the child in adoption cases. The social worker should be matched to the child because of their similar characteristics, such as their personality, cultural background, training or experience. This could help the child to relate to the social worker more easily.

The social worker's job would be to support the child through the adoption process. Support

would include helping the child to share their views, where they can do so. It would also include making sure the child has age-appropriate information about the adoption, its effect, and their rights. This option would help to protect the child's right to participate.

We want to hear your views on whether the child should have a dedicated social worker.

Children should have a dedicated social worker whose sole responsibility is to act in the best interests of the child.

The birth mother/parents may also need someone to act in their best interests. Making a decision to place a child for adoption is a very difficult decision to make and many birth mothers/parents make these decisions at a very vulnerable period of their lives. The birth mother/parents may need support and/or counselling and a social worker to enable them to make the best and most informed decision about the future of their child.

Placement of children before an adoption order is made

We think that the social worker should be able to approve a child's placement with the adoptive applicants before the adoption is finalised. Placement could be approved if the birth parents have given their informed consent and the social worker is satisfied that the adoptive applicants are suitable.

We want to hear your views on whether you think the child should be able to be placed with the adoptive applicants before an adoption order is made.

We agree with early placement prior to the adoption order being finalised only if it is in the best interests of the child, and where the birth parents have given their fully informed consent and have not been subject to coercion or pressure to make a decision.

Other care options

We think the social worker should have to tell the birth parents about other less permanent care options that may be available for the child, and let them know the judge will look at whether other care options were considered before making an adoption order.

Adoption permanently changes a child's legal status. Because of this, we think it's important that the birth parents are made aware of other potential care options. For example, parenting or guardianship orders under the Care of Children Act might be more appropriate.

We want to hear your views on whether you think the social worker should have to tell the parents about other care options available when they ask about adoption.

The birth parents cannot make an informed decision about whether or not placing their child for adoption is the right decision without being informed of all other options. Therefore, they must be informed of all potential care options as early as possible in the process and be given ample time to consider all options.

Who can have a say?

Children being adopted

We've suggested that the dedicated social worker for the child should encourage them to participate and record their participation and views in their report to the Court. We also think that a lawyer should be able to be appointed to represent the child, and that the child should be able to attend and speak during adoption proceedings.

These options will make sure the Court can hear the child's views, either through a lawyer or to the Court directly. Hearing from the child can help the Court make better decisions. It also makes sure the child feels involved in the decision.

We don't think children should have to consent to their own adoption. Research shows children want to be involved, but often don't want to be making the decisions. The options we're looking at would allow the child to participate in the adoption process, without putting pressure on them to be the decision-maker.

We want to hear your views on these options we are considering for enabling children to participate in the adoption process.

Any child old enough to understand the concept of adoption, even in the most basic of terms, should be facilitated to participate in the process and express their views, wants and needs. The degree to which a child participates will depend on age, maturity and desire to participate. It is important that the child be involved as they wish to be. Some people adopted in decades past speak of the trauma of being adopted; being taken or stolen, of being treated as chattels, possessions, and second class citizens.

If children, even quite young children, are enabled to express their opinions, concerns and fears, they may feel more like their best interests truly are at the heart of adoption law and the adoption process and thereby suffer less harm or trauma from being separated from their biological parents.

Parents placing their child for adoption

Agreeing to the adoption

We think that both parents should need to agree to their child's adoption, regardless of their relationship or guardianship status. Requiring both parents to consent recognises that primary responsibility for the child's care lies with their family and whānau. It also supports decision-making on whether an adoption is in the child's best interests.

We've suggested that a parent can't agree to the adoption until at least 30 days after the child is born. This gives the parents space and time to fully consider the adoption. We've also suggested that parents can take back their consent up until a final adoption order is made.

This will protect parents who might change their mind about the adoption.

We've also suggested that a birth parent's agreement shouldn't be needed if they pose a risk to the child or other parent's wellbeing, or if they haven't met their duty of care toward the child.

The current law allows a person's agreement to be dispensed because they have a mental or physical incapacity. We think this should not be included in a new adoption system as those grounds are discriminatory and don't meet our human rights obligations, particularly towards people with disabilities.

We think that birth parents should be able to participate when the adoption case gets to court. This would mean the Court could hear from birth parents directly, which can help it decide if an adoption is in a child's best interests.

> We want to hear your views on whether both birth parents should be required to consent to the adoption, when consent can be given for adoption after the child is born, and when birth parents' consent to adoption should not be required.

We are concerned that hard and fast rules about the consent of both biological parents of the child has the potential to create problems. For example, if there is a significant power imbalance between the biological parents, if consent, or not, is being used to control, punish or coerce one parent.

We do not agree with removing a parent's right to consent because they have a mental or physical incapacity. For example, mental and physical ill health can be transient and a parent should not have a child permanently removed from their care and adopted because they have a limited period of their lives during which they are unable to care for a child or make a decision about consenting to adoption.

While the rights and interests of the child are paramount and should be the foremost consideration, there must be sufficient recognition of the rights and interests of the birth parents, particularly the mother, and recognition of the combination of factors that might lead a biological parent to considering placing their child for adoption.

Removing the right of one or both of the birth parents to consent should only occur in cases in which lack of capacity to consent is extremely unlikely to ever change (for example, in the case of brain damage), or if they pose an irredeemable risk to the child.

Adoption in New Zealand has a long history of removing babies from their birth mothers against the wishes of those vulnerable women because of the prevailing morals of the time, when unmarried mothers were looked down on, outcast and treated as second class citizens. While the moral and social landscape has changed considerably since the decades when this situation dominated adoption practices, and unmarried mothers are generally not repudiated as they once were, and there are many social and financial supports in place, it is not inconceivable that some vulnerable pregnant New Zealanders might be coerced into giving up their babies for adoption.

While the best interests of the child must be first and foremost, it is also vitally important that vulnerable birth mothers are protected and facilitated to openly and

honestly, in a compassionate and protective environment, discuss their views about the future of their child and how they feel about placing that child for adoption. It is vital that the best interests of the birth mother come a close second to the best interests of the child.

Studies have shown the incredible bond between baby and its birth mother, the severing of which should not be taken lightly. A newborn baby's need for their birth mother is instinctive and innate, e.g. Dr Catherine Lynch (medical sociologist and adoptee advocate) has stated that: "every aspect, every cell, every desire of that neonate, is geared toward being on the body of the gestational mother, to suckle and seek comfort and safety".[1]

Newborn babies recognise and are calmed by their birth mothers' voice and heart rate. The health promoting effects of skin-to-skin bonding between birth mother and the baby are well documented, similarly access to the nutrient- and antibody rich colostrum and breastmilk produced by the birth mother and therefore specifically tailored to the child's physiology – see Adeline Allen's cogent discussion of these issues in her (2018) paper 'Surrogacy and limitations to freedom of contract: Toward being more fully human' published in the *Harvard Journal of Law and Public Policy*.[2]

AWHC believe that a baby bonds with its birth mother, therefore prioritising the wellbeing of the child still requires the birth mother to have a key role in the infant's life. Regardless of her 'intention', the growing science of epigenetics shows how the child is quite literally a part of the birth mother long after she has carried them in her womb and given birth. Oxytocin, a hormone present in higher quantities in pregnancy and released in labor and birth to promote bonding between mother and newborn child, is held to "imprint the baby on the mother, and the mother on the baby". Fascinatingly, scientists have also found DNA from male babies in their mothers' brains—potentially remaining there for life.[3]

The biological connection cannot be ignored in favour of social pressure and it is vital for the health of the birth mother and child that a mother's intent to place her child for adoption is genuine and not the result of duress, coercion or social pressure to "do the right thing."

1 Lynch, C. (2017). Ethical case for abolishing all forms of surrogacy. Retrieved from https://www.sundayguardianlive.com/lifestyle/11390-ethical-case-abolishing-all-forms-surrogacy

2 Allen, A. A. (2018). Surrogacy and limitations to freedom of contract: Toward being more fully human. *Harvard Journal of Law and Public Policy*, 41, 753.

3 Chan WFN, et al. (2012) Male microchimerism in the human female brain. *PLoS One*, 2012;7(9):e45592.

Wider family and whānau

We've suggested that the views of the child's family and whānau about the adoption should be included in the social worker's report. This will mean the family and whānau can be involved early in the process and means family or whānau-based care options can be explored. We also think that family and whānau should be able to share their

views in their own words to the Court.

We think there are situations where it might not be appropriate for family and whānau to be involved. We've suggested that family and whānau won't need to be involved if it would cause unwarranted distress, which might include serious harm. We think that either a government department, the Court, or a combination of both, could make the decision about whether unwarranted distress might occur.

> We want to hear your views on the options we're considering for involving family and whānau in the adoption process. We also want to hear your views on who you think should decide if involving the family and whānau would cause unwarranted distress.

In general, we believe that wider family and whānau should be involved in the adoption process, particularly if that might lead to family or whānau-based care options that would enable the child to be raised within the wider family and retain strong links to the birth parents if that is safe and appropriate. We think this is more in keeping with the principles of adoption as set out at the beginning of this discussion document. Adoption outside the wider family should be the last option after family or whānau-based care options have been considered and rejected.

However, we accept that there are situations where consultation with the wider family and whānau is not in the best interests of the child. An independent, dedicated social worker for the child should in the first instance assess such situations and then the Court with advice from a lawyer appointed to represent the child's best interests should make such decisions.

At all times the child's best interests and safety, mental and physical well-being should be the paramount concern.

Hapū and iwi

Some other countries require consultation with indigenous groups where an indigenous child is to be adopted. For example, New South Wales in Australia requires a relevant indigenous community organisation to be consulted before an indigenous child is adopted.

Consulting with a child's hapū and iwi when tamariki Māori are placed for adoption would honour the Tiriti partnership and support Māori collective decision-making processes. It would also recognise the distinct rights of hapū and iwi to exercise rangatiratanga in the care and protection of tamariki who whakapapa to them.

> We want to hear your views on whether a child's hapū and iwi should have to be consulted when tamariki Māori are placed for adoption.

Māori have a long history of whangai and informal adoption-like practices, and traditionally embrace the concept that it takes a village to raise a child. Given the tragic history and outcomes of adoption of Māori children in a settler-colonial system that denied Māori children access to their identity and culture, it is important that the same

mistakes are not repeated with the new legislation. As we have stated, AWHC is not a tangata whenua organisation, and we support engaging with a wide range of Māori voices on this issue, rather than seeking the opinions of pākehā. However, it would seem that it is vitally important that a child's hapū and iwi are consulted and the articles of te Tiriti are honoured and upheld whenever tamariki Māori are placed for adoption.

Who makes the decisions?

Government, the Court, and accredited bodies

We think that it's appropriate for the Family Court to keep making domestic adoption decisions. The Court is an impartial decision-maker that is experienced in making other family law orders, such as parenting and guardianship orders. Most people see the Court as a legitimate decision-making body.

We also think assessments and other administrative processes are best managed by government agencies. Government agencies are held publicly accountable and are subject to rigorous reporting requirements. Agencies currently involved in the adoption process work hard to ensure children's best interests are upheld, despite issues with the current law.

We want to hear your views on whether the Court should continue to be responsible for decision-making in the adoption process, and whether government agencies should continue to be responsible for assessments in the adoption process.

We agree that the Family Court is probably the best agency to continue to make adoption decisions.

Adoption support from Oranga Tamariki

We think that all adoptive applicants should have to engage with Oranga Tamariki before making an application to the Court. This means Oranga Tamariki can check the adoptive applicant's suitability and the child's safety and best interests early in the process. It would also mean that applicants can access support and education from Oranga Tamariki and may provide some protection to birth parents from being pressured to agree to an adoption.

We want to hear your views on whether adoptive applicants should be required to engage with Oranga Tamariki before making an adoption application.

We have significant concerns about the role of Oranga Tamariki in the adoption process, particularly for tamariki Māori. There is a long history of dysfunction in the organisation currently called Oranga Tamariki. Changes in branding only serve to paper over the cracks with sequential failures to change the culture of the organisation and ensure that

it is working in the best interests of children and young people. Its relationship with Māori is abysmal.

Oranga Tamariki seem incapable of ensuring the children in their care are safe and well, and recently were found to have hidden significant failings in the development of a sexual violence project from the Public Services Commissioner. An independent report found the Oranga Tamariki team doing the work to fill glaring gaps in services was so "dysfunctional", "inadequate" and "confused" it had to be shut down.[1]

The 2020-21 Safety in Care report revealed that 486 children babies, children and teenagers suffered 742 incidences of harm in that year (an increase of harm incidents since the 2018 report), including:

- 289 children who suffered 344 incidences of physical harm;
- 183 children who suffered 252 incidences of emotional harm;
- 77 who suffered 88 incidences of sexual harm; and
- 58 cases of neglect of 34 children.[2]

Most occurred in the care home into which the children and young people were placed by Oranga Tamariki and only a minority of incidences of harm were committed away from the placement, for instance, abuse by a stranger.

The Independent Children's Monitor, in its inaugural annual report, found Oranga Tamariki was fully compliant just two percent of the time across all 12 of its own practice requirements, and that it still lacks the data to know if it's taking proper care of children or not.[3]

It is clear that Oranga Tamariki is incapable of assessing the suitability of families in which to place children for fostering and to ensure their safety, thus it is impossible to have faith that they can assess the suitability of people wanting to adopt.

The 2021 Ministerial Advisory Board report, *Te Kahu Aroha*,[4] on Oranga Tamariki found that “the anchor points for current systems within Oranga Tamariki are weak, disconnected, and unfit for the population of tamariki it serves. The organisation lacks strategic direction and is not visionary. It is self-centred and constantly looks to itself for answers. There is no workforce strategy being implemented, nor is there a strategy to partner with Māori and the community.”

Further, the report’s authors found that:

- [P]ervasive and comprehensive problems are apparent;… the Board is not confident that there is a strategy in place to effectively remedy these problems.
- There is evidence of a workforce under pressure and that lacks professional leadership and support.
- The social work voice within Oranga Tamariki is muted. Out of a leadership group of 11 throughout the last four years, only one voice at the table has had a social work lens. It is evident that professional practice views, opinions and experience are missing at many levels of the organisation
- Coming into contact with the current care and protection system, even if only briefly, can reinforce and cause further damage to tamariki and their whānau, as well as to broader social cohesion.

- There is also evidence that the Oranga Tamariki system continues to allow poor and even damaging behaviour and practice by some Oranga Tamariki employees.

The Ministerial Advisory Board were not able to provide a high level of assurance that Oranga Tamariki:

- exemplifies quality social work practice,
- respects professional opinion in statutory decision-making, and is providing the training and professional development to enable this,
- promotes a culture of continuous learning and improvement.

The Te Kahu Aroha report is just one of many negative reports, reviews and investigations into Oranga Tamariki that ultimately describe an organisation that is dysfunctional and unable to ensure the safety of the children it is charged with protecting, causing deep divisions in families and whānau and the wider community.

In conclusion, we don't believe that Oranga Tamariki should have any role in the adoption process until such time as its own dysfunction and multiple failings are addressed and remedied, and it can show that, across the entire organisation, it understands what children need.

1 https://www.rnz.co.nz/news/national/467871/oranga-tamariki-badly-mismanaged-60m-sexual-abuse-programme-review-finds
2 Oranga Tamariki (2022) Safety of Children in Care, Annual Report July 2020 to June 2021. Safety of Children in Care Unit, Oranga Tamariki.
3 Independent Children's Monitor (2022) Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021. Wellington.
4 Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa | Te Kahu Aroha Ministerial Advisory Board Report, July 2021 https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF

How are adoption decisions made?

Suitability of adoptive applicants

We think a judge should have to be satisfied that the applicants are suitable to adopt before making an adoption order. We don't think any specific suitability criteria should be set out in law. Instead, we think the social worker report and any other relevant information should inform the Court's decision on whether applicants are suitable to adopt.

We want to hear your views on whether a judge should have to determine that applicants are suitable to adopt before making an adoption order, and whether this decision should be informed by the social worker report and any other relevant information.

Whoever is involved with making an adoption order should be well-versed in the needs of children and the issues that faced by all those involved in adoption. A social worker report and all relevant information should be considered. The child's best interests should be represented by a dedicated social worker or lawyer for the child. Each case should be considered on its merits, including the suitability of the person/people wishing to adopt, but not necessarily with set criteria. The purposes and principles of adoption, as set out at the beginning of the discussion document should effectively the "criteria" against which applicants to adopt are considered.

Social worker reports

We think that the law should set out some of the things that need to be included in the social worker report. This would make sure the judge understands the circumstances of the adoption and help them to make an informed decision. We think the report should include:

- how the child participated, including any views shared by the child
- the suitability of the adoptive parents
- views of the child's family and whānau
- the child's cultural information.

We think the assessment of the suitability of adoptive parents should be left to professional discretion, rather than being set out in law. This would make the assessment more flexible and allow for case-by-case decision-making.

We want to hear your views on whether the law should set out some of the things to be included in the social worker report.

We agree that certain information must be included in the social worker report. In addition to those mentioned, we believe that assurances must be provided that the birth parents, particularly the birth mother, are placing the child for adoption of their own free will and are not subject to duress and coercion to do so. We encourage counselling for the birth parents to ensure that they understand the implications of placing their child for adoption, now and into the future to avoid as much as possible the trauma to birth parents that has occurred in the past.

Access to other information

We think the Court should be able to order extra reports. It's important that the Court has all relevant information available when it's deciding about an adoption. We've suggested the Court should be able to order cultural, medical, psychiatric or psychologist reports if it thinks they are needed to support its decision-making. This matches the powers the Court has in other family law cases.

We want to hear your views on what report-ordering powers the Court should have in adoption cases.

We agree that all relevant information should be provided to the Family Court and the judge or other authority that is making the order for adoption, including cultural, medical, psychiatric or psychologist reports if they think they are needed to support their decision-making.

Alternative care options

We think that judges should need to be satisfied that other care options have been considered before making an adoption order. This would help the judge decide whether adoption is the most suitable care option and is in the child's best interests. This option links in with the other option on page 4, which would require a social worker to tell the birth parents about other care options available.

We want to hear your views on whether judges should be satisfied that other care arrangements have been considered before making an adoption order.

We believe that adoption should be a "last-resort" option for a child when all other care options have been exhausted. We agree that judges must be satisfied that all other options have been discussed with the birth parent/s and that no other care option is suitable or in the child's best interests.

What is the legal effect of adoption?

Final adoption orders

We think that a judge should always make a final adoption order, unless they think an interim order is desirable in the circumstances. This would provide certainty for everyone involved, which could help the child and adoptive parents' relationship develop.

> We want to hear your views on whether there are any circumstances where interim orders should be used. For example, to provide time for contact agreements to be made.

We agree that there may be circumstances in which an interim order is in the best interests of the child to be adopted and that this option should be covered in the legislation. We encourage engagement with past adoptees, birth and adoptive parents to ascertain what circumstances might exist in which an interim order might be considered.

Legal effect

We think the adopted person should be able to keep a legal connection to their birth parents, as well as have a new connection to their adoptive parents. This would protect their right to identity and family connection, while also providing certainty and security for their new family relationship. It also aligns with the practice of open adoption which has developed over the last 30 years, and is more consistent with tikanga Māori, where childcare duties may be shared but connections to family and whānau never change.

We think that guardianship responsibilities should be transferred from birth parents to adoptive parents. These responsibilities include having day-to-day care of the child and determining for, or with, the child important matters affecting them, for example, where they live, medical treatment and education choices. Transferring guardianship responsibilities provides certainty for those involved and reflects the purpose of adoption we've suggested (see page 3).

Consistent with the current law, we've suggested that adoptive parents should be financially responsible for the child and that adopted children should be able to inherit citizenship from both sets of parents.

> We want to hear your views on the options we're considering relating to adoptive children's legal connections to their birth parents and adoptive parents. We also want to hear your thoughts on who should have guardianship responsibilities, and how financial responsibility and citizenship rights should be determined.

We believe that it is important for an adopted child to retain a variety of connections to their birth/biological parents. This may include a legal connection, but this may have to be

decided on a case by case basis. The legal responsibility for the child should be vested in the adoptive parents, for example, for ensuring the child attends school.

Guardianship should be transferred to the adoptive parents to provide certainty for first and foremost the child, but also both sets of parents. There should be no uncertainty about who is responsible for the care of the child and who is responsible for their needs, welfare and safety. Children need stability and a consistent home life. The adoptive parents must be financially responsible for the child and its needs.

In terms of citizenship, this might need to be considered on a case by case basis as not all countries allow dual citizenship, while others only allow dual citizenship in certain circumstances. It seems logical that if an adoption takes place in the New Zealand jurisdiction the child would have New Zealand citizenship.

Inheriting property

Currently, adopted people have to be specifically mentioned in a will to inherit property from their birth parents, as they aren't counted as their children. Birth parents also can't inherit from the adopted person in a similar way.

We are not looking at changing the rules for how adopted people inherit property as part of adoption law reform. Te Aka Matua o te Ture | The Law Commission recently reviewed New Zealand's succession law (inheritance, or what happens to property after a person dies). The Government response to the Law Commission report accepts that reforms in succession law is required, but this would be a significant programme of longer term work.

We are interested in your views on what the inheritance rules should be for adopted people.

We believe that the law regarding inheritance between birth parents and their child that was placed for adoption should remain. However, the adopted child should have the same rights to inheritance from their adoptive parents as a biological child of those parents raised in the family. An adopted child should have all the same legal rights in relation to their adoptive parents as a biological child of those parents.

Adopted people's birth certificates

We've suggested that adopted people should have two birth certificates:

- one birth certificate with only their adoptive parents listed, and
- one birth certificate with both their birth and adoptive parents listed.

This approach would mean adopted people can choose which birth certificate to use day-to-day. It recognises that some adopted people might want to keep their adoption status private, and some may not. This flexible approach also recognises that what an adopted person wants on their birth certificate may change as they get older.

We want to hear your views on whether adopted people should have access to two birth certificates.

A birth certificate is a document that sets out the biological and birth parents of a person. It is not possible for a someone to have a true "birth" certificate that lists the adoptive parents, despite long standing practice in this country to provide adoptees with a birth certificate listing their adoptive parents. We fail to see how their can ever be a legal birth certificate that lists people who are not the biological parents of that person.

Birth certificates that list the adoptive parents perpetuate a lie, and this is at the root of some of the trauma that past adoptees suffer. We fail to understand how a document that is a lie has aver been accepted as a legal document and the above proposal to issue two "birth" certificates with different names on seeks to perpetuate a damaging and distressing lie for children who are adopted.

The birth certificate should list the biological birth mother and the biological father (where known). A second certificate that list the adoptive parents as parents and guardians should be provided, but it should not be labelled a birth certificate, because it is not.

The proposal above perpetuates the idea that adopted children have something to hide, that there is something wrong with the manner of their conception and birth and that they have something to be ashamed of. This law reform should be removing the stigma of adoption from the child, not perpetuating it. No matter the reasons for a child being placed for adoption it is not the child's fault or responsibility, and they should never be made to feel lesser, or othered, or as second class citizens because they are adopted.

Changing children's names in adoption

We think that a judge should be able to consider changing an adopted person's surname at the time of the adoption, where they deem it appropriate. Surnames are important to a person's identity and connection to their birth family, family history and whakapapa. This option balances the importance of a person's name, while also recognising that sharing a surname with the adoptive family may give a sense of connection and belonging.

We are looking at two options relating to changing an adopted person's first name. Either:

- first name changes shouldn't be allowed as part of the adoption process; or
- first name changes should be allowed only when it's in the child's best interests.

Preventing a child's first name being changed as part of the adoption process could help to protect their identity. However, flexibility may allow for situations where a change may be in the child's best interests, for example, if the child is named after an abusive family member.

We want to hear your views on the options we are considering for changing children's names in an adoption. Specifically, we want to know if you think an adopted child's first name and surname should be able to be changed and, if so, when.

The decisions around changing a child's name should be made on a case by case basis, and considerations should include the age of the child and the ability of the child to express an opinion and understand the implications of a name change. There may be many complex circumstances and reasons for an adoption and complex interrelationships between the birth parents and adoptive parents which may influence the options and decisions about name changes.

We believe there should be a high degree of flexibility, including options to have double-barrelled names, but in every case the guiding factor should be what is in the best interests of the child.

Changing the name or determining the name of a newborn that is being adopted is very different from an older child that already knows its name and that name has already become part of their identity. In the latter case the decision should be very much guided by the views of the child.

When the views of the child are sought, care should be taken to ensure that the child is enabled to express their views openly and without duress, guilt or shame.

What ongoing contact can adopted children and birth parents have?

Post-adoption contact

We suggest that families should have to think about making a contact agreement before an adoption is finalised. Maintaining contact with birth family and whānau after an adoption can protect an adopted person's best interests, family connections, and reflects the principle of openness. Agreements could set out how the adopted person would stay in contact with their family, and could be referred to and changed over time. We think that family and whānau should be able to be involved in making the agreement, where appropriate.

We've also suggested that the adoptive parents should need to talk to the birth parents about how they can stay in contact if they (and the child) are moving away. It could result in a contact agreement being changed.

We want to hear your views on whether families should have to think about making a contact arrangement before an adoption is finalised. We also want to know if you think adoptive parents should have to consult the birth parents on how contact can be maintained if the adoptive parents and child move away.

We agree that a contact agreement should be worked out long before the adoption is finalised. It is vital that both the birth parent/s and adoptive parent/s have realistic expectations about what ongoing contact between the child and birth parent/s will be. Likewise, in many circumstances family and whānau should be involved so that they too have realistic expectations about contact with and involvement in the child's life.

A contact agreement should be a living, dynamic document that is regularly updated as the child grows and matures, dependent on the needs and best interests of the child. As the child reaches an age where they are old enough to understand and form views on the sort of contact they have with their birth parents and whānau, the child should be involved in the

updating of the contact agreement.

Certainly, the birth parents should be consulted on how to maintain contact if the adoptive parents and adopted child move away from the birth parents. It is important that the child not lose their connection with their culture and identity through physical shifts away from the birth parents and whānau.

Enforceability of contact agreements

We're thinking about whether contact agreements should be enforceable. If they were, people could have the agreement enforced in court if it wasn't being followed. However, enforcing the agreements may be harmful to the child if disputes over contact are escalated to court. The court process could also challenge good-faith relationships.

We want to hear your views on whether you think contact agreements should be enforceable.

The decision whether or not to enforce contact must be assessed on a case by case basis and only in the context of what is in the best interests of the child. All other avenues to reach agreement about contact, and to renegotiate the frequency and form of contact if necessary, should be exhausted before court action is considered.

Post-adoption culture plans

We're also thinking about whether post-adoption culture plans should be required if the adoptive applicants are from a different culture to the child. The plan could form part of the contact agreement. A culture plan would reinforce the child's right to culture. It would also make sure that adoptive parents know the child's cultural needs and record how they intend to maintain the child's connection to their culture.

However, culture plans may be inflexible and not responsive to the changing needs and interests of the child. They might set out unrealistic expectations. There's also no guarantee that the plan would be followed after the adoption.

We want to hear your views on whether you think post-adoption culture plans should be required.

We agree that a culture plan could be formulated at the same time as the contact agreement, and maintaining the child's connection to their culture could be an integral part of their ongoing contact with birth parents and whānau.

One of the issues described by past adoptees is a loss of sense of identity and for many that identity is closely bound with a connection to culture, as well as genetic and familial history. To avoid the sort of trauma that has occurred in the past, a culture plan should be required. The plan, like the contact agreement, could be a living, dynamic document that changes in accordance with the changing needs and views of the child. However, it should not be ignored or abandoned or "put in the too hard basket" just because it may not be convenient for the adoptive parents, or too difficult for them to maintain.

Raising a child is hard at times, and ensuring the child's connection with their identity, and

the culture that is their birthright and heritage, is important in raising a healthy, well adjusted human being. No child should be denied their heritage, birthright and identity just because it no longer suits the adults that chose to adopt them. If potential adoptive parents express reluctance to agree to a culture plan then perhaps more suitable adoptive parents should be found; this should be part of the assessment of suitability to adopt a child.

What support can people access?

We think it's important that the new adoption system provide appropriate support for people impacted by adoption. Everyone impacted by adoption will have different support needs. Common types of adoption support used around the world include:

- Counselling or therapy, such as for birth parents before they place their child for adoption or give their consent to the adoption
- Support groups
- Education (before and after an adoption)
- Reunification services

There are likely other types of support that would be helpful that we haven't listed above.

We want to hear your views on what support should be available for people impacted by an adoption and when it should be available.

We agree that counselling and/or support should be available by all those affected by adoption.

Counselling must be available to the birth parents, especially the birth mother, as early in the process as possible, ideally both before and after the birth of the child (depending on the circumstances of the adoption and the age of the child at the time of adoption), and before and after consent if given.

Some birth parents may need ongoing counselling and/or support, particularly around certain events in the child's life.

Similarly, counselling should be available to the adoptive parents before and after the adoption. Parenting can be hard, and children don't come with a user manual. Adoptive parents who have longed for a child may find the reality doesn't quite meet their expectations. If a child is adopted into a family where there are other children, those children may need counselling or support. Similarly, a child adopted as an older child, not a baby, may need counselling and support to adjust to their new circumstances.

There should not be hard and fast rules about when and how much counselling is available for the birth parents, child and adoptive parents. The needs of all parties, but particularly the child, should be paramount in order to ensure the mental health of both the child and the adults in its life.

Who can access adoption information and when?

Access to adoption information

We've suggested removing age restrictions for accessing adoption information. This means adopted people would be able to apply to access information whenever they're ready. We've also suggested that adopted people can access information on their original birth record automatically, in the same way people who are not adopted can.

We think the law should make it faster and easier for adopted people to access their information. For example, we don't think people should have to undergo counselling when applying for information on an original birth record. We also don't think people should need to provide an original birth certificate to access information held by Oranga Tamariki.

We want to hear your views on whether age restrictions on accessing adoption information should be removed, and whether the law should make it faster and easier for adopted people to access their information.

We agree that age restrictions should be removed and that an adopted person should be able to access all their information at any time. Adopted people should have all the same rights as a non-adopted person and should have access to all the information pertaining to their birth and adoption. There should be no impediments at all, and their ability to access their information should be the same as any other person. They should not have to undergo counselling in order to access their information, although counselling should be available if they need it.

Other people's access to original birth records

Access to pre-adoption records is currently extremely limited. An adopted person's original birth record is one of the exceptions to the general rule of open birth registers. If anyone orders an adopted person's birth certificate, it will only show their post-adoption information. That means the adoptive parents are recorded as if they were their birth parents unless they've chosen to be recorded as adoptive parent.

Options could include having records open by default, limiting access to the adopted person, their parents, and their family and whānau, or allowing anyone to access the records who has a good reason to.

We want to hear your views on who else should be able to access an adopted person's original birth record, other than the adopted person and their birth parents.

Adoptive parents should never be recorded as birth parents as this is a lie and perpetuates the lies, secrecy and stigma surrounding adoption. Adoptive parents should not have a

choice to be recorded as birth parents, only the birth parents should be recorded as birth parents, and adoptive parents only option should be to be recorded as adoptive parents.

The birth records of an adopted person and all their pre-adoption information should be treated the same way as any other person's information is treated.

Information protected by vetoes

We're thinking about whether the current veto system needs to change. The veto system applies to some adoptions that happened before 1986. It allows some people to block others from accessing their identifying information on the original birth record. In many cases, it is birth parents who have vetoes in place which stop adopted people from accessing their original birth record. Vetoes last for 10 years and can be renewed.

The veto system creates tensions between the right to privacy (of the veto holder) and the right to identity and information (of the person seeking the information). Currently, the balance leans towards the rights of veto holder.

In particular, we're looking for feedback on the following options:

- Keeping the current veto system, so people who have one in place can continue to renew them every 10 years indefinitely; or
- Changing the current veto system so that all vetoes have one final renewal available that lasts for 1-2 years. After that time, the veto would end, and the information could be accessed by the other party. People who would experience unwarranted distress by having their veto expire could apply to have the veto extended further.

The second option would change the current balance and prioritise the rights of the person seeking the information, most of whom are adopted people. This would be more consistent with the objectives for reform. However, it would likely cause harm to those who still have a veto, many of whom are likely to be elderly and may be vulnerable.

We want to hear your views on whether the current veto system should continue, or whether it should end but allow people who would experience unwarranted distress to have a further extension.

As always the guiding principle should be the rights and best interests of the child. However, we understand that placing a child for adoption can be a traumatic and difficult option for birth parents and they may have good reason to apply for a veto.

We support the changing the current veto system so that all vetoes have one final renewal available that lasts for 1-2 years. After that time, the veto would end, and the information could be accessed by the other party. People who would experience unwarranted distress by having their veto expire could apply to have the veto extended further. We believe this option provides some protect to those seeking vetoes but achieves better balance in favour of adopted people.

However, we would hope that there were extenuating circumstances when a person applies for a veto and that vetoes are not used in a way that unduly prevents an adopted person from accessing information about their identities and the circumstances of their adoption.

What if things go wrong?

Varying an adoption order

We're thinking about whether the law needs to allow the Court to vary (or change) as it's currently unclear when and why an adoption order might be varied. There may need to be a power to vary an adoption order in case the Court makes a mistake when the order is made. For example, if details are recorded incorrectly on the adoption order.

We want to hear your views on whether there needs to be a power to vary an adoption order.

We support the legislation allowing for adoption orders to be varied but these should be considered a rare event and only done in special circumstances.

Discharging an adoption order

We think there should be changes to when an adoption order can be discharged (or reversed). When an adoption order is discharged, the birth parents return to being the adopted person's legal parents. The law should balance flexibility against the need for an appropriate level of scrutiny.

If the adopted person is a child (depending on what age is agreed for who may be adopted as outlined on page 3), we think that the birth parents or the adoptive parents should be able to apply to reverse the adoption order. If the adopted person is an adult, we think that only they should be able to apply to have the adoption order reversed. We're also thinking about whether 16- and 17-year-olds should be able to apply on their own behalf.

We've suggested changing the test for reversing an adoption order. We think the Court should have to be satisfied that reversing the order would be in the adopted person's interests. We've also suggested expanding the grounds for reversing an order to include where there is mutual consent of the birth and adoptive parents, or if there is an 'irretrievable breakdown' in the adoptive relationship. An order could still be reversed on the grounds of material mistake or misrepresentation.

We don't think that birth or adoptive parents should need to consent (or agree) to an adoption order being reversed. However, we do think both sets of parents should be able to share their views with the Court, if they wish.

If the adopted person is a child, the Court will need to consider who will care for the child if the birth parents don't want to. We've suggested that the Court should also consider whether other orders under the Care of Children Act or the Oranga Tamariki Act need to be made.

We want to hear your views on who can apply to reverse an adoption order when the adopted person is a child or adult, and in what circumstances an adoption order can be reversed. We also want to hear your views on whether the birth or adoptive parents should be required to consent to an adoption order for an adult being reversed, and whether the Court should have to consider making other care orders.

We agree that adoption orders should be able to be reversed and that the best interests of the child are, as always, paramount. We believe that the views of the child, if they are of an age to understand the implications and can articulate a view, should be considered and taken into account.

Over the course of a person's life from adoption to 18 years, many things could change in the lives and circumstances of birth parents, adoptive parents and adopted child. There should be the flexibility to allow for reversals of an adoption order considered on a case by case basis and with consideration of the views of all parties.

Given our previously expressed concerns about the inadequacies and dysfunction within Oranga tamariki, we don't believe that Oranga Tamariki should automatically have a role in the reversal of adoption orders or consideration of other care options. It might be appropriate to consider the views of an independent dedicated social worker representing the child in an application to reverse the adoption order.

Reversal of an adoption order has implications beyond the guardianship of the child, including financial responsibility, and inheritance issues. This is clearly not an option that should be undertaken lightly and may cause excessive distress to one or more parties particularly if there is disagreement between the birth and adoptive parents regarding whether or not reversing the order is desirable.

What happens in overseas and intercountry adoptions?

Recognition of overseas and intercountry adoptions

We think we should continue to recognise overseas adoptions so that families who move to New Zealand can have their relationships recognised. We also think there's still a place for intercountry adoption in New Zealand, but we need to ensure children's rights are protected.

We have suggested that the law could clarify the two pathways using the following definitions:

- Overseas adoptions are ones where both the child and adoptive applicant(s) don't live in New Zealand.
- Intercountry adoptions are ones where the adoptive applicant(s) live in New Zealand

and the child lives overseas.

We haven't yet identified specific options for what the processes for each pathway should look like. However, we think there will need to be:

- criteria for when New Zealand recognises an overseas adoption; and
- new protections for intercountry adoptions to make sure they are in the child's best interests and match more closely to the Hague Convention adoption process.

Once the new pathway is set up, we think it's important for overseas adoptions to continue to be recognised through an administrative process rather than through the Court. This would mean families moving to New Zealand won't need to go through an extra step to have the adoption recognised.

We want to hear your views on the options we're considering relating to overseas and intercountry adoptions, and what the new pathways should look like.

We don't feel adequately placed to comment on the processes for new pathways for intercountry adoption, but recommend that adoptees and adoptive families who have been party to intercountry adoption should be widely consulted on this.

We agree that the new pathways should match more closely to the Hague Convention adoption process, and agree that overseas adoptions should not have to go through the court again in New Zealand, assuming that the process of adoption overseas complies with our child-centred adoption principles.

Hague Convention intercountry adoptions

We think it's appropriate to continue to allow Hague Convention intercountry adoptions. The Hague Convention reflects international best practice and during engagement we heard support for the process. People agreed that all children adopted under the Hague Convention should have the same citizenship rights, no matter where they're adopted. We're currently looking at how to ensure this happens.

We want to hear your views on whether we should continue to facilitate intercountry adoptions via the established Hague Convention process.

We agree that we should continue to facilitate intercountry adoptions via the established Hague Convention process and value its child-centred focus.