

Hon Kris Faafoi
Minister of Justice

Proactive release – Government response to the Social Services and Community Committee report on matters related to forced adoptions

Date of issue: 29 April 2021

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Government response to the Social Services and Community Committee report on matters related to forced adoption Cabinet paper Office of the Minister of Justice Lodged: 15 February 2021	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
2	Minute of Decision: Government Response to the Report of the Social Services and Community Committee on Matters Related to Forced Adoption Cabinet minute Cabinet Office Meeting date: 10 February 2021	Released in full

In-Confidence

Office of the Minister of Justice

Chair, Cabinet Business Committee

Government response to the Social Services and Community Committee report on matters related to forced adoption

Purpose

- 1 This paper seeks approval of the Government's response to the report of the Social Services and Community Committee, *Briefing on matters related to forced adoption*.

The Social Services and Community Committee delivered a briefing on matters related to forced adoptions in New Zealand

- 2 In August 2019, the Social Services and Community Committee ('the Select Committee') initiated a briefing on matters related to forced adoptions. It heard submissions from Maggie Wilkinson, Barbara Sumner and Christine Hamilton who requested an inquiry into forced adoption practices in New Zealand be undertaken. The Select Committee heard evidence regarding the submitters' experience of past adoption practices from the 1950s through to the 1980s.
- 3 The Select Committee delivered its report on the briefing to Parliament on 7 August 2020. The Select Committee made one recommendation. This was "*that the Government consider:*
 - 3.1 *the concerns that exist about the practice of forced adoption in New Zealand from the 1950s to the 1980s*
 - 3.2 *the actions it could take in response to these concerns.*"
- 4 The Select Committee did not specifically recommend any actions be taken. However, the report noted a range of remedies suggested by submitters as desired outcomes of an inquiry. Suggested remedies included an apology detailing and acknowledging all aspects of forced adoption, funding for support services to respond to the trauma of those who experienced forced adoption, and adoption law reform. Submitters' comments on law reform focused on the need for adoption law to reflect the current values of society, meet human rights standards, and protect the adopted person's right to identity.

There have been ongoing calls for an inquiry into past adoption practices

- 5 There have been calls that an inquiry into past adoption practices be conducted for some time. In 1996 the Commerce Committee considering the Adoption Amendment Bill (No 2) heard from submitters who had been negatively impacted by adoption. In its report, the Commerce Committee strongly recommended that an urgent inquiry be undertaken into adoption practices in New Zealand over the past 50 years. Successive governments have not initiated such an inquiry. To date, there have been no official findings regarding past forced adoption practices.
- 6 In 2016, Maggie Wilkinson petitioned the House of Representatives to undertake a broad and full inquiry into the practice of forced adoption in New Zealand during the 1950s to the 1980s. The Social Services Committee report on the petition in 2017 did

not recommend an inquiry be undertaken. However, the Labour Party and Green Party minority views supported a review into forced adoption.

- 7 In initiating the current briefing, the Select Committee noted that it aimed to address the continued calls for an inquiry, as well as scoping what outcomes submitters hoped an inquiry into forced adoption would achieve. It also planned to consider any changes that had occurred regarding this issue since Maggie Wilkinson's petition in 2016.

I recommend that the Government response reference two areas of current Government work

- 8 I seek Cabinet approval of the attached Government response to the Select Committee's report.
- 9 Two areas of current Government work correspond to the concerns presented by submitters and their suggested remedies. I propose the response reference the work of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions ('the Royal Commission'), as well as referring to the Government's upcoming adoption law reform work.

The Royal Commission's mandate includes adoption placements

- 10 The primary outcome sought by submitters was a broad and full inquiry into forced adoption practices in New Zealand from the 1950s to the 1980s. Submitters considered that such an inquiry would provide evidence of the practices that occurred and would be sufficient to underpin an apology from the Government.
- 11 In 2018, the Government set up the Royal Commission to respond to calls for investigation into a broad range of historic abuse that vulnerable individuals suffered in the care of the state and in faith-based institutions between 1950 and 1999. The Inquiry delivered its initial report at the end of 2020, and will deliver a final report in January 2023.
- 12 The Royal Commission's terms of reference define "state care" as including adoption placements. The reference to adoption placements was a late addition to the terms of reference. The Government at the time noted that those placements may have involved discrimination, arbitrary decisions, or otherwise unreasonable conduct by officials.
- 13 At this stage, the Royal Commission has not yet begun an inquiry specifically considering past adoption practices. s9(2)(f)(iv)
- 14 The Royal Commission also noted that adoption issues can arise during the course of other investigations and hearings. This has been the case in the Royal Commission's public hearings, which have included evidence on past adoption practices including evidence related to forced adoption from Maggie Wilkinson and other submitters. The Royal Commission's interim report, released in December 2020, notes the experiences of young, unmarried mothers who faced extreme pressure to adopt out their babies and were forced to give up their babies at birth.
- 15 I expect that the Royal Commission's consideration of adoption placements will provide a further opportunity for the submitters and other survivors to share their

experiences of harm connected to past adoption practices. The circumstances in which children were placed for adoption are likely to be as relevant to the Royal Commission's inquiry as the placements themselves.

- 16 It is appropriate that an inquiry into past adoption practice be conducted by the Royal Commission. The Royal Commission is an already established, formal process that allows for thorough investigation and takes into account the experiences of those impacted. Importantly, its process provides conclusive reports outlining its findings on the nature and extent of abuse in care. Those findings would provide a sound basis for considering an apology to those impacted by past adoption practices and to consider what redress might be appropriate.
- 17 As part of the Royal Commission process, submitters are also able to access mental health support and counselling before, during and after reporting to the Commission. The Royal Commission provides funding for up to six sessions of counselling. This will provide some support to the submitters and others who wish to share their experiences with the Royal Commission.
- 18 I consider that it is most appropriate to wait for findings regarding past adoption practices from the Royal Commission before making decisions about the appropriateness of an apology or redress for past adoption practices. Progressing those actions prior to receiving the Commission's findings may risk pre-empting its findings and limiting the options for redress that could be offered if findings are made. Should the Royal Commission not make findings regarding past adoption practices in its final report, including forced adoption, I will consider alternative responses at the appropriate time.

Upcoming adoption law reform will address some of the submitters' concerns

- 19 Submitters to the Select Committee also strongly indicated that they hoped an outcome of an inquiry would be the repeal of existing adoption laws. Submitters suggested the Adoption Act 1955 should be replaced with legislation that reflects the current attitudes and values of society and that meets our human rights obligations.
- 20 I propose that the Government response reference my intention to progress adoption law reform this term. I also propose that the Government response outline my agreed objectives of reform as outlined at paragraph 22 below.
- 21 The Adoption Act 1955 has not been substantially updated since its enactment. It no longer accurately represents New Zealand society, how children move across international borders, or modern adoption practices. Current adoption laws place children's safety and welfare at risk, are fragmented, and perpetuate discriminatory practices. New Zealand has a range of international obligations that relate to adoption and current settings may not fully align with those.
- 22 I have directed the Ministry of Justice to progress adoption law reform on the basis of the following key objectives:
 - 22.1 To modernise and consolidate New Zealand's adoption laws so as to reflect contemporary adoption processes that meet societal needs and expectations and promote consistency with principles in existing child-centred legislation;
 - 22.2 To ensure that children's rights are at the heart of New Zealand's adoption laws and practice, and that children's rights, best interests and welfare are safeguarded and promoted throughout the adoption process, including the right to identity and access to information;

- 22.3 To ensure that adoption laws and practice meet our obligations under Te Tiriti o Waitangi and reflect culturally appropriate concepts and principles, in particular tikanga Māori, where applicable;
- 22.4 To ensure appropriate support and information is available to those who require it throughout the adoption process and following an adoption order being made, including access to adoption information;
- 22.5 To simplify and improve the timeliness, cost and efficiency of adoption processes where a child is born by surrogacy, whilst ensuring the rights and interests of children are upheld; and,
- 22.6 To ensure New Zealand meets all of its relevant international obligations, particularly those in the UN Convention on the Rights of the Child and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.
- 23 Reform on the basis of these objectives will help to ensure that our laws apply best practice in safeguarding the rights, best interests and welfare of children. It will also provide the opportunity to address many of the issues raised by the submitters to the Select Committee, including ensuring that the rights of birth mothers are upheld.
- 24 Surrogacy issues are often raised when discussing adoption in New Zealand, as adoption is currently the only legal mechanism for transferring legal parentage to the intending parents. In 2020, the previous Minister of Justice referred a review of surrogacy law to the Law Commission, with a focus on surrogacy arrangements and legal parenthood. Given the separate surrogacy review underway, adoption law reform will focus only on examining the adoption process where a child is born by surrogacy.
- 25 Ministry of Justice officials are progressing policy work on adoption law reform and I will bring a paper to Cabinet in mid-2021 seeking approval to begin public consultation on options for reform. I consider that consultation should include both public and targeted engagement. This will ensure that those directly impacted by adoption (such as birth mothers), as well as the general public, will be able to share their views on issues with current adoption laws and options for amending the law.
- 26 The engagement opportunities offered within the reform process will offer submitters recourse to input into the formation of new adoption legislation. I have instructed officials to offer to meet with the submitters to hear their views on options for reforming New Zealand's adoption laws.

Timing of the Government response

- 27 The Government response is due on 15 February 2021 and must be tabled in the House. Subject to Cabinet approval, I will table the response directly following the Cabinet meeting on 15 February.

Consultation

- 28 The following agencies were consulted on this paper: Crown Law Office, Departments of Internal Affairs and Prime Minister and Cabinet, Inland Revenue Department, Ministries of Business, Innovation and Employment, Education, Foreign Affairs and Trade, Health, Social Development, Ministries for Pacific Peoples, Women, New Zealand Customs Service, New Zealand Police, Office for Disability Issues, Oranga Tamariki – Ministry for Children, Te Arawhiti, Te Kawa Mataaho Public Service Commission, Te Puni Kōkiri and The Treasury.

Financial Implications

- 29 The Government response has no financial implications. Any financial implications relating to the work of the Royal Commission or adoption law reform will be considered by Cabinet in due course.

Bill of Rights Implications

- 30 I consider that the proposed Government response is consistent with the rights affirmed in the New Zealand Bill of Rights Act 1990.

Te Tiriti o Waitangi implications

- 31 The Government response to the Select Committee's report does not have any direct Te Tiriti o Waitangi implications. However, past adoption practices have been in tension with the Government's obligations under Te Tiriti o Waitangi. Submitters' concerns regarding the right to identity of adopted persons are reflective of objections to the lack of consideration current adoption law gives to whakapapa ties and the need of Māori children to be brought up with a full understanding of their history and identity.
- 32 One of the objectives for adoption law reform is to ensure that adoption laws and practice meet our obligations under Te Tiriti o Waitangi and reflect culturally appropriate concepts and principles, in particular tikanga Māori, where applicable. Targeted consultation with Māori whānau, hapū and iwi will be carried out ensure adoption reform will effectively serve the best interests of these groups and will uphold the Crown's commitments under Te Tiriti o Waitangi.
- 33 Any Te Tiriti o Waitangi implications that arise as part of adoption reform will be considered and addressed during the policy process. Substantive analysis will be provided when I return to Cabinet with proposals for change.

Gender implications

- 34 Past adoption practice has had significant impacts on adopted children, birth mothers and birth fathers. The Government's encouragement to those affected by past adoption practices to engage with the Royal Commission process applies equally to all those affected.
- 35 Adoption law reform will consider the gender implications of our adoption laws, including how the rights of adopted children, birth mothers and birth fathers can best be safeguarded in adoption cases.

Disability perspective

- 36 Current adoption laws have been found to discriminate against disabled people and it is likely that past adoption practices meant that disabled mothers and children were adversely affected by experiences similar to those of the submitters to the Select Committee. I anticipate that the experiences of disabled people with regard to adoption placements will also be considered as part of the Royal Commission's work.
- 37 Adoption law reform will provide an opportunity to ensure New Zealand upholds the rights of disabled children under the United Nations Convention on the Rights of People with Disabilities. The work will consider how disabled children and parents, particularly birth mothers, rights can be safeguarded in adoption cases, and whether appropriate support systems are in place.

Proactive release

- 38 This paper will be released, with any necessary redactions, in line with the Government's policy on proactive release. Publicity related to the response will be managed by my office.
- 39 I intend to release a media statement announcing that I am progressing adoption law reform. Media enquiries will also be managed by my office.

Recommendations

The Minister of Justice recommends that the Committee:

- 1 **Note** that the Social Services and Community Committee presented its report, "*Briefing on matters related to forced adoptions*", to the House of Representatives on 7 August 2020 and a Government response is due to be tabled in the House by 15 February 2021;
- 2 **Note** that the Select Committee recommended that the Government consider:
 - 2.1 the concerns that exist about the practice of forced adoption in New Zealand from the 1950s to the 1980s;
 - 2.2 the actions it could take in response to these concerns;
- 3 **Note** that the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions is mandated to consider past adoption practices from 1950 to 1999;
- 4 **Note** that, should the Royal Commission not make findings in relation to past adoption practices, including forced adoptions, in its final report in January 2023, I will consider alternative appropriate responses at that time;
- 5 **Note** that I will publicly announce in February 2021 that I am progressing work on adoption law reform this term, and will return to Cabinet to seek agreement to begin public consultation in mid-2021;
- 6 **Approve** the attached Government response;
- 7 **Invite** the Minister of Justice to present this response in the House, in accordance with Standing Order 256.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice



Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Government Response to the Report of the Social Services and Community Committee on Matters Related to Forced Adoption

Portfolio Justice

On 10 February 2021, the Cabinet Business Committee:

- 1 **noted** that the Minister of Justice has commissioned advice to progress adoption law reform on the basis of the following objectives:
 - 1.1 to modernise and consolidate New Zealand's adoption laws so as to reflect contemporary adoption processes that meet societal needs and expectations and promote consistency with principles in existing child-centred legislation;
 - 1.2 to ensure that children's rights are at the heart of New Zealand's adoption laws and practice, and that children's rights, best interests and welfare are safeguarded and promoted throughout the adoption process, including the right to identity and access to information;
 - 1.3 to ensure that adoption laws and practice meet the government's obligations under Te Tiriti o Waitangi and reflect culturally appropriate concepts and principles, in particular tikanga Māori, where applicable;
 - 1.4 to ensure appropriate support and information is available to those who require it throughout the adoption process and following an adoption order being made, including access to adoption information;
 - 1.5 to simplify and improve the timeliness, cost and efficiency of adoption processes where a child is born by surrogacy, while ensuring the rights and interests of children are upheld;
 - 1.6 to ensure New Zealand meets all of its relevant international obligations, particularly those in the *United Nations Convention on the Rights of the Child* and the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*;
- 2 **noted** that on 7 August 2020, the Social Services and Community Committee presented its report to the House of Representatives entitled *Briefing on Matters Related to Forced Adoptions* (the report);

- 3 **noted** that the Social Services and Community Committee recommended that the government consider:
- 3.1 the concerns that exist about the practice of forced adoption in New Zealand from the 1950s to the 1980s;
- 3.2 the actions it could take in response to those concerns;
- 4 **noted** that the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) is mandated to consider past adoption practices from 1950 to 1999;
- 5 **noted** that, should the Royal Commission not make findings in relation to past adoption practices, including forced adoptions, in its final report in January 2023, the Minister of Justice will consider alternative appropriate responses at that time;
- 6 **noted** that the Minister of Justice intends to publicly announce in February 2021 that he is progressing work on adoption law reform this parliamentary term, and will report back to Cabinet to seek agreement to begin public consultation in mid-2021;
- 7 **approved** the government response to the report, attached to the paper under CBC-21-SUB-0018, subject to any appropriate amendments as discussed at the meeting;
- 8 **noted** that the government response must be presented to the House of Representatives by 15 February 2021;
- 9 **invited** the Minister of Justice to present the government response to the House of Representatives in accordance with Standing Order 256.

Janine Harvey
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Michael Wood

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Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet