

Interim Regulatory Impact Statement: Consultation options for adoption law reform

| Quality Assurance (completed by QA panel) | |
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| Reviewing Agency/Agencies: | Ministry of Justice |
| Panel Assessment & Comment: | <p>The Ministry of Justice's RIA QA panel has reviewed the Interim Regulatory Impact Statement: Consultation options for adoption law reform (Interim RIS) prepared by the Ministry of Justice and considers that the information and analysis summarised in the Impact Summary meets the Quality Assurance criteria.</p> <p>Because the purpose of the Interim RIS is to address any gaps in the discussion document and support public consultation on reform, the panel has focused its final assessment on whether there is an adequate description in both documents of the problems with the existing adoption law, objectives of the reform, and identifies the options. The panel notes that there are no preferred options in the discussion document, and submitters are invited to suggest other options to address the issues raised.</p> <p>The panel considers that the Interim RIS is complete, as it appropriately supplements the information available to the public and Ministers in the discussion document. The Interim RIS provides analysis of all the options set out in the discussion document, briefly drawing out the advantages and disadvantages of each option against the criteria. As interim analysis, the panel considers it is balanced and uses appropriate supporting evidence, with the limitations of information clearly signalled. The panel would expect to see a future complete RIS to include the feedback from the upcoming consultation process, describe the costs and feasibility of the final policy proposals (together with the outstanding sections of the RIS, such as implementation).</p> |

Section 1: General information

1.1 Purpose

The Ministry of Justice is solely responsible for the analysis and advice set out in this Interim Regulatory Impact Statement (IRIS).

This Interim Regulatory Impact Statement (IRIS) provides high level assessment of the options for change to adoption laws that the Ministry of Justice is seeking feedback on in its public and targeted engagement on adoption law reform.

Public and targeted engagement is being undertaken to seek information relating to:

- problems with existing adoption laws and practices,
- public views on the options for change laid out in the Government’s discussion document, and
- public ideas and suggestions on other options for change.

Engagement is the first stage of broader reform. Following engagement, analysis of preferred options will be undertaken and we will return with a full RIS that assesses options for change and implementation, identifies a preferred approach to reform, and analyses monitoring and review processes for the preferred approach.

1.2 Key Limitations or Constraints on Analysis

This analysis has been constrained by:

- **Pressured timeframes:** The Government intends to complete adoption law reform within the current Parliamentary term. To meet this timeframe, public engagement on issues and options for change needs to begin in mid-2021. This constrains the level and depth of analysis which can be carried out prior to engagement.
- **The analysis within the IRIS occurring at an early stage of the policy process:** The Ministry’s public and targeted engagement on adoption laws is occurring at a very early stage of the policy process. Because of this, the discussion document catalogues a very large range of potential policy options. The Ministry does not identify preferred options. The intent of the discussion document is to provide scope to discover the views of the public and of targeted stakeholders within a broad horizon of possibilities, rather than limiting the possibilities for discussion. Because of this, the IRIS does not assess the financial implications, implementability considerations or monitoring, evaluation and review implications of options. These considerations will be addressed in further analysis of proposals, which will be presented in the complete RIS when the Government makes decisions on its preferred approach to reform.
- **Defined scope:** Adoption reform encompasses a full review of the three Acts regulating adoption: the Adoption Act 1955, Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1997. The following aspects of adoption-related discussions are out of scope of the reform:
 - Past adoption practice, as past adoption placements are being considered as part of the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions (‘the Royal Commission’)
 - Whether adoption should continue to be the legal mechanism to transfer legal parentage where a child is born by surrogacy, which is being considered as part of Te Aka Matua o te Ture | Law Commission’s review of surrogacy.

The work of the Royal Commission and Law Commission will be further discussed in the IRIS section on project interdependencies.

- **Information limitations:** While generally there is good information about the impacts of adoption in New Zealand, and of closed adoptions generally, the IRIS is constrained by a lack of information related to

the impact of specific aspects of New Zealand's adoption law on adopted persons, birth parents and adoptive parents.¹

Adoption-related information and data is held across various agencies with varying levels of ease of access and comprehensiveness. A primary purpose of engagement is to gather further information to help assess the impact of the proposals for adoption law reform. The final RIS will provide more complete information and data in its assessment of problems and options for change.

Responsible Manager(s) (completed by relevant manager)

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Section 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

Adoption in New Zealand

Adoption is the legal process through which legal responsibility for and parentage of a child is transferred from a child's birth parents to an adoptive parent(s). Adoption orders are usually made by the New Zealand Family Court. Once an adoption order is made, the law treats the child as if they were born to the adoptive parents.

An adoption order allows the adoptive parents to make decisions for the child and provide their day-to-day care. It also creates new legal relationships between the child and adoptive family and whānau. At the same time, the adoption order removes the child's legal relationship to their birth parents and birth family, whānau, hapū and iwi.

Adoption has significant and lifelong effects on people, particularly on the person who is adopted. In the eyes of the law, adoption treats the person who has been adopted as if they were born to their adoptive parents. There is no legal mechanism for a person who has been adopted to retain connection to their birth family and whānau, and ongoing contact agreements between an adopted person's birth and adoptive families and whānau operate on a good faith basis. If a person who has been adopted does not have ongoing contact with or information about their birth family and whānau, they must wait until they reach 20 years old before they can apply to access information that the Government holds about their birth record and adoption. A person who has been adopted also does not have the right to inherit from their birth family and whānau.

Regulation

Adoption in New Zealand is currently regulated by three pieces of legislation; the Adoption Act 1955, the Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1997. Associated regulations also apply.

¹ The impacts on the individual of some aspects of adoption law, for example, closed adoption, are well established. See, for example, Maria Haenga-Collins. 2017. *Closed Stranger Adoption, Māori and Race Relations in Aotearoa New Zealand, 1955-1985*

Legislation sets out the statutory boundaries on matters such as:

- who may adopt and be adopted
- when an adoption order may be granted
- the effect of an adoption order
- recognition of intercountry and overseas-made adoption orders; and
- how adopted persons may access their adoption information as adults.

Other aspects of adoption practice have developed through the interaction of the law and the operational practice of Oranga Tamariki and other agencies, such as:

- support and information for participants in the adoption process
- the processes for assessing the suitability of adoptive applicants; and,
- any arrangements for post-adoption contact between a person who is adopted and their birth family and whānau.

Government, the courts and accredited agencies' role in the adoption process

Oranga Tamariki

Oranga Tamariki provides a service for birth parents wanting to place their child for adoption. Birth parents are not required to use Oranga Tamariki services. Oranga Tamariki works with the birth parents and gives them information and support so that they can make informed decisions about their child's care.

Oranga Tamariki also provides services for potential adoptive parents. It provides education and training for people considering adoption, including an overview of the process and other ways of caring for children. Its social workers assess potential adoptive parents. Oranga Tamariki also pre-approves and maintains a pool of potential adoptive parents who are shown to birth parents considering adoption. When requested by the court, Oranga Tamariki will assess adoptive applicants and provide a social worker's report.

Oranga Tamariki's involvement varies between cases, depending on the way an adoption application is made. If the birth parents contact Oranga Tamariki, it will generally be involved throughout the entire process until a final adoption order is made. If an adoption is arranged independently and an application is made directly to the court, Oranga Tamariki may only be involved when preparing a social worker report for the court.

Oranga Tamariki is also the New Zealand Central Authority for intercountry adoptions under the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention'). This means it undertakes assessments for, arranges and finalises adoptions where a child is to be adopted from another Hague Convention country.

The Courts

The Family Court is responsible for considering adoption applications and granting interim and final orders. When making decisions, the court primarily relies on adoption laws and jurisprudence but may also look at other New Zealand laws and international agreements.

The Family Court considers information provided in the adoption application and any additional evidence supporting the application. This can include, for example, evidence about the identity of the adoptive applicants and the child to be adopted, or evidence about the birth parents' consent to the adoption.

The Family Court also receives a social worker report to help it decide whether the applicants are fit and proper, and if the adoption is in the child's interests. The Family Court may also receive other evidence through a lawyer to assist the court, by the judge speaking directly to the child or adoptive parents, or by adding a government department as a party to the application.

Department of Internal Affairs

The Department of Internal Affairs is responsible for recording, holding, and releasing information about birth records, including adoption information.

When an adoption order is made, the Department of Internal Affairs issues a new birth certificate for the child. A person who has been adopted can apply to receive a birth certificate which shows information from their original birth records (what is described as their “original birth certificate”) from the Department of Internal Affairs.

The Department of Internal Affairs is also responsible for granting people citizenship. Children adopted by a New Zealand citizen, will often be entitled to New Zealand citizenship. Once an adoption is finalised, the child (or their adoptive parents) can apply for their citizenship to be recognised through the Department of Internal Affairs.

Immigration New Zealand

Immigration New Zealand sometimes also play a role in intercountry adoptions. Children being adopted via intercountry adoption, or who have been adopted overseas by a New Zealand citizen or resident, may require a visa to enter New Zealand.

Where a child is born by surrogacy overseas, the child will usually come to New Zealand with the intending parents on a temporary visa granted by the Minister of Immigration. The child remains on this temporary visa until a final adoption order is granted.

Ministry of Justice

The Ministry of Justice is responsible for looking after the three pieces of adoption law. This means that, if the government want to change the laws, the Ministry of Justice is primarily responsible for giving the government advice.

Accredited agencies

For Hague Convention intercountry adoptions, accredited agencies can play a role in facilitating adoptions. Accredited agencies are non-government organisations who have been delegated power by the government to undertake education and assessment functions, or functions associated with the facilitation and finalisation of adoption. An accredited agency may not perform both functions.

Currently, there are three accredited agencies; Intercountry Adoption New Zealand (ICANZ), Compassion for Orphans and Adoption First Steps.

Accredited agencies do not have a role in domestic adoption.

Forms of adoption

New Zealand’s legislation allows for domestic adoptions, intercountry adoptions and the recognition of overseas adoptions.

Domestic adoptions: Domestic adoptions are where the adoptive parent(s) and child both live in New Zealand. An example of a domestic adoption is where a New Zealand based couple adopts a child who is also living in New Zealand.

Overseas adoptions: Overseas adoptions are where both the adoptive parent(s) and child live in an overseas country. New Zealand law recognises some adoptions made in overseas countries. This means that if the child and parents move to New Zealand, they will have the same rights and responsibilities as other children and parents under New Zealand law.

An example of an overseas adoption is where people living in the United Kingdom adopt a child there. The adoptive parents and child may subsequently decide to move to New Zealand, where the adoption could be recognised as valid.

Intercountry adoptions: An intercountry adoption is where the adoptive parent(s) live in one country and the child lives in another country. In New Zealand, an intercountry adoption might follow the Hague Convention process or the process set out in New Zealand's domestic law, which takes a Hague Convention-consistent approach where possible.

Examples of intercountry adoptions include:

- A New Zealand based couple adopt a child living in China using the Hague Convention process. If the child is under 18 years old, this is a Hague Convention intercountry adoption as both China and New Zealand are signatories to the Hague Convention.
- A New Zealand based couple adopt a child living in Ethiopia. This is an 'other' intercountry adoption as Ethiopia isn't signatory to the Hague Convention (even though New Zealand is) and the couple can adopt the child in the New Zealand Family Court following the domestic adoption process.

Some intercountry adoptions may use the overseas adoptions process. This may be the case where New Zealanders travel to another country and adopt a child under the other country's domestic law, but then return to New Zealand.

Tamaiti whāngai or tamaiti atawhai is the Māori customary practice where tamariki are placed in the care of others (generally whānau members), instead of the birth parents. Whāngai is often referred to as 'Māori customary adoption', but there are significant differences between whāngai and adoption as set out in the Adoption Act, and the Adoption Act specifically excludes whāngai from being considered as a legal form of adoption.² Despite this, some Māori use the adoption process to formalise whāngai arrangements, as formal adoption can make it easier for whāngai parents to access Government support or to arrange healthcare and education for the tamariki in their care.

Adoption numbers

The number of domestic adoptions has reduced over time. In the 1970s, numbers of adoptions peaked at nearly 4000 adoptions per year. In contrast, in 2020/21 the Family Court approved 125 adoptions under the Adoption Act. Intercountry adoption numbers under the Hague Convention are also relatively low, with 18 adoptions granted in 2019.

Intercountry adoptions outside of the Hague Convention process (including overseas adoptions) make up the majority of adoptions made and recognised under New Zealand's law. In 2020, approximately 820 children adopted overseas were granted citizenship by descent, the majority of whom were from Pacific Island countries.³ Other children adopted overseas by New Zealanders (including both citizens and residents) are granted resident visas, but data on the number of these adoptions is not available.⁴

Longstanding calls for reform

Many previous government and government-commissioned reviews have recommended substantial reform of adoption laws. Examples include Patricia Webb's *A Review of the Law of Adoption* in 1979, the 1987

² Adoption Act 1955, s. 19

³ Children are entitled to citizenship by descent if they are adopted overseas by a New Zealand citizen and are under 14 years old at the time of their adoption.

⁴ If a child is 14 years or older at the time they are adopted by a New Zealand citizen, they can obtain a resident visa. If a child is adopted overseas by a permanent New Zealand resident, regardless of their age, they can obtain a resident visa.

Interdepartmental Working Group's *Review of the Adoption Act 1955*, and the New Zealand Law Commission's 2001 report, *Adoption and its Alternatives*.

Private individuals and groups have taken legal action to press for the urgency of adoption law reform. In 2016, advocacy group Adoption Action Inc successfully brought a case to the Human Rights Review Tribunal.⁵ Māori individuals and groups have also brought two cases to the Waitangi Tribunal alleging that the Adoption Act constitutes unjustifiable discrimination against Māori.⁶ These cases have not been heard, as they have been delegated to the Tribunal's kaupapa inquiries for consideration. Advocates also regularly engage with the media to keep the subject of adoption law reform in the public view.⁷

2.2 What is the policy problem or opportunity?

Reform provides an opportunity to ensure New Zealand's adoption laws reflect modern society and are fit for purpose. Given adoption's significant impact on children, safeguarding children's rights, best interests and welfare will be at the heart of this work. Reform will also provide the opportunity to ensure that we meet our domestic and international human rights obligations.

When the Adoption Act was enacted, adoption most commonly featured an infant being taken from an unmarried birth mother and given to a "suitable" married couple who desired a child, who were most commonly strangers to the birth family and whānau. Assumptions that underpinned the system included:

- that children are best raised in heterosexual married homes
- that an adopted child would be better off without contact with their birth parents; and,
- that the majority of adoptions would take place domestically.

These assumptions affected the substance of the Act and the way that adoption has been practiced in New Zealand, with ongoing impacts on the lives of those involved. For example, the Adoption Act sets out eligibility criteria based on values of the 1950s that do not necessarily reflect a person's suitability to adopt and care for a child. It fails to acknowledge the significant lifelong impacts adoption has on the people involved, including on their identity. No support, including psychological support, is provided for those involved, and there is no provision for maintaining ongoing contact between the person who is adopted and their birth family and whānau. Globalisation and increases in the numbers of intercountry adoptions also mean that the Adoption Act's assumption that the majority of adoptions occur domestically is also now out of date, and its safeguards are no longer appropriate in many of those cases. As an example, the recognition of some overseas adoptions has raised serious child protection risks where the other countries' laws don't align with New Zealand's approach to child safety and welfare.

Given its age, the Adoption Act is becoming increasingly disconnected from international best practice, and from adoption practice in New Zealand. The judiciary and Oranga Tamariki have put concerted ongoing effort into using practice-based solutions and statutory interpretation to enable the Adoption Act to function as best as possible in support of modern understandings of best practice in adoption. Law reform is needed to further support this process. Without legislative change many of the status quo issues will remain or escalate.

Adoption law reform will enable New Zealand's law to take a child-centric approach to adoption processes, in keeping with the approach taken in all other domestic child-focused legislation

Reform offers an opportunity to consider how New Zealand's adoption laws can best safeguard and promote the rights, best interests and welfare of children. The United Nations Committee on the Rights of the Child have criticised the lack of scope for children's participation and consent in the Adoption Act in their three previous

⁵ Adoption Action Inc v Attorney-General [2016] NZHRRT 9.

⁶ WAI 160, WAI 286; as cited in NZ Law Commission (2000) *Adoption and its Alternatives*, 87.

⁷ See, for example, "Outdated adoption law set for change." Newsroom. February 18, 2021.

country reports on New Zealand's adherence to its obligations under the United Nations Convention on the Rights of the Child ("the Children's Convention").⁸ The United Nations International Children's Emergency Fund (UNICEF) have echoed the view that increased scope for children's participation would improve New Zealand's adoption laws.⁹ Many similar jurisdictions, such as the United Kingdom, most Australian and most Canadian states, territories and provinces require a child to consent to their adoption once they have reached a specified age and provide opportunities for children to participate in decisions affecting them. Domestically, New Zealand's other legislation that governs processes ruling on the care of children, the Care of Children Act 2004 (CoCA) and the Oranga Tamariki Act 1989, has mechanisms to support children's participation in decisions concerning their care.

Similar international jurisdictions state in their legislation that the purpose of adoption is to provide a service for the child, to promote the child's welfare and best interests throughout its life. New Zealand's adoption law does not set out the purpose of adoption. This allows adoptions to take place for a range of reasons, with no guidance for judges on what should and should not be considered legitimate purposes of adoption. Engagement on incorporating a clear purpose into legislation would provide the opportunity for a conversation about what 21st century New Zealand considers adoption should and should not be.

Adoption law reform gives an opportunity to ensure that our adoption laws are consistent with New Zealand's domestic and international human rights obligations

Reform also provides an important opportunity to align New Zealand's adoption laws with domestic and international human rights obligations. In particular, there is an opportunity to meet obligations toward children set out in the Children's Convention and the Hague Convention.

There is strong precedent for the need to address this matter. In *Adoption Action v Attorney General*, the Human Rights Review Tribunal found seven provisions of the Adoption and Adult Adoption Information Acts constitute unjustifiable discrimination for the purposes of the New Zealand Bill of Rights Act 1990. The law was found to be discriminatory on the basis of age, sex, disability and marital status.¹⁰ There are also opportunities to strengthen New Zealand's law in relation to our international obligations, particularly relating to safeguarding children's rights, best interests and welfare.

Adoption law reform provides the Government with an opportunity to better consider the values of Māori and other cultures with regard to childcare and adoption, as well as ensuring the Crown meets its obligations toward Māori under te Tiriti o Waitangi.

Reform of adoption laws will enable government to improve our laws fitness for purpose in addressing the concerns and values of Māori and people of other cultures. The Adoption Act currently reflects Western understandings of family and childcare, and does not acknowledge the importance a child's culture plays in their life. There is no recognition that the child has a right to culture and no requirement that the child's culture be considered in decision-making. Given the effect of an adoption, which removes a child's legal ties to their birth family and whānau, a child's legal connections to their culture, heritage and language may also be lost.

Other cultures concepts and practices relating to the care of children, including Māori practices, are also not reflected in the Adoption Act. For example, the Māori customary practice of tamaiti whāngai or tamaiti atawhai is expressly referred to as having no effect in adoption laws, and other parts of New Zealand's laws only recognise whāngai placements for very limited purposes.

⁸ Committee on the Rights of the Child, *General Comment 12* (20 July 2009) CRC/C/GC/12.

⁹ UNICEF New Zealand. 2013. *Kids Missing Out*. Available from <https://tewhareporahou.files.wordpress.com/2015/08/kids-missing-out-a4-document.pdf>

¹⁰ *Adoption Action Inc v Attorney-General* [2016] NZHRRT 9

Many aspects of the Adoption Act have been criticised as not appropriately considering tikanga Māori. The Act was described as “alien” and as “an affront to Māori culture” by Māori submitters to the 2000 Law Commission review of the Act.¹¹ Specific focuses of Māori critique of the Adoption Act in previous reviews have been:

1. The “clean break” principle that underlies the Act, which results in the legal effect of adoption being that a child is treated as if they were born to their adoptive family and whānau, and completely severs their legal relationships with their birth whānau and whakapapa; and,
2. The lack of opportunity for the involvement of wider whānau, hapū and iwi in adoption decisions.

There are currently two cases brought against the Adoption Act in the Waitangi Tribunal, alleging that the Act has breached the Crown’s responsibility to active protection under Te Tiriti o Waitangi by allowing Māori to be separated from their whānau and whakapapa through adoption without considering the effect that this has on their identity as Māori.¹²

Adoption law reform will enable the Government to consider what support and information is necessary and appropriate for children, birth parents, adoptive parents and wider family and whānau in the adoption process

Reform also provides an opportunity to explore what support and access to adoption information the Government should provide during the adoption process. Where Oranga Tamariki is involved early in the adoption process it offers information, training, and support services to birth parents and adoptive parents. However, these services are voluntary and there is no specific government funding set aside for adoption support services. The law doesn’t require any pre, during or post-adoption support in domestic adoption cases.

It is now well known that adoption, particularly ‘closed’ adoptions, can cause trauma for the child and the birth parents. Submitters to the Royal Commission have provided evidence of the impact that lack of sufficient support in the adoption process can have on the mental and emotional health of adopted persons and birth parents.¹³ Reform provides an opportunity to consider what a coherent framework of support for adopted persons, birth parents and adoptive parents pre and post-adoption could look like.

Current restrictions on accessing adoption information can prevent the person who is adopted from exploring their identity, including who they are and where they came from. Restrictions to adoption information can also have intergenerational effects on the family and whānau of a person who has been adopted. Approximately 400-500 applications to the Department of Internal Affairs (DIA) are made each year to access adoption information.¹⁴ Research has shown that lack of connection to whakapapa information is particularly detrimental for Māori.¹⁵ For adoptions that took place before 1 March 1986, people who have been adopted and birth parents are able to place a ‘veto’ on their information held by the Department of Internal Affairs. A veto will show as a note on the record that they do not want their identifying information to be shared with the other person. The Department of Internal Affairs is not able to share a full original birth certificate if a veto is in place. As at December 2020, there were 201 active vetoes, with the large majority of those vetoes placed by birth mothers. Between 2016 and 2020, six people who were adopted tried to access their original birth certificate but weren’t able to as there was an

¹¹ NZ Law Commission. (2000). *Adoption and its Alternatives*, 85

¹² WAI 160, WAI 286; as cited in NZ Law Commission (2000) *Adoption and its Alternatives*, 87.

¹³ Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions. 2020. *Tāwharautia – Pūrongo o te Wā: Interim Report*, 54

¹⁴ Data received from Department of Internal Affairs on 1 April 2021.

¹⁵ See for example Maria Haenga-Collins. 2017. *Closed Stranger Adoption, Māori and Race Relations in Aotearoa New Zealand, 1955-1985*

active veto in place¹⁶ Reform provides the opportunity to reconsider how access to adoption information should be managed given the right to identity of the person who is adopted.

2.3 What do stakeholders think about the problem?

Groups with particular interest in reform of New Zealand's adoption laws are:

Children

Children are the group most directly affected by adoption. Adoption law reform which is child-centred and aligns with other domestic child-centric legislation would benefit children by enabling changes to systems and processes for future adoptions that better recognise and protect the rights, best interests and welfare of children. Rights that are considered in reform proposals within the discussion document include the child's right to have their best interests as a primary consideration in decisions affecting them, their right to participate, right to identity, right to culture and right to family and whānau.

Those directly affected by adoption

Many of those who have had personal experiences of adoption have campaigned for adoption law reform for decades. Changes to supports available and access to information could better support adult adopted persons and their family and whānau in dealing with the ongoing effects of their adoption experiences. Being given a voice in adoption reform discussions will also be of high importance to those with direct experience of adoption and may enhance their wellbeing.

Māori

Many Māori have consistently opposed aspects of current adoption law. The "clean break" principle of the legal effect of adoption that treats a child as if they were born to their adoptive family and whānau is strongly opposed to te ao Māori understandings of the strong importance of whānau, hapū and iwi connections and whakapapa. Equally foreign to te ao Māori understandings is the lack of opportunity for the involvement of wider whānau, hapū and iwi in adoption decisions. Māori have a strong interest in the opportunity offered by reform to consider what the purpose of adoption is, how adoption could best be responsive to different cultural understandings of family and whānau and responsibility for childcare, and how adoption laws should provide for the cultural distinctiveness of Māori tamariki.

In addition, reform provides the opportunity to explore whether Māori consider that changes should be made to the way the law treats whāngai. Currently, the lack of legal recognition of whāngai placements can disadvantage whāngai tamariki and whāngai parents by affecting their access to government services.

Pacific communities

The majority of New Zealand's adoptions in recent years involve recognition of overseas adoptions from Pacific Island nations. Reform that places the rights and interests of children in the centre of adoption law, and that considers how adoption can reflect culturally appropriate concepts and principles, will be of high importance to Pacific communities.

Rainbow community

The rainbow community has in the past suffered from both direct and indirect discrimination as a result of adoption laws. For example, the Adoption Act sets out eligibility criteria on who may apply to adopt a child, including that two people applying to adopt together must be 'spouses'. That eligibility criterion has, until relatively recently, restricted same-sex couples from adopting. The rainbow community have a particular interest in ensuring that adoption law is consistent with New Zealand's domestic and international human rights obligations.

¹⁶ Data received from Department of Internal Affairs on 1 April 2021.

Disabled communities

Disabled persons have in the past suffered from both direct and indirect discrimination in the adoption process. The community has been concerned regarding the consent provision of the Adoption Act, which allows for a birth parent's consent to an adoption to be dispensed with on the basis of mental or physical incapacity. Disabled persons have an interest in ensuring that reform of adoption laws takes a strengths-based approach to supporting disabled persons in the context of adoption laws and processes.

2.5 What interdependencies exist in relation to the identified problem?

Surrogacy

Adoption is the only way intending parents can become the legal parents of a child born by surrogacy. Due to this, questions about surrogacy arise in discussions of current adoption laws. Any changes that are made as a result of adoption reform will impact on the adoption process for children born by surrogacy.

Te Aka Matua o te Ture | Law Commission is undertaking a first principles review of surrogacy in July 2020. That review will consider fundamental questions concerning surrogacy, including how the law should attribute legal parenthood in surrogacy arrangements. Consequently, adoption law reform will consider changes to the adoption process where a child is born by surrogacy, but will not consider surrogacy issues more broadly.

Care and protection

Oranga Tamariki's care and protection functions are currently under review. While Oranga Tamariki's adoption services functions are separate from their care and protection functions, large-scale changes to the structure or mandate of Oranga Tamariki could have substantial implications for the way that adoption services are delivered. Adoption law reform will not consider changes to care and protection settings.

The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions

The Royal Commission was set up in 2018 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 Royal Commission's Terms of Reference specifically list adoption placements as a setting in which abuse may be considered. The Royal Commission has heard submissions from a number of individuals related to past adoption practices. The Royal Commission will deliver its final recommendations on responses to past abuse in 2023. The Government will consider appropriate responses to past abuse once official findings have been made. For this reason, historical abuse and responses to past practice will not be a matter for the reform to consider.

2.5 What are the objectives sought in relation to the identified problem?

The Government's overall programme of adoption law reform is guided by the following objectives:

1. To modernise and consolidate New Zealand's adoption laws to reflect contemporary adoption processes, meet societal needs and expectations, and promote consistency with principles in child-centred legislation;
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;
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;
4. 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;

5. 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; and,
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.

These objectives have been noted by Cabinet [CBC-21-MIN-0018 refers].

This IRIS and the discussion document form the basis of public engagement and set out a range of policy options that may be considered as part of adoption law reform. The purpose of these documents is to test our understanding of issues with current adoption laws and seek the public's views on the options for change and any further suggestions for change. Feedback received as part of public engagement will help to guide policy development. Targeted engagement with specific communities impacted by adoption is also planned.

Section 3: Option identification

3.1 What options are available to address the problem?

The attached discussion document (Appendix 1) will provide the basis for public engagement in relation to issues with current laws and on options for change.

The document is structured into the following sections:

- what is adoption
- who is involved in adoption
- culture and adoption
- how does the adoption process work
- impacts of adoption
- surrogacy and the adoption process.

The IRIS will consider each of these sections in turn, analysing the issues and associated options for change raised in the discussion document.

The options considered in these sections will be considered against the criteria of:

| | |
|---------------------------|--|
| Upholds children’s rights | The option promotes children’s rights, including those set out in the United Nations Convention on the Rights of the Child. |
| Effectiveness | The option addresses the identified policy problem and helps achieve the objectives of reform. |
| Equity | The option treats population groups equally or any differential treatment is justified. Equity considerations will consider how options align with the Government’s obligations to Māori under Te Tiriti o Waitangi. |
| Clarity and accessibility | The option is clear and able to be understood by all, and not just those with specialist skills or knowledge. |
| Consistency | The option is consistent with existing domestic and international laws and obligations. |

The intent of assessing options against these criteria is to inform, rather than to influence, public consideration of the options. The Ministry does not have preferred options at this stage in the policy process and acknowledges that many of the options referenced involve competing rights and priorities. For this reason, criteria are not weighted, and options are not assessed against each other.

In the complete RIS to be delivered with final policy proposals, options will be assessed against the above criteria, and will also be assessed against feasibility as a criterion to determine how the benefits of the proposed options weigh against the costs of implementation to government and other actors in the system.

Options analysis tables

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Part 1: What is adoption

Options for reform set out in the “what is adoption” section of the discussion document primarily relate to the question “What should the purpose of adoption be?”.

Purpose of Adoption

The discussion document notes that there is no set purpose for adoption in the Adoption Act, meaning that it can be unclear when an adoption should happen or when it might be an appropriate care option for a child. The lack of clarity also means that adoptions can be made for a range of different purposes. In some cases, this may lead to adoptions being made for reasons that New Zealanders do not generally agree with or in situations that may not be in the child’s best interests.

The discussion document provides seeks peoples’ views on whether:

- the law should define what the purpose of adoption is, and
- if so, what the purpose of adoption should be defined as. The purposes presented as options are not mutually exclusive and the discussion document notes that adoption could be for one specific purpose or it may be a combination of options.

| Purpose of adoption: Description of options | | |
|--|---|---|
| Status Quo | Option 1 | Option 2 |
| <p>No set purpose for adoption.</p> <p>Adoptions can occur for different purposes at the discretion of judicial decisions</p> | <p>That legislation not define the purpose of legislation.</p> <p>Judicial precedent continues to shape the purpose of adoption and guide decisionmakers in determining whether adoption is appropriate.</p> | <p>That legislation define the purpose of adoption.</p> <p>The purpose of adoption may be outlined within core principles of the Act, or as part of the test for when an adoption order should be made</p> |

| Purpose of adoptions: Analysis of options | | | | | |
|---|--|--|---|---|---|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: No statutory purpose in legislation. ME | Lack of clarity about the purpose of adoption can allow adoptions for purposes which may not be in the best interests of children. | Lack of explicit purpose provides no guidance to judges as to when an adoption should be approved, meaning unlikely to meet objectives for reform. | Lack of an explicit purpose in legislation allows purpose of adoption to be malleable to individual circumstances. However, it may allow implicit cultural understandings of the purpose of adoption to be the default purpose of adoption, which may be inequitable. | This does not address one of the key problems with current adoption laws which relates to the lack of clarity around the purpose of adoption. | Generally inconsistent with existing family law which sets out purposes for different types of care orders e.g. under the Care of Children Act (CoCA) and the Oranga Tamariki Act. Also inconsistent with international interpretations of when adoption should be used. |
| Option 2: Purpose in objectives or principles of legislation. ME | Depending on purpose, can help to place children's rights at the heart of the new laws. Outlining explicit purposes is potentially in tension with flexibility and individual context in judicial decision-making. The level of risk created would depend on the level of restrictiveness that is used in defining the purpose. | Inserting purpose into legislation, will assist judges in determining whether an adoption should be approved. | No unjustified differential treatment. Depending on purpose, may allow for different cultural views about the purpose of adoption to be considered when a judge is making an adoption. | Will make clear what purpose of adoption is at beginning of legislation. | Consistent with other domestic laws and can be used to reflect those in international obligations All comparable jurisdictions include a purpose of adoption in their adoption legislation to help shape judicial decision-making about when adoption is and is not appropriate. |

| Defining a purpose of adoption: Description of options | | | | | | | | | |
|--|---|---|--|---|--|---|--|---|---|
| Option 1 | Option 2 | Option 3 | Option 4 | Option 5 | Option 6 | Option 7 | Option 8 | Option 9 | Option 10 |
| The purpose of adoption is to provide stability or security for a child. | The purpose of adoption is to provide a new permanent family for a child. | The purpose of adoption is to provide continuity of care for a child. | The purpose of adoption is to provide long-term care and a family and whānau home environment for a child. | The purpose of adoption is to promote a child's well-being and development, or to promote the child's best interests. | The purpose of adoption is to provide a service for the child (and therefore not a service for the adults involved). This would recognise adoption as a service that is provided to meet a child's needs, and not to meet the needs and wishes of adults (including birth parents, adoptive parents, family and whānau, or adults, including government, more generally). | The purpose of adoption is to deepen a child's connection with family, whānau, hapū and iwi by living with other relatives. | The purpose of adoption is to provide care for a child who cannot be raised by their birth family or whānau, or where they are in need of a new family and whānau. | The purpose of adoption is, in the case of intercountry adoption, to provide care for a child where they cannot be cared for in their home country. | The purpose of adoption is to provide legal recognition of social connections and/or close relationships. For example, the purpose of adoption could be to legally recognise relationships between step-parents and step-children, or foster parents and foster parents. |

Defining a purpose of adoptions: Analysis of options

KEY: = Legislative option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|--|---|---|--|---|
| <p>Option 1: The purpose of adoption is to provide stability or security for a child.</p> <p>CW (All)</p> | <p>Promotes children’s rights by recognising the importance stability and security have on a child’s wellbeing and development (particularly attachment and bonding).</p> | <p>Security and stability are important to children’s wellbeing and development and so are consistent with the objectives for reform. However, stability and security could also be achieved through other care arrangements.</p> | <p>Treats population groups equally and is consistent with what adoption is already used for in some cases. For example, some existing care arrangements (such as step-parent relationships or whāngai) are formalised through adoption due to the legal stability and security it can provide.</p> | <p>Relatively clear and accessible, particularly given its use in other family law contexts. Leaving ‘security’ undefined could create uncertainty for the general public but is generally understood in case law.</p> | <p>Consistent with existing family law that recognises children’s needs for stability and security but does not acknowledge that this can be provided through other care arrangements.</p> |
| <p>Option 2: The purpose of adoption is to provide a new permanent family for a child.</p> <p>CW (All)</p> | <p>Recognises a child’s right to be cared for by their parents and permanency, as it links to stability, is consistent with a children’s rights approach. However, may not be consistent if it means providing the child with a new permanent family where they are not in need of a new family.</p> | <p>This purpose alone may not meet the objectives of reform, as it fails to take account of the individual child’s needs and does not explicitly recognise best practice.</p> | <p>No unjustified differential treatment.</p> | <p>Permanency is generally well understood and would not require specialist knowledge.</p> | <p>Some crossover with the ability to appoint permanent caregivers in Oranga Tamariki Act (noting that this has been recognised as a need). However, permanency at the expense of wellbeing is inconsistent with domestic and international laws.</p> |

Defining a purpose of adoptions: Analysis of options

KEY: = Legislative option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|---|--|--|---|--|
| <p>Option 3: The purpose of adoption is to provide continuity of care for a child.</p> <p>CW(All)</p> | <p>Continuity (and the stability it provides) is consistent with children’s rights, particularly Article 20 of the Children’s Convention which recognises the desirability for continuity in a child’s upbringing. However, will not be consistent if it means continuing to be cared for someone even if they place the child’s wellbeing at risk.</p> | <p>Likely to meet the objectives of reform by recognising the benefits stability and continuity can provide a child, relative to their best interests and welfare. However, continuity of care could also be achieved through other care arrangements.</p> | <p>No unjustified differential treatment.</p> | <p>Clear term that is used currently in the care of children processes.</p> | <p>Consistent with existing family law and links to the importance of stability for a child’s wellbeing needs.</p> |
| <p>Option 4: The purpose of adoption is to provide long-term care and a family and whānau home environment for a child.</p> <p>CW (All)</p> | <p>Consistent with the need for children to be cared for and the benefits that a home environment provides a child but fails to recognise children’s growing maturity and independence.</p> | <p>Likely to meet the objectives of reform but does not recognise evolving capacity of children.</p> | <p>No unjustified differential treatment, but this option especially recognises the different and sometimes ongoing needs of children with disabilities.</p> | <p>Relatively straightforward purpose that is clear and accessible.</p> | <p>Inconsistent with existing family law that recognises the evolving capacity of children and the reduced need for long-term care and decision-making on behalf of the child.</p> |

Defining a purpose of adoptions: Analysis of options

KEY: = Legislative option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|---|---|--|---|--|
| <p>Option 5: The purpose of adoption is to promote a child’s well-being and development, or to promote the child’s best interests.</p> <p>CW(All)</p> | <p>Consistent with children’s right to have their wellbeing and development provided for. Also consistent with best practice that decisions about children’s care are in the child’s best interests, taking into account the individual circumstances of the child.</p> | <p>Helps to achieve the objectives of reform by use of a child-focused purpose of adoption.</p> | <p>No unjustified differential treatment.</p> | <p>Clear language which reflects common practice and is well-understood by professionals and some parts of the public. However, may need to provide clarity on what this means in the adoption context as is open to interpretation which could lead to inconsistencies in what is considered best for a child.</p> | <p>Is consistent with other child-centred legislation (CoCA and Oranga Tamariki Act) and international obligations.</p> <p>Aligns with international obligations, including the Hague Convention.</p> |
| <p>Option 6: The purpose of adoption is to provide a service for the child (and therefore not a service for the adults involved).</p> <p>CW (All)</p> | <p>Recognising adoption as a service for the child supports children’s rights by focusing on the individual needs of the child.</p> | <p>Would likely achieve objectives of reform by defining adoption as child-focused, but information may be needed to make clear what is meant by ‘service’.</p> | <p>Differential treatment of children to adults as it focuses on the child’s needs. However, this could be considered justified given the significant impact adoption has on children and that adoption should generally be considered</p> | <p>May be unclear what is meant by ‘service for the child’, particularly when we often use other language to explain this concept in other family law.</p> | <p>Language not used elsewhere in NZ law but is consistent with ideas of making decisions that are in a child’s best interests and promote their welfare. Also consistent with the law in several Australian states.</p> |

Defining a purpose of adoptions: Analysis of options

KEY: = Legislative option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|--|--|--|--|--|
| | | | when it is necessary for the child. | | |
| <p>Option 7: The purpose of adoption is to deepen a child’s connection with family, whānau, hapū and iwi by living with other relatives.</p> <p>CW (All)</p> | <p>Recognises child’s right to continuity to the child’s ethnic and cultural background, and the importance of the child’s family, whānau, hapū and iwi in their life and upbringing. However, is not a needs-based approach and this outcome could be achieved through other care arrangements.</p> | <p>Does not provide a clear definition or set of circumstances in which adoption should be used. Generally not consistent with best practice and may not meet objectives. However, this purpose is consistent with the approach to customary adoptions or arrangements in some cultures.</p> | <p>No unjustified differential treatment but is more reflective of the approach to customary adoptions or arrangements in other cultures.</p> | <p>This option may not provide enough clarity on when an adoption is considered appropriate, which may lead to inconsistencies in its application.</p> | <p>Is likely to be inconsistent with international obligations and does not align with practice across other family law (e.g. CoCA and Oranga Tamariki Act) which provide other ways for a child to maintain connections with their relatives.</p> |
| <p>Option 8: The purpose of adoption is to provide care for a child who cannot be raised by their birth family or whānau, or</p> | <p>Child rights-consistent approach as it is based on the child’s needs. Recognises children have a right to be cared for by their family and whānau and, if they can’t be, that the State has a responsibility to find a family and whānau for the child.</p> | <p>Provides clear ground for when adoption is considered appropriate, taking a child-focused approach which reflects best practice.</p> | <p>Differential treatment of children to adults as it only recognises child’s circumstances. However, this is justified given the significant impact adoption has on children and that adoption should generally be considered</p> | <p>Clear ground for when adoption should be used.</p> | <p>Consistent with approach in CoCA and the Oranga Tamariki Act that children should be cared for by their parents, and that alternatives outside the birth family and whānau should be explored as a last resort. Also consistent with principle of</p> |

Defining a purpose of adoptions: Analysis of options

KEY: = Legislative option CW (1) = Complementary with (Option 1)

| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|---|--|---|--|--|
| <p>where they are in need of a new family and whānau.</p> <p>CW (All)</p> | | | when it is necessary for the child. | | subsidiarity in the Hague Convention. |
| <p>Option 9: The purpose of adoption is, in the case of intercountry adoption, to provide care for a child where they cannot be cared for in their home country.</p> <p>CW (All)</p> | Promotes children's rights by recognising the child's right to maintain connections to birth family and whānau, culture, language and nationality, and that those connections are important to a child's wellbeing. | Helps to address the problem by providing a clear ground for when a child may be considered 'adoptable'. Meets objectives as it is in line with best practice. | Differential treatment for children born overseas but consider this is justified on the basis that removing a child from their home country (including culture and language) can have significant impacts on their wellbeing. | Existing, well-known rule (principle of subsidiarity) so likely to be easy to apply. | Consistent with the principle of subsidiarity in the Hague Convention. No similar provisions in domestic law but is a consistent premise to the Oranga Tamariki Act, in that placement outside of a birth family and whānau should be considered only if there are no alternatives inside the family and whānau. |
| <p>Option 10: The purpose of adoption is to provide legal</p> | This option may promote a child's best interests as it can provide legal certainty for the child to a person with whom they already | Unlikely to address the problem as the ground would be open to interpretation and alone | No unjustified differential treatment. | Would provide some clarity on why adoption may be used, but also open to interpretation based on | Inconsistent with international obligations, particularly the Hague Convention, as could be seen as lower standard for when |

Defining a purpose of adoptions: Analysis of options

KEY: = Legislative option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|--|---|---------------|---|---|
| recognition of social connections and/or close relationships. CW (All) | have a close relationship with. However, it may also result in adoptions that benefit or promote adult interests rather than the child’s. This option does not necessarily take into account the individual child’s needs. | does not safeguard children’s rights. However, is consistent with the objective to meet Te Tiriti obligations and reflect culturally appropriate concepts, as it aligns with the reasons for some customary arrangements. | | someone’s person views, culture, or understandings of adoption. | adoption should be used, and is not consistent with current approaches in CoCA or Oranga Tamariki Act. However, likely to be consistent with UNDRIP as it could provide recognition of adoptions that take place alongside the customary practices of different cultures. |

Part 2: Who is involved?

The next section of the discussion document discusses who is involved in the adoption process. This section outlines some options for change relating to:

- the child's rights in the adoption process (including who can be adopted and how children's rights, particularly the right to participation, can be more central to adoption laws);
- birth parent's role in the adoption process;
- who may adopt; and,
- involvement of family and whānau in the adoption process.

Reform provides the opportunity to ensure the law meets the objectives of:

- modernising and consolidating New Zealand's adoption laws to reflect contemporary adoption processes, meet societal needs and expectations, and promote consistency with principles in child-centred legislation
- ensuring 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
- ensuring 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; and
- ensuring 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.

Child's rights in the adoption process - Who may be adopted

Current law says that any person under the age of 20 years is a child who may be adopted. This does not align with who is considered to be a child in other pieces of New Zealand's family law or match the definitions in international obligations. Most international jurisdictions also have a younger age as their maximum age for adoption. Conversely, there are ongoing calls from some groups to allow the adoption of adults, especially where an adoption would recognise the ongoing care a person received from a step or foster parent during childhood.

The age of adoption is intrinsically connected to questions about the purpose of adoption. Some purposes of adoption are more consistent with a younger maximum age of adoption, while allowing an older age of adoption could encourage the use of adoption for some purposes that most people might not consider legitimate reasons for adoption.

The discussion document seeks the public's views on two options for change:

| Who may be adopted: Description of options | | |
|---|--|--|
| Status Quo | Option 1 | Option 2 |
| <p>Retain current law and practices around who may be adopted.</p> <p>Any person under the age of 20 may be adopted, or a 20-year-old may be adopted when application began before their 20th birthday.</p> | <p>Change the definition of child to mean a person under a different age.</p> <p>Only allow adoption of persons under a specific age, for example under 16 or 18 years old.</p> | <p>Remove age limit on who is able to be adopted.</p> <p>This option would allow people of any age to be adopted, including adults.</p> |

| Who may be adopted: Analysis of options | | | | | |
|---|--|---|--|---|---|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Define a child in adoption as a person under a different age, e.g. under 16 or 18 years old. ME | <p>Age restriction could align with the age set out in the Children's Convention, which defines a child as someone under 18 years old.</p> <p>Supports purpose of adoption being focused on the welfare and best interests of children, this is less clear if adults may be adopted.</p> | <p>Aligns well with objectives of the reform and could be more consistent with modern societal views on when a person reaches adulthood (generally 18 years old).</p> | <p>Age bar to be adopted could be viewed as discriminatory. Likely to disproportionately affect Pasifika, who have more commonly adopted older children.</p> | <p>Fairly clear and straight forward to understand.</p> | <p>Likely to be consistent with most domestic and international obligations. If 16 years old, aligns with when parenting orders end under CoCA.</p> |
| Option 2: Remove age limit on who is able to be adopted. ME | <p>Does not necessarily place child's rights at the centre of adoption laws, as would enable an adult focus for adult adoptions.</p> | <p>Does not clearly address current problem or achieve the objectives of reform, which focus on the rights, best interests and welfare of children.</p> | <p>No age discrimination.</p> | <p>Easy to understand.</p> | <p>Does not align with international obligations, including the Hague Convention.</p> |

Children's rights in the adoption process

Safeguarding and promoting children's rights, best interests and welfare is central to the reform programme. In particular, this includes supporting a child's right to have their best interests as the primary consideration in decisions affecting them and the right to participate are upheld. Current law requires that a child's views be taken into consideration by the Court when deciding whether to grant an adoption order but does not provide any specific guidance for how this should be done. Our lack of specific mechanisms within the law to enable a child's participation in the adoption process has been criticised internationally. It is not in keeping with practice in other jurisdictions, or in other New Zealand proceedings involving the care of children.

The discussion document seeks the public's views on the following options for increasing children's participation in adoption proceedings:

| Child's rights in the adoption process: Description of options | | | | | | | |
|--|--|---|---|---|--|--|--|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 | Option 6 | Option 7 |
| <p>Retain current law and practices around children's participation in adoption.</p> <p>Child's views to be considered in determining whether an adoption should be approved, but no explicit mechanism exists for the child to give their views on adoption.</p> | <p>Create an overriding principle within the law that the child's best interests are the paramount consideration in deciding whether an adoption is appropriate.</p> <p>The court could use the principle to guide all decision-making.</p> | <p>Give the child a right, or reasonable opportunity, to participate in their adoption process as part of overarching principles or purpose of adoption laws.</p> <p>This could guide those using the law.</p> | <p>Explicitly reference the Children's Convention, including the child's right to participate.</p> | <p>Require the child be provided with age and understanding-appropriate information about the adoption.</p> <p>Information can assist the child to understand the adoption, its impact and their rights, and gives them time and support to formulate their views.</p> | <p>Require the social worker, or specific advocate, to encourage the child to participate and say how the child participate in their report to the court.</p> | <p>Specify ways to encourage and enable the child to participate once the adoption reaches court.</p> <p>For example, the law could explicitly require the child's views be obtained and taken into account. Though this happens in practice, requiring it in law would ensure it is applied more consistently.</p> | <p>Give the court the power to appoint a lawyer or another person to act as the child's advocate.</p> <p>This could support the court to hear the child's views and evidence on whether the adoption would be in the specific child's best interests. This may be particularly useful where the child is very young, has a disability, or has difficulties communicating.</p> |

| Child's rights in the adoption process: Analysis of options | | | | | |
|---|---|--|---|--|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| <p>Option 1: Create an overriding principle within the law that the child's best interests are the paramount consideration in deciding whether an adoption is appropriate.</p> <p>CW (All)</p> | <p>Consistent with children's best interests paramountcy principle.</p> <p>Would support adoption laws to be child-centric and affirm a child's right to participation.</p> | <p>Provides guidance to judges about the purpose of adoption.</p> | <p>Justified preferential treatment for children.</p> <p>In keeping with te ao Māori understandings of the value of the value of the child.</p> | <p>Easy to understand.</p> | <p>Consistent with other domestic legislation (COCA, Oranga Tamariki Act) which allow for child participation.</p> <p>Most comparable jurisdictions include such a principle in their legislation.</p> |
| <p>Option 2: Give the child a right, or reasonable opportunity, to participate in their adoption process as part of overarching principles or purpose of adoption laws.</p> <p>CW(All)</p> | <p>Promotes children's rights, particularly the right to participate.</p> | <p>Provides certainty on when a child is able to participate in adoption proceedings and gives judges additional information to inform decisions about what will be in a child's best interests.</p> | <p>Justified preferential treatment for children.</p> <p>In keeping with te ao Māori understandings of the value of the value of the child.</p> | <p>Easy to understand, though may need explanatory material on when it would be reasonable (or unreasonable) to enable a child to participate.</p> | <p>Consistent with domestic and international obligations.</p> |
| <p>Option 3: Explicitly reference the Children's Convention, including</p> | <p>Promotes children's rights by providing legislative</p> | <p>Gives certainty to all involved on the status of the Children's</p> | <p>Justified preferential treatment for children.</p> | <p>Easy to understand and case law likely to develop over time to provide further</p> | <p>Consistent with international obligations. Similar approach taken in some domestic law.</p> |

| Child's rights in the adoption process: Analysis of options | | | | | |
|--|--|---|--|--|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| the child's right to participate. CW(All) | recognition of the Children's Convention. | Convention and the fact that the right to participate is protected. | | explanation of what this means in practice. | |
| Option 4: Require the child be provided with age and understanding-appropriate information about the adoption. CW (All) | Consistent with Children's Convention right to participate. Works to support children to understand the consequences of adoption decisions and are able to present their views in proceedings. | Increased age-appropriate information will help child understand and engage in adoption process. | Justified preferential treatment for children. In keeping with te ao Māori understandings of the value of the child. | Quite easy to understand option – but determining age-appropriateness of information may have some complexity. | Consistent with approach taken in other family law (including CoCA and Oranga Tamariki Act). Also consistent with international obligations. |
| Option 5: Require the social worker, or specific advocate, to encourage the child to participate and say how the child participate in their report to the court. CW (All) | Consistent with Children's Convention right to participate and helps the court to be informed on how the child has been given opportunities to participate. | Addresses the current issue by providing how the child should be encouraged to participate and providing evidence of this to the court. | Justified preferential treatment for children. | Easy to understand. | Consistent with international obligations. |

Child's rights in the adoption process: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|--|--|--|---|--|
| <p>Option 6: Specify ways to encourage and enable the child to participate once the adoption reaches court.</p> <p>CW (All)</p> | <p>Consistent with the right to participate, as will provide children with specific opportunities to do so.</p> | <p>Would provide clarity on how a child should participate, which would help to achieve objectives of reform.</p> | <p>Justified preferential treatment for children.</p> | <p>Making clear in law the specific ways a child should be able to participate will provide clarity for all those involved.</p> | <p>Consistent with other pieces of family law (including CoCA and Oranga Tamariki Act) and would help to meet international obligations.</p> |
| <p>Option 7: Give the court the power to appoint a lawyer or another person to act as the child's advocate.</p> <p>CW (All)</p> | <p>Supports child's right to have their best interests as a primary consideration in decisions affecting them upheld, as well as the right to participate.</p> | <p>Lawyer for child or another advocate would provide an ability for children's voice to be heard in Court. Helps to meet objectives for reform as matches approaches in modern legislation.</p> | <p>In keeping with te ao Māori understandings of the value of the child and their voice being heard.</p> | <p>Easy to understand.</p> | <p>Consistent with other legislation that provides lawyer for child (e.g. CoCA and Oranga Tamariki Act).</p> <p>Consistent with international obligations.</p> |

Birth parent's role in the adoption process

The law requires birth parents to consent to an adoption, unless their consent is dispensed with. Once birth parents have given consent to an adoption, they do not have any further formal role in the adoption process and the involvement of birth parents in court processes is dependent on judicial discretion. This means the court may not hear important contextual information relating to the application, including the reasons for placing the child for adoption. It also means the court is unable to hear the birth parents' views on, and understanding of, post-adoption contact arrangements.

The discussion document seeks public views on the following options for change:

| Role of birth parents: Description of options | | |
|--|--|--|
| Status Quo | Option 1 | Option 2 |
| <p>No mandated birth parent involvement in adoption hearings. An adoption hearing may go ahead without any direct involvement of the birth parents. Judges have the ability to decide how and when best to involve birth parents.</p> | <p>Give birth parents a right to participate in adoption cases. Include in legislation that a birth parent has a right to participate in adoption cases once they get to court.</p> | <p>Require the Court to hear from a birth parent before making an adoption order. The Court could be required to hear from a birth parent before making an order.</p> |

| Role of birth parents: Analysis of options | | | | | |
|---|--|--|--|--|--|
| KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Give birth parents a right to participate in adoption cases. ME | Increases information available to the court, which is likely to improve decision-making as to whether an adoption is in a child's best interests. | Addresses the problem by providing for birth parents to participate in adoption proceedings, even if current practices mean they would likely to be allowed to appear. | Increases rights of birth parents. | Clear and straightforward to understand. | Consistent with domestic and international obligations. |
| Option 2: Require the Court to hear from a birth parent before giving an adoption order. ME | Increases information available to the court, which is likely to improve decision-making as to whether an adoption is in a child's best interests. | Requiring the court to hear from a birth parent where they do not want to speak in an adoption hearing is unlikely to deliver useful information and may cause harm. | In tension with rights of birth parents if they do not want to speak in the hearing. | Easy to understand. | Domestically, we only require someone to speak to a court in a very limited range of serious circumstances. No international precedent for this option. |

Who can adopt

The Adoption Act sets out criteria for who is eligible to apply to adopt, which restricts some people from being able to adopt a child based on their inherent characteristics. The eligibility criteria were a primary feature of the Human Rights Review Tribunal’s findings that the Adoption Act was unjustifiably discriminatory.

The discussion document seeks public views on the following options for change:

| Who can adopt: Description of options | | | | |
|---|--|---|---|---|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 |
| <p>Maintaining eligibility criteria within current Act.</p> <p>Eligibility criteria restrict persons from adopting where:</p> <ul style="list-style-type: none"> - they are under 25, or under 20 years older than the child to be adopted - they are a single male wanting to adopt a female child -they are two persons wanting to adopt jointly who do not qualify as spouses (i.e. civil union couples) | <p>Remove all eligibility criteria and rely on judicial assessment of suitability to decide whether a person should be able to adopt.</p> <p>This option would amend the Act to remove eligibility criteria, allowing any person to apply to adopt. A judge would then have the responsibility for deciding if a person is suitable to adopt.</p> | <p>Keep just some of the eligibility criteria.</p> <p>For example, all eligibility criteria could be removed but the age criterion could be kept. Some people might think that a person should have to be a certain age before they can adopt.</p> | <p>Alter the current eligibility criteria.</p> <p>For example, the age criterion could be changed to require a person to be 18 years old before they can apply to adopt. The meaning of ‘spouse’ could be changed to refer to anyone in a ‘qualifying relationship’, such as a marriage, civil union or de facto relationship.</p> | <p>Add in new eligibility criteria.</p> <p>An example of a new criterion could be that step-parents or relatives of a child could not be eligible to adopt the child or may not be eligible to adopt unless there are special circumstances.</p> |

| Who can adopt: Analysis of options | | | | | |
|---|---|---|---|--|---|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Remove eligibility criteria and rely on judicial assessment of suitability to decide who should be able to adopt. ME | Centres the child in the process and focuses on who is best suited to care for the child. No potentially suitable person barred from adopting. | Removes eligibility bars entirely. | Culturally responsive and flexible. Does not discriminate on any grounds. | Suitability criteria decided by the courts and judicial precedent, which is unlikely to be accessible to public. | Most human rights consistent option. No person barred from applying to adopt based on their identity. |
| Option 2: Keep just some of the eligibility criteria. CW (3-4) | May be inconsistent with children’s rights as they may be prevented from being cared for by someone who would be suitable on the basis of the arbitrary eligibility criteria. | Does not address current issues associated with the eligibility criteria and does not meet objectives of reform. | Likely to continue to discriminate against some groups. | Clear and well understood as is currently part of the eligibility criteria. | Inconsistent with some domestic and international obligations, given the potential for discrimination. |
| Option 3: Alter the current eligibility criteria. CW (2,4) | May be inconsistent with children’s rights as they may be prevented from being cared for by someone who would be suitable on the basis of the arbitrary eligibility criteria. | May address some of the current issues associated with the eligibility criteria if some elements of discrimination are removed. Could be altered in a way that would meet objectives of reform. | Likely to continue to discriminate against some groups. | Clear and likely to be well understood if does not depart too significantly from current eligibility criteria. | Likely to be inconsistent with some domestic and international obligations, given the potential for discrimination. |

| | | | | | |
|---|---|---|--|--|---|
| <p>Option 4: Add in new eligibility criteria.</p> <p>CW (2-3)</p> | <p>Adding in new eligibility criteria may protect children’s rights if there is evidence to support the inclusion of those new criteria (i.e. relating to the impact certain types of adoptions may have on children). However, may still be inconsistent with children’s rights as they may be prevented from being cared for by someone who would be suitable on the basis of the arbitrary eligibility criteria.</p> | <p>Does not necessarily address the current issues with eligibility criteria. Depending on new criteria, may help to meet objectives of reform if it aligns with best practice.</p> | <p>Care would need to be taken to ensure no new grounds of discrimination are created, or that any discrimination is justified on the basis of solid evidence.</p> | <p>Will be dependent on the new eligibility criteria, but likely to be accessible if clearly defined in law.</p> | <p>Many overseas jurisdictions continue to have eligibility criteria in their adoption legislation. However, depending on formulation, may not align with domestic and international obligations.</p> |
|---|---|---|--|--|---|

Birth family and whānau

Reform offers the opportunity for adoption laws to consider how wider family and whānau should be involved in the adoption process. Currently, opportunities for family and whānau involvement are quite limited. Pre-adoption, wider family and whānau will only be involved in discussions about the potential for adoption if the birth parent involves them themselves or consents to Oranga Tamariki involving them in the decision. Once an adoption case reaches the court, wider family and whānau rarely have any involvement in the process. This is in tension with the values of Māori, Pacific peoples and people of other cultures in New Zealand, who place high value on the role of wider family and whānau in decision-making, and often have a much stronger communal culture regarding childcare.

The discussion document seeks the public's views on the following options for increasing family and whānau involvement. The discussion document also references options for the wider family and whānau to be involved in post-adoption contact with the adopted child. These options are addressed in the IRIS's section on post-adoption contact.

| Birth family and whānau: Description of options | | | | | |
|--|--|---|---|--|---|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 |
| <p>Retain current law and practices around wider family and whānau involvement in adoption.</p> <p>Wider family involvement pre-adoption occurs only at discretion of birth parents. No mechanisms for in-Court or post-adoption involvement.</p> | <p>Require a social worker to interview the family and whānau and include their views on the adoption in their report to the Court.</p> <p>Set out practice requirement for Oranga Tamariki social worker to consult with family in preparing their report on the adoption.</p> | <p>Require Oranga Tamariki to organise a family meeting or whānau hui before the adoption takes place.</p> <p>This could provide an opportunity for family and whānau involvement, with a focus on what is in the child's best interests. Oranga Tamariki or another organisation could provide mediation if needed.</p> | <p>Require the court to consider the child's relationship with their birth family and whānau.</p> <p>This could support the court to consider the impact of an adoption on the child's connection with wider family and whānau in determining whether adoption is in child's best interests.</p> | <p>Give wider family and whānau the right to attend and speak in court during the adoption hearing.</p> <p>This would allow the court to hear directly from family and whānau about what they believe would be in the child's best interests. This could be extended to the child's hapū and iwi.</p> | <p>Allow wider family and whānau to be added as a party to the adoption hearing.</p> <p>This would give family and whānau the right to support or oppose the adoption. They could also offer alternative care arrangements to the court. This right would have to be balanced with the birth parents' right to make decisions about their child. It could result in some tension between the birth parents and the family and whānau, particularly in cases where there is family breakdown.</p> |

Birth family and whānau: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|---|---|--|---|--|
| <p>Option 1: Require a social worker to interview the family and whānau and include their views on the adoption in their report to the Court.</p> <p>CW (All)</p> | <p>May provide better information to the court about whether an adoption is in the best interests of the child.</p> | <p>Addresses the problem by providing a clear right for the family and whānau to be included in the adoption process. Helps to meet objectives of reform by better reflecting other cultures principles and modern adoption practice.</p> | <p>Provides for more equal treatment of family and whānau in adoption decision. Also, more reflective of collective decision-making approach which is consistent with te ao Māori.</p> | <p>Easy to understand in practice but may not be clear how those views should be taken into account by the court.</p> | <p>Consistent with international obligations such as UN Declaration on the Rights of Indigenous Peoples. Not inconsistent with approaches in other pieces of family law.</p> |
| <p>Option 2: Require Oranga Tamariki to organise a family meeting or whānau hui before the adoption takes place.</p> <p>CW (All)</p> | <p>May provide better information about whether an adoption is in the best interests of the child.</p> <p>Enables all wider family and whānau to engage in child-focused discussions about what is the best form of care for the child</p> <p>Likely to be inappropriate and harmful for child and birth parents in cases of longstanding family breakdown or abuse.</p> <p>Consistent with Article 5 of the Children’s Convention, which</p> | <p>Makes space for family and whānau involvement in discussions about child’s care, but does not actually give wider family and whānau any role in decision-making. This may align with more modern adoption practice.</p> | <p>Fits with te ao Māori understandings of decisions around the care of children being a communal process, instead of a responsibility of birth parents.</p> | <p>Easy to understand but may not be clear what happens if the family and whānau cannot reach mutual agreement.</p> | <p>Consistent with processes for family group conferences in care of children and care and protection settings domestically. However, family group conferences are not compulsory in these settings, and allow for these processes to not be followed where there is a risk of harm.</p> |

| Birth family and whānau: Analysis of options | | | | | |
|---|---|--|---|---|---|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| | supports the rights of the family to be the first recourse for providing care for the child. | | | | |
| Option 3: Require the court to consider the child's relationship with their birth family and whānau. CW(All) | Supports child's rights by providing for their connections to their broader family and whānau to be taken into account when making an adoption decision. | Addresses the problem by providing clarity on the status of the child's relationship with their family and whānau. More consistent with modern best practice and reflective of other cultural concepts and principles. | No unjustified differential treatment. Aligns with the importance Māori place on whakapapa and whanaungatanga. | Easy to understand | Consistent with approaches in other family law which emphasises the importance of the child's relationship with their family and whānau. Consistent with international obligations. |
| Option 4: Give wider family and whānau the right to attend and speak in court during the adoption hearing. CW(All) | Supports judge to receive relevant information so they can make an informed adoption decision, taking into account the child's connection to wider family and whānau. This can contribute to a judge's assessment of whether an adoption is in the best interests of the child. | This would signal the importance of family and whānau in the child's life, and reflect more culturally appropriate concepts and principles. | In keeping with te ao Māori understandings of the value of the child as a member of the collective whānau, hapū and iwi. Enhances the participation of whānau, hapū and iwi in the process and supports te ao Māori understandings of collective decision-making. | Reasonably easy to understand but may not be clear what weight the family and whānau views should be given. | Consistent with New Zealand's commitment to the importance of right to family and identity in the UN Declaration on the Rights of Indigenous Persons. Consistent with importance placed on family and whānau connection within other domestic child-focused |

| Birth family and whānau: Analysis of options | | | | | |
|---|--|---|--|---|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| | | | | | legislation, e.g. the Oranga Tamariki Act. |
| <p>Option 5: Allow wider family and whānau to be added as a party to the adoption hearing.</p> <p>CW (All)</p> | <p>Allows judge to hear directly from the family and whānau so it can make an informed adoption decision, taking into account the child's connection to wider family and whānau. This can contribute to a judge's assessment of whether an adoption is in the best interests of the child. Emphasises the importance of the child's connection to their family and whānau.</p> | <p>This would signal the importance of family and whānau in the child's life and reflect more culturally appropriate concepts and principles.</p> | <p>Differential treatment when compared to birth parents who currently are not added as a party to proceedings. Would be consistent with te ao Māori understandings of collective decision-making.</p> | <p>Unclear what role the family and whānau would play as a party to the proceeding.</p> | <p>Likely to be consistent with UN Declaration on the Rights of Indigenous Peoples. Somewhat consistent with other pieces of law which enable other specified persons to be added as a party to proceedings.</p> |

Part 3: Culture and adoption

This part of the discussion document outlines how culture is considered in the adoption process. It also discusses tamaiti whāngai or tamaiti atawhai, as well as types of customary adoptions practised by other cultures.

The discussion document considers:

- how a child's culture can be better considered in the adoption process; and
- whether any changes should be made to the way the law treats other customary adoptions.

Reform offers an opportunity to consider whether changes to these areas would better serve the reform objectives of:

- ensuring 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; and
- ensuring 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.
- ensuring 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.

Specific options have not been provided for whāngai, as we do not consider it appropriate for the Crown to make proposals relating to Māori customary practices. Targeted engagement with Māori communities, including whānau, hapū and iwi will be undertaken to understand whether there is a need for change.

Culture and adoption

Current adoption laws do not make any reference to culture. Adoption processes do not consider the needs and values of different cultures, how the law should treat children from different cultures, or the child's right to culture. As adoption removes a child's legal ties to their birth family and whānau, their legal connections to their culture, heritage and language may also be lost. For tamariki Māori, the removal of these ties can also impact on their whakapapa and whanaungatanga connections. Reform offers an opportunity to consider how adoption law should treat adoptions of children from different cultures, including cross-cultural adoptions and the customary adoptions of different cultures.

The discussion document seeks the public's views on the follow options for change relating to how our adoption laws deal with culture. The discussion document also references options for the wider family and whānau to be involved in post-adoption contact with the adopted child to support the maintenance of the child's cultural and whakapapa ties. These options are addressed in the IRIS's section on post-adoption contact.

| Culture and adoption: Description of options | | | | |
|--|---|---|--|---|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 |
| <p>No consideration of culture within adoption law. Oranga Tamariki and judicial practice act to support the culture of an adopted person to be considered as part of the child's best interests, but there is no legislative backing or requirement to do this, and no legislative guidance for how this should be done.</p> | <p>Require birth parents to provide information about their culture and heritage when they place their child for adoption. This would allow the information to be held on file and be made available to the child.</p> | <p>Include overarching objective or principle within the law relating to culture. It could do this by saying that a child's culture and language is a key consideration in adoption cases.</p> | <p>Require the court to take a child's cultural and language needs into account when deciding if an adoption is in a child's best interests. This may mean that adoptive applicants need to provide evidence on how they will meet those needs.</p> | <p>Allow the court to call for a cultural report about the child's cultural and language needs. Cultural reports identify any cultural differences between the child and the adoptive parents, the child's cultural needs, and explain how the adoptive applicants say they will foster the child's culture.</p> |

| Culture and adoption: Analysis of options | | | | | |
|---|---|---|--|--|---|
| KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Require birth parents to provide information about their culture and heritage when they place their child for adoption. CW (All) | Upholds children's rights, particularly the right to identity and culture, by providing for the collection of information about a child's culture and heritage. | In practice, this option alone is unlikely to address the problem as it means the information is available but does not require the court to consider it. | Supports need for adoption to promote child's cultural identity, in keeping with te ao Māori and other cultures perspectives. No unjustified differential treatment. | Clear requirement but may need clarity on what that information will be used for. | Consistent with international obligations including the right to culture, as set out in UN Declaration on the Rights of Indigenous Peoples. |
| Option 2: Include overarching objective or principle within the law relating to culture. CW (All) | Would provide emphasis on the importance of the right to culture and identity, which will help to promote children's rights. | Consistent with modern best practice approach and supports the consideration of culture throughout the adoption process. | Supports need for adoption to promote child's cultural identity, in keeping with te ao Māori and other cultures perspectives. No unjustified differential treatment. | May not be clear on what this means and could result in inconsistent application, depending on the objective or principle. | Consistent with international obligations including the right to culture, as set out in UN Declaration on the Rights of Indigenous Peoples. |

| | | | | | |
|--|--|---|---|--|---|
| <p>Option 3: Require the court to take a child’s cultural and language needs into account when deciding if an adoption is in a child’s best interests.</p> <p>CW (All)</p> | <p>Ensures the child’s culture and language is considered by the judge when determining whether adoption will be in the child’s best interests.</p> <p>Encourages adoptive parents to make plans to maintain child’s cultural heritage and provide evidence on how that would be achieved.</p> | <p>Consistent with modern best practice approach and would support the court in considering and reflecting more cultures concepts and principles in the adoption process. However, lack of enforcement may result in insincere plans from adoptive applicants, or failure to follow through with plans.</p> | <p>Supports need for adoption to promote child’s cultural identity, in keeping with te ao Māori and other cultures perspectives. No unjustified differential treatment.</p> | <p>Clear and easily understood option.</p> <p>However, some information may be required to support adoptive applicants in knowing how they could support an adopted child’s culture where they have no links to it</p> | <p>Consistent with right to identity and culture affirmed in the UN Declaration on the Rights of Indigenous Persons. Also consistent with approaches in other family law, e.g. Oranga Tamariki Act.</p> |
| <p>Option 4: Allow the court to call for a cultural report about the child’s cultural and language needs.</p> <p>CW (All)</p> | <p>Cultural reports can help discussions in Court about the best way that care of a child can maintain their cultural identity</p> | <p>Content of cultural reports may enable judges with a better understanding of the child’s cultural and linguistic needs, including whether these needs will be met by the adoption placement. Effectiveness will be affected by supply of high-quality report writers especially for cultures with smaller numbers of adoptions</p> | <p>Supports need for adoption to promote child’s cultural identity, in keeping with te ao Māori and other cultures perspectives. No unjustified differential treatment.</p> <p>There is a risk that cultural report writers may not be available for some cultures.</p> | <p>There is some uncertainty within the Courts as to how a cultural report should be relied on. Given this, education may be required around how a cultural report will influence an adoption proceeding</p> | <p>Aligns with other family law which provides for the court to request for cultural reports. Also consistent with international obligations.</p> |

Customary adoptions

Currently the law does not give customary adoptive parents legally recognised parental rights and responsibilities toward the child. This can have implications for both the customary adoptive parents and child in accessing services. While some customary adoptions may be formalised through a court order, the current law doesn't recognise the cultural needs or practices of those involved. This section does not examine whāngai.

The discussion document seeks the public's views on the follow options for change relating to the way the law treats customary adoptions:

| Customary adoptions: Description of options | |
|---|---|
| Status Quo | Option 1 |
| <p>No recognition of customary adoptions in adoption laws. Customary adoptions are recognised in specific New Zealand laws, but are not recognised generally under adoption laws. This can impact on the ability of family and whānau accessing government services.</p> | <p>Provide legal recognition for customary adoptions in more circumstances with associated safeguards for children. Safeguards could include assessing the customary adoptive parents for relevant criminal convictions. Recognition could be granted through some type of certificate of recognition, or all customary adoptions could be automatically recognised via legislation.</p> |

Customary adoptions: Analysis of options

KEY: = Legislative option = Practice-based option

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|---|---|---|---|--|
| Option 1: Provide legal recognition for customary adoptions in more circumstances with associated safeguards for children. | Upholds children’s rights by giving all adopted children the same rights, regardless of whether they are adopted legally or through customary practice. Also protects children’s rights by putting appropriate safeguards in place. | Addresses the identified problem and achieves objectives of reform, particularly by granting recognition of other cultures concepts and principles. | <p>May be considered justifiable differential treatment as it is more inclusive of other cultures practices.</p> <p>However, if changes are not also made to the way whāngai is treated, this would result in differential treatment across cultures.</p> | Would need to provide a lot of clarity on when a customary adoption will be recognised, for what purposes, and what effect the recognition has. | Consistent with international obligations as set out in UN Declaration on the Rights of Indigenous Peoples. Not consistent with the approach currently taken in family law, but note customary adoptions are recognised for the purposes of some other laws. |

Part 4: How the adoption process works

Part 4 of the discussion document outlines features of the adoption process, including:

- processes for making and recognising overseas and intercountry adoptions
- consent requirements for an adoption
- processes for determining the suitability of adoptive applicants
- court process in an adoption hearing
- the legal effect of adoption
- processes for discharging an adoption order
- how the court considers alternatives to adoption, including processes for “open” adoption and ongoing contact between adopted persons and their birth family and whānau

Reform offers an opportunity to consider whether changes to any of these areas would better serve the reform objectives of:

- ensuring 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;
- ensuring 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; and,
- ensuring 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.

Overseas and intercountry adoptions

Current law sets out how overseas and intercountry adoptions are made and recognised within New Zealand. Reform offers the opportunity to consider how provisions for recognising these adoptions align with:

- ensuring the law is child-centric, and supports the welfare and best interests of children; and,
- ensuring that New Zealand law meets our domestic and international human rights obligations

The discussion document seeks public views on options for change relating to how New Zealand:

- recognises overseas adoptions
- recognises Hague Convention adoptions
- provides for intercountry adoptions in the New Zealand Court and how New Zealand recognises intercountry adoptions made in an overseas court; and,
- recognises intercountry adoptions.

Recognition of overseas adoptions

Recognising overseas adoptions is important so that families with adoptive children travel or move to New Zealand can have their relationships recognised. New Zealand relies on the other country in an overseas adoption to consider the child's rights, best interests and welfare when deciding to make an adoption. Some countries may not take some of the steps New Zealand 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.

| Overseas adoptions: Description of options | | |
|---|--|---|
| Status Quo | Option 1 | Option 2 |
| <p>Retain existing grounds for recognising an overseas adoption.</p> <p>Overseas adoptions may be recognised either where a person moves to New Zealand along with children they have previously adopted in an overseas court and the adoption meets criteria to show it is consistent with New Zealand legislation.</p> | <p>Recognise any adoption which is valid in the country that it was made.</p> <p>Do not require overseas adoption to meet criteria of consistency with New Zealand legislation in order to be recognised.</p> | <p>Require evidence be provided that the overseas adoption included safeguards to protect the child's rights.</p> <p>Create children's rights criteria that an overseas adoption must meet in order to be recognised in New Zealand.</p> |

| Overseas adoptions: Analysis of options | | | | | |
|--|--|--|--|---|---|
| KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| <p>Option 1: Recognise any adoption which was valid in the country in which it was made.</p> <p>ME</p> | <p>Ensures that no children are unable to receive their rights as adopted children of their parents because of the law under which their adoption was made</p> <p>Conversely, may allow recognition of adoptions with different legal meaning to New Zealand, which may change the legal status of the child</p> | <p>Does not provide safeguards to require that adoptions recognised from overseas will have the same legal effect as a New Zealand adoption. This option may not achieve the objectives of reform where the overseas adoption conflicts with best practice.</p> | <p>Provides equity for families of children adopted from countries with different legal systems to New Zealand</p> | <p>Easier to understand and apply than the status quo</p> | <p>Does not provide evidence that adoptions meet international safeguards including those in the Hague Convention on Intercountry Adoption.</p> |
| <p>Option 2: Require evidence be provided that the overseas adoption included safeguards to protect the child's rights.</p> <p>ME</p> | <p>Provides support for assessment that overseas adoptions that are being recognised are in the best interests of the child.</p> | <p>Inflexible criteria may make it very difficult for overseas adoptions to be recognised, particularly where adopted person and their adoptive family and whānau are intending to move to New Zealand from a country with poor administrative infrastructure around the adoption process.</p> | <p>Likely to most severely impact on those from countries with poor administrative infrastructure around the adoption process.</p> | <p>Some complexity in determining/ explaining criteria for adjudging best interests of child. Process of proving criteria may be difficult for adoptive parents to navigate, particularly if their adoption occurred sometime in the past, or in a country with poor administrative infrastructure around the adoption process.</p> | <p>Provides support for assessment that adoptions being managed are in the best interests of the child, which is in line with international obligations.</p> <p>May cause difficulties to New Zealand's relationships with other countries if we are seen to question the validity of another country's decision.</p> |

Hague Convention intercountry adoptions

The Hague Convention has safeguards that make sure intercountry adoptions are in the best interests of the child. The Adoption (Intercountry) Act implements the Hague Convention in New Zealand. Once both Central Authorities agree the adoption should proceed the adoption is finalised using the agreed process. This results in an Article 23 certificate being issued.

Following adoptions that follow the Hague Convention process, the child's citizenship status will depend on which country issues the Article 23 certificate. The law says that the adopted child is to be treated as if they were born where the adoption order was made. If the Article 23 certificate is issued in New Zealand, the child is entitled to New Zealand citizenship by birth. If the Article 23 certificate is issued in the other country, the child is entitled to New Zealand citizenship by descent. Citizenship by birth can be passed on to your children, citizenship by descent cannot.

| Hague Convention adoptions: Description of options | |
|--|---|
| Status Quo | Option 1 |
| <p>Citizenship rights depend on where Article 23 certificate is issued.</p> <p>If the Article 23 certificate is issued in New Zealand, the child is entitled to New Zealand citizenship by birth. If the Article 23 certificate is issued in the other country, the child is entitled to New Zealand citizenship by descent. Citizenship by birth can be passed on to your children, citizenship by descent cannot.</p> | <p>Align citizenship rights for children adopted through the Hague Convention process, regardless of whether that process was completed in New Zealand or overseas.</p> <p>Children adopted under the Hague Convention automatically receive same citizenship benefits as if they were the children of their adoptive parents.</p> |

Hague Convention adoptions: Analysis of options

KEY: = Legislative option

| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|--|--|--|---|---|
| Option 1: Align citizenship rights for children adopted through the Hague Convention process, regardless of whether that process was completed in New Zealand or overseas. | Enhances citizenship rights of children who have been adopted via intercountry adoption. | Effectively reduces inequity and clarifies legal position. | Reduces inequity of status quo, enables all children adopted under the Hague Convention to have the same citizenship rights. | Unlikely to be understood by those who haven't had personal experience with Hague Convention process, but more accessible and easier to understand than status quo for those directly affected. | Consistent with domestic and international obligations as it supports consistent and equitable treatment of all people who are adopted. |

Intercountry adoptions in New Zealand Family Court

Current adoption laws allow anyone to make an application from anywhere, regarding any child, anywhere. An application under the Adoption Act involving people living overseas (either the child or adoptive applicants) will follow New Zealand’s domestic adoption process. This is an unusual approach as it allows the court to make decisions about people or matters not connected to New Zealand. It can also be difficult to get information needed for an application, or to verify the accuracy of information provided. It could be challenging to confirm the child’s identity or decide that the adoption is in the child’s best interests. The current approach also allows people living overseas to make an application in the New Zealand Family Court to bypass their own country’s laws.

| Intercountry adoptions in New Zealand Family Court: Description of options | | | |
|--|---|---|---|
| Status Quo | Option 1 | Option 2 | Option 3 |
| <p>Retain existing grounds for recognising an intercountry adoption.</p> <p>Intercountry adoptions may be recognised by the Family Court where either:</p> <ul style="list-style-type: none"> - the adoption has been arranged through the formal Hague Convention process; or, - the adoptive parents have applied to adopt the child in the New Zealand Family Court. | <p>Require child or parent to live in New Zealand.</p> <p>Adoption application can only be made if one or both of child and adoptive parent are living in New Zealand.</p> | <p>Only allow intercountry adoptions that follow the Hague Convention.</p> <p>Change law around when adoption from overseas may be recognised, so that New Zealanders may only adopt from overseas countries that are signatory to the Hague Convention.</p> | <p>Allow New Zealand to negotiate agreements with specific countries that have not ratified the Hague Convention to create processes that require adoptions to meet similar safeguards to the Hague Convention process.</p> <p>Expansion of Option 2. Hague Convention adoptions may continue. Recognition of other intercountry adoptions will only be allowed where New Zealand makes a bilateral agreement with the country that enables our system to be satisfied with their processes.</p> |

| Intercountry adoptions in New Zealand Family Court: Analysis of options | | | | | |
|---|--|--|---|--|---|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Require child or parent to live in New Zealand. CW (All) | <p>Enables improved processes for checks about the suitability of an adoptive parent, and whether the adoption is in the best interests of the child to be made.</p> | <p>Likely that checks will still be difficult where child is located overseas.</p> | <p>No equity impacts.</p> | <p>Clear and easily understood option.</p> | <p>Supports New Zealand's commitment to protecting best interests of the child, as affirmed in the Hague Convention.</p> <p>Supports consistent, equitable treatment of all adopted persons.</p> |
| Option 2: Only allow intercountry adoptions that follow the Hague Convention. ME (3) | <p>Ensures that New Zealand does not recognise intercountry adoptions where there is uncertainty whether the adoption is in the best interests of the child.</p> <p>Likely to result in stopping some adoptions which would be in the best interests of the children involved.</p> | <p>Total bar will be strongest measure to ensure that only intercountry adoptions that meet Hague Convention safeguards are recognised in New Zealand.</p> | <p>Impacts on immigrants from countries not party to the Hague Convention.</p> | <p>Clear and accessible option.</p> | <p>Supports that adoptions being recognised are in the best interests of the child, which supports obligations under the Hague Convention.</p> <p>Supports consistency with international agreements (such as the Hague Convention) where New Zealand has committed to preventing child trafficking and exploitation.</p> |
| Option 3: Allow New Zealand to negotiate agreements with specific countries that create a process that includes similar safeguards as the | <p>Increases safeguards to reduce the risk that New Zealand recognises intercountry adoptions where there is uncertainty whether the adoption is in the best interests of the child.</p> <p>Bilateral agreements provide option for countries that are not party to the</p> | <p>Flexibility of bilateral agreements provides additional option for New Zealand to ascertain whether a country's adoption processes support</p> | <p>Impacts on immigrants from countries not party to the Hague Convention.</p> <p>Bilateral</p> | <p>Clear and accessible option.</p> | <p>Supports that adoptions being recognised are in the best interests of the child, which supports obligations under the Hague Convention.</p> <p>Supports consistency with international agreements (such as the Hague Convention)</p> |

| | | | | | |
|---|---|----------------------------------|--|--|---|
| Hague Convention process. ME (2) | Hague Convention to allow for their children to be adopted by New Zealand citizens. | the best interests of the child. | agreement option makes this impact less than for Option 2. | | where New Zealand has committed to preventing child trafficking and exploitation. |
|---|---|----------------------------------|--|--|---|

Intercountry adoptions in overseas court

Some intercountry adoptions take place using the process for recognising overseas adoptions, rather than a formal intercountry adoption process. Once the overseas adoption is finalised, it can be recognised under New Zealand law if the criteria are met. There is a risk that overseas countries laws and adoption processes don't align with New Zealand's expectations around safeguarding children's rights. New Zealanders can bypass domestic adoption laws, by going to another country to adopt where there may be fewer checks. Recognising these adoptions can place children's rights, best interests and welfare at risk once they enter New Zealand.

| Intercountry adoptions in overseas court: Description of options | | |
|--|--|---|
| Status Quo | Option 1 | Option 2 |
| <p>Retain existing grounds for recognising an intercountry adoption made in an overseas Court.</p> <p>all overseas adoptions are automatically validated by administrative process on return to New Zealand</p> | <p>Option 1: Only recognise overseas adoptions where both the child and the adoptive parents lived overseas at the time of the adoption</p> <p>OR Require parents to have lived overseas for a certain period of time before returning to New Zealand with an adopted child.</p> | <p>Only allow intercountry adoptions from countries that have ratified the Hague Convention.</p> <p>Change law around when adoption from overseas may be recognised, so that New Zealand citizens may only adopt from overseas countries that are signatory to the Hague Convention.</p> |

| Intercountry adoptions in overseas court: Analysis of options | | | | | |
|--|--|--|--|---|---|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| <p>Option 1: Only recognise overseas adoptions where both the child and the adoptive parents lived overseas at the time of the adoption OR Require parents to have lived overseas for a certain period of time before returning to New Zealand with an adopted child.</p> <p>ME</p> | <p>Increases assurance that recognition of adoption in New Zealand requires some proof of intention of longstanding relationship of care which will be in the best interests of the child.</p> | <p>Reduces risk of New Zealanders going overseas to obtain adoptions that New Zealand would not consider are in the best interests of the child.</p> | <p>Will have disproportionate impact on some migrant communities, who make up the majority of New Zealanders adopting children in overseas courts. May well be justifiable considering the benefit of greater focus on the best interests of children.</p> | <p>Clear and accessible option without need for specialist knowledge.</p> | <p>Supports New Zealand's commitment to protecting best interests of the child, as affirmed in the Hague Convention.</p> <p>A number of overseas jurisdictions require a citizen to have lived overseas for a certain time period before they may have an overseas adoption recognised.</p> |
| <p>Option 2: Only allow intercountry adoptions that follow the Hague Convention or equivalent process.</p> <p>ME</p> | <p>Ensures that New Zealand does not recognise intercountry adoptions where there is uncertainty whether the adoption is in the best interests of the child.</p> <p>Likely to result in stopping some adoptions which would be in the best interests of the children involved.</p> | <p>Total bar will be strongest measure to require that only intercountry adoptions that meet Hague Convention safeguards are recognised in New Zealand</p> | <p>Impacts on immigrants from countries not party to the Hague Convention.</p> | <p>Clear and accessible option.</p> | <p>Supports consistency with international agreements (such as the Hague Convention) where New Zealand has committed to preventing child trafficking and exploitation.</p> |

Consent

Who must agree to an adoption (or “provide consent”) is an important part of New Zealand’s adoption law. Currently, the law only requires the child’s parents or guardians to give their consent to the adoption. In practice, this often means the birth mother and birth father. A birth father’s consent isn’t needed if he and the birth mother weren’t married between the child’s conception and birth, and if he isn’t listed as a guardian on the child’s birth certificate. The law does not require a child to consent to their adoption.

In some situations, the Family Court can make adoption orders without the consent of one or both birth parents, if an application is made to dispense with their consent. Currently this application may be granted if the parent or guardian has either abandoned, neglected, consistently failed to look after and care for, or consistently ill-treated the child, or if the Court considers that the parent is unfit to look after the child because of a physical or mental incapacity. Some consider that allowing a child to be adopted without a parent’s consent should only occur in extreme cases and that the current grounds are discriminatory, while others consider there may be some circumstances where there are good reasons to dispense with consent.

The law says that a birth mother may not give consent until a child is 10 days old. This timeframe gives the birth mother the time to consider the implications of the decision to place a child for adoption after a child is born. Some may consider that this timeframe is too short, given the physical and psychological effects of giving birth, while others may consider it is too long, for example in cases where the birth mother is a surrogate carrying a child for intending parents.

The law also says that where birth parents consent to an adoption by specific adoptive applicants, they cannot remove (or ‘withdraw’) their consent while the application is pending or until the applicants have had reasonable opportunity to apply to adopt the child. This provides certainty to the adoptive applicants, but means that birth parents have few options available if they change their mind about the adoption.

Reform offers an opportunity to consider how consent requirements can best consider the best interests of the child alongside the rights of consenters, and consider the values of Māori and other cultures. The discussion document seeks the public’s views on the following options for reforming laws related to consent:

| Who should consent: Description of options | | | |
|---|--|---|---|
| Status Quo | Option 1 | Option 2 | Option 3 |
| <p>Retain existing consents. Birth mother must consent, and birth father if he is listed as a guardian. Spouse of adoptive applicant must consent. No requirement for consent of child, wider family and whānau. All consents may be dispensed with where Court considers the person is inappropriate to consent for a listed ground in the Act.</p> | <p>Require the birth father to consent to adoption, regardless of marital and guardianship status. This option would align the requirement for the birth father’s consent, with those for the birth mother. There would likely need to be exceptions in some cases, for example, where involving a birth father in an adoption process poses a risk of harm to the birth mother or child.</p> | <p>Require the child’s consent to their own adoption once they reach a certain age. An age would need to be decided on, or a test of maturity. Other jurisdictions have ages of consent ranging from 8-14 years.</p> | <p>Require specified wider family and whānau to consent to the adoption. In the detail of this option, who would need to consent as a member of wider family and whānau would need to be determined. There would likely need to be exceptions in some cases, for example where involving wider family and whānau in an adoption process poses a risk of harm to the birth mother or child.</p> |

Who should consent to adoption: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|---|--|---|--|---|
| <p>Option 1: Require the birth father to consent to adoption, regardless of marital and guardianship status.</p> <p>CW (All)</p> | <p>Supports child’s right to identity and to know family. Decisions about best interests of the child can occur with input of birth father</p> | <p>Will be constrained in situations where a birth father is not identified or cannot reasonably be found.</p> | <p>Allows for birth father to participate in adoption process on equal footing with birth mother</p> | <p>This option is clear and easy to understand and interpret. May require some interpretation regarding the level of effort that must be put into locating birth fathers</p> | <p>Supports commitments under international human rights covenants to protect adopted child’s right to connection with family. Consistent with rights of birth father in other domestic legislation, right to non-discrimination in the NZ Bill of Rights Act</p> |
| <p>Option 2 Require the child’s consent to their own adoption once they reach a certain age.</p> <p>CW (All)</p> | <p>Supports child’s right to participation and agency in decisions. Child has agency over determination of whether an adoption will be in their best interests once they reach age of consent</p> | <p>Addresses the problem of the lack of child’s input into adoption process</p> | <p>Gives child rights in keeping with rights given to birth parents. In keeping with te ao Māori valuing of a child as a taonga</p> | <p>In principle, simple to understand. Decisions about age of consent, or test for competency may be more complex</p> | <p>The Children’s Convention affirms a child’s right to participation and agency in decisions concerning them. All comparable jurisdictions we assessed require the child’s consent from a certain age, with a range of 8-14 years old</p> |
| <p>Option 3: Require specified wider family and whānau to consent to the adoption.</p> | <p>Supports adoptee’s right to have connection with family and whānau. May allow for exploration of alternatives to</p> | <p>Supports the law considering the needs and values of Māori and other</p> | <p>Supports the child’s right to connection with whakapapa and whānau</p> | <p>Likely to require clear delineation around which members of wider family and whānau must consent to</p> | <p>Consistent with the right to identity, family connection. No other domestic regime requires all wider family to consent to a child’s</p> |

Who should consent to adoption: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|-----------------|---|---|---|---|--|
| CW (All) | <p>adoption which may enable a child to be cared for within the family.</p> <p>Tension where wider family may deny consent where adoption may be in the best interests of the child.</p> <p>Consents may be seen as adult-centric, particularly if family and whānau refusal of consent prevents an adoption that the child supports.</p> | <p>non-Western cultures.</p> <p>Requiring wider family and whānau consent may be inappropriate in circumstances of abuse, wider family breakdown.</p> | <p>connection, which is vitally important for Māori understandings of self.</p> | <p>help make it clear to all those involved who is required to consent.</p> | <p>placement, although the severe effects of adoption could make this more justifiable.</p> <p>Some Australian and Canadian states and territories only allow adoption of an indigenous child where that child cannot be placed within their family context.</p> |

| Dispensing with consent: Description of options | | | |
|---|--|---|---|
| Status Quo | Option 1 | Option 2 | Option 3 |
| <p>Retain existing Court powers for dispensing with consents.</p> <p>Court may dispense with consent where</p> <ul style="list-style-type: none"> - it is satisfied that the parent has abandoned, neglected, persistently failed to maintain, or persistently ill-treated the child, or failed to exercise the normal duty and care of parenthood in respect of the child - the parent's mental or physical disability makes them unfit to consent to adoption. | <p>Remove the ability for the Court to rely solely on the presence of a mental or physical incapacity when dispensing with consent.</p> <p>This option would require the Court to prove that a disabled parent has failed to provide the normal duty of care to their child for consent to be dispensed with.</p> | <p>Include additional circumstances where consent may be dispensed with.</p> <p>Grounds used in other jurisdictions, which could be utilised could include</p> <ul style="list-style-type: none"> - where a parent cannot be identified or located - where the Court believes a child is the product of a sex offence. | <p>Remove the option to dispense with consent altogether.</p> <p>In any circumstance where a birth parent refuses to consent to an adoption, this option would provide that adoption may not proceed, and guardianship/ care of children proceedings must follow in place of adoption.</p> |

| Dispensing with consent: Analysis of options | | | | | |
|--|---|---|---|--|--|
| KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Remove the ability for the Court to rely solely on the presence of a mental or physical incapacity | Supports disabled parents who are able to care for their children to continue to do so, which | Supports dispensation only occurring in cases where it is | Removes discrimination against persons with disabilities. | This option is clear and easy to understand. | Supports New Zealand's commitments under the UN Declaration on the Rights of Persons |

| Dispensing with consent: Analysis of options | | | | | |
|---|--|--|--|---|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| when dispensing with consent. CW (2) | protects the child's right to care within their family. | absolutely necessary. | | | with Disabilities and the NZ Bill of Rights Act. |
| Option 2: Include additional circumstances where consent may be dispensed with. CW (1) | May allow for adoptions to go ahead which are in the best interests of the child, where a lack of dispensation options might result in a barrier to adoption. | In practice, unlikely that dispensations would not be given for the grounds listed in other jurisdictions. | Dispensation of consent is not in keeping with te ao Māori value of respecting the mana of individuals in decision-making processes. | Additional circumstances for dispensing with consent are not difficult to understand, but guidance may need to be provided to enable public understanding of the new grounds. | Additional circumstances are unlikely to change the human rights considerations of the dispensation process. |
| Option 3: Remove the option to dispense with consent altogether. ME | Supports adoptee's right to connection with family. Tension where birth parents may deny consent where adoption may be in the best interests of the child. Removing dispensing with consents may be seen as adult- | Likely to cause issues where a birth parent cannot be located, there may need to be a ground of exceptional circumstances to justify dispensation. | In keeping with te ao Maori views about the importance of respecting family and whānau views about the care of a child. Dispensation is opposed to the mana of a birth parent, by denying them the | Clear and straightforward to understand. | All other international jurisdictions we surveyed allow for dispensation of consent in some circumstances. |

| Dispensing with consent: Analysis of options | | | | | |
|---|---|---------------|---|---------------------------|-------------|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| | centric, particularly if family and whānau refusal of consent prevents an adoption that the child supports. | | right to make decisions about their child's future. | | |

| Timing of consent: Description of options | | | | |
|---|--|---|---|--|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 |
| <p>Retain existing timing before which a birth mother may not consent to adoption.</p> <p>Consent may not be obtained until at least 10 days after the birth of a child.</p> | <p>Require a longer period before birth parent(s) may consent to an adoption.</p> | <p>Allow a period of time in which consent may be withdrawn after it has been given.</p> | <p>Allow consent only once the individual has received counselling and support.</p> <p>Create approved programme of support or counselling, which birth parents have to receive before giving consent OR which birth parents must go through if they wish to give consent before the legislated period has passed.</p> | <p>Provide access to free legal advice before a person gives consent to adoption.</p> |

| Timing of consent: Analysis of options | | | | | |
|---|--|--|---|---|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| <p>Option 1: Require a longer period before birth parent(s) may consent to an adoption.</p> <p>CW (All, but may be superseded by 3)</p> | <p>Parents have a longer time period to engage with information and support, so that they can make a more settled decision about whether adoption is in the best interests of their child. Parents may be given support and information to assist with decision-making, particularly where coercion or pressure to adopt may be suspected.</p> | <p>Allows for provision of information and support to birth parents. However, no guarantee that extra time will enable birth parents to engage with support and information. This will be highly dependent on availability and resourcing of counselling services.</p> | <p>Reduces potential for pressure and coercion around consent decision in some cases, which is likely to disproportionately harm birth mothers and/or disabled parents.</p> | <p>This option is clear and easy to understand.</p> | <p>In keeping with New Zealand's international obligations, including the UN Convention on the Rights of Persons with Disabilities.</p> <p>New Zealand's current time bar of ten days is short by international standards (NSW and Queensland require 28 days; the UK requires 42 days).</p> |
| <p>Option 2: Allow a period of time in which consent may be withdrawn after it has been given.</p> <p>CW (All)</p> | <p>May support birth parents to make better decisions about whether adoption is in the best interests of the child.</p> <p>Conversely, lack of certainty about consent may affect child's relationship with adoptive</p> | <p>Allows birth parent with time and opportunity to reconsider consent.</p> | <p>Adoptive parents are negatively affected by a lack of certainty about the finality of their rights.</p> | <p>Easily understandable option.</p> | <p>Some Australian states allow for a period of time for consent to be withdrawn.</p> |

| Timing of consent: Analysis of options | | | | | |
|---|---|--|--|---|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| | family, for example it could affect the child's ability to bond and build attachments with their adoptive family. | | | | |
| <p>Option 3: Allow consent only once the individual has received counselling and support.</p> <p>Alternative to or CW (1)</p> | Support assists birth parents to make settled, informed decisions about whether adoption is in the best interests of their child. | Support and information more likely to enable consent decisions to be informed and free from pressure Counselling criteria less blunt than time bar, could support those birth parents who are very sure of their decision to adopt out their child to do so without undue delay This will be highly dependent on availability and resourcing of counselling services. Lack of services could delay giving of consent. | Reduces potential for pressure and coercion around consent decision in some cases, which is likely to disproportionately harm birth mothers and/or disabled parents. | Information about counselling required and interaction with timing of consent will need to be clearly set out to avoid confusion. | In keeping with New Zealand's international obligations, including the UN Convention on the Rights of Persons with Disabilities. |

| Timing of consent: Analysis of options | | | | | |
|---|--|---|--|-------------------------------|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 4: Provide access to free legal advice before a person gives consent to adoption. CW (All) | Legal advice will help support birth parents in decision as to whether adoption is in the best interests of their child. | Supports parents to make well-informed decision about adoption. | Reduces potential for pressure and coercion around consent decision in some cases, which is likely to disproportionately harm birth mothers and/or disabled parents. | Easily understandable option. | In keeping with New Zealand's international obligations, including the UN Convention on the Rights of Persons with Disabilities. |

Suitability to adopt

Currently the law says that an adoption must promote the “welfare and interests” of the child and that the applicant must be a “fit and proper person” to adopt. However, it does not set out the factors that make a person suitable. Currently, Oranga Tamariki practice determines what factors are assessed in considering whether an adoptive applicant is suitable and these factors inform the content of a social worker’s report on an adoption. A judge uses this report to determine whether the adoption will be in the best interests of a child. Reform provides an opportunity to consider what processes should be used to assess whether an adoptive applicant is suitable to adopt.

The discussion document seeks the public’s views on the following options:

| Suitability to adopt: Description of options | | | |
|---|---|--|--|
| Status Quo | Option 1 | Option 2 | Option 3 |
| <p>Suitability report provided by social worker to judge. No legislative requirements for content of social worker report on suitability. Format of suitability assessment drawn from Oranga Tamariki practice (nearly all social workers are employed by Oranga Tamariki) Regulations require police/health/financial assessments to be provided to judge as part of suitability assessments.</p> | <p>Set out in legislation what types of information must be included in a social worker’s report. For example the Act could specify that certain health, criminal, financial, immigration and police vet information be included</p> | <p>Include restrictions on who can be considered suitable to adopt. For example, specific criminal convictions could be a bar to being considered suitable to adopt. Place within the Act a list of specified factors which would bar a person from being considered suitable to be approved as an adoptive parent.</p> | <p>Include suitability criteria or a test in legislation which the courts would use to assess whether an adoptive parent is suitable to adopt. This option goes further than Option 1 in prescribing what judges must consider when determining suitability. Criteria for suitability are set out in law.</p> |

| Suitability to adopt: Analysis of options | | | | | |
|---|--|--|---|---|---|
| KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Set out in legislation what types of information must be included in a social worker's report. CW (All) | Ensures judge has all listed information in assessing an applicant's suitability to adopt a child, which supports a child's safety. | These types of information are already specified by regulation. This is a more flexible approach, which may be preferable. | No differential treatment. | Clear and easy to understand. | Protecting the safety of children is in keeping with New Zealand's domestic and international human rights obligations. |
| Option 2: Include restrictions on who can be considered suitable to adopt. For example, specific criminal convictions could be a bar to being considered suitable to adopt. ME (as assumption that this would be included in Option 2) | Has the potential to provide extra protection to children against being adopted by unsuitable adoptive parents, which would protect the child's rights. However, there is a risk that such restrictions become arbitrary as it will not take into account changes in circumstance. | May guide judicial suitability decision-making. However, in practice judges, are highly likely to give appropriate weight to criminal convictions which might make a person unsuitable to adopt. If a judge considers a person suitable despite a relevant conviction, there is likely to be strong justification | May frame bars to criteria around factors likely to disproportionately negatively affect some groups. | This option is likely to be clear and easy to understand, depending on criteria for suitability chosen. | Protecting the safety of children is in keeping with New Zealand's domestic and international human rights obligations. 'This option has been adopted in a number of similar jurisdictions, e.g. UK. |
| Option 3: Include suitability criteria or a test in legislation which the courts would use to | Criteria may support judges to make consistent decisions about whether adoptive parents are | It is questionable whether legislative criteria will be more effective in helping judges make suitability | Same as for Option 1. | Setting out suitability criteria in law may help public understanding and transparency of judicial | Protecting the safety of children through ensuring they are in the care of suitable adults is in keeping |

| | | | | | |
|--|---|---|--|--|---|
| <p>assess whether an adoptive parent is suitable to adopt.</p> <p>ME</p> | <p>suitable, and in the best interests of children.</p> <p>Conversely, inflexible criteria might prevent adoptive applicants from adopting when being adopted by the carers would be in the child's best interests.</p> | <p>decisions than judicial practice being based on malleable, individualised practice guidance and precedent.</p> | | <p>decisions. However, these criteria are also likely to retain subjective elements, as they are developed through judicial decision-making. This may lead to appearances of inconsistency where nuance of decision-making is not visible to public.</p> | <p>with New Zealand's domestic and international human rights obligations. How suitability is determined will not necessarily affect the fulfilment of this obligation.</p> |
|--|---|---|--|--|---|

Court processes

The majority of adoptions in New Zealand are made by the Family Court. Currently, the law requires the court to make an interim order before it can make a final adoption order. Interim orders are considered by some people as a type of ‘trial period’ for the child and the adoptive parents, however they can also create uncertainty for the child and adoptive parents. The Family Court can consider any evidence that it thinks is relevant to the adoption application. In most cases, the court will receive a social worker’s report that provides an assessment of the adoptive applicant’s suitability to adopt. The court can also appoint a lawyer to assist the court to provide additional information on the case or the law. However, the court has limited powers to request reports or the assistance of professionals to help it make decisions.

The discussion document seeks public feedback on five options for change related to court processes. These are:

| Court processes: Description of options | | | | |
|---|---|---|---|---|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 |
| <p>No changes to court processes. Current Court processes include:</p> <ul style="list-style-type: none"> - interim adoption orders being the default in law, unless there is specific reason for a final order to be given - a judge being unable to order specialised reports -additional parenting or contact orders only rarely being given in adoption cases | <p>Enable final adoption orders to be granted unless there is a specific reason to grant an interim order, for example, where the adoptive parents are not already known to the child.</p> <p>The current Act favours using interim orders. However, in practice final orders are often granted using the justification of special circumstances. This option would enable the Court to grant a final order without having to declare that the case meets special circumstances.</p> | <p>Give the Court the power to call for cultural, psychological, medical and psychiatric reports where they think it is relevant.</p> <p>State in law that the Court has the ability to call for any reports it considers necessary in an adoption proceeding. Similarly to Options 1 and 2, this option would make explicit in legislation a power that there has been debate about the Court already having under its inherent jurisdiction.</p> | <p>Allow the Court to appoint a Lawyer for Child (or another children’s advocate).</p> | <p>Allow the Court to request additional evidence from people outside the application who have a relevant connection to the child.</p> |

Court processes: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|---|--|---|--|---|
| <p>Option 1: Enable final adoption orders to be granted unless there is a specific reason to grant an interim order.</p> <p>CW (All)</p> | <p>Could enable the child to more quickly bond with their adoptive parents and to remove uncertainty during the lengthy (from the child’s perspective) period of an interim order.</p> <p>Could support child’s right to permanent and stable care under the Children’s Convention.</p> <p>Conversely, if abused, could damage child’s right to contact with their birth family and whānau.</p> | <p>Streamlines the adoption process and reduces unnecessary hearings.</p> <p>Needs to be balanced against need for time to assess whether adoption placement is appropriate.</p> | <p>Favours adoptive parents desire for permanency and stability.</p> | <p>Easily understood.</p> | <p>Domestic care of children processes favour interim care orders before deciding to give a placement more permanence based on its success.</p> |
| <p>Option 2: Give the court the power to call for cultural, psychological, medical and psychiatric reports where they think it is relevant.</p> <p>CW (1+2) ME (4)</p> | <p>Enabling a court to call for these reports would assist the Court in considering that the interests of the subject child are appropriately addressed, whatever their age.</p> | <p>Supports informed, consistent decision-making in adoption cases.</p> <p>Effectiveness likely to be constrained by accessibility of high-quality cultural report writers, particularly in less common cultural contexts</p> <p>Calling for reports is likely</p> | <p>Acknowledges that needs of adopted person will be culturally particular, and that judges should be enabled to consider this.</p> | <p>Reasonably clear and understandable. Cultural reports are known to the public in the criminal context. Some education may be required for adoptive applicants as to what kinds of things a cultural report will contain, and how judges</p> | <p>Reports would support consistent decision-making by the court. It would also provide assurance that the resulting audience would be in accordance with the UN Convention - Article 30.</p> <p>Cultural reports are a common feature of proceedings under</p> |

Court processes: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|--|--|--|------------------------------|---|
| | | to increase the time taken to make an adoption order. | | will take this into account. | the Care of Children Act and Oranga Tamariki Act. |
| Option 3: Allow the Court to appoint a Lawyer for Child (or another children’s advocate). CW (1+2) ME (3) | Makes the court process more child-centric and more easily navigable for children, who have an expert support to represent their views. | Lawyer for child provides an ability for children’s voice to be heard in Court. Effectiveness will depend on Lawyer for Child’s capability in eliciting child’s views. | In keeping with te ao Māori understandings of the value of the child and their voice being heard | Easy to understand. | Consistent with other legislation that has lawyer for child. Consistent with right of the child to participate in decisions that affect them. |
| Option 4: Allow the Court to request additional evidence from people outside the application who have a relevant connection to the child. CW (All) | Allows for other voices to be heard in Court, who might have relevant information about whether an adoption is in the best interests of the child. | Supports Court process to gather all relevant information. | May allow greater rights for wider family and whānau to be involved in the Court process. | Easily understandable. | Consistent with domestic court processes under the Care of Children act and Oranga Tamariki Act, which allow the Court to call for additional evidence. |

Legal effect of adoption

Reform offers the opportunity to consider the legal consequences of adoption, known as the legal effect, in the light of the objectives of reform. The current law removes the child’s legal connection to their birth family and whānau, so that, in the eyes of the law, it is as if the adopted child was born to their adoptive parents. The legal effect of adoption also determines a child’s rights to inherit from their birth family and whānau (known as succession) and a parent’s responsibility to pay child support. Under current law, an adopted child has full succession rights from their adoptive parents, as if they had been born to those parents. They generally have no succession rights from their birth parents, except as decided by the Māori Land Court in relation to succession to Māori land. Birth parents have no responsibility to pay child support following adoption.

The legal consequences of adoption have been referred to as the “legal fiction” of adoption, that the law does not reflect a child’s ongoing connection to their birth family and whānau following adoption. Reform offers the opportunity to consider how the legal effect of adoption interacts with the objectives of ensuring the law is child-centric, and supports the welfare and best interests of children, and recognising the needs and values of Māori and other cultural groups.

The discussion document seeks the public’s views on the following options for reform relating to the legal effect of adoption:

| Legal Effect: Description of options | | |
|---|---|---|
| Status Quo | Option 1 | Option 2 |
| <p>Retain existing legal effect of adoption.</p> <p>Adoption means that a child has no legal connection to their birth family and whānau, and their birth family and whānau has no legal right to any ongoing interaction.</p> | <p>Change the legal effect of adoption to recognise both the birth parents and the adoptive parents as the child’s legal parents, but the adoptive parents have additional responsibilities.</p> <p>This could mean the adoptive parents have day-to-day care of the child and are the child’s primary guardians. The birth parents could still maintain some parental responsibilities to the child – these could be decided on a case-by-case basis depending on the role they will continue to play in the child’s life. This could be a way to legally recognise ‘open’ adoption arrangements.</p> | <p>Change the legal effect of adoption to recognise both the birth parents and adoptive parents as the child’s legal parents, but only the adoptive parents have full parental rights and responsibilities toward the child.</p> <p>This could be similar to situations under the Care of Children Act which enables the court to remove a legal parent’s guardianship and parental responsibilities, and create new guardians, but the law still recognises them as the child’s parent.</p> |

Legal effect: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|---|---|--|---|---|
| <p>Option 1: Change the legal effect of adoption to recognise both the birth parents and the adoptive parents as the child’s legal parents, but the adoptive parents have additional responsibilities</p> <p>ME</p> | <p>Supports child’s ongoing connection to their birth parents</p> <p>Has positive implications for succession rights for adopted children.</p> | <p>Effectively ends “legal fiction” of adoption.</p> <p>Child remains child of birth parents for purposes of law, while recognising additional parental relationship with adoptive parents.</p> | <p>In keeping with te ao Māori understandings of whānau relationship and whakapapa as being unable to be undone by adoption.</p> | <p>May be difficult to delineate rights and responsibilities of birth vs adoptive parents. Likely to be a source of confusion and conflict.</p> | <p>Consistent with child’s right to identity, connection with family.</p> <p>Option has been used with specific types of adoption (primarily step-parent adoptions) in other countries.</p> |
| <p>Option 2: Change the legal effect of adoption to recognise both the birth parents and adoptive parents as the child’s legal parents, but only the adoptive parents have full parental rights and responsibilities toward the child.</p> <p>ME</p> | <p>Supports child’s ongoing connection to their birth parents.</p> <p>Has positive implications for succession rights for adopted children.</p> | <p>Effectively ends “legal fiction” of adoption.</p> | <p>In keeping with te ao Māori understandings of whānau relationship and whakapapa as being unable to be undone by adoption.</p> | <p>May be difficult to delineate rights and responsibilities of birth vs adoptive parents. Likely to be a source of confusion and conflict.</p> | <p>Consistent with child’s right to identity, connection with family.</p> <p>Consistent with approaches to guardianship in domestic legislation e.g. CoCA.</p> |

| Succession: Description of options | |
|--|--|
| Status Quo | Option 1 |
| <p>Retain existing law on succession related to adoption</p> <p>Adopted child is recognised as a member of their adoptive family and whānau for the purpose of succession law, but is not recognised as a member of their birth parent’s family and whānau.</p> <p>Where adopted child is named in the will of a birth parent, this may be challenged in court.</p> <p>Succession in whāngai cases and for Māori adopted persons may be determined by the Māori Land Court under the Te Ture Whenua Māori Act 1993.</p> | <p>Recognise the person who has been adopted as a family member of both birth and adoptive parents, for our succession laws This would mean, for example, that an adopted person could inherit from a birth parent who died without a will or take legal action if they consider they have not been adequately provided for in the birth parent’s will.</p> |

| Succession: Analysis of options | | | | | |
|---|--|---|--|----------------------------------|---|
| KEY: = Legislative option | | | | | |
| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Recognise the person who has been adopted as a family member of both birth and adoptive parents, for our succession laws | Increases succession rights of adopted child. Recognises adopted child’s ongoing place in their birth family and whānau. | Reflects in law an ongoing connection between the adopted person and their birth family and whānau. Likely to result in conflict where adopted person’s claim to succession disadvantages other successors. | Gives adopted person more rights of succession than non-adopted persons. Disadvantages other successors. Supports te ao Māori understandings of whānau and whakapapa as inalienable. | Clear and easily understandable. | Could be viewed as positive discrimination in favour of adopted person. |

| Child support: Description of options | |
|--|---|
| Status Quo | Option 1 |
| Retain existing law on child support. Birth parent has no responsibility to pay child support following an adoption. | Require a birth parent to continue to pay child support following an adoption. Explicitly set out that birth parents continue to have a duty to pay child support following adoption. |

| Child support: Analysis of options | | | | | |
|---|--|--|--|---------------------------|---|
| KEY: = Legislative option | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Require a birth parent to continue to pay child support following an adoption. | Increases financial support for child. | Likely to cause ongoing tension between birth and adoptive parents over rights to the child. May not effectively recognise the permanence of shift in parental responsibility that occurs at adoption. | Birth parents strongly disadvantaged in comparison to the status quo – paying support for a child with whom they may have no ongoing legal connection. | Easy to understand. | No other comparable jurisdiction requires birth parents to continue to pay child support following an adoption. |

Alternative care arrangements and orders

Current law does not require that alternatives to adoption be considered before an adoption is made. This means that adoptions may be made in cases where another type of order would be better suited to the circumstances. Similarly, the law does not require consideration of open adoption practices and post-adoption contact between an adopted child and their birth family and whānau. This means that there are no legal protections for the birth parents and birth family and whānau to maintain contact with the child once they have been adopted. In practice, consideration of alternative care arrangements and post-adoption contact is encouraged by Oranga Tamariki and the courts. However, as these matters are not set out in the legislation, practice can be inconsistent. Reform provides the opportunity to consider how alternatives to adoption and post-adoption contact are considered in the process of considering whether an adoption is appropriate.

Options the public are invited to comment on in the discussion document are:

| Alternative care arrangements and orders: Description of options | | | | | | | | |
|--|---|---|---|--|---|---|--|---|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 | Option 6 | Option 7 | Option 8 |
| <p>The law stay silent on how and when other options should be considered.</p> <p>No guidance given to decisionmakers about how to consider alternatives to adoption or post-adoption contact arrangements.</p> | <p>Require Oranga Tamariki social workers to advise birth parents about the alternatives to adoption (alternative orders, alternative care options) in initial consultation.</p> | <p>Require the court to be satisfied that other care options have been considered before making an adoption order.</p> | <p>Require that alternatives to adoption be canvassed in social worker reports in step-parent and relative adoptions only.</p> <p>Require consideration of alternatives in step-parent and relative adoptions as these adoptions make up the majority of direct applications to the Court, where Oranga Tamariki are less likely to have time to canvass alternatives.</p> | <p>Require that post-adoption contact agreement be supplied to Court as part of an adoption application, unless it is inappropriate to do so.</p> | <p>Require the Court to consider additional orders for birth parents and wider family and whānau (e.g. contact order), in addition to approving an adoption.</p> | <p>Provide funded mediation service to assist birth and adoptive parents in resolving disagreements about post-adoption contact.</p> <p>Establish dispute resolution services to support ongoing post-adoption contact. Option to combine with Option 6 as escalation.</p> | <p>Offer support for updating or changing contact agreements.</p> | <p>Make post-adoption contact agreements legally enforceable.</p> <p>Allow a birth parent or member of wider family and whānau to take an adoptive parent to Court over non-compliance with a post-adoption contact agreement, as can be done with custody agreements.</p> |

Alternatives care arrangements and orders: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|---|---|--|--|--|
| <p>Option 1: Social worker to inform birth parents of alternative options.</p> <p>CW (2-4)</p> | <p>Assists birth parents to be better informed to make decisions about the child’s care but does not require that these are considered by any party other than birth parents. This may not support child’s right to connection with their birth family.</p> | <p>Close to best practice guidelines that Oranga Tamariki already follow to the extent possible but including it in Family Court requirements would provide enforceability for the need for canvassing alternatives, especially where this might be opposed by birth parents.</p> | <p>Reduces differential treatment of children placed for adoption when compared to children entering the care and protection system. In care and protection cases, social workers already emphasise encouraging placement within the whānau.</p> | <p>Social worker explanation means birth parents able to ask questions and means process can be explained. Likely to be more accessible than engaging with a lawyer.</p> | <p>Consistent with encouraging in-family solutions, which supports a child’s right to family and whānau.</p> |
| <p>Option 2: Require the court to be satisfied that other care options have been considered before making an adoption order.</p> <p>CW (All)</p> | <p>Supports child’s rights to connection with birth family and whānau to be acknowledged, and consideration is given to all options in assessing that adoption is the best option for the child’s care.</p> | <p>Already best practice, unclear whether a legislative mandate is necessary.</p> | <p>In keeping with te ao Māori values of the importance of child’s connection to whakapapa and whanaungatanga.</p> | <p>Clear and easily understandable option.</p> | <p>Consistent with encouraging in-family solutions, which supports a child’s right to family and whānau.</p> |

| Alternatives care arrangements and orders: Analysis of options | | | | | |
|---|--|--|--|---|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 3: Alternatives to be considered in social worker report for step-parent and relative adoptions. CW (1, 3-4) | Provides clarity on which circumstances adoption is unlikely to suitable given the effects of adoption and the range of viable alternative care options. Gives judge more information to help with assessment if whether adoption is in the child's best interests in these cases. | Makes clear that alternatives to adoption are to be considered in direct applications to the Family Court. | Treats children and adoptive parents differently according to their family status. Could be considered justifiable given the substantive differences that step-parent and relative adoptions have to stranger adoptions. | Clear that alternatives must be considered in relative and step-parent adoptions but still uncertainty for other adoption situations. | Supports rights to identity and ongoing contact with family and whānau. |
| Option 4: Require that post-adoption contact agreement be supplied to Court as part of an adoption application, unless there are special circumstances. ME (4) | Protects child's right to identity, connection to culture and language. | Strong support for ongoing contact between adopted person and birth family and whānau. | In keeping with te ao Māori values of the importance of child's connection to whakapapa and whanaungatanga. | Contact agreements can be mediated and explained by Oranga Tamariki social workers. | Supports consistency with child's right to identity and family. In keeping with approach to connection to family and whānau in other domestic child-focused legislation e.g. Oranga Tamariki Act. |
| Option 5: Allow for alternative contact orders once adoption order made. | Provides mechanism for consideration of ways a child can maintain connections to their birth family, culture and | Stronger support for ongoing contact with birth family and whānau than Option 3. | In keeping with te ao Māori values of the importance of child's connection to | Clarity for decision-makers but might require further guidance and info for birth and adoptive parents on | Consistent with child's rights to maintain connections to their birth family and whānau, culture and language. Also aligns with approaches in |

| Alternatives care arrangements and orders: Analysis of options | | | | | |
|---|---|--|--|--|--|
| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| ME (3) | language following an adoption order being made. | | whakapapa and whanaungatanga. | ongoing contact arrangements. | other family law (CoCA and OTA) for having ongoing relationships with other carers. |
| Option 6: Mediation service offered to resolve post-adoption contact disputes. CW (7-8) | Helps to protect and maintain durability of post-adoption contact agreements Informal dispute resolution likely to cause less serious damage to birth/ adoptive parent relationship than formal court process. This is likely to be beneficial to the child. | Lower level of enforceability of post-adoption contact. | Continues status quo position that adoptive parents have veto power in event of post-adoption contact dispute. | Relatively easily understandable and navigable process for dispute resolution. | Helps to protect and maintain durability of post-adoption contact agreements, which protects a child's right to identity, connection to family and whānau. |
| Option 7: Support for updating or changing contact agreements to reflect that the needs of those impacted by the adoption may change over time. CW (6,8) | Acknowledges that child's needs and desires related to contact may change over time, and assists birth and adoptive families to best evolve arrangements to support the child. | Helps birth and adoptive parents cooperate to achieve best outcomes for child. | In keeping with te ao Māori values of the importance of child's connection to whakapapa and whanaungatanga. | Relatively simple to understand. | Helps to protect and maintain durability of post-adoption contact agreements, which protects a child's right to identity, connection to family and whānau. |

Alternatives care arrangements and orders: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|---|---|--|--|---|--|
| <p>Option 8: Make post-adoption contact agreements legally enforceable.</p> <p>CW (6-7)</p> | <p>Ensures that child is able to continue contact with their birth family and whānau.</p> <p>Formal dispute resolution process likely to cause more serious damage to birth/ adoptive parent relationship than mediation. This is likely to be harmful to the child, could cause strain on adoptive relationship.</p> | <p>Higher level of enforceability of post-adoption contact. However, comes with complications for adoptive relationship.</p> | <p>Gives birth parents power against adoptive parents in post-adoption contact disputes.</p> | <p>More complicated, expensive process for dispute resolution. More difficult for birth and adoptive parents to navigate.</p> | <p>Ensures that child is able to continue contact with their birth family and whānau, which protects a child’s right to identity, connection to family and whānau.</p> |

Discharging an adoption order

Current law provides that an adoption order can only be discharged in limited circumstances, and only with the prior approval of the Attorney-General. This can place significant barriers and costs on applicants where there is a genuine reason for wanting an adoption order discharged. The law is also unclear who may apply for a discharge. Reform offers the opportunity to consider whether the law around discharging an order is fit for purpose.

The discussion document seeks the public's views on options for change around who may apply for a discharge, and three options for change around the circumstances in which a discharge could be allowed. All options assessed would require legislative change.

| Who may apply for an order to be discharged: Description of options | | |
|---|---|--|
| Status Quo | Option 1 | Option 2 |
| <p>Retain existing law on who may apply for a discharge.</p> <p>It is unclear in the law who may apply for a discharge. Case law has determined that adopted persons may apply, but in some cases wider family and whānau have been prevented from applying.</p> | <p>Set out clearly in law who can apply for a discharge based on current precedent.</p> <p>This would allow the person who has been adopted, birth parents, and the adoptive parents to apply for a discharge.</p> | <p>Allow wider family and whānau to apply to discharge an adoption order.</p> <p>Law may need to specify which family and whānau members can apply.</p> |

Who may apply to have an order discharged: Analysis of options

KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1)

| | Upholds children’s rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
|--|---|---|---|---|--|
| <p>Option 1: Set out clearly in law who can apply for a discharge based on current precedent.</p> <p>ME</p> | <p>Continues current practice regarding who may apply to discharge an adoption order and grounds for discharge.</p> | <p>Reduces uncertainty about who may apply to discharge an adoption order.</p> | <p>Maintains status quo that does not allow wider family and whānau to apply to discharge an order. This is not in keeping with Māori understandings of collective responsibility for whānau.</p> | <p>Improves clarity of the law.</p> | <p>It is best practice in domestic and international law that it is clear who may make a particular application to the Court.</p> |
| <p>Option 2: Allow wider family and whānau to apply to discharge an adoption order.</p> <p>ME</p> | <p>Wider family and whānau may apply for discharge of an adoption order when a child lacks sufficient capacity to do so themselves, and birth parents are unable or unwilling. This may protect the best interests of the child where an adoption was made fraudulently or erroneously.</p> | <p>Provides recognition that other persons than the birth parents, adoptive parents and adopted person may have reason to apply for the discharge of an adoption order.</p> | <p>Recognition of the importance of wider family and whānau, in keeping with te ao Māori values.</p> | <p>Law will need to be clear with regard to which members of an adopted person’s wider family and whānau may apply for discharge.</p> | <p>Recognition of the importance of wider family and whānau in keeping with commitments under the UN Declaration on the Rights of Indigenous Persons.</p> <p>No international jurisdiction we studied explicitly allows for wider family and whānau to apply for a discharge, but some Canadian states allow any relevant person to apply.</p> |

| Grounds for discharging an adoption order: Description of options | | | |
|--|--|---|--|
| Status Quo | Option 1 | Option 2 | Option 3 |
| <p>Retain existing grounds for discharging an order.</p> <p>Discharge may only be based on factual error or misrepresentation in adoption case.</p> | <p>Allow discharge where the relationship between the adoptive parents and adopted person has completely broken down.</p> | <p>Allow for discharging an order if the adopted person, birth parents and adoptive parents all agree to discharge the adoption order.</p> | <p>Allow for a discharge where the court believes it would be in the adopted person's best interests.</p> <p>This option would provide the court with additional flexibility, relying on judicial discretion to determine when a discharge of an adoption order is appropriate.</p> |

| Grounds for discharging orders: Analysis of options | | | | | |
|--|--|---|-----------------------------------|---|---|
| KEY: = Legislative option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| <p>Option 1: Allow discharge where the relationship between the adoptive parents and adopted person has completely broken down.</p> <p>CW (2), (3 includes within scope)</p> | <p>Allows adoption order to be discharged when an adoption is no longer in the best interests of the child, rather than requiring error or fraud in the initial case to justify discharge.</p> | <p>Allows discharge of adoption for a purpose that is evolving, rather than only for errors in the initial case. Likely to better meet the needs of those who seek discharge.</p> | <p>No differential treatment.</p> | <p>Clear and understandable option.</p> | <p>Supports New Zealand's commitment to the paramountcy of the interests of the child and adopted person. Aligns with child-centric principles in domestic child-focused legislation.</p> |

| | | | | | |
|--|--|---|--|--|--|
| <p>Option 2: Allow for discharging an order if the child, birth parents and adoptive parents all agree to discharge the adoption order.</p> <p>CW (1), (3 includes within scope)</p> | <p>Allows adoption order to be discharged when all involved parties agree, rather than requiring error or fraud in the initial case to justify discharge.</p> | <p>Requires consent of all parties for discharge, which reduces options for discharge on the adopted person's initiative. Allows discharge of adoption for a purpose that is evolving, rather than only for errors in the initial case. Likely to better meet the needs of those who seek discharge</p> | <p>Supports the rights of all involved in the adoption process to make collective decisions.</p> | <p>Clear and easily understandable option.</p> | <p>Consistent with what would occur in other domestic care of children proceedings</p> |
| <p>Option 3: Allow for a discharge where the court believes it would be in the child's best interests.</p> <p>ME (All-inclusive)</p> | <p>Allows adoption order to be discharged when an adoption is no longer in the best interests of the child, rather than requiring error or fraud in the initial case to justify discharge.</p> | <p>Widest possible discretion allows judge to discharge an order without needing to meet any criteria.</p> | <p>No differential treatment.</p> | <p>Reasonably clear and understandable option, but less public understanding of judicial discretion.</p> | <p>Supports New Zealand's commitment to the paramountcy of the interests of the child and adopted person. Aligns with child-centric principles in domestic child-focused legislation</p> |

Part 5: Impact on the individual

Part 5 of the discussion document discusses the lifelong impact that adoption has on those involved in the process. It considers options that could be utilised to help mitigate the potential for harm from the adoption for the person who is adopted, birth parents, adoptive parents and wider family and whānau.

The discussion document considers:

- support and information that could be provided before, during and after an adoption occurring; and,
- what information an adopted person's birth certificate should contain following an adoption
- access to adoption information, and about the identity of people who are adopted.

Better consideration of the impact of adoption on those involved and the ways in which support and information could assist with adopted persons ongoing needs is central to achieving the objectives of adoption reform.

Consideration of these areas aligns with the reform objectives:

- ensuring 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
- ensuring 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
- ensuring 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
- ensuring 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.

Adoption support services

The current adoption system doesn't recognise that people impacted by adoption may need access to ongoing support. In many cases these days, adoption placements result in positive outcomes for children and the child can continue to have a relationship with their birth parents and birth family and whānau. Despite this, many people involved in adoption experience ongoing challenges. There is no specific government funding set aside for adoption support services, and the law doesn't require any pre, during or post-adoption support in domestic adoption cases. There is also little public information available about adoption and its emotional and psychological impacts on those involved, outside of the Oranga Tamariki process.

Reform provides an opportunity to consider what support services should be available to adopted persons, birth parents and adoptive parents before, during and after an adoption. The discussion document seeks the public's views on the following options for increasing support in the adoption process. These options are all non-legislative and all complementary.

| Adoption support services: Description of options | | | | |
|--|--|--|--|---|
| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 |
| <p>No additional support for any persons in the adoption process.</p> <p>Oranga Tamariki continue to provide what support they can with current budgets. No support is mandated</p> <p>Education only provided to adoptive parents. No formal provision of counselling.</p> | <p>Expand the types of information made available to children and people who are adopted, birth parents, adoptive parents, and the wider family and whānau about adoption before and after an adoption order has been finalised.</p> <p>Increased information provision could be delivered by Oranga Tamariki or an accredited third party.</p> | <p>Expand provision of education programmes relating to adoption, including tailored education.</p> <p>Expand education offered by Oranga Tamariki, or by another provider. Potential to offer preparation to child, birth parents, wider family and whānau as well as to adoptive parents, as well as ongoing training and support following adoption to the child and adoptive family. Tailored education could be offered for specific types of adoptions, such as intercountry adoptions, cross-cultural adoptions, relative or step-parent adoptions, adoptions when the adoptive parents have biological children, or when an older child is adopted.</p> | <p>Provide counselling with an accredited or specialist counsellor with a good understanding of adoption before, during or after an adoption.</p> <p>Fund a set amount of adoption counselling for child, birth parents, adoptive parents. Counselling targeted to specific needs (e.g. intercountry, disability-focused, culturally focused) likely to be most beneficial.</p> | <p>Facilitate support groups that connect people who were adopted, birth parents, adoptive parents and wider birth family and whānau with people who have similar adoption experiences.</p> <p>Fund Oranga Tamariki or an NGO to run support groups, with targeting to specific needs.</p> |

| Adoption support services: Analysis of options | | | | | |
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| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Information | Recognises that children should have the right to information about changes in their care (age-appropriate). Giving information to all parties assists in supporting well-informed decisions to be made, which is in the best interests of the child. Information can help support all groups to understand changes that are taking place with an adoption and how best to support the child through transition. | Information supports all groups going into an adoption with knowledge of their options and fair expectations of how an adoption will function, which will assist them with acclimatising to changes. | Information can be tailored to the needs of particular groups, reducing inequities that result from standardised provision. | More information is a straightforward option that is easy to understand in theory and in practice. | Information is a standard support service in comparative jurisdictions. Affects the child's right to participation in proceedings concerning them. |
| Option 2: Education | Education can be offered to all parties, including to children. Education can be age-appropriate to support children to be well-informed about the adoption and its effects. Ongoing support can help children bond to their adoptive families and get used to changes following adoption. | Education increases likelihood that all parties to an adoption are well-informed and comfortable with the adoption itself and their capabilities once the adoption is finalised. Education is likely to improve experience of those receiving information | Education can be tailored to the needs of particular groups, reducing inequities that result from standardised provision. | This is a straightforward option that is easy to understand in theory and in practice. | Affects the child's right to participation in proceedings concerning them. |
| Option 3: Counselling | Counselling could be offered to children, allowing them the opportunity to talk through any issues and indirectly have a voice in proceedings. Counselling would support the emotional/ psychological wellbeing of the child at the time of adoption, and after. Counselling can help birth parents make decisions from a place of settled intent, with full information and | Counselling could help parties' comfort with adoption arrangements, and to help with ongoing needs for support in adjusting to lifelong effects of adoption. | Counselling can be tailored to the needs of particular groups, reducing inequities that result from standardised provision. | This is a straightforward option that is easy to understand in theory and in practice. | Counselling is a standard support service in comparative jurisdictions and consistent with obligations under the Hague Convention. |

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| | taking into consideration the best interests of the child. Support through counselling for adoptive parents about the ongoing needs of the child will also result in better outcomes for the child. | | | | |
| Option 4: Support groups | Support groups can be offered to all parties, including to children. The groups, if specific enough (e.g. support groups specifically for children adopted from a particular country), can support a child's right to identity. Additionally, support groups for birth parents and adoptive parents can be a source of support which is in the best interests of the child. | Support groups provide support for participants from people who can strongly empathise with their adoptive experiences. Where participants find connection through them, they are likely to enhance other support services. | Support groups can be general (adoptees, adoptive parents) or specific (pre-1986 adoptions, cross-cultural adoptions, Pasifika adoptions) increasing likelihood that the specific needs of groups are met. | This option is simple to understand. | Support groups are widely available around the world but are typically organised privately. Where support groups support a child's identity and emotional connection to family, this is consistent with New Zealand's international obligations. |

Birth certificates after an adoption

When a person is adopted, their original birth record held by the Department of Internal Affairs is closed and a new record is created. Any birth certificates requested after that date reflect the information on the new birth record, showing 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, which has been criticised as being a "legal fiction" and can create issues for the person who has been adopted in accessing information about their identity. Restrictions on accessing adoption information, including original birth records, can also have intergenerational effects on the family and whānau of a person who has been adopted.

Reform offers the opportunity to consider what information should be on an adopted person's birth certificate following their adoption. The discussion document seeks the public's views on the following options relating to birth certificates:

| Birth certificates after an adoption: Description of options | | | |
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| Status Quo | Option 1 | Option 2 | Option 3 |
| No recognition of adopted status or birth parents on birth certificate. | Include the names of both the birth parents and the adoptive parents on a new birth certificate. | Create two new birth certificates, one with just the names of adoptive parents, and an amalgamated one with the names of both birth parents and adoptive parents on it | Introduce a new, different type of legal parenthood document that shows the adoptive parents as the child's legal parents but does not make changes to the child's original birth certificate. |

| Birth certificates after an adoption: Analysis of options | | | | | |
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| KEY: <input type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Include the names of both the birth parents and the adoptive parents on a new birth certificate. ME | Recognises that children should have the right to information about their identity, history, family and whānau. | Amended birth certificates recognise the reality of pre and post-adoption relationships. | In keeping with te ao Māori understanding of the importance of whakapapa connections. Signifies adopted person's ongoing connection to their birth family. | Straightforward option that is easy to understand in theory and in practice. | In keeping with commitments within the UN Declaration on the Rights of Indigenous Persons to protect right to identity and culture. |
| Option 2: Adoption and amalgamated certificates. ME | Supports adopted person's right to identity and to know about their birth parents. | Allows an adoptee to see that they are the child of their birth parents. Clarity will be required about the legal status of amalgamated certificates. | Adoptees know who their birth parents are, the same as non-adopted persons. In keeping with te ao Māori understanding of the importance of whakapapa connections. Signifies adopted person's ongoing connection to their birth family. | Clarity will be required about the legal status of amalgamated certificates, especially if no changes are made to the legal effect of adoption. | In keeping with commitments within the UN Declaration on the Rights of Indigenous Persons to protect right to identity and culture. Similar approach offered in comparative jurisdictions (e.g. four parent certificates in some Canadian states). |
| Option 3: Original and separate 'legal parenthood' document. | Supports right to identity and to know parents. | Allows an adoptee to see that they are the child of their birth parents, but may require them to operate | No differential treatment under this option, but likely to be a tension between birth parents and adoptive parents. | Clear who birth parents are (arguably the point of a birth certificate) but will raise questions of the legal effect for adoptive | In keeping with commitments within the UN Declaration on the Rights of Indigenous Persons to protect right to identity and culture. |

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| <p>ME</p> | | <p>legally as though the child of their adoptive parents. Clarity will be required about the legal status of both certificates.</p> | <p>In keeping with te ao Māori understanding of the importance of whakapapa connections. Signifies adopted person's ongoing connection to their birth family.</p> | <p>parents. Clarity will be required about the legal status of both certificates.</p> | <p>Not aware of comparative jurisdictions that do not change the birth certificate to some degree following an adoption.</p> |
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Access to adoption information

Current laws relating to access to adoption information are based on the underlying principles that a “clean break” between the child and birth family was best. A person who has been adopted must be at least 20 years old before they can apply for their “original birth certificate”, and birth parents cannot apply to access information about the child they placed for adoption until the child is 20 years old. Restrictions to adoption information can also have intergenerational effects on the family and whānau of a person who has been adopted. For adoptions that took place before 1 March 1986, people who have been adopted and birth parents are able to place a ‘veto’ on their information held by the Department of Internal Affairs. This prevents those people from accessing their birth record information.

Adoption information can also be held by Oranga Tamariki, the Family Court and, in some cases, non-government organisations. Accessing adoption information held by Oranga Tamariki and the Family Court can also be difficult. Accessing information held by Oranga Tamariki requires the applicant to have a copy of their “original birth certificate”, meaning the restrictions above also apply to those applications. Access to adoption court records held by the Family Court may only be granted if there is a ‘special ground’, which is a high threshold to meet.

The discussion document seeks public views on the following options for reform:

| Access to adoption information: Description of options | | | | | | |
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| Status Quo | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 | Option 6 |
| <p>Retain existing restrictions on accessing adoption information.</p> <p>Adopted persons must reach the age of 20 before they can apply to access their adoption information.</p> <p>Birth parents and adopted persons involved in adoptions before 1986 may place vetoes on their adoption information to prevent their child or parent</p> | <p>Lower or remove the age restriction for people who were adopted wanting to access birth information.</p> <p>Appropriate age would need to be determined.</p> | <p>Allow wider family and whānau of a birth parent or adopted person to apply to access adoption information with the consent of the adopted person.</p> <p>This option would create a process for wider family and whānau to try to reconnect with adopted family members.</p> | <p>Rescind the ability to put vetoes on access to existing adoption information.</p> <p>This option would mean that adult adopted persons would be able to access their adoption information, which had previously been</p> | <p>Remove the requirement to provide a birth certificate to receive adoption information from Oranga Tamariki.</p> | <p>Enable the Court to grant access court adoption records if it is satisfied the person has a genuine interest in the record.</p> <p>This would broaden who is able to access adoption records and likely make it easier for people to find out information about themselves or family and whānau members.</p> | <p>Create a separate system for storing and sharing information about the identity of a person who has been adopted.</p> <p>This database could sit alongside the birth certificate process and include information relating to a person’s whakapapa, culture and heritage. It could also include relevant genetic and</p> |

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| <p>from seeing their adoption information. No person other than an adopted person or a birth parent may apply to access adoption information</p> | | | <p>inaccessible due to a veto.</p> | | | <p>medical information. Implementation issues, including privacy and data sovereignty issues, will need to be considered.</p> |
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| Access to adoption information: Analysis of options | | | | | |
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| KEY: = Legislative option = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| Option 1: Lower or remove minimum age for adopted person to access adoption information CW (All) | Supports right to identity and to know family. | Improves access to information by removing age restriction. | May be discriminatory based on age, dependent on the age limit chosen for access. This will have to be considered in justifying any age limit. | This option is clear and simple to enforce. | Consistent with international obligations. Aligns with general domestic rules on access to your own private information. |
| Option 2: Some wider family access to information CW (All) | Indirectly supports children's right to identity and know family (both for adoptees and for wider family and whānau of adoptees) Offers adoptees potential avenue for family reunification where they have been through a historical closed adoption. | Addresses concerns about restricted access to information for wider family and whānau, does not affect the rights of the adopted person | Recognises the needs of the wider family and supports wider whānau connection, which is in keeping with the value of whanaungatanga. | Reasonably clear and straightforward but would need to be clear who can request the information. | Consistent with right to identity under UN Declaration on the Rights of Indigenous Peoples. |
| Option 3: Vetoes removed CW(All) | Supports adoptee's right to identity, and right to know family. | Improves access to adoption information, supporting the right to identity. | Supports the right to know whakapapa and whānau connection, which is vitally important for Māori understandings of self. Requires careful consideration of balancing of rights. Birth parents right to | Simple option to understand. | Consistent with the right to identity. Veto systems remain in place overseas. |

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| | | | privacy and to be treated as the law affirmed they would be when they entered into adoption are breached, in favour of adopted person's right to identity. | | |
| Option 4: Remove the requirement to provide a birth certificate to receive adoption information from Oranga Tamariki CW(All) | Supports adoptee's right to identity. | Reduces barriers to adopted person being able to access their identity information. | Improves equity for adopted persons who have less access to their birth documentation. | Will improve clarity and accessibility of law for adopted persons. | Consistent with right to identity under UNDRIP. |
| Option 5: Enable the Court to grant access court adoption records if it is satisfied the person has a genuine interest in the record. CW (All) | May support child's rights to identity in some cases. | Will need careful management to determine that genuine interest does not override privacy considerations. | Courts will make rulings on who may access information, this will determine whether access is equitable or not. | "Genuine interest" test will need to be clearly defined to support public understanding. | Consistent with right to identity under UNDRIP. |
| Option 6: Create a separate system for storing and sharing information about the identity of a | Allows adopted person to access crucial identifying information such as their whakapapa and iwi connections, as well as | Has potential to give adopted persons access to information that they currently cannot receive. Effectiveness will be determined by whether birth | Strongly supportive of equity. Brings adopted persons' rights to information about important | Reasonably clear and easy to understand. | Supports adopted persons' rights to identity. |

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| <p>person who has been adopted</p> <p>CW (All)</p> | <p>significant information that may affect their life, such as hereditary medical conditions, without having to access this information via their birth parents. This is particularly important for adopted persons who do not have ongoing connection with their birth family.</p> | <p>parents can and will give out this information at the time of adoption.</p> | <p>information in line with non-adopted persons.</p> | | <p>Careful consideration required to ensure adequate privacy protections in place that are consistent with privacy laws, given the potentially significant privacy implications.</p> |
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Part 6: Surrogacy and the adoption process

Part 6 of the discussion document considers how changes to the broader adoption process will impact on adoptions for children born by surrogacy, both within New Zealand and internationally.

Traditional surrogacy is where the surrogate uses her own eggs with either an intending parent's or a donor's sperm. Traditional surrogacy may take place with or without the help of a fertility clinic;

Gestational surrogacy is where the surrogate does not use her own eggs. Instead, an embryo is created using the eggs and sperm from the intending parents or donors. In this type of surrogacy, the child is usually genetically linked to one or both of the intending parents. Gestational surrogacy requires the assistance of a fertility clinic to perform an in vitro fertilisation ('IVF') procedure.

Under New Zealand law, the woman who gives birth to a child is recognised as the child's legal parent. If the woman has a partner, they are also recognised as the child's legal parent. For children who are born by surrogacy, this means that the surrogate (and her partner, if relevant) are the child's legal parents when the child is born. Adoption is used to transfer the legal parentage of a child born by surrogacy from the surrogate to the intending parents, regardless of whether the surrogacy arrangement was traditional or gestational.

Some intending parents involved in the surrogacy process argue that the process is unnecessarily administrative and burdensome. Reform offers an opportunity to consider whether any improvements can be made to the adoption process where a child is born by surrogacy, while ensuring that the rights and interests of children are upheld.

Te Aka Matua o te Ture | Law Commission is undertaking a first principles review of surrogacy. That review will consider fundamental questions concerning surrogacy, including how the law should attribute legal parenthood in surrogacy arrangements. Consequently, adoption law reform will consider changes to the adoption process where a child is born by surrogacy, but will not consider surrogacy issues more broadly.

The discussion document seeks the public's views on the below options for change.

| Surrogacy and the adoption process: Description of options | | | |
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| Status Quo | Option 1 | Option 2 | Option 3 |
| <p>Retain existing processes for approving surrogacy adoptions.</p> <p>There is a scarcity of information on what the surrogacy adoption process looks like, both following a child being born as a result of a domestic and international surrogacy arrangement.</p> <p>Intending parents must be assessed for suitability as part of the surrogacy process (before commencing and during a surrogacy arrangement) and adoption process (after the child is born), which is duplicative.</p> | <p>Provide user-friendly information for intending parents considering domestic surrogacy.</p> <p>Information could be provided by Oranga Tamariki or by a third party.</p> | <p>Changes to home visits for intending parents in domestic surrogacy arrangements.</p> <p>This could include reducing the number of visits to intending parents in both gestational and traditional surrogacy arrangements or changing the agency that carries out home visits.</p> | <p>Provide user-friendly information for intending parents considering surrogacy, with specific focus on international surrogacy.</p> <p>Information could be provided by Oranga Tamariki or by a third party.</p> |

| Surrogacy and the adoption process: Options for change | | | | | |
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| KEY: <input checked="" type="checkbox"/> = Legislative option <input type="checkbox"/> = Practice-based option ME = Mutually exclusive option CW (1) = Complementary with (Option 1) | | | | | |
| | Upholds children's rights | Effectiveness | Equity | Clarity and accessibility | Consistency |
| <p>Option 1: Provide user-friendly information for intending parents considering domestic surrogacy.</p> <p>CW (All)</p> | <p>Providing intending parent(s) and surrogates with initial information about surrogacy arrangements will increase likelihood that they have a better understanding of their rights and responsibilities towards the child.</p> | <p>Information will support intending parents, reducing risk that a commissioning parent's lack of knowledge leads to difficulties in the surrogacy process.</p> | <p>Improves the accessibility of current process for those who choose to enter into surrogacy arrangements.</p> | <p>Provides more clarity for all involved in the process.</p> | <p>Consistent with other care of children practices where general information is provided before entering into arrangements.</p> |

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| <p>Option 2: Changes to home visits for intending parents in domestic surrogacy arrangements CW (All)</p> | <p>Reducing the frequency and timeliness of home assessments may mean that intending parent(s) do not receive all the information they need about their rights and responsibilities towards the child.</p> | <p>Reduces administrative requirements on surrogates and intending parents.</p> | <p>Less state intervention would be in the best interest of the intending parent(s). However, condensing the time and frequency of home visits needs to be balanced against the importance of sufficient suitability assessment.</p> | <p>This approach is clear for all involved.</p> | <p>Can be consistent with international obligations so long as child's welfare and best interests continue to be upheld by change in assessments.</p> |
| <p>Option 3: Provide user-friendly information for intending parents considering surrogacy, with specific focus on international surrogacy. CW (All)</p> | <p>Providing intending parent(s) with initial information about surrogacy arrangements will support them to have a better understanding of their rights and responsibilities towards the child.</p> | <p>Information will support intending parents, preventing situations where a commissioning parent's lack of knowledge leads to difficulties in the surrogacy process</p> | <p>Improves the accessibility of current process for those who choose to enter into international surrogacy arrangements.</p> | <p>Provides more clarity for all involved in the process.</p> | <p>Consistent with other care of children practices where general information is provided before entering into arrangements.</p> |