

18pt

Adoption in Aotearoa New Zealand: Summary document

Ministry of Justice
Tāhū o te Ture



Ministry of Justice | Tāhū o te Ture

New Zealand Government

This large format text is produced under Section 69 of the NZ Copyright (Marrakesh Treaty Implementation) Amendment Act 2019. It is for your own personal use and cannot be shared with anyone else. The author and publisher reserve the right to take legal action if the Act is breached. No unauthorised copying is permitted.

Produced 2021 by Accessible Formats Service,
Blind Low Vision NZ,
Auckland

Total print pages: 20

Total large print pages: 43

Although all reasonable steps have been taken to ensure the accuracy of the information contained in this document, Te Tāhū o te Ture—Ministry of Justice disclaims any and all responsibility for any inaccuracy, error, omission, or any other kind of inadequacy, deficiency, or flaw in, or in relation to, the information; and fully excludes any and all liability of any kind to any person or entity that chooses to rely upon the information.

Additional Publishing Information

This large print edition is a transcription of the following print edition:

Ministry of Justice

Tāhū o te Ture

New Zealand Government

ISBN 978-0-478-32495-2

Published by the Ministry of Justice

June 2021 © Crown Copyright

Ministry of Justice

The Justice Centre, 19 Aitken Street

SX10088, Wellington

New Zealand

T +64 4 918 8800

F +64 4 918 8820

E info@justice.govt.nz

W www.justice.govt.nz

Notes for the Large Print Reader

Print page numbers are indicated as:

Page 1

Main text is in Arial typeface, 18 point.

Headings are indicated as:

Heading 1

Heading 2

Heading 3

Heading 4

Omissions and alterations

Transcriber's notes are indicated with **[TN]** and are in a separate box where possible.

The URLs (website addresses) shown as links in the print edition are given in full.

Contents

	Print pages	Large print page
We want to hear from you	–	1
How to have your say	–	1
Closing date to share your views	–	2
Privacy and Official Information	–	2
Introduction	1	3
Objectives of reviewing adoption law in Aotearoa	3	6
What is adoption?	4	8
International law	4	9
The wider system	4	10
Te Tiriti o Waitangi— the Treaty of Waitangi	5	11
Purpose of adoption	5	11
Who is involved in adoption?	6	13
Child's rights in the adoption process	6	13
Birth parents	6	14
Who can adopt?	7	15

	Print pages	Large print page
Birth family and whānau	7	16
Government, the Court and accredited bodies	8	17
Culture and adoption	9	20
Whāngai	9	21
Customary adoptions	10	22
How does the adoption process work?	11	23
Overseas and intercountry adoptions	11	23
Domestic adoptions in Aotearoa	13	28
Impacts of adoption	17	36
Surrogacy and the adoption process	19	40

We want to hear from you

We want to hear your views on current adoption laws and your ideas for what adoption laws could look like in the future. Your views will be used to help us develop adoption policy and proposals for law change.

How to have your say

This summary document outlines the full discussion document on current adoption law and practice.

It highlights the issues with keeping the laws as they are, and asks for your views on options for how the law could be changed. A copy of the full discussion document can also be found on the Adoption Law Reform webpage:

www.justice.govt.nz/adoption-law-reform/.

Web: You can share your views online by completing the submission form available at

<https://consultations.justice.govt.nz/policy/adoption-law-reform>

Email: You can also write your own submission and email it to adoptionlaw@justice.govt.nz or post it to:

Mail: Adoption Law Reform
Ministry of Justice
Free Post 113
PO Box 180
Wellington 6140

If you have any **questions** about this summary document or the Adoption Law Reform project, please contact adoptionlaw@justice.govt.nz

Translated and accessible versions of this document, including a Te Reo Māori version, are available on the Adoption Law Reform webpage above.

Closing date to share your views

The closing date for all submissions is 5pm Tuesday, 31 August 2021. Submissions received after this time will be considered on a case-by-case basis.

Privacy and Official Information

Please note that your submission may be subject to a request to te Tāhū o te Ture—Ministry of Justice for information under the Official Information Act 1982.

Personal details can be withheld under the Act, including your name and address. If you do not want any information you provide to be released, please state this clearly and explain why. For example, you may wish for some information to be kept confidential because it is sensitive personal information. Te Tāhū o te Ture—Ministry of Justice will take your views into account when responding to such requests.

The Privacy Act 2020 governs how the Ministry collects, holds, uses, and shares personal information about you

and the information you provide. You have the right to be given and correct this personal information.

Te Tāhū o te Ture—Ministry of Justice's full privacy policy can be found here:

https://consultations.justice.govt.nz/privacy_policy/

Introduction

Adoption is where a child is raised by, and becomes the legal child of, a person or people other than their birth parents. Adoptions reached their highest number in Aotearoa New Zealand in the 1970s, with nearly 4,000 children adopted each year. The number of adoptions in Aotearoa has reduced over time, with only 125 adoptions granted by the New Zealand Family Court in 2020.

Aotearoa New Zealand's main adoption law, the Adoption Act 1955, is now over 65 years old. The law no longer accurately reflects Aotearoa society, modern adoption practices, and does not place children's rights at its centre. Adoption laws are now used for reasons that weren't considered at the time they came into force. For example, adoption is now used to create a full legal relationship between intending parents and children born by surrogacy (where a woman agrees to give birth to a child that is then given to another person/people who will be the child's parent(s)).

Overseas and intercountry adoptions make up the majority of adoptions made and recognised in Aotearoa (in addition to the 125 adoptions made by the New Zealand Family Court last year). This includes adoptions made by countries that are Hague Convention Contracting States and those that are not. Overseas adoptions made in Pacific Island countries are those most commonly recognised in Aotearoa. In some cases, recognising overseas adoptions has raised serious child protection risks as other countries' laws don't match Aotearoa New Zealand's approach to child safety and wellbeing.

Adoption can have significant and lifelong effects on everyone involved, especially for the children who are adopted. It can affect them in ways that many people see as essential to their personal identity, such as their culture and language. In particular, tamariki Māori adopted into non-Māori whānau can become disconnected from their culture and find it hard to connect to their whakapapa and whenua. This experience of cultural disconnection can be passed through to the next generations.

Changes to our understanding of best practice, and the impacts of adoption, have influenced how we now approach adoption. Most adoptions these days are "open", where children often have an ongoing relationship with their birth parents, family and whānau.

We're reviewing our current adoption laws so we can look forward and create adoption law that is safe and supportive for everyone involved in an adoption. We

propose placing children's rights at the centre of the new law and ensuring it better supports and considers the needs, including cultural needs, of everyone involved.

We'll consider whether adoption law needs to legally recognise whāngai arrangements (where a child is cared for by members of the wider whānau). We'll also look at ways to improve the adoption process where a child is born by surrogacy.

There have been calls to change Aotearoa New Zealand's adoption laws for a long time. We acknowledge the time and effort adoption reform advocates have dedicated over many years to bring about change. We also thank those who have been involved when previous governments have considered adoption law reform. The hard work of those involved helps us to reflect on the past and guide the development of adoption law and policy today.

Page 2

This summary document outlines Aotearoa New Zealand's adoption laws and provides an overview of some of the issues with the current law. This is a summary of the discussion document, **Adoption in Aotearoa New Zealand**. The discussion document provides more detail, including some ideas on how the law could be changed. You can find a copy of the full discussion document on the Adoption Law Reform webpage: www.justice.govt.nz/adoption-law-reform

We want to hear your views on what adoption law should look like and how it can better reflect modern Aotearoa.

Objectives of reviewing adoption law in Aotearoa

The following objectives have been created to help to shape the development of adoption law in Aotearoa. They will be used to guide and consider suggestions for reform.

- To modernise and consolidate Aotearoa New Zealand's adoption laws to reflect contemporary adoption processes, meet societal needs and expectations, and promote consistency with principles in child-centred legislation.
- To ensure that children's rights are at the heart of Aotearoa 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.
- 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.
- To ensure appropriate support and information is available to those who require it throughout the adoption

process and following an adoption being finalised, including information about past adoptions.

- To improve the timeliness, cost and efficiency of adoption processes where a child is born by surrogacy, whilst ensuring the rights and interests of those children are upheld.
- To ensure Aotearoa 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.

What is adoption?

Aotearoa New Zealand's adoption laws are set out in three Acts. All adoptions in Aotearoa occur within this framework, but there is some flexibility in how the law is applied in practice.

Adoption Act 1955 sets out most of Aotearoa New Zealand's law on domestic adoption, with some international elements.

www.legislation.govt.nz/act/public/1955/0093/latest/DLM292661.html

Adult Adoption Information Act 1985 sets out the rules on how people who have been adopted and birth parents can access adoption information.

www.legislation.govt.nz/act/public/1985/0127/latest/whole.html

Adoption (Intercountry) Act 1997 sets out the law on some adoptions where the child and the adoptive applicants live in two different countries. It gives effect to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ("the Hague Convention").

www.legislation.govt.nz/act/public/1997/0109/latest/DLM422494.html

The law provides for three types of adoptions:

- Domestic adoptions, where both the child and the adoptive parents live in Aotearoa.
- Overseas adoptions, where both the child and the adoptive applicants live overseas.
- Intercountry adoptions, where the child and the adoptive applicants live in two different countries. Intercountry adoptions can be made under the Hague Convention, or outside of that process.

International law

There are a number of international agreements that influence and form part of Aotearoa New Zealand's adoption laws. These include, but are not limited to, the:

- United Nations Convention on the Rights of the Child ("the Children's Convention")
www.ohchr.org/en/professionalinterest/pages/crc.aspx
- Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption
www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption
- United Nations Declaration on the Rights of Indigenous Peoples
www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html
- United Nations Convention on the Rights of Persons with Disabilities.

www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html

The Children's Convention defines a child as a person under 18 years old. This Convention is particularly important in child-related law as it sets out the wide-ranging rights children have.

The wider system

Adoption is one type of legal arrangement for children to be looked after in Aotearoa. It is at one end of a range of options for alternative ways a child could be cared for, as it has wide-reaching and permanent legal implications.

Page 5

The Care of Children Act 2004 and the Oranga Tamariki Act 1989 provide some examples of other types of care of children arrangements available, including different types of guardianship and parenting orders. Information on different care arrangements can be found on the below webpages:

- Parenting and guardianship on te Tāhū o te Ture—Ministry of Justice website:
www.justice.govt.nz/family/care-of-children/parenting-and-guardianship/
- Types of caregiving on the Oranga Tamariki—Ministry for Children website:
www.orangatamariki.govt.nz/caregiving/types-of-caregiving/

Te Tiriti o Waitangi— the Treaty of Waitangi

Te Tiriti o Waitangi—the Treaty of Waitangi is a founding constitutional document in Aotearoa. Te Tiriti sets out and guides the relationship between Māori and the Crown. Te Tiriti provides further context for considering the suitability of Aotearoa New Zealand's current adoption laws. Any changes to adoption laws must consider te Tiriti and how those changes may affect Māori.

We want to hear how you think the Crown could meet its partnership obligations to Māori under te Tiriti in regard to adoption law.

Purpose of adoption

The current law doesn't say what adoption is or when it should be used. This can make it unclear when an adoption should happen. Adoptions have been used for different reasons, including to:

- give a child a permanent family and whānau
- ensure a child who, for whatever reason, can't be cared for by their parents can be raised in a stable and secure whānau environment
- ensure a child can inherit property belonging to the adoptive family and whānau
- provide a child for a couple who, for whatever reason, can't give birth to their own child

- legally recognise a child's connection to a step-parent or foster parent
- transfer the rights to be a child's parents from surrogate parents to the intending parents under a surrogacy arrangement
- give immigration benefits to a child or bring a child out of poverty in the developing world into the opportunities and advantages of Aotearoa life
- allow families and whānau to be reunited with each other.

We want to hear your views on whether the law should give a definition of what adoption is, and what you think the purpose of adoption should be. Further details, including options for change, and more specific questions on the purpose of adoption can be found on page 11 of the discussion document.

Who is involved in adoption?

Adoption is often described as a "triangle" of relationships between the:

- **child** who is placed for adoption
- **birth parents** who the child is born to and who have the legal rights and responsibilities toward the child at birth
- **adoptive parents** who get the legal rights and responsibilities toward the child once the adoption is made.

This triangle reflects the current law. It doesn't acknowledge the child's birth family and whānau, who also often play in an important role in their life, particularly in Māori and Pacific peoples' culture. The government, the Court and accredited bodies (organisations approved to provide some intercountry adoption services) also have roles in the adoption process in Aotearoa.

Child's rights in the adoption process

In Aotearoa, children and young people can be adopted up until the age of 20 years. This means that 18-and 19-year olds, who are generally able to live independently, can be

adopted. Other family laws and international agreements generally say a child is a person under 18 years old.

Sometimes, people aged 20 years and over may wish to be adopted. For example, adoption could provide a person with a sense of connection with the people who cared for them. In some cases, adult adoption could also provide practical support, for example, where a person needs lifelong care and support.

Our adoption laws don't explicitly provide for children's rights. For example, a child's best interests don't have to be a primary consideration in decisions affecting them. The laws also don't ensure that children can participate in the adoption process. This doesn't fit with te ao Māori (Māori worldview) where tamariki (children) are viewed as taonga (treasure) whose wellbeing should be nurtured. Adoptions can also happen without a child's agreement.

We want to hear your views on who should be able to be adopted. We also want to hear your ideas on how children's rights, particularly the right to participate, could be better included in adoption law. Further details, including options for change and more specific questions on the child's rights in the adoption process, can be found on page 14 of the discussion document.

Birth parents

The law says a person's legal parents are their mother (who gave birth to them) and their father (who is or was the mother's husband during the pregnancy or at birth and/or

is named on the birth certificate). Some birth parents will decide to place their child for adoption, which is a big decision to make.

Once the birth parents agree to the adoption, their role in the adoption process ends. They don't have the right to attend the adoption hearing, or to talk to the judge deciding the adoption application. There is also limited information and support services available for birth parents before, during and after an adoption.

We want to hear your views on what the birth parents' role should be in the adoption process. Further details, including options for change and more specific questions on the birth parents' role, can be found at page 17 of the discussion document.

Who can adopt?

Our adoption laws say who can apply to adopt (or who is "eligible" to adopt). There are rules relating to the applicant's marriage status, age, and sex:

- a person can apply to adopt alone, or two spouses may apply to adopt together
- a person wanting to adopt must be at least 25 years old, and at least 20 years older than the child being adopted. If two spouses are adopting, at least one person must be 25 years old and the other must be at least 20 years old

- a male may not apply alone to adopt a female child, unless the male is also the child's father or there are exceptional circumstances.

These rules don't necessarily show how suitable an applicant would be to raise a child. They also don't reflect modern family and whānau structures or acknowledge concepts of gender identity and gender fluidity. The Human Rights Review Tribunal has said the rules are discriminatory on the basis of marital status, age and gender (1). Step-parent and relative adoptions are able to take place under Aotearoa New Zealand's law.

We want to hear your views on whether there should be changes to who is eligible to adopt a child. If you think there should be changes, we want to hear what your ideas are. Further detail, including options for change and more specific questions on who can adopt, can be found on page 18 of the discussion document.

Birth family and whānau

Birth family members, whānau, hapū and iwi often play an important role in the life of a child. Māori and Pacific peoples in particular place importance on wider family and whānau involvement in the life of children. Decisions made collectively that involve family and whānau can ensure a

1 **Adoption Action Inc v Attorney-General** [2016] NZHRRT 9.

range of viewpoints are considered when deciding what type of care arrangement might be in a child's best interests.

Adoption laws currently don't recognise the important role of family and whānau, and there are no requirements to involve them in a decision to place a child for adoption. Once an adoption order is made, the law takes away a child's legal links to their birth family and whānau. Wider family and whānau have very few opportunities to be involved during the adoption process.

Page 8

We want to hear your views on whether wider family and whānau should have a role in the adoption process. If you think they should have a role, we want to hear your ideas on how they could be involved. Further details, including options for change and more specific questions on the birth family and whānau, can be found on page 21 of the discussion document.

Government, the Court and accredited bodies

Oranga Tamariki—Ministry for Children

Oranga Tamariki is involved in most adoptions within Aotearoa. It works with birth parents and potential adoptive parents. Once an adoption application gets to the Court, Oranga Tamariki social workers usually write the social

worker report, which provides information on the application and the adoptive applicants' suitability to adopt. Oranga Tamariki is also the decision-maker (also known as the "Central Authority") in Aotearoa for intercountry adoptions made under the Hague Convention.

The Court

The Family Court is the decision-maker in the adoption process under the Adoption Act and is responsible for making orders for domestic (within Aotearoa) and some intercountry adoptions.

Other government departments

Other government departments, such as the Department of Internal Affairs and Immigration New Zealand, often play a role in the adoption process. Te Tāhū o te Ture—the Ministry of Justice looks after the three pieces of adoption law and gives advice to the government on adoption law change.

Accredited bodies

For Hague Convention intercountry adoptions, non-government organisations called "accredited bodies" are given powers to carry out certain functions. Accredited bodies can carry out only one of two functions:

- education and assessments, or
- facilitation and finalisation of adoptions.

There are no accredited bodies for domestic adoptions.

We want to hear your views on the government, the Court and accredited bodies' roles in the adoption process. Further details and more specific questions on the role of government, the Court and accredited bodies can be found on page 24 of the discussion document.

Culture and adoption

Aotearoa is culturally and ethnically diverse. A person's culture can be a big part of their identity and can give people feelings of belonging and security. For Māori, whanaungatanga and the knowledge of whakapapa are particularly important to their identity.

Aotearoa New Zealand's current adoption laws are centred around Western understandings of adoption and family structures, and don't reflect other cultural values or concepts. The law also doesn't consider the cultural needs of those involved in the adoption process.

Once an adoption order is made, the adoptive parents are responsible for supporting a child to maintain, understand, and foster their cultural heritage, language and identity. Sometimes, adoptive parents may want to meet these cultural needs, but may not know how. In other cases, adoptive parents may overlook, or not fully understand, the importance of a child's cultural heritage and identity.

We want to know whether you think there should be changes to how a child's culture is considered in the adoption process, and how Aotearoa New Zealand's adoption laws could be made more culturally inclusive. Further details, including options for change and more specific questions on culture and adoption, can be found on page 26 of the discussion document.

Whāngai

Tamaiti whāngai or tamaiti atawhai is a Māori customary practice where tamariki are cared for by others (usually whānau members) instead of the birth parents. Whāngai is often referred to as "Māori customary adoption", but it's very different from adoptions made under the Adoption Act. Whāngai tamariki are usually aware of their whāngai status and will often keep a relationship with their birth parents, whānau, hapū and iwi.

Aotearoa New Zealand's laws only recognise whāngai placements for very limited purposes. Often whāngai parents won't have legal parental rights and responsibilities toward tamariki. This can make it hard for whāngai parents to access government, educational or medical help for whāngai tamariki.

Whāngai parents may ask the Court to make an order to provide some legal recognition to a whāngai arrangement. For example, they can ask for a guardianship or adoption order, which can give legal security or certainty for the child and whānau. However, whānau have limited ways to be involved in the court process, and the court process can affect whānau, hapū and iwi rangatiratanga. Court orders may also conflict with the flexibility and openness associated with whāngai practice.

We want to understand the tikanga around whāngai and want to hear from Māori to understand whether changes should be made to the way the law treats whāngai. If

changes are needed, we want to work with Māori to ensure that the law gives appropriate effect to whāngai arrangements. Targeted engagement with Māori will also be undertaken as part of the adoption reform process. Further discussion on whāngai can be found on page 28 of the discussion document.

Customary adoptions

Many cultures practice different forms of customary adoption, and it's particularly common among Pacific Island countries. Our adoption laws also don't recognise the customary adoptions of non-Māori cultures, however, some parts of Aotearoa New Zealand's law will recognise them in limited circumstances. For example, customary adoptions can be recognised for the purposes of paid parental leave, the unsupported child benefit, or immigration.

We want to hear your views on how our adoption law treats customary adoptions, particularly those of Pacific and other ethnic communities. Further details, including options for change and more specific questions about customary adoptions, can be found on page 29 of the discussion document.

How does the adoption process work?

Overseas and intercountry adoptions

Aotearoa New Zealand's laws provide for overseas and intercountry adoptions. Overseas adoptions are where both the child and the adoptive applicants live overseas. Intercountry adoptions are where the child and the adoptive applicants live in two different countries. Most adoptions recognised in Aotearoa today are overseas adoptions with citizens or permanent residents from Aotearoa as the adoptive parents.

Recognition of overseas adoptions

Recognising overseas adoptions is important if families travel or move to Aotearoa. Aotearoa New Zealand's law automatically recognises some adoptions made in overseas countries, so long as they meet certain criteria. In those cases, the adoptive parents are recognised as the child's legal parents and the child becomes entitled to certain legal rights and responsibilities, such as immigration and citizenship rights. An overseas adoption will be recognised in Aotearoa if it:

- was legally valid in the country it was made
- gave the adoptive parents greater responsibility for the day-to-day care for the child compared to the birth parents, and
- was made in a country specified by the law (2), or gave the adoptive parents the same or greater inheritance rights than the birth parents.

Aotearoa relies on the other country to consider the child's rights, best interests and welfare when deciding to make the adoption that is later recognised. Some countries may not take some of the steps Aotearoa considers necessary to safeguard children's rights, which can place children's best interests and welfare at risk. For example, it could create risks related to trafficking, slavery, or abuse.

We want to hear your views on whether changes should be made to the way we recognise overseas adoptions. Further details, including options for change and more specific questions on the recognition of overseas adoptions, can be found on page 33 of the discussion document.

2 A Commonwealth country, the United States of America, a State or territory of the United States of America, or a country specified by the Governor-General by Order in Council.

Intercountry adoption

There are two types of intercountry adoptions in Aotearoa: Hague Convention intercountry adoptions, and other intercountry adoptions.

Hague Convention intercountry adoptions

The Hague Convention is an international agreement that sets out safeguards to protect the child and make sure the adoption is in the child's best interests. Aotearoa New Zealanders can adopt children from overseas countries where the other country is also signed up to the Hague Convention and Aotearoa has an agreement with that country (3). The Hague Convention applies to children under 18 years old.

In Hague Convention adoptions, the Central Authorities, or accredited bodies, of the two countries involved will be in contact with each other to facilitate the adoption. Once both countries agree the adoption should go ahead, a certificate is issued finalising the adoption. The child has different citizenship entitlements depending on which country issues the certificate.

3 Aotearoa has agreements with the following countries: Thailand, Philippines, Lithuania, India, China, Hong Kong and Chile.

We want to hear your views on whether changes should be made to how Aotearoa implements the Hague Convention intercountry adoption process. Further details, including options for change and more specific questions on Hague Convention intercountry adoptions, can be found on page 35 of the discussion document.

Other intercountry adoptions

Aotearoa New Zealand's law allows intercountry adoptions to take place outside of the Hague Convention process. In 2020, approximately 820 children adopted overseas by Aotearoa New Zealand citizens were granted citizenship by descent, the majority of whom were from Pacific Island countries. Other children adopted overseas by Aotearoa New Zealanders (including both citizens and residents) have been granted resident visas. Some of the Aotearoa New Zealanders who have adopted children overseas may be living in those countries, but others will probably have travelled to the country for the purpose of adopting a child. Intercountry adoptions outside of the Hague Convention process may take place in either:

- the New Zealand Family Court, or
- an overseas court, with the order later recognised in Aotearoa.

If an adoption application is made in the Family Court, it follows the domestic adoption process. This process can be more challenging when it's an intercountry adoption, as it may be hard for the Court to get information or to confirm

its accuracy. This can make it difficult to decide if the adoption is in the child's best interests.

If the adoption is made in an overseas court, it's subject to that country's process and rules. The adoption can be automatically recognised in Aotearoa if it meets certain criteria. This allows Aotearoa New Zealanders to bypass our domestic adoption laws and there is a risk that overseas countries laws don't align with Aotearoa New Zealand's expectations around safeguarding children's rights. Recognising these adoptions can place children's rights, best interests and welfare at risk once they enter Aotearoa.

We want to hear your views on whether changes should be made to the way other intercountry adoptions currently happen in Aotearoa. Further details, including options for change and more specific questions on other intercountry adoptions, can be found on page 36 of the discussion document.

Domestic adoptions in Aotearoa

In Aotearoa, domestic adoptions are made by the New Zealand Family Court. In considering adoption applications, the Family Court must be satisfied that certain requirements have been met.

Consent

Currently the law requires the child's parents and guardians to agree (also known as "consent") to an adoption. In practice, this often means the child's birth mother and birth father.

A birth mother's agreement to an adoption is always needed. A birth father's agreement will only be needed if he is a legal parent or guardian of the child. The law doesn't need the child to agree to the adoption, even if they are old enough to express their views or wishes about it. Wider family, whānau, hapū and iwi also don't need to agree to the adoption for it to go ahead.

We want to hear your views on who should have to agree to an adoption. Further details, including options for change and more specific questions about who must consent to adoption, can be found on page 39 of the discussion document.

Timing of consent and withdrawing consent

The law says a birth mother can't agree to an adoption until the child is at least 10 days old. Evidence suggests that this short period after birth is a particularly vulnerable

time for birth mothers and it may not give them enough time to consider their decision to adopt.

The law says that where birth parents agree to an adoption by specific adoptive applicants, they can't change their minds (also known as "withdrawing" their consent) while the application is being processed, or until the adoptive applicants have had a reasonable chance to apply to adopt the child.

We want to hear your views on when you think birth parents should be able to give their agreement to an adoption. We also want to hear your views on what should happen if a birth parent wants to change their mind and take back their agreement. Further details, including

Page 14

options for change and more specific questions on timing and withdrawing consent, can be found on page 40 of the discussion document.

Dispensing with consent

In some situations, the Family Court can decide not to require the agreement of one or both birth parents. This is known as "dispensing with consent". If an application to dispense with consent is made, the Court may only do so if:

1. the parent or guardian mistreated the child. This means the parent or guardian has either abandoned, neglected, consistently failed to look after and care for, or consistently ill-treated the child, or

2. the Court decides the parent or guardian is unfit to look after the child because of a physical or mental incapacity. Any physical or mental incapacity must also be likely to continue indefinitely.

Disability rights advocates have criticised the second category as it can discriminate against people with disabilities and creates a presumption around the quality of parenting by people with disabilities.

We want to hear your views on whether the Family Court should be able to dispense with agreement to an adoption. If you think it should, we want to hear when you think it should be able to dispense with agreement. Further details, including options for change, and more specific questions about dispensing with agreement can be found on page 42 of the discussion document.

Suitability

Adoptive applicants must be suitable to adopt, meaning that they are "fit and proper" people to provide day-to-day care for the child. Current adoption law doesn't include any criteria to help decide who may be a "fit and proper" person.

A social worker, usually from Oranga Tamariki, must provide a report to the Court on the applicant's suitability in most adoption cases. Supporting information about the applicants will be used in preparing the report. This includes proof of identity, immigration status, residency

and/or citizenship, police and care and protection vetting, medical reports, referee checks and residential addresses.

When an adoption application gets to court, the Court considers the report and other relevant factors when deciding whether the adoptive applicants are suitable to adopt.

We want to hear your views on whether the law should set out criteria on who is suitable to adopt. If you think there should be specific criteria, we want to hear your ideas on what they should be. Further details, including options for change and more specific questions on suitability, can be found on page 43 of the discussion document.

Page 15

Court processes

The Family Court must usually make an interim (temporary) order before it can make a final adoption order. If an interim order is made, a final adoption order can be applied for six to 12 months later. Final adoption orders are made in almost all cases.

Interim orders allow the adoptive parents to experience parenting the child and for Oranga Tamariki to monitor the adoption to make sure it's working for the child. However, waiting for a final order can create uncertainty and could affect the developing relationship between the child and adoptive parents.

Some people think that the court process takes a long time to complete. It can also be costly, as a lawyer is usually

needed to work through the court process and give evidence to the Court. The costs and time involved may mean that some people in Aotearoa, or groups of people in Aotearoa, aren't able to access the adoption process.

We want to hear your views about whether changes should be made to the types of orders the Court must make in adoption cases. Further details, including options for change and more specific questions on court processes, can be found on page 45 of the discussion document.

Court powers

In adoption cases, the Family Court has limited powers to request reports or advice from professionals. Under other family law, the Family Court can order specialist reports, including cultural, medical, psychological or psychiatric reports. Such reports give the Court wider information to help it make informed decisions. A lawyer for the child can also usually be appointed to act as an advocate for the child in other family law cases.

We want to know whether you think the Court should have more powers to ask for information and reports to help with its decisions in adoption cases. Further details, including options for change and more specific questions about Court powers, can be found on page 45 of the discussion document.

Legal effect

Under current laws, when a child is adopted their birth family and whānau is permanently and legally replaced by the adoptive family. Birth parents' legal and parental rights toward the child are removed, and the adoptive parents get full legal and parental rights toward the child.

The current legal effect of adoption doesn't reflect the now common practice of "open" adoptions, as it hides the existence of the birth family and whānau. Research shows that the secrecy around closed adoptions can be harmful for the child and others involved. The "replacing" of the birth family and whānau through adoption also doesn't fit with many customary care arrangements and may be seen as offensive by some cultures.

We want to hear from you about what the legal effect of adoption should be in Aotearoa. Further details, including options for change and more specific questions on the legal effect of adoption, can be found on page 47 of the discussion document.

Page 16

Alternative care arrangements and orders

Adoption is a permanent way of changing care arrangements for a child when their birth parents can't care for them. Other types of care arrangements or orders, such as guardianship orders, have less severe and permanent legal effects than adoption, meaning the child can stay more connected to their birth family and whānau.

The law doesn't need other care options to be considered when deciding whether a child should be adopted. There are also no legal protections for the birth family and whānau to maintain contact with the child once they've been adopted. Contact agreements, which may be developed during the adoption process, can't be legally enforced.

We want to hear your views on whether alternative care arrangements or contact orders should have to be considered in adoption cases, including once an adoption order has been made. Further details, including options for change and more specific questions on alternative care arrangements and orders, can be found on page 49 of the discussion document.

Discharging an adoption order

A final adoption order can only be varied or discharged (cancelled) in limited circumstances. For example, an adoption order may be discharged if false evidence was given to the Court, or the birth parents' agreement was gained through fraud, deception or force. If an adoption order is discharged, the child goes back to being the legal child of their birth parents.

Discharging an adoption order can be difficult and costly. The Attorney-General must give permission to make an application. In some circumstances, discharging an order may be appropriate to protect a person's best interests. For example, if they were neglected or abused and

removed from the adoptive parent's care. Currently the law doesn't say an order can be discharged in those cases.

We want to hear your views on when you think an adoption order should be able to be discharged. Further details, including options for change and more specific questions about discharging an adoption, can be found on page 51 of the discussion document.

Impacts of adoption

Identity and adoption

Identity is an important part of a person's wellbeing. A strong sense of identity can strengthen a person's confidence and ability to cope with challenges. The Children's Convention protects a child's right to identity—this protection includes the right to their name, nationality and family and whānau ties.

There is lots of evidence that people who are adopted can struggle to establish a sense of identity. For example, they may find it hard not being connected to their whakapapa, culture, religion or language. This can affect the family and whānau of a person who has been adopted and the generations that come afterwards.

Many adoptions these days are open, with the child, birth parents and adoptive parents having some kind of ongoing relationship. However, the current law restricts a person's access to information about their identity.

A key focus of adoption law reform is making sure that children's rights, welfare and best interests are protected, including the right to identity. Further information on identity and adoption can be found on page 53 of the discussion document.

Adoption support services

Children and older people who have been adopted, adoptive parents, birth parents and the wider birth family and whānau will often need support and information before, during and after an adoption. This is because adoption can have major psychological effects on those involved and they can experience ongoing challenges after the adoption takes place.

Oranga Tamariki provides some pre-adoption information and education, but adoption support services generally, including post-adoption support, is limited in Aotearoa. There's no legal requirement for ongoing information or support, and no specific government funding is set aside for people who need adoption information and support.

We want to hear your views on what type of support should be provided to people affected by an adoption before, during and after the adoption. Further details, including options for change and more specific questions on adoption support services, can be found on page 54 of the discussion document.

Birth certificates after an adoption

Every person born in Aotearoa has details of their birth recorded in the Birth Register, including the names of their birth parents. When a person is adopted, their original birth record is closed, and a new record is created to replace it. The Department of Internal Affairs issues birth certificates, which sets out the information on the birth record.

Birth certificates issued after an adoption show the child's adopted name and the names of the adoptive parents in place of the child's birth parents. This reflects the legal effect of adoption and the resulting relationship between the adoptive parents and the child.

We want to hear your views on what birth certificates should look like once a person has been adopted. Further details, including options for change and more specific questions on birth certificates after an adoption, can be found on page 56 of the discussion document.

Access to adoption information

Aotearoa New Zealand's law gives limited access to original birth records and adoption information. The Department of Internal Affairs holds birth records, and Oranga Tamariki, the Family Court and, in some cases, non-government organisations may hold relevant adoption information.

A person who has been adopted and their birth parents can't apply for an original birth certificate until the person who was adopted is 20 years old. Other family and whānau members can't apply for original birth records relating to adoption.

A "veto" system currently exists for birth records of people adopted before 1 March 1986. A veto means the full original birth certificate can't be shared with the person

making the request. A veto may be placed by the person who has been adopted or a birth parent.

We want to hear your views on who should be able to access adoption information and how they should be able to access it. We also want to hear your views on the veto system in Aotearoa. Further details, including options for change and more specific questions on access to adoption information, can be found on page 57 of the discussion document.

Surrogacy and the adoption process

Surrogacy is an arrangement where one person agrees to become pregnant and carries and delivers a child for the purpose of giving parental responsibility of the child to another person(s) after birth. The person who agrees to become pregnant and carry and deliver the child is referred to as the surrogate. The person(s) who enter a surrogacy arrangement with a woman to become pregnant, carry and deliver a child on their behalf is referred to as the intending parent(s).

Adoption is the only way intending parents can become the legal parents of a child born by surrogacy. This adoption law review will look at ways to improve the adoption process when a child is born by surrogacy. Changes that are made as a result of adoption reform more generally will also affect adoptions for children born by surrogacy. For example, if changes are made to consent requirements, it could take longer to process an adoption.

The Government asked Te Aka Matua o te Ture The Law Commission, Aotearoa New Zealand's independent law reform body, to carry out a wider review of surrogacy and related issues. The Law Commission is looking at the broader questions relating to surrogacy, including whether

there should be a different process than adoption for intending parents to become legal parents of a child born by surrogacy, and how international surrogacy arrangements should be provided for in the law.

Information on the Law Commission's work can be found here: www.surrogacyreview.nz/. Further details on surrogacy can be found on page 61 of the discussion document.

Domestic surrogacy arrangements

Domestic surrogacy is where both the surrogate and the intending parents live in the same country. In Aotearoa, when people need the help of a fertility clinic, the surrogacy arrangement must be approved by the Ethics Committee on Assisted Reproductive Technology ("ECART"). Surrogacies arranged privately, without the help of a fertility clinic to create the pregnancy, don't need ECART approval.

There's not much information available on the adoption process, including the relevant assessments, for people considering surrogacy arrangements. This can make it hard for the parties involved to understand their rights and responsibilities. The need to have approval for both ECART and the adoption process means that intending parents go through extra assessments to prove their eligibility and suitability to adopt. The number of assessments can add time and cost to the process.

We want to hear your views on whether changes should be made to the adoption process where the child is born by domestic surrogacy. Further details, including options for change and more specific questions on the adoption process where the child is born by domestic surrogacy, can be found on page 62 of the discussion document.

International surrogacy arrangements

Some people may choose to make surrogacy arrangements with a surrogate who lives overseas. These are known as international surrogacy arrangements.

Aotearoa law still requires a child born by international surrogacy to be adopted by the intending parents so that they become the child's legal parents. The adoption can be made in Aotearoa or in the overseas country.

International surrogacy cases are more complicated than domestic surrogacy. Like domestic surrogacy, there's not much information available on the international surrogacy adoption process.

We want to hear whether you think there should be changes to the adoption process where the child is born by international surrogacy.

Further details, including options for change and more specific questions on the adoption process where the child is born by international surrogacy, can be found on page 64 of the discussion document.

Ministry of Justice

Te Tāhū o te Ture

justice.govt.nz

info@justice.govt.nz

0800 COURTS

0800 268 787

National Office

Justice Centre

19 Aitken St

SX10088

Wellington

New Zealand