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14 April 2023

Section (9)(2)(a)
[redacted]

Section (9)(2)(a)
[redacted]

Ref: OIA 102050

Tēnā kōrua Section (9)(2)(a)

Official Information Act request: Adoption Law Reform

Thank you for your letter of 15 January 2023 to the Ministry of Justice (the Ministry), requesting under the Official Information Act 1982 (the Act) information related to the adoption law reform. Specifically, you requested:

> *Reports and memos/briefing notes from January 2022 to the current date prepared by the Ministry of Justice for the Minister of Justice (Hon Kiritapu Allan) regarding all matters relating to Adoption Law Reform.*
>
> *All correspondence between the office of the Minister of Justice and the Ministry of Justice relating to the timeframes for the Adoption Law Reform work from June 2022 to the current date, specifically:*
>
> - *the report to Cabinet on the proposed reform of adoption legislation, or if not*
> - *completed, when it is due to be presented to Cabinet;*
> - *when an adoption Bill will be drafted by the Parliamentary Counsel Office; and*
> - *when the Bill will be included in the Legislation Programme.*
>
> *Malatest's report(s) to the Ministry of Justice on the consultation and engagement it undertook in 2022 to inform the Adoption Law Reform work.*
>
> *Emails between Malatest and the Ministry of Justice relating to the finalising and publishing of Malatest's report(s).*

On 13 February 2023, the Ministry extended the timeframe to respond to your request under section 15A(1)(a) of the Act, as consultations necessary to make a decision on your request were such that a proper response to your request could not reasonably be made within the original time limit.

On 13 March 2023, the Ministry sent you a letter advising that it has made the decision to grant your request, but some more time was needed to finalise the information for release.

Please find the documents within the scope of your request enclosed with this letter, as listed in Appendix 1. As Hon Kiri Allan took on the Justice portfolio in June 2022, seven of the documents the Ministry is releasing to you were prepared for the previous Minister of Justice, Hon Kris Faafoi between January and May 2022.

Some of the information in these documents has been redacted under the following provisions of the Act:

- 6(a), as the making available of that information would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand;
- 9(2)(a), to protect the privacy of natural persons;
- 9(2)(f)(iv), to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.

I am satisfied there are no public interest considerations that render it desirable to make the information withheld under section 9 available at this time.

Some information in the documents has also been redacted as I did not consider it to be in scope of your request.

I apologise for the length of time it has taken the Ministry to finalise and release this information to you. Thank you for your patience while waiting for it to be released.

Please note that this response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/oia-responses.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

Sam Kunowski
General Manager, Courts and Justice Services Policy

Appendix 1. Documents in scope

#	Date	Type	Document title	Decision on release
1	28.03.22	Briefing	Adoption law reform: Briefing 1 – Overview and Guiding Principles	Withheld in part under s9(2)(a), s9(2)(f)(iv), s9(2)(g)(i)
2	28.03.22	Briefing	Adoption law reform: Briefing 2 - Upholding Children's Rights	Withheld in part under s9(2)(a), s9(2)(g)(i)
3	28.03.22	Briefing	Adoption law reform: Briefing 3 - Legal Effect and Court Processes	Withheld in part under s9(2)(a), s9(2)(f)(iv)
4	28.03.22	Briefing	Adoption law reform: Briefing 4 - Intercountry and Overseas Adoptions	Withheld in part under s6(a), s9(2)(a), s9(2)(f)(iv), s9(2)(g)(i)
5	20.04.22	Briefing	Adoption law reform: Summary of policy proposals for inclusion in discussion document	Withheld in part under s9(2)(a), s9(2)(g)(i)
6	05.05.22	Briefing	Adoption law reform: Approval of discussion document for second engagement round	Withheld in part under s9(2)(a), s9(2)(f)(iv), s9(2)(g)(i)
7	30.05.22	Aide memoire	Adoption law reform discussion document	Withheld in part under s9(2)(f)(iv), s9(2)(g)(i)
8	14.06.22	Briefing	Adoption in Aotearoa New Zealand: Approval of discussion document for public release and update on engagement planning	Withheld in part under s9(2)(a), s9(2)(g)(i)
		Attachment	*Draft press release: adoption law reform engagement* (Final press release is available at: justice.govt.nz/about/news-and-media/news/adoption-law-reform-options-for-creating-a-new-system)	Withheld in full under s9(2)(g)(i)
		Attachment	*A new adoption system for Aotearoa New Zealand: Discussion document* (available at: justice.govt.nz/assets/A-new-adoption-system-for-Aotearoa-New-Zealand-Discussion-document2.pdf)	Refused under s18(d)
		Attachment	*A new adoption system for Aotearoa New Zealand: Discussion document* – track changes	Withheld in full under s9(2)(g)(i)
		Attachment	*A new adoption system for Aotearoa New Zealand: Summary document* (available at: justice.govt.nz/assets/A-new-	Refused under s18(d)

#	Date	Type	Document title	Decision on release
			adoption-system-for-Aotearoa-New-Zealand-Summary-document.pdf)	
		Attachment	*Targeted engagement Adoption Law Reform Report* – marked up	Withheld in full under s9(2)(g)(i)
		Attachment	*Targeted engagement Adoption Law Reform Report* – redacted (available at justice.govt.nz/assets/Adoption-Law-Reform-Targeted-Engagement-Report.pdf	Refused under s18(d)
		Attachment	*Summary of feedback on adoption in Aotearoa New Zealand: Discussion Document* (available at: justice.govt.nz/assets/Uploads/Adoption-reform-Summary-of-engagement-2022.pdf)	Refused under s18(d)
9	14.07.22	Briefing	Adoption in Aotearoa New Zealand: Whāngai wānanga	Withheld in part under s9(2)(a), s9(2)(f)(iv), s9(2)(g)(i)
10	23.08.22	Email	RE: Adoption law reform focus groups - draft report	Withheld in part under s9(2)(a)
11	23.08.22	Report	Adoption Law Reform – a synthesis of focus group findings	Released in full
12	15.09.22	Email	RE: Timelines for adoption and surrogacy	Withheld in part under s9(2)(a), s9(2)(f)(iv), and as out of scope
13	28.09.22	Briefing	Adoption law reform: Publishing summary of engagements	Withheld in part under s9(2)(a), s9(2)(f)(iv), s9(2)(g)(i)
14	31.10.22	Briefing	Adoption law reform: Public release of summary of engagement	Withheld in part under s9(2)(a)

DOCUMENT 1

Hon Kris Faafoi, Minister of Justice

Adoption law reform: Briefing 1 – Overview and Guiding Principles

Date	28 March 2022	**File reference**	

Action sought	**Timeframe**
Agree to the recommendations in this briefing related to reforming New Zealand's adoption laws.	4 April 2022

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**Telephone (a/h)**	**First contact**
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Security classification – Sensitive

Purpose

1. This briefing is the first in a suite of four briefings that seek your decisions on a package of Government preferred policy options for the design of a modified form of adoption that will inform the basis of the second round of engagement. This briefing provides an overview of our advice and seeks your agreement to including a set of principles to guide the new adoption system as a Government preferred option. It also provides an update on our engagement planning and next steps.

Overview

2. We have prepared a suite of four briefings setting out our advice on a package of Government preferred policy options for reforming New Zealand's adoption laws. The briefings seek your decisions on proposals relating to adoption principles, upholding children's rights, the legal effect of adoption and court processes, and intercountry and overseas adoptions. These proposals provide much of the detail to support the proposed modified form of adoption that you agreed to in February 2022.

3. This briefing seeks your agreement to guiding principles and updates you on our planning for the second round of engagement.

4. We recommend that you agree to a set of principles that will set the direction for adoption policy and guide decision-making under the new adoption regime. The principles support the purpose of adoption you agreed in February, and focus on protecting children's rights, particularly of participation and culture, recognising the responsibilities of the child's family and whānau, and transparency. The need for a specific te Tiriti o Waitangi principle is being considered as policy proposals are refined.

5. Planning for the second round of engagement is well underway. For public engagement, we plan to replicate the approach used for our first round of engagement with a public launch, discussion document and online survey. We are considering how to improve our targeted engagement approach, particularly for engagement with Māori and Samoan communities. Pre-engagement with Māori is underway, and we will provide you with an update on our detailed plan for engagement in May.

6. We continue to recommend engaging further with Māori on whether changes should be made to the way the law treats whāngai, given the limited engagement and mixed views received last year. Pre-engagement currently underway will help to ensure our engagement with Māori is more effective, particularly on issues relating to whāngai.

7. There are some policy areas, such as customary adoptions and adoption-related offences, we have been unable to progress given the time and resource available. Work on these areas will continue alongside the engagement process.

8. Relevant agencies have been consulted on the proposals set out across this suite of briefings. Adoption law and operations sit across multiple agencies and our package of proposals will have cross-portfolio impacts, including for funding implications. We will provide you with Budget advice alongside final policy advice later this year. Due

to the cross-portfolio impacts, we also recommend you forward and discuss the suite of briefings with your relevant colleagues.

9. s9(2)(f)(iv)

10. You have also received or will receive briefings this month relating to the other potential policy projects. We intend to meet with you to discuss the cumulative impacts of the projects on which further advice has been provided, and any trade-offs that need to be made in the context of the wider work programme. The timing of our adoption law reform work will depend on your decisions on the wider Ministry policy work programme.

Background

11. You have commissioned adoption law reform to bring adoption laws in line with the needs and expectations of modern New Zealand. The objectives for reform, as noted by Cabinet last year [CBC-21-MIN-0013 refers], are:

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

    b. To ensure that children's rights are at the heart of Aotearoa New Zealand's adoption laws and practice, and that children's rights, best interests and welfare are safeguarded and promoted throughout the adoption process, including the right to identity and access to information.

    c. To ensure that adoption laws and practice meet our obligations under Te Tiriti o Waitangi (te Tiriti) and reflect culturally appropriate concepts and principles, in particular, tikanga Māori, where applicable.

    d. 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.

    e. 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.

    f. To ensure Aotearoa meets all of its relevant international obligations, particularly those in the UN Convention on the Rights of the Child ('the Children's Convention') and the Hague Convention on the Protection of

Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention').

12. The reform requires a fundamental reconsideration of our adoption laws, so that they serve the interests and meet the needs of children and their whānau. We have been considering:

    a. the purpose of adoption, and the principles that support that purpose;

    b. how adoption laws protect and support children's rights;

    c. how the legal effect of adoption and court processes support children's rights and the purpose of adoption;

    d. how the domestic adoption process interacts with recognition of intercountry and overseas adoptions; and,

    e. the legal status of whāngai.

13. As you know, we have entered a collaboration agreement with Ināia Tonu Nei for the adoption reform, who have an interest in it due to their focus on social justice reform. Our collaboration with Ināia Tonu Nei is not a substitute for our te Tiriti obligations to engage broadly with Māori, but provides an opportunity for Māori advice and input at all stages of the policy development process. Our proposals in this paper are informed by advice from Ināia Tonu Nei.

14. In December 2021, we briefed you on the findings of the first round of public and targeted engagement on the reform of adoption laws, and sought your in-principle decisions on a number of the central policy decisions for reform.

15. In February 2022, you agreed to a modified form of adoption that would support creating new enduring family relationships for children, without many of the harmful aspects of our current law. You also agreed to some key features for a modified form of adoption, in line with the reform objectives. The decisions you made in February 2022 are included as Appendix A to this briefing.

We have developed proposals we recommend form a package of Government preferred options for the second round of engagement

16. As signalled in our previous advice, we have now undertaken further policy work to develop proposals, in line with the reform objectives, to engage on in the second round of engagement. The proposals we have developed build on the high-level policy decisions you made in February 2022. We seek your agreement to:

    a. proposals that we recommend be presented as a package of Government preferred options for reform in the second round of engagement; and

    b. options for further consideration that we recommend be included in the second round of engagement. These options have been provided where we consider more engagement is needed to support a decision or where we have been unable to identify a preferred option in the time available.

17. Our advice across the suite of briefings provides you with the building blocks for a substantially different form of adoption that addresses the most significant problems with the current approach. Options have been developed based on what we heard through engagement and from previous scholarship about issues with our adoption laws. In assessing options for reform, we have considered the option's impacts on children's rights, the option's effectiveness, whether options are equitable, recognition of the child's culture, consistency with te Tiriti, implementation and feasibility.

18. Cumulatively, the proposals we recommend will create a new adoption regime that is child-centred and includes practical measures to safeguard child's rights, best interests and welfare. The proposed adoption regime places importance on hearing the voices of the children being affected by adoption decisions and on ensuring they have the support needed to navigate a significant event in their lives. It will also clearly set out the rights, powers, duties, and responsibilities of birth parents and adoptive parents during and following an adoption. The new adoptive family would have legal status that supports a permanent and enduring parent-child relationship, while preserving legal connections to birth family and whānau.

19. We aim to give effect to our te Tiriti o Waitangi obligations, and uphold children's right to culture, by recognising the child's place within their family, whānau, hapū, iwi and family group. Proposals acknowledge the child's culture and whakapapa as a key part of their identity and look to ensure the child can maintain cultural connections following an adoption. The interests of wider family and whānau will also be protected by enabling their participation in adoption cases and ongoing contact after the adoption.

20. The proposed regime will also ensure we meet our obligations internationally, particularly those under the Children's Convention and the Hague Convention. Our proposals narrow the intercountry and overseas adoption pathways to ensure those adoptions are occurring in children's best interests and to better safeguard children from harm.

21. We are currently preparing journey maps that will outline the way people will move through our proposed new adoption regime, and will provide these to you once they are complete.

Format of our advice

22. Our advice is set out across a suite of four briefings:

    a. <u>Briefing 1: Overview and guiding principles (this briefing)</u>
    This briefing sets out the background and context for the detailed decisions sought across the suite of briefings. It seeks your decisions on a set of guiding principles for the new adoption system, which will underpin decisions in subsequent briefings. It also provides you with advice on our engagement plan, including engaging with Māori on whāngai.

b. Briefing 2 – Upholding children's rights
This briefing seeks your decisions on proposals to uphold children's rights in the adoption process regarding children's participation, culture, identity, family and whānau connections, and safety.

c. Briefing 3 Legal effect and Court processes
This briefing seeks your decisions on proposals relating to the legal effect of adoption and adoption court processes.

d. Briefing 4: Intercountry and overseas adoptions
This briefing seeks your decisions on high-level proposals relating to recognition of overseas adoptions and processes for intercountry adoptions. Substantial work is needed to develop more detailed policy proposals in this space.

23. We have also prepared a set of summary A3s (Appendix B) to assist your interaction with our advice. We recommend you read the suite of briefings alongside these A3s.

24. The decisions from these briefings and your February decisions will inform content for the second round of engagement.

We seek your agreement to a set of guiding principles for adoption

25. Currently, adoption laws do not set out a purpose or principles for adoption. In February 2022, you agreed that a purpose of adoption should be defined in law, and that the second round of public engagement on adoption reform include a proposal that the purpose of adoption be that adoption:

a. is a service for a child, and is in their best interests;

b. will create a stable, enduring and loving family relationship; and,

c. is for a child whose parents cannot or will not provide care for them.

26. As mentioned in our previous advice, guiding principles can help to support the overarching purpose of the legislative regime. The guiding principles we propose in this briefing are referred to throughout the subsequent briefings, and decisions on these principles will affect your decisions in other areas of the reform.

27. We have developed a set of principles that we consider support the purpose in paragraph 25 and provide a clear direction for future adoption policy. Many of these align with existing principles in the Oranga Tamariki Act 1989. We recommend that the Government's package of preferred options include the following set of guiding principles:

a. that the long-term well-being and best interests of the child or young person are the first and paramount consideration;

b. that a child is encouraged and supported, where practical, to participate and express their views in adoption processes, and that their views are taken into consideration

c. the preservation of, and connection to, culture and identity

d. the protection of whakapapa;

e. recognition of the whanaungatanga responsibilities of family, whānau, hapū, iwi and family group;

f. recognition that primary responsibility for caring for a child lies with their family, whānau, hapū, iwi and family group;

g. that family and whānau should have an opportunity to participate and have their views taken into consideration;

h. openness and transparency.

28. The rationale for including these principles is set out at Appendix C.

29. We also considered, but do not recommend, including a principle that adoption should be considered a 'last resort'. A principle like this would make the regime less flexible to different individual and cultural circumstances. This could result in perverse practice where decision-makers are required to prioritise other arrangements even when adoption would be in the child's best interests.

We have not yet determined whether a Te Tiriti o Waitangi principle is needed

30. A core objective of reform is to ensure that adoption laws and practice meet the Crown's obligations under te Tiriti. We have looked to reflect te Tiriti in the set of guiding principles, however we have not yet formed a position on the need for a specific te Tiriti clause in our adoption laws.

31. Following the second round of engagement, we will consider whether the package of proposals adequately meet our te Tiriti obligations, or whether there is the need for a descriptive or operative te Tiriti clause in legislation. In any case, we note case law which has found that in any proceedings dealing with the status, future and control of children the law must be interpreted as coloured by the principles of the Treaty of Waitangi.[1]

Planning for the second round of engagement

We plan to engage with the public on your preferred options for reform and outstanding policy questions

32. Following your decisions in this set of briefings, we will prepare a discussion document for the second round of public and targeted engagement. We are planning for engagement to be carried out in June and July 2022, subject to meeting current planned timeframes for Cabinet approval of a discussion document.

[1] *Barton-Prescott v Director of Social Welfare* [1997] 3 NZLR 179.

33. Key aspects of the engagement plan currently under consideration are set out below. We would welcome any views you have on our approach to the second round of engagement so we can factor this into our planning.

Ministerial launch	We seek your views on a public launch event, given it involves the release of a package of Government preferred options. If you indicate you would like a public launch event, we will develop options for your consideration.
Information/publicity	We will replicate the approach taken in the 2021 engagement, comprising publicity through various channels, including: • Ministry of Justice website • Communications via other agencies' and interested organisations' websites and newsletters • Release of discussion document, translations and accessible versions • Targeted emails • Social media
Collecting feedback	• Citizen Space survey • Written submissions • Analysis of submissions

Targeted engagement (specific stakeholders)	• Online engagements with:
	  ○ People impacted by adoption
	  ○ Samoan communities
	  ○ Key Pacific communities
	  ○ Ethnic communities
	  ○ Young people over the age of 18
	• If possible, we will engage with children under 18 with adoption experiences (method TBC).

Targeted engagement (Māori)	See paragraph 35 below.

We are working on how to reach particular groups through targeted engagement with general stakeholders

34. We are considering approaches to engagement that will better enable us to reach the groups we did not hear from in the first round of engagement, including Pacific communities (other than Samoan communities) and children under 18 years old. In particular, we are currently considering whether, in the time available, we can develop safe methods for engaging with children as part of this round of engagement.

We are pre-engaging with interested Māori groups to help design targeted engagement with Māori as the Crown's Tiriti partner

35. As agreed earlier this month, we commenced pre-engagement with interested Māori groups to help inform the design of the second round of engagement with Māori, iwi and hapū. In the 2021 engagement, we heard the views of individual Māori on issues relating to adoption and their experiences with whāngai, and received written submissions from two iwi groups. Through pre-engagement we hope to design a more effective engagement process that provides opportunities for Māori to provide feedback in a way that is culturally appropriate and respects their position as the Crown's Tiriti partner.

36. Following pre-engagement, we will develop a draft Māori engagement plan for discussion with Māori partners. We will provide you with an update on the Māori engagement plan in May as part of the wider adoption engagement plan.

We continue to recommend that we engage further with Māori on whāngai

37. In February 2022, you agreed that section 19 of the Adoption Act, which states that Māori customary adoptions/whāngai do not have legal effect, should not be carried over to the new system. You also agreed that the second round of engagement should more extensively engage with Māori on whether there should be changes to the way the law treats whāngai and on the process for developing a new system if Māori consider one is desirable. s9(2)(g)(i)

You sought Oranga Tamariki and Minister Davis' views about engaging further on the matter.

38. s9(2)(g)(i)

39. We acknowledge the views of Ināia Tonu Nei and Oranga Tamariki. We also recognise the advice of Te Arawhiti to consider whether upcoming work on whāngai might be Māori-led. However, in line with our previous advice, we consider that as a first step to further work on whāngai, the Ministry should further engage on whether

there should be changes to the way whāngai is legally recognised and, if so, how that process could work. We consider the extent of our previous engagement with Māori, and the mixed views received, was insufficient to support separating whāngai from the adoption reform process at this stage.

40. Undertaking this work alongside targeted engagement with Māori on adoption reform will enable conversations both about the proposed new model of adoption, and how that may or may not align with existing whāngai practices.

41. As noted above, we are pre-engaging with Māori to seek advice and assistance to ensure we engage more effectively than in our last round of consultation. Our aim is to gain a better understanding of those matters of importance to Māori, particularly in relation to whāngai. Ināia Tonu Nei is assisting with this pre-engagement. As part of our pre-engagement, we had an initial meeting with representatives from the National Iwi Chairs Forum Pou Tikanga, who have offered to partner with the Ministry to deliver engagement with Māori.

42. Further work on any legal framework for whāngai either within or outside of adoption reform will require resourcing. If a separate work programme is preferred by Māori, we will need to consider how this can be included on the Ministry's policy work programme, its timing, and to ensure additional resourcing and funding is available to support the work.

He kōrero nā Ināia Tonu Nei – Ināia Tonu Nei comment

43. s9(2)(g)(i)

We have further policy work to progress that we have not yet developed detailed advice on

46. Given the breadth and complexity of the policy issues raised in adoption reform, there are some policy areas that require further work to develop preferred policy options. This includes, but is not limited to:

    a. developing detailed processes for recognising overseas adoptions in New Zealand and intercountry adoptions taking place outside of the Hague Convention (as noted in *Briefing 4 – Intercountry and Overseas Adoptions*);

    b. customary adoptions;

    c. adoption-related offences;

    d. relationship status following an adoption for the purposes of marriage and civil union law.

47. We will provide you with advice on these matters later this year as we refine final policy proposals.

Transitional and implementation arrangements will be considered as policy is finalised

48. Following the second round of engagement, we will refine and finalise our policy proposals. At that time, we will consider transitional arrangements, both for past and current adoptions, and for surrogacy cases. Other implementation issues will also be considered and discussed with relevant agencies at that time. For example, we will need to consider how:

    a. changes to the legal effect of adoption will impact on the legal recognition of New Zealand adoptions overseas;

    b. to operationalise proposals relating to birth certificates (and its impact on the birth record system);

    c. the Law Commission's succession recommendations from its report, *Review of succession law: rights to a person's property on death*, should be considered in relation to adoption policy decisions;

    d. changes to the legal effect of adoption will impact on social security benefits;

    e. to ensure the collection, use, storage and management of information is culturally sensitive and appropriate.

s9(2)(f)(iv)

s9(2)(f)(iv)

We consulted relevant agencies on the package of policy proposals

52. We have consulted with the following agencies on the package of policy proposals and further options for engagement: Crown Law Office; Customs New Zealand, Department of Internal Affairs; Department of Prime Minister and Cabinet; Ināia Tonu Nei; Ministry of Business, Innovation and Employment; Ministry of Education; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry for Pacific Peoples; Ministry of Social Development; Ministry for Women; New Zealand Police; Office of the Privacy Commissioner; Office for Disability Issues; Oranga Tamariki – Ministry for Children; Statistics New Zealand; Te Arawhiti; Te Kawa Mataaho Public Service Commission; Te Puni Kōkiri; and The Treasury.

Next steps

Policy proposals will impact on other portfolio areas

53. We recommend you forward these briefings to several of your Ministerial colleagues and discuss the proposals with them so that they are aware of the general direction of reforms. We recommend this include the Prime Minister, Minister for Children, Associate Minister for Children (who has a delegation relating to adoption law reform), Minister of Foreign Affairs, Minister of Internal Affairs, Minister of Courts and Minister for Pacific Peoples. We can provide you with talking points should you wish.

54. Many of the policy proposals we have recommended including in the package of Government preferred options will impact on the portfolio areas of your colleagues identified above. For example, the majority of proposals will impact on the Children's portfolio, as Oranga Tamariki has operational responsibility for the adoption system.

Proposals relating to birth certificates and access to adoption information will also impact on the Internal Affairs portfolio.

55. We will be considering operational and funding implications across relevant portfolios as final policy proposals are refined. It is important for relevant agencies and Ministers to be across this work as early as possible to ensure they can consider the impacts to their portfolio.

We will prepare a discussion document to support the second round of engagement

56. Following your decisions on this suite of briefings, we will prepare a discussion document that will be used as the basis of the second round of engagement planned for later this year. The discussion document will require Cabinet approval for it to be publicly released. We will provide the discussion document and a draft Cabinet paper for your approval in May 2022. We will also provide you with a draft engagement plan at that time.

s9(2)(f)(iv)

Milestone	Date
Engagement plan, draft discussion document and Cabinet paper for your consideration	5 May 2022
Ministerial consultation	12 – 26 May
Cabinet paper lodged	26 May
SWC consideration	1 June
Cabinet approval of discussion document for engagement	6 June
Second round of engagement	Mid-June - August 2022

s9(2)(f)(iv)

Milestone	Date
s9(2)(f)(iv)	

s9(2)(f)(iv)

in the upcoming Ministry of Justice policy work programme discussion

59. On 27 January 2022 you met with officials to discuss the Ministry policy work programme. We reported to you on 15 February 2022 to confirm your decisions. One of those decisions was that we would provide advice to you on the next steps for a number of projects, including adoption law reform.

60. You have also received or will receive briefings this month relating to the other potential policy projects. Following receipt of that advice, we will provide a further policy work programme briefing. That briefing will summarise the outcome of budget decisions. It will also identify the impact of the Omicron outbreak on the policy work programme. We will then seek a meeting with you to discuss the cumulative impacts of the projects on which further advice has been provided, and any trade-offs that need to be made in the context of the wider work programme.

61. The timing of our adoption law reform work will depend on your decisions on the Ministry policy work programme. We can provide further information in relation to adoption law reform if required to support a work programme discussion.

Recommendations

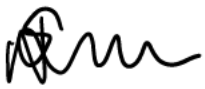
62. We recommend that you:

1.	**Note** that this is the first in a suite of four briefings that seeks your decisions on adoption policy proposals to be included in a Government package of preferred options and other options to be considered in the second round of engagement;	
2.	**Agree** that the Government's package of preferred options include a set of guiding principles;	YES / NO
3.	**Agree** that the set of guiding principles include:	
	a. that the long-term well-being and best interests of the child or young person are the first and paramount consideration;	YES / NO
	b. that a child is encouraged and supported, where practical, to participate, and express their views in adoption processes, and that their views are taken into consideration;	YES / NO
	c. the preservation of and connection to culture, and identity;	YES / NO
	d. the protection of whakapapa;	YES / NO
	e. recognition of the whanaungatanga responsibilities of family, whānau, hapū, iwi, and family group;	YES / NO
	f. recognition of that primary responsibility for caring for child lies with family, whānau, hapū, iwi and family group;	YES / NO
	g. that family and whānau should have an opportunity to participate and have their views taken into consideration;	YES / NO
	h. openness/transparency;	YES / NO
4.	**Indicate** whether you are interested in holding a public launch event to release the discussion document and begin the second round of engagement;	YES / NO

5. **Note** that we will brief you on the Ministry of Justice policy work programme and meet with you to discuss it, including implications for the timing of adoption law reform work;

6. **Note** that you are meeting with officials to discuss the contents of this suite of briefings on 1 April 2022;

7. **Forward** this briefing to the Prime Minister, Rt Hon Jacinda Ardern, Minister of Children, Hon Kelvin Davis, Associate Minister of Children, Hon Poto Williams, Minister of Foreign Affairs, Hon Nanaia Mahuta, Minister for Internal Affairs, Hon Jan Tinetti, and Minister of Courts and for Pacific Peoples, Hon William Aupito Sio. YES / NO



Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kris Faafoi
Minister of Justice

Date / /

Attachments:

- Appendix A: Decisions in February 2022
- Appendix B: Adoption law reform A3s
- Appendix C: Rationale for proposed principles

Appendix A: Decisions in February 2022

In February 2022, you agreed:

- that a purpose of adoption should be defined in legislation
- that the second round of public engagement on adoption reform include a proposal that the purpose of adoption be that adoption:
    - is a service for the child, and is in their best interests;
    - will create a stable, enduring and loving family relationship;
    - is for a child whose parents cannot or will not provide care for them
- that the second round of public engagement on adoption reform include proposals that:
    - the child's best interests be the paramount consideration in determining whether an adoption is appropriate
    - children's rights be upheld in the adoption process, including the right to identity and family, right to information, right to participation, right to culture and right to safety
    - adoption be centred on a principle of openness and a primary right to access information for the adoption person
    - child participation be a fundamental part of the new system
- that adoption law reform should not create a pathway for adult adoptions to be recognised
- that the second round of public engagement on adoption reform include a proposal that adoption creates new enduring legal relationships and clarifies ongoing rights and responsibilities for all parties involved and will no longer sever the links between an adopted child and their birth family and whānau
- in-principle, that family and whānau should be involved in the adoption process as a default approach, but with flexibility to allow for circumstances in which this is not appropriate
- in-principle, that the child should be able to maintain a connection to their birth family and whānau following an adoption.
- that government should continue to hold responsibility for decision-making in the adoption process AND that government should continue to hold responsibility for assessment functions in the adoption process.
- s9(2)(f)(iv)

s9(2)(f)(iv)

- in principle, that further policy work proceed on an assumption that we will continue to recognise overseas adoptions and facilitate some intercountry adoptions.
- that the new law does not carry over section 19 of the Adoption Act, which states that Māori customary adoptions/whāngai do not have legal effect.
- that the second round of engagement should engage more extensively with Māori on whether they support legal recognition of whāngai.

Appendix B: Adoption law reform A3s

See attached PDF: 220328 – Adoption law reform A3s (FINAL)

Adoption Law Reform: Overview

A child-centred purpose

In February 2022, you agreed that the purpose of adoption:

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

Strong guiding principles

That the long-term well-being and best interests of the child or young person are the first and **paramount consideration**

That a child is encouraged and supported, wherever practical, to participate and express their views in adoption processes, and that their views are taken into consideration

Preservation of and connection to culture and identity

Protection of whakapapa

Family and whānau should have an opportunity to participate and have their views taken into consideration

Recognise the whanaungatanga responsibilities of family, whānau, hapū, iwi, and family group

Recognise that primary responsibility for caring for a child lies with family, whānau, hapū, iwi and family group

Openness/Transparency

Adoption Law Reform: A child-centred approach

Participation

Principle: That a child is encouraged and supported, wherever practical, to participate and express their views in adoption processes, and that their views are taken into consideration

Culture

Principle: Preservation of and connection to culture and identity

Principle: Protection of whakapapa

Identity

Proposed supporting mechanisms / policy we seek agreement on to present as a package of Government preferred options

Court have ability to appoint a Lawyer for Child*

Encourage the child to participate and document how they did and their views in the social worker report

Allow child to attend and speak at adoption proceedings

Appoint a dedicated social worker for the child* and provide age-appropriate information about adoption, its impact and their rights*

Cultural information included in the social worker report

Power for the Court to order cultural reports*

Social worker matched to an adoption case suitable by their personality, cultural background, training and experience

Remove counselling requirements to access information, but have counselling available *

Allow last name changes as part of an adoption to be decided by a Judge where they deem appropriate

No requirement to present an original birth certificate to access information

No age restrictions on adoption information

2 birth certificates that can be used (one with adoptive parents, one with birth parents as well)*

Adopted people automatically able to access information on their original birth record

Options/questions to engage on where we do not have a recommended position

Child Consent

Post-adoption cultural maintenance plans

Presumption against cross-cultural adoptions

Hapū and iwi consultation*

Allow vetoes to be renewed, or end vetoes with ability to review *

Ban first name changes before an adoption is finalised, or have a presumption against first name changes before an adoption is finalised

Limiting adoptive parents' ability to change a child's name after adoption

Access to an adopted persons original birth certificate, outside adopted person and birth parents

* Has budget implications

Adoption Law Reform: A child-centred approach continued

Family/Whānau involvement

Principles:
- Family and whanau should have an opportunity to participate and have their views taken into consideration
- Recognise the whanaungatanga responsibilities of family, whānau, hapū, iwi, and family group
- Recognise that primary responsibility for caring for a child lies with family, whānau, hapū, iwi and family group

Best interests & Safety

Principle: That the long-term well-being and best interests of the child or young person are the first and paramount consideration

Proposed supporting mechanisms / policy we seek agreement to present as a package of Government preferred options

Family and whānau views included in social worker report, unless this would cause unwarranted distress*

Family and whānau consulted by birth parents on impacts of relocation on contact

Birth family and whānau allowed to attend adoption proceedings with the right to be heard, unless this would cause unwarranted distress

Post adoption contact agreements*:
- Considered in all domestic cases
- Agreed before adoption finalised
- Flexible and amended via mediation* or the Family Court
- Involve wider family and whānau
- Allow child to participate how and where appropriate

Court must be satisfied alternative care orders have been considered

Judge satisfied adoptive applicants are suitable to adopt

Suitability assessment in social worker report be left to professional discretion

Judge's decision on suitability informed by the social worker report and any other relevant information

Remove age eligibility to adopt criteria OR lower it to 16 or 18

Remove sex and relationship status eligibility to adopt criteria

Options/questions to engage on where we do not have a recommended position

s9(2)(f)(iv)

Maximum age a child can be adopted (16 or 18 years old)

* Has budget implications

Adoption Law Reform: Legal effect

Policy we seek agreement on to present as a package of Government preferred options

Parents' rights and responsibilities for decision-making

Birth parents and adoptive parents both recognised as legal parents of the child following adoption

Birth parents

- Do not have day-to-day care
- Do not maintain decision-making rights

Adoptive parents

- Permanent guardianship of the child and all associated duties, powers, rights and responsibilities, including providing day-to-day care
- Must consult with birth parents or wider family/whānau to consider how post-adoption contact (if it occurs) can best be maintained following relocation

Children's entitlement to citizenship

Adopted children continue to be able to derive citizenship from their birth and adoptive parents

Children's Succession rights

Work on adoption and succession should be considered as part of the work on the Law Commission's Report on Succession

Financial responsibility for paying support and maintenance for a child

Adoptive parents hold all financial responsibility for the child following an adoption

Options/questions to engage on where we do not have a recommended position

Specific aspects of the law of succession applying to the adopted child and birth parent following an adoption

* Has budget implications

Adoption Law Reform: Court Process

Policy we seek agreement on to present as a package of Government preferred options

Court orders and powers

Enable the Court to make final adoption orders in the first instance unless it is desirable to make an interim order

Birth parents have right to participate in proceedings

Require adoptive applicants to engage with Oranga Tamariki before submitting an application*

The Court have the power to order medical, psychiatric or psychological reports and cultural reports*

Only birth parents can apply to discharge child's order, once an adult only the adopted person may apply

Grounds for discharge:

- where there has been a material mistake or misrepresentation
- mutual consent of birth and adoptive parents
- an irretrievable breakdown in relationship between adoptive parents and adopted person

Court must be satisfied alternative care orders have been considered. The social worker inform the birth parents of:

- alternative care orders AND
- requirement for court to consider them

Children are able to be placed with prospective adoptive parents at the discretion of social workers

Require that the **Social Worker Report** be child-focused and reflect certain elements including:

- how the child participated including any views expressed by the child
- the suitability of the adoptive parents, and
- information about the views of the family or whānau

Consent

Birth mother and father consent be required, unless dispensed with

Consent may be dispensed with where:

- informing a birth parent about a child's adoption would pose a clear risk to the child or other birth parent, OR
- where the parent has abandoned, neglected, persistently ill-treated or failed to exercise the normal duty and care of parenthood to the child

Birth parents withdraw their consent up until final adoption order

Minimum time required to give consent - 30 days from the birth of a child

Options/questions to engage on where we do not have a recommended position

- Circumstances that would make interim orders desirable
- Court ability to vary orders
- Support services required or offered in the adoption process*
- Attorney-General consent required to make an application for discharge
- Situations where the birth parent does not consent to the discharge or an adopted adult, or is no longer alive
- 16 and 17 year olds apply for discharge of their own adoption

* Has budget implications

Adoption Law Reform: Intercountry and overseas adoptions

Overseas adoptions

Intercountry adoptions

Clearly define overseas and intercountry adoptions so that people living in New Zealand should not be able to go to another country to adopt a child and bring them to New Zealand without going through an intercountry adoption process which includes suitable safeguards

Policy we seek agreement on to present as a package of Government preferred options

Define an overseas adoption as one where the child and adoptive applicant(s) do not live in New Zealand

Provide for automatic recognition of overseas adoptions via an administrative process

Define Intercountry adoptions as those where the adoptive applicant(s) live in New Zealand and the child lives overseas

Allow adoptions to take place via the established Hague Convention process

A new process for intercountry adoptions taking place outside of the Hague Convention process will be established*

Options/questions to engage on where we do not have a recommended government position

Criteria to be met for an overseas adoption to be automatically recognised.

What the new process for intercountry adoption taking place outside the Hague Convention should look like

s9(2)(f)(iv)

* Has budget implications

Appendix C: Rationale for proposed principles

Principle	**Rationale**

That the long-term well-being and best interests of the child or young person are the first and paramount consideration.	• Supports the agreed child centred purpose of adoption.
	• Ensuring children's best interests are upheld in adoption.
	• Centres adoption decision-making on child rights.
	• Helps protect against exploitation and commodification of children.
	• Supports human rights obligations under the Children's Convention:
	  ○ Article 3: In all actions concerning children, the best interests of the child are a primary consideration.
	  ○ Article 21: In adoptions the best interests of the child/adopted person are paramount.
	• Consistent with te ao Māori view that children are taonga, which must be protected under Article 2 of te Tiriti.
	• Read in conjunction with other key principles, is child-centred.

That a child is encouraged and supported, wherever practical, to participate and express their views in adoption processes, and that their views are taken into consideration. *Mechanisms for child participation are discussed in Briefing 2: Upholding Children's Rights.*	• Children having the right to have their views heard in decisions made for them is a fundamental right. Participation is important to inform decisions about what is in the child's best interests. • An active principle helps to ensure child participation occurs. • Supports obligations under Children's Convention. • Provides a strong expectation that the opportunity for child participation is a requirement, not just desirable. Provisions and mechanisms that support this principle will recognise that children also have the right to

Principle	Rationale
	choose not to participate. Respects the tapu and mana of the child.
Preservation of and connection to culture, and identity. *Mechanisms to support consideration of children's cultural needs are discussed in Briefing 2: Upholding Children's Rights.*	• A child's culture (ethnicity, name, spirituality, religion, language etc) is an integral part of their identity, and that consideration of whether adoption will be in the best interests of a child must consider the impact on their culture. • Consideration of culture is particularly important for children who are Māori or belong to an ethnic or religious minority to uphold their right to enjoy their own culture, to profess and practice their own religion or use their own language. These rights are reflected under article 30 of the Children's Convention. Recognises that culture and identity are taonga and must be protected under Article 2 of te Tiriti. • Helps ensure that the adopted family provides opportunities for the child to preserve their culture identity through seeking opportunities to connect with their culture.
Protection of whakapapa. *Mechanisms to support protection of whakapapa are discussed in Briefing 2: Upholding Children's rights and Briefing 3: Legal Effect and Court Processes.*	• Recognises that whakapapa is a taonga and a right that must be protected under Article 2 of te Tiriti. • Supports and protects connection to whakapapa, whānau, hapū, and iwi. • Supports an adopted person to maintain connection to their identity and family ties. • Upholds Children's Convention articles 7 and 8 that children have the right to have their identity protected and preserved, including their name, nationality and family ties.
Recognise the whanaungatanga responsibilities of family, whānau, hapū, iwi and family group.	• Gives effect to Article 2 of te Tiriti by providing for Māori tino rangatiratanga over tamariki. • Upholds child rights to family, whānau, hapū and iwi ties.

Principle	Rationale
And Recognise that primary responsibility for caring for a child lies with family, whānau, hapū, iwi and family group. *Mechanisms to support these responsibilities are discussed in Briefing 2: Upholding Children's Rights and Briefing 3: Legal Effect and Court Processes.*	• Strong direction for decision-makers to consider placements within the family, whānau, hapū and iwi if available. • Aligns with approach taken in other child centred legislation (Oranga Tamariki Act 1989). • Uphold responsibilities of family/whānau, hapū and iwi to care for their tamariki. • Children have a fundamental right to be cared for and belong to their family/whānau, hapū and iwi. • Including 'family group' reflects our responsibilities to other cultures family structures e.g. tribe or villages. • Whanaungatanga responsibilities are broader than primary responsibility for day-to-day care and there is benefit in these two principles being separate. Whanaungatanga can be defined, in relation to a person, as per the Oranga Tamariki Act 1989— ○ the purposeful carrying out of responsibilities based on obligations to whakapapa: ○ the kinship that provides the foundations for reciprocal obligations and responsibilities to be met: ○ the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of their sense of belonging, identity, and connection.
Family and whānau should have an opportunity to participate and have their views taken into consideration. *Mechanisms to support family and whānau participation are discussed in Briefing 2: Upholding Children's Rights and Briefing 3: Legal Effect and Court Processes. This*	• Supports children's rights to family ties. In particular, Māori whānau have the opportunity to consider their response to the situation. This supports decision makers to consider a range of perspectives to consider what is in the child's best interest. • Provides opportunity to family to suggest alternative arrangements if they disagree with an adoption occurring.

Principle	Rationale
includes advice on how to manage situations where family involvement may be inappropriate.	
Openness/Transparency. *Mechanisms to support openness and transparency are discussed in Briefing 2: Upholding Children's Rights.*	• Sets a strong standard that there should be openness and transparency in the adoption process. Information should be available, which supports the shift away from the harms of the closed era of adoption. • Upholds children's rights to identity, family ties and culture by ensuring aspects of adoption are not clouded in secrecy. • Supported by provisions relating to the sharing and accessibility of information relating to adoption.

DOCUMENT 2

Hon Kris Faafoi, Minister of Justice

Adoption law reform: Briefing 2 - Upholding Children's Rights

Date	28 March 2022	**File reference**	
Action sought			**Timeframe**
Agree to the recommendations in this briefing related to reforming New Zealand's adoption laws.			4 April 2022

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	First contact
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Purpose

1. This briefing is the second in a suite of four briefings that seek your decisions on a package of Government preferred policy options to progress adoption law reform and inform the second round of engagement. This briefing seeks your agreement to include proposals for upholding children's rights in the Government's package of preferred options. It also seeks your agreement to further engagement on areas where the feedback we have received to date was insufficient or unclear.

Overview

2. This briefing provides you with further advice on upholding children's rights in adoption. The adoption system should be child-focused and ensure children's rights are protected in line with the objectives for reform.

3. We seek your agreement to policy proposals we consider should form part of the Government's package of preferred options for reform. In particular, we make recommendations relating to:

    a. children's participation, to ensure there are legislative and operational mechanisms in place that enable children to participate and have their views heard;

    b. culture, to ensure that a child's culture is considered and reflected in the adoption process;

    c. identity and information, to ensure that a child's right to identity is promoted by opening access to adoption information;

    d. family and whānau, to ensure a child's right to family is enhanced by increased emphasis on family and whānau involvement during and after the adoption process, and supported by establishing a system for post-adoption contact; and

    e. safety, to ensure that eligibility and suitability requirements protect children's safety and best interests.

4. We also recommend further engagement in some areas where feedback from the first round of engagement was insufficient or unclear. This includes, for example, seeking feedback on the maximum age that a child may be adopted, which sets the boundaries for the new child-focused system. We recommend you read this advice alongside the set of summary A3s attached as Appendix B to *Briefing 1 – Overview and Guiding Principles.*

Adoption law reform will be centred on children's rights

5. You have agreed that children's rights should be at the centre of adoption law reform. In December 2021, we provided you with advice on how children's rights are relevant to the adoption process, and issues to be considered. This included child's rights to:

    a. participation;

    b. culture;

c. identity and information;

d. family and whānau; and

e. safety.

6. In February 2022, you agreed that:

a. the child's best interests be the paramount consideration in determining whether an adoption is appropriate;

b. children's rights be upheld in the adoption process including the right to identity and family, right to information, right to participation, right to culture and right to safety;

c. adoption be centred on a principle of openness and a primary right to access to information for the adopted person; and

d. child participation be a fundamental part of the new system.

7. In December 2021, we committed to providing you with further advice on how to enable child participation, consideration of culture, the collection, storage and provision of information, and the level of involvement of family and whānau in the adoption process, including when involvement would be inappropriate. This briefing presents our advice on those matters.

We recommend legislative mechanisms to ensure children can participate and have their views heard

8. Participation rights focus on giving children the chance to have their say, encouraging and supporting them to share their views, and taking their views into account.

9. We have considered how to uphold children's rights to participate in matters affecting them. Our advice has been informed by preliminary findings from the stocktake of best practice for children's participation in mediation and court processes for Care of Children Act 2004 ('Care of Children Act') proceedings in the Family Court ('the stocktake'). It is important that the system enables young children and children with different needs, such as disabled children or children from different cultures, to participate meaningfully by providing appropriate and accessible processes and support.

10. We have recommended a package of preferred options that will ensure children can meaningfully participate in their adoption process in an age-appropriate way. We do not consider that any of these provisions alone will be sufficient to ensure children's rights to participate and be heard are upheld.

11. As discussed in *Briefing 1 - Overview and guiding principles,* we recommend a guiding principle be that a child is encouraged and supported, wherever practical, to participate and express their views in adoption processes, and that their views are taken into consideration. This will help ensure that children's views are consistently considered, as opposed to the current case-by-case approach. However, this requirement alone will not be enough to ensure meaningful participation.

12. We have identified mechanisms to support the new participation principle. We recommend that the Government's package of preferred options include:

    a. the ability for the Court to appoint a lawyer for child;

    b. a requirement for the department responsible for providing the social worker report to appoint a dedicated social worker for the child;

    c. a requirement to encourage the child to participate in the adoption process and document how the child participated, including any views expressed by the child, in the social worker report; and

    d. provision for the child to attend and speak at the adoption proceeding.

13. We also recommend seeking views in the second round of engagement on whether children should be able to consent to their adoption.

14. These preferred options are discussed in turn below. We have considered, but do not recommend the current judicial and practice-based approach to child participation. Requiring the Court to consider the child's 'wishes' (as per the current law) is narrower than requiring it to hear a child's views or enabling the child to participate more broadly. The current law does not clearly outline if or how a child can participate in their own adoption process, meaning the way they are involved varies from case-to-case. The preferred options we have identified align with your objectives for reform to uphold children's rights and promote consistency across child-centred legislation.

15. We will consider the final findings of the stocktake as we refine our advice following the second round of engagement.

A lawyer for child is important for child legal representation

16. We recommend the Court be able to appoint a lawyer for child in adoption proceedings. The lawyer for child would support children's participation by being responsible for representing the child in the adoption proceedings, including reporting the child's views to the Court, and advocating for the child's best interests and welfare.

17. Currently, the Court will sometimes use its inherent power to appoint a counsel to assist the Court in adoption proceedings. Judges can appoint counsel to assist in any type of court proceeding. Their purpose is to provide independent legal advice to the Court or provide an impartial perspective on a specific issue. However, in adoption proceedings, counsel to assist have been used as a proxy for lawyer for child, providing advice on the best interests of the child and other tasks. Counsel to assist were appointed in around a quarter of cases in 2019 and 2020.[1]

18. We heard in engagement that support for a child's participation would be enhanced by better systems to help children navigate court processes and more expert help to enable them to express their views. Other child-centred legislation, such as the Care of Children

[1] Counsel to assist were appointed in 35 cases in 2019 and 41 cases in 2020. There were 138 adoption applications made in 2019 and 153 in 2020.

Act, allows the Court to appoint a lawyer for child. The lawyer for child role in Care of Children Act proceedings has a dual function:

a. helping to facilitate participation by explaining the court process to the child, eliciting the child's views and communicating them to the Court; and

b. advocating for the child's best interests and welfare.

19. Allowing the Court to appoint a lawyer for child will be more suitable as the child is the lawyer's client, who they advocate for, whereas a counsel to assist owes a duty to the Court itself. Additionally, a lawyer for child is has more relevant specialist training than general counsel to undertake this role.

20. We will seek views from lawyers for child, and the legal profession more generally, on this proposal during the second round of engagement. The extent to which specific duties and responsibilities of the lawyer for child in adoption cases should be reflected in legislation, and the capacity of the profession to provide additional lawyer for child services, will be considered as part of our ongoing policy work and implementation.

A dedicated social worker would ensure child views are prioritised

21. We recommend that legislation require that the child being placed for adoption be assigned a dedicated social worker. A dedicated social worker, separate to the social worker working with the birth parents and adoptive parents, will be able to build a strong relationship with the child to help support them through the process, including their participation.

22. We do not think that the lawyer for child role alone is sufficient to ensure that the child is able to participate meaningfully in the entire adoption process, as their expertise lies in law and not in supporting children. A lawyer for the child has expertise in navigating the legal process, representing the child's views, and advocating for their best interests and welfare in legal proceedings. Social workers have expertise to support children to give their views and to understand those views (including recognising when children are being influenced). Where the children are very young, social workers have the skills to objectively observe their needs, preferences and attachments to adults, and, in that context, consider whether adoption is in the child's best interests.

23. Currently, a social worker is involved in the adoption process, but they work with potential adoptive parents, birth parents and the child simultaneously. Acting for various parties can be difficult to manage if there are conflicts. In practice, often social workers will co-work a case together for added objectivity. Ensuring that the child has their own social worker will allow the social worker to focus on establishing a strong relationship with the child and understanding their needs and preferences.

24. We envisage the social worker would be primarily responsible for eliciting the child's views and preparing parts of the social worker report (discussed further at paragraph 27), as well as:

a. considering the child's emotional and physical attachment and bonding to the adoptive parents;

b. encouraging the child to participate in the adoption process;

c. explaining the purpose of their participation and options available to them, the voluntary nature of participation and procedural rule;

d. eliciting the child's views on the adoption and sharing those with the lawyer for child;

e. reporting the child's desire for a judicial meeting or to speak in court;

f. providing continuity and ongoing support following the adoption; and

g. facilitating ongoing contact between the child and the birth family in accordance with any post-adoption contact agreement.

25. We recommend the dedicated social worker also be required to provide the child with age-appropriate information about adoption, its impacts, and their rights. This will support the child's understanding of the process and help ensure their informed participation. The specific duties and responsibilities of the dedicated social worker in adoption cases will be considered as part of our ongoing policy work.

26. The requirement for a dedicated social worker will have both impacts on the social work profession and fiscal implications. We will test this option with the social work profession during the next round of engagement, and work through workforce, availability and fiscal issues with Oranga Tamariki as part of our ongoing policy work.

Documenting child views in the social worker report will ensure they are presented to the Court

27. We recommend the dedicated social worker be required to encourage the child to participate in an age-appropriate way, and document how the child participated, including any views shared by the child, in their report to the Court. Currently, Oranga Tamariki practice requires the social worker report to record the emotional and physical progress of the child with the adoptive applicants, and how attachment is developing.

28. Social workers are experienced in working with, and supporting the participation of children in the adoption process. Requiring the child's participation and views to be recorded in the social worker report will largely formalise existing practice and help to inform judicial decision-making. This aligns with a more child-centred approach to the social worker report as discussed at paragraph 40. It will also mean the child will be able to look back and see how they participated in their adoption proceedings later in life if they wish.

Allowing the child the right to be heard directly in the adoption proceeding will further support participation

29. We recommend that the child have the right to attend and be heard (if they wish) by the Court during adoption proceedings. This ensures the child also has the right to participate once the case gets to court, and gives the Court the opportunity to hear directly from the child.

30. Allowing the child to make decisions about how they participate aligns with treating children in a way that reflects their level of maturity and capacity, and upholds their right to choose

to participate. We expect the lawyer for child or dedicated social worker would provide appropriate support for the child to be heard directly and that a child be allowed to speak to the Judge in chambers if they are not comfortable speaking in court. We note that additional supports may be required for young children or children with different needs.

We want to engage further on whether a child should consent to their adoption

31. Currently, a child is not required to consent to their own adoption. Our preliminary view is that a child's consent should not be required, as it is inconsistent with the approach taken in other child-centred legislation. We consider it is likely to be more appropriate for children to have their say through participation mechanisms outlined in this briefing, without making them the decision-maker.

32. However, there was public support for requiring consent in the first round of engagement. We therefore recommend seeking further views, particularly from adopted people and young people, on whether a child should be able to consent to their adoption, and if so, whether the following model would be appropriate:

    a. a child may consent or object to their adoption if they have capacity, however consent (or objections) is not required; and

    b. if a child objects to an adoption order being made the adoption cannot proceed.

33. Allowing children to consent to their adoption recognises the increasing capacity of children as they get older to make decisions for themselves. Most people we spoke to in the first round of engagement supported a child being required to consent to their adoption if they have capacity. This view may have been influenced by the current severe legal effect of adoption.

34. However, we also heard in engagement that child consent should not be required, as this can place a heavy emotional burden on a child. Evidence shows that children often want a role in the decision-making process, but do not want the responsibility for the decision. Given the lifelong consequences of adoption, not requiring a child's consent may be particularly important in the adoption context.

35. Child consent is also rarely required in other family law situations, such as those under the Care of Children Act and Oranga Tamariki Act 1989[2]. Providing for a child to consent, either in a voluntary or mandatory way, would be inconsistent with the approach taken in other child-centred legislation in New Zealand and not align with your objective to promote consistency with principles in child-centred legislation. Requiring consent has the potential to prevent an adoption which is in the best interests of the child.

36. From a te Tiriti o Waitangi (te Tiriti) perspective, it is also unclear whether consent is an optimal approach. Giving the child autonomy to consent where they have capacity upholds the mana of the child, which may support allowing consent. However, the individualistic

[2] For example, children over the age of 16 can consent to medical procedures. Similarly any child of any age can consent or refuse a termination of pregnancy.

nature of consent is at odds with collective approach to decision-making in te ao Māori. This ambiguity underlines the importance of specifically engaging with Māori on this reform.

37. Given the feedback received during the first round of engagement and subsequent policy analysis, it would be helpful to seek further views on whether a child's consent should be required to support our final advice on this issue.

38. If engagement signals that a child's consent should be required, then the model we think would be most appropriate is to allow (but not require) the child to consent if they have capacity. This allows for a flexible approach and is consistent with the child's fundamental right to participate, which includes the right to choose not to participate if they wish. A mandatory consent requirement would be inconsistent with that right.

39. Given the complexities of the decision, some children may not have sufficient capacity to understand the consequences of the decision and be able to provide their informed consent. If our advice post-engagement is that children should be able to consent to an adoption, we would develop an appropriate threshold, either an age-based, capacity-based, or a combination of the two. We would also consider the most appropriate test for establishing capacity.

Agree that the Government's package of preferred options include:	
• the ability for the Court to appoint a lawyer for child;	YES / NO
• a requirement for the department responsible for the social worker report to appoint a dedicated social worker for the child;	YES / NO
• a requirement for the dedicated social worker to provide the child with age-appropriate information about adoption, its impact, and their rights;	YES / NO
• a requirement to encourage the child to participate in the adoption process and document how the child participated, including any views expressed by the child, in the social worker report; and	YES / NO
• provision for the child to attend and speak at the adoption proceeding.	YES / NO
Agree to engage on whether children should be able (but not be required) to consent to an adoption if they have capacity.	YES / NO

A child-centred social worker report will support children's rights

40. The social worker report supports other parts of the adoption system to ensure that aspects of child rights are upheld. We have therefore outlined proposed changes to content of the social worker's report in other sections of this briefing.

41. We recommend that the Government's package of preferred options include the requirement for a social worker report to be prepared and presented to the Court. We recommend that report be required to be child-centred, reflecting elements we have referenced throughout this paper including:

    a. how the child participated, including any views expressed by the child (see paragraph 27)

    b. the suitability of the adoptive parents (see paragraph 163), and

    c. information about the views of the family or whānau (see paragraph 121).

42. While the Adoption Act 1955 currently requires a social worker to provide a social worker report on the application, no specific information is required to be included in the report in the primary legislation. The Adoption Regulations 1959 provide the only legislative guidance about the content of the report, requiring the social worker to make inquiries to the Police about the adoptive parents and to report this to the Court (see discussion about suitability at paragraph 163).

43. The current approach has allowed social worker reports to evolve to take a broad approach and focus on the needs of the child. Flexibility has some benefits, by enabling practice to change to reflect changing needs, however we consider providing clarity on the focus and content of the report (as signalled above) would be valuable.

44. Further aspects of the legal process are discussed in *Briefing 3 - Legal Effect and Court Processes*.

Agree that the Government's package of preferred options include:

- a requirement for a social worker to provide a child-centred social worker report on the application. YES / NO
- a requirement that the social worker report include: YES / NO
    - how the child participated, including any views expressed by the child
    - the suitability of the adoptive parents, and
    - information about the views of the family or whānau.

A child's culture should be central to decision-making

45. In February 2022, you agreed, in-principle, that adoption should include measures to support an adopted person to maintain their culture. We have considered culture as a broad concept, including, for example, ethnic background, religion, language and disability and sexuality cultures, such as LGBTQIA+ and rainbow cultures (where appropriate).

46. Current laws do not recognise that the child has a right to their culture or require that the child's culture be considered in an adoption. In practice, Oranga Tamariki social workers consider the cultural needs of the child as part of their assessment of an adoption. We heard in engagement that loss of culture was a significant harm from adoption, particularly from those who had been adopted in historical closed cross-cultural adoptions.

47. Our recommendations for upholding a child's right to culture are closely linked to other parts of the adoption reform package and give effect to the overarching principle of "Preservation of and connection to culture, and identity" that we recommend in *Briefing 1- Overview and guiding principles.* Principles and mechanisms relating to the involvement of family and whānau in adoption cases also uphold a child's right to culture as they recognise the child's birth family and whānau can support the child's connection to their culture.

48. We discuss further below:

    a. matching social workers to an adoption case;

    b. social worker reporting to the Court on relevant cultural information;

    c. the power for the Court to order a cultural report;

    d. whether cross-cultural adoptions should be allowed;

    e. post-adoption cultural maintenance plans; and

    f. consultation with hapū and/or iwi before a Māori child is adopted.

Requiring social workers to be suitably qualified to represent the child will enhance court understanding of the child's culture

49. We recommend that the Government's package of preferred options require that a social worker matched to an adoption case be suitably qualified to represent the child, by reason of their personality, cultural background, training, and experience. This links to the proposal at paragraph 21 that a dedicated social worker be appointed for the child. These matching requirements are also consistent with recent changes to the Care of Children Act, related to appointing a lawyer for child.

50. Currently, the law requires that a Māori social worker be appointed where the child placed for adoption is Māori. No other requirements for matching a social worker to a case apply. We heard from Oranga Tamariki that Māori social workers are able to adapt their practice in order to better serve the interests of Māori children.

51. We consider that matching a child with a social worker who shares similar characteristics would best support the child through the adoption process. Children will be more likely to be

able to relate to their social worker, and the social worker can adapt their practice to suit the needs, including the cultural needs, of the particular child. We have recommended the requirement be flexible to allow for the needs of each individual case and any resourcing limitations. This flexibility recognises that, while a social worker may not share the child's culture, a social worker with an understanding of the child's culture would be preferable to one without. The proposal's flexibility also allows for practical decision-making around how this is implemented in individual cases.

52. We considered, but do not recommend, a strict approach requiring the social worker to exactly match the child's culture. Oranga Tamariki advised that the requirement for a Māori social worker where a Māori child is to be adopted already creates resourcing challenges. Consequently, non-adoption social workers are sometimes used for these cases and may not have specialist adoption knowledge. We considered that a strict approach to matching a child's culture would be difficult for the social worker workforce to meet, given the multi-cultural nature of New Zealand society.

Providing a child's cultural information to the Court will support a best interests assessment

53. We recommend that the Government's package of preferred options include:

    a. that cultural information about the child be collected and included in the social worker report provided to the Court; and

    b. a power for the Court to order cultural reports in adoption proceedings.

54. A child's right to culture is reflected in the principles for adoption we have recommended in *Briefing 1 - Overview and Guiding Principles.* Ensuring children's cultural information can be presented to the Court is necessary to support decision-making that is in the child's best interests, and to support achievement of the principles. Requiring a child's cultural information to be provided to the Court also aligns with the Crown's Tiriti obligation to protect the rights and interests of Māori.

55. As noted in paragraph 41 we have recommended retaining the requirement for social worker reports to be prepared, which are used to provide information to the Court to support it in its decision-making. Social workers work closely with the child, birth parents and wider family and whānau, and, given those relationships, will be able to gather information about the child's cultural heritage. Requiring a child's cultural information be recorded in the social worker report will help to ensure the Court is well-informed in its decision-making. We note that the level of information available may be variable based on birth parents' (and wider family and whānau) knowledge and understanding of their own cultural background.

56. Further information on the child's cultural background could also be provided by Court-ordered cultural reports, prepared by a person with relevant cultural knowledge and expertise. Feedback from engagement strongly supported giving the Court the power to request a cultural report to guide their assessment of a child's best interests. Cultural reports provide individualised assessments of a child's background and culture and its relevance to an adoption. Enabling the Court to order cultural reports is consistent with other child-centred legislation, such as the Oranga Tamariki Act and Care of Children Act.

57. Collecting and providing cultural information to the Court will require sensitivity to ensure that it is appropriate. Cultural and identity information is of high privacy and sensitivity for many cultures. Many Māori consider whakapapa information to be tapu. Collection of information also has privacy and New Zealand Bill of Rights Act 1990 ('NZBORA') implications which need to be thoroughly considered. A key issue for Māori-Crown relations currently is Māori having sovereignty over their data, including how it is collected and used and who can access it.

58. In implementation, we will work alongside operational delivery with Oranga Tamariki and Department of Internal Affairs (DIA) to ensure cultural information is appropriately managed.

59. There is an ongoing need for the family justice system to build capacity and establish a skilled workforce of report writers for a diverse range of cultures, as was identified in the Te Korowai Ture ā-Whānau report.[3] That report identified a need for improvements to recruitment and training processes for cultural report writers, remuneration of report writers, processes for review and consistency across report writers and processes for forming partnerships with iwi/Māori and other community organisations to provide report writing services.

60. Given those capacity issues, and the time and cost cultural reports can add to proceedings, we will consider whether specific guidance on ordering cultural reports in adoption cases is needed to ensure they are used effectively. Implementation issues, including funding implications and the demand for cultural reports throughout the justice system, will be considered as we refine policy proposals.

We recommend further engagement on whether it is appropriate to create a presumption against cross-cultural adoptions

61. We recommend further engagement on whether there should be a presumption against cross-cultural adoptions or whether the new principle that adoption must support the preservation of, and connection to, a child's culture and identity is sufficient.

62. Some of those we engaged with in the first round strongly supported a presumption against cross-cultural adoptions.[4] A presumption would mean that, in most cases, cross-cultural adoptions should not be approved by the Court, but allow for flexibility to depart from this in certain circumstances. A presumption reinforces the policy position that, in general, it will not be in a child's best interests to be cross-culturally adopted. This would be a stronger legislative steer than a principle alone and would highlight the importance of a child retaining links to their culture.

63. However, there are complexities to determining if a cross-cultural adoption will be in the best interests of a child. These are heightened when a child comes from a mixed cultural background. We heard in engagement that adoption is highly stigmatised in some communities, particularly if a child is born to an unwed mother, which could make adopting

[3] *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms* (2019).
[4] Cross-cultural adoptions are defined as an adoption of a child by adoptive parents who come from a different cultural background to the child.

a child within their culture difficult or inappropriate. We heard concerns in engagement that a presumption against cross-cultural adoptions could risk privileging the child's right to culture over and against other rights and needs of the child.

64. A presumption against cross-cultural adoption could potentially align with reform objectives, but there is a risk such a presumption could be applied inconsistently until there is clear judicial precedent about how to apply it. The principle for "preservation of and connection to culture and identity" alongside other principles regarding family and whānau involvement, and that children's well-being and best interests are paramount, may be sufficient to ensure that placements within the child's culture are given due consideration.

65. We recommend engagement seek views on whether a presumption is appropriate, and, if so, in what circumstances it could be overridden.

Post-adoption cultural maintenance plans could assist families and the Court, but further engagement is required on this

66. We recommend further engagement on whether cultural maintenance aspects to post-adoption plans would be useful, and, if so, whether they should be enforceable. We envisage adoptive applicants would provide the plan to the Court. The Court could then use that plan, alongside the social worker's report, when deciding whether the applicants are suitable to adopt.

67. Nearly all of those we engaged with acknowledged that cross-cultural adoptions come with additional difficulties for supporting the child's right to their culture. This has also been extensively supported in research.[5]

68. In cases of cross-cultural adoption, we consider that adoptive parents should be encouraged by social workers in pre-adoption discussions to consider how they can support the child to maintain their culture. However, some people we engaged with considered that adoptive parents should be required to make plans to support a child's culture where it differs from their own, and express their intentions in court.

69. There is no guarantee that intentions expressed in cultural maintenance plans will be met following adoption. Establishing and maintaining post-adoption contact with family and whānau, where possible, will normally be the best way to maintain a child's connection to their culture. However, plans may help adoptive parents to understand the adoptive child's cultural needs and help them generate a clear intention to engage with their child's culture.

70. There are some risks to requiring adoptive parents to set out specific details of how their adoptive child will maintain connection to their culture in a formal 'plan'. Initial expectations

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[5] See, for example, Anita Gibbs. (2017) "Beyond colour-blindness: Enhancing cultural and racial identity for adopted and fostered children in cross-cultural and transracial families". *Journal of Aotearoa New Zealand Social Work*. Vol 27. No 4 , 74-83; Maria Haenga-Collins & Anita Gibbs (2015). "Walking between worlds": The experiences of New Zealand Māori cross-cultural adoptees". *Adoption and Fostering*, 39(1), 62–75; Scherman, R., & Harré, N. (2004). "Intercountry adoption of Eastern European children in New Zealand: Parents' attitudes toward the importance of culture." *Adoption & Fostering*, 28(3), 62–72.

may be unrealistic, and a set plan may be inflexible to the changing needs and interests of the adopted child.

71. We propose seeking public feedback on whether post-adoption cultural plans should be enforceable. Enforceability would enable access to mediation between the adoptive family and birth family, if either party were not following through with their commitments. Enforceability gives parties some confidence that people can be required to follow through on their pre-adoption commitments.

72. However, enforceability may have drawbacks, as it could lead to conflict between birth and adoptive parents about what is best for the child, or ultimately court-ordered involvement in cultural settings which itself can cause harm to the child.

Consultation with hapū and iwi could be part of protecting right to culture, and part of fulfilling the Government's Tiriti obligations to Māori

73. We recommend engagement seek views on how, and to what extent, hapū and iwi consultation should form a part of the adoption process for tamariki Māori.

74. Feedback from Māori suggested that greater consistency of the adoption process with tikanga Māori is intrinsically linked to allowing whānau, hapū and iwi more direct mechanisms to have input into individual adoption proceedings. Further consideration of the role of wider family and whānau and the process for determining when this is inappropriate is at paragraph 116.

75. In other reviews of decision making related to tamariki Māori, the Government has heard a strong voice from Māori about the need for Māori rangatiratanga to be provided for. Waitangi Tribunal findings in the urgent inquiry into Oranga Tamariki (WAI 2915) emphasised the need to allow for much greater avenues for Māori to hold influence and agency over decisions that will affect them. The inquiry held that the Tiriti commitment to Māori rangatiratanga over kāinga guarantees the right of Māori to care for and raise the next generation.[6]

76. Some international jurisdictions require consultation with indigenous groups where an indigenous child is to be adopted.[7] In New South Wales, for example, where an indigenous child is to be adopted, a relevant indigenous community organisation is legally required to be consulted. Requiring similar consultation with hapū and iwi (or iwi entities, for example) about an adoption of a Māori child from that hapū or iwi would greatly increase their ability to speak to the cultural needs of that child. This would also be a strong Tiriti partnership approach by recognising the distinct rights of hapū and iwi to exercise rangatiratanga in the care and protection of tamariki who whakapapa to them.

[6]Waitangi Tribunal. (2021). *WAI2915: He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, 12

[7] See, for example, section 33 of the New South Wales Adoption Act 2000 Adoption Act 2000 No 75 - NSW Legislation, section 50 of the Adoption Act of Victoria 1984 Adoption Act 1984 (legislation.vic.gov.au); section 7 of the British Columbia Adoption Act 1996 Adoption Act (gov.bc.ca).

77. Requiring consultation with hapū and iwi (or iwi entities, for example) about an adoption of a Māori child from that iwi (or multiple iwi, depending on the child's whakapapa) would greatly increase the ability of iwi to speak to the cultural needs of Māori adoptees. This would also be a strong Tiriti partnership approach, that would recognise the distinct rights of iwi and tamariki Māori under te Tiriti to an approach to adoption that recognises Māori collective decision-making processes.

78. We consider that further engagement with Māori should be central to our consideration of how and to what extent hapū and iwi should be involved. Lessons from other jurisdictions can also support consideration of how hapū and iwi could participate, the role of Government and the necessary processes for cooperation, for example information sharing.

79. If this option is progressed, we will need to consider implementation issues related to a requirement to consult with hapū and iwi. For example, this should consider how to establish mechanisms for consultation, who should consult with hapū and iwi, what governance and oversight mechanisms would be required for this function, and resourcing.

Agree that the Government's package of preferred options include:

- a power for the Court to order cultural reports in adoption proceedings; YES / NO
- a requirement that a social worker be matched to adoption cases who is, to the extent practicable, suitably qualified to represent the child, by reason of their personality, cultural background, training, and experience; and YES / NO
- a requirement for cultural information to be provided to the Court in the social worker report; YES / NO

Agree to engage on:

- whether a presumption against cross-cultural adoptions should be included and the circumstances in which it could be overridden; YES / NO
- whether cross-cultural adoptive parents should be required to complete a post-adoption cultural maintenance plan; and YES / NO
- how and to what extent hapū and iwi consultation should form a part of the adoption process for Māori children. YES / NO

Increased access to adoption information will support a child's identity

80. In February 2022, you agreed that adoption be centred on a principle of openness and a primary right to access to information for the adopted person. Adoption information may include (but is not limited to) court records, information held by Oranga Tamariki, and information on the original birth record.

81. The current approach to adoption changes an adopted person's legal identity, severing their links to their birth identity and family, whānau and whakapapa. It is inconsistent with the right to identity outlined in the Children's Convention. For Māori and other cultural groups, the status quo is also inconsistent with the right to identity outlined in the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). Many adopted people consider restrictions on accessing their information to be a fundamental breach of their rights.

82. Many of those we engaged with described ongoing harm from being denied access to their information, such as not knowing or struggling to learn about their identity or being unable to form relationships with family members. Current access rules are a barrier to identity formation and can even affect the medical care of adopted people who are unable to learn about hereditary or genetic conditions in their family. For non-European adopted people, especially those adopted into Pākehā families, we heard of their specific struggles with identity, and for Māori adoptees with their sense of tūrangawaewae, and with their ability to engage with te ao Māori. These impacts are felt across generations.

83. Even with some information available under the Adult Adoption Information Act 1985, the current access to information rules reflects closed adoption practices and cause undue harm to adopted people. Opening up access to information will help adopted people better understand their identity.

Being able to access adoption information at any age is consistent with openness and supports an adopted person's right to identity

84. We recommend the Government's package of preferred options impose no age restrictions for an adopted person to access any type of adoption information.

85. Currently, an adopted person must be at least 20 years old before they can apply for their original birth certificate. This amounts to discrimination on the basis of age under NZBORA, as found by the Human Rights Review Tribunal in 2016. We consider that the proposed new adoption regime should provide there are no age restrictions for accessing adoption information.

86. As information would be available at any age with our above proposal, we recommend practice should provide that adoption information should be presented in an age-appropriate way, where relevant. This is likely to apply primarily to information held by Oranga Tamariki. This is consistent with the principle of openness and the right to information. Providing there is no age restriction is preferred over lowering the age restriction, as to do so would continue to withhold information from adopted people.

87. We will consider how adoption information, including that held by Oranga Tamariki and the Court, could be made age-appropriate during implementation.

Removing counselling and birth certificate requirements for accessing information will reduce barriers

88. We recommend the Government's package of preferred options include that adopted people can receive counselling before receiving adoption information on request, but that counselling should not be compulsory. We also recommend not requiring an original birth certificate (containing the names of the birth parents) to be presented to access adoption information held by Oranga Tamariki.

89. Current requirements to attend counselling and present an original birth certificate are a barrier to accessing information and are not consistent with the values underpinning reform, such as prioritising openness, or the values of open adoption today. Requiring an original birth certificate to access Oranga Tamariki information creates a two-step process, by requiring people to first apply for their original birth certificate, then use that to access the Oranga Tamariki information.

90. The requirement to attend counselling was introduced by the Adult Adoption Information Act 1985 and reflects the shift from closed to open adoptions. We heard during engagement that the counselling requirement specifically assumes that adopted people cannot handle learning about their personal information. However, making counselling available on request recognises that accessing adoption information can be a significant matter for adopted people, and some may still appreciate having the option to talk through this step with a professional.

Further engagement is needed on whether to end vetoes

91. During the first round of engagement, we heard minimal feedback on the veto system, particularly from those who are affected by it. Given the impact any changes to the veto system would have on those involved, we consider further engagement is needed to provide those people with a further opportunity to share their views. We recommend engaging on:

    a. continuing to allow existing vetoes to be renewed, or

    b. ending vetoes, with a transitional period introduced, but enabling veto holders to apply for a review to have the veto continued, if they show removal would cause them unwarranted distress.

92. The veto system was introduced under the Adult Adoption Information Act, for adoptions that occurred before that Act. It allowed a birth parent or adopted person to block others involved in the adoption from being able to access the other party's identifying information. A veto lasts for 10 years and is infinitely renewable, but can be removed at the direction of the applicant at any time. No new vetoes can be placed for adoptions after 1 March 1986.

93. There are 201 vetoes currently in place; most of these have been put in place by birth parents with a very small number (27) held by adopted people. These numbers are reducing over time as people pass away. Given the era these vetoes relate to, many veto holders are also likely to be elderly and potentially vulnerable.

94. The veto system is not consistent with the principle of openness and denies people's right to identity. Vetoes enabled ongoing secrecy for people involved in adoptions during an era where there was stigma attached to unmarried mothers and adoptions were kept secret. For adopted people, their children and subsequent generations, vetoes deny them access to their family history and identity. Vetoes are inconsistent with the principles of te Tiriti, prevent access to whakapapa information, and prevent a sense of tūrangawaewae.

95. Many people we engaged with recognised that the person who has a veto in place may be doing so as a consequence of, or to avoid harm. However we also heard that the veto system creates harm to those who have a veto placed against them by denying them access to basic identifying information.

96. There is a direct tension between the right of the veto holder to keep private information about themselves and the right of the person who cannot access information about themselves. The current system prioritises veto holders' rights to privacy for those who exercised a veto prior to 1 March 1986. Ending vetoes would better align with the objectives for reform to uphold adopted child rights to identity and information, and would be more consistent with the principles of te Tiriti.

97. Given the contentious nature of the veto system, and the harm that results from either option, presenting options for reform provides an opportunity for affected people to share their views. We note, however, that those who hold a veto may be reluctant to provide feedback – the very nature of a veto indicates their wish to keep the details of an adoption secret and they may be reluctant to openly discuss issues relating to adoption.

98. If the veto system is abolished, further work will need to consider what an appropriate transitional period would be for phasing them out. This could be a limited extension following the expiry of an individual's veto, for example a period of 1-2 years, to inform veto holders of the change and give them time to access support for managing the risk that they may be contacted.

99. Further work would also be required to design a review process for veto holders who wish to make a case for the veto to be continued. Consideration would need to be given to implementation issues, including contacting those with vetoes in place and determining what may constitute "unwarranted distress". We will continue to work closely with DIA and the Office of the Privacy Commissioner on a potential review process so we can provide advice following the second round of engagement.

100. If this option is progressed, we will consider what type of support could be provided to those having vetoes removed and funding required for it as part of the Budget process. Support is discussed further in *Briefing 3 - Legal Effect and Court Processes* at paragraph 101, and we hope to hear more in the second round of engagement about the types of support that should be provided throughout the adoption system.

Retaining an adopted person's birth name may support their right to identity

101. We recommend the Government's package of preferred options include allowing Judges to consider changing an adopted person's surname at the time of the adoption where they deem it appropriate (for example, for child safety or at the child's request). This would

recognise the importance names have to a person's identity and connection to their birth family, family history and whakapapa, while also recognising that some adopted people may want to share a surname with their adoptive family for the sense of connection and belonging. We will undertake further work to set the standard for accepting a surname change and will provide advice following engagement.

102. To ensure that the child's right to identity is retained under Article 8 of the Children's Convention, we also recommend engaging on two options regarding first name changes, namely:

    a. banning first name changes as part of the adoption process; or

    b. a presumption against first name changes as part of the adoption process.

103. We did not seek specific feedback on this issue in the first round of engagement. However, we heard that some adopted people felt that when their birth name was changed they lost part of their identity. We think there is value in hearing from people, particularly those who have been adopted, before deciding on a preferred option. Banning first name changes as part of an adoption process would provide the strongest protection of an adopted person's name as a fundamental part of their identity and is simple to enforce given its blanket application.

104. In contrast, a presumption against allowing first name changes as part of the adoption process would be more flexible, as it could be overridden in special circumstances. A presumption would reinforce that, in general, it will not be in a child's best interests to change a child's first name, but recognises that there may be exceptions.

105. Both of these options should protect against the child having their name changed solely due to adoptive parents' preference, however, we recommend engaging further on which approach is most appropriate.

106. Under the current law, after an adoption is finalised adoptive parents have the same rights as non-adoptive parents and are free to change a child's name. Names can be fundamental identity markers, particularly in many non-European cultures where names carry family history and mana. We also therefore recommend further engagement on whether there is a need to limit adopted parents' ability to change a child's name after the adoption has been finalised. For example, adoptive parents who want to change the child's name through the adoption process but are denied by a Judge, could use the normal name change process after an adoption to change a name.

107. At the same time, it is important to recognise that a child may wish to change their first or surname with their adoptive parents' consent for reasons other than the adoption, for example transgender children who may wish to use a new name. Under the current law, adoptive parents, like biological parents of non-adopted people, can change their child's name at any time. Anyone can apply to change their own name once they turn 18, or at 16 if they have their parent's consent or are in a de facto relationship, civil union or married.

108. We considered, but do not recommend, banning all name changes or requiring surnames to be hyphenated. We consider both of the proposed approaches balance the right to identity

while respecting the wishes of some adopted children to have a name connection with their adopted family.

Adopted people having a choice of what information appears on their birth certificate is consistent with the principle of openness while protecting the right to privacy

109. We recommend that the Government's package of preferred options include adopted people being able to access two types of post-adoption birth certificates: one that includes the names of both sets of parents; and another that includes only the adoptive parents. This addresses the current system's 'legal fiction' of an adopted person's identity, which replaces the names of the birth parents on the birth certificate with the names of the adoptive parents with no indication that an adoption has occurred.

110. We also recommend that the Government's preferred options include that access to a birth certificate containing information on the original birth record (which includes the names of their birth parents only) would be automatically available to those named on the certificate (the adopted person and their birth parents).

111. However, we recommend engaging on who else should be able to receive copies of an adopted person's birth certificates. This could be limited to family and whānau of the adopted person, for example, or anyone who can prove they have a legitimate interest in the information. It will be useful to have insights from adopted people to better understand the appetite for this information being made available more widely.

112. We heard strongly in engagement that the status quo approach to birth certificates is inappropriate, including that it perpetuates a legal fiction. We frequently heard that birth certificates should better reflect that an adoption has taken place.

113. For Māori adopted people and their descendants, the current approach to birth certificates conceals important information about their whakapapa, iwi and tūrangawaewae. This breaches the right to identity under UNDRIP and is not in the spirit of te Tiriti.

114. We also considered, but do not recommend, only issuing a post-adoption birth certificate that includes both sets of parents, rather than offering the choice as we have recommended. This option would automatically disclose an adopted person's adoptive status which some people may prefer to keep private.

115. DIA has expressed its support of the proposal, while noting that operational implications will need to be worked through. We will continue to work with DIA on the operational and policy issues with implementing changes to post-adoption birth certificates. As discussed in *Briefing 1 - Overview and Guiding Principles*, we recommend you discuss these options with the Minister for Internal Affairs.

Agree that the Government's package of preferred options include:	
• no age restrictions for adopted people accessing any types of adoption information;	YES / NO

- that counselling for adopted people accessing adoption information should be available on request, but not be compulsory; YES / NO
- not requiring an original birth certificate to be presented to access adoption information held by Oranga Tamariki; YES / NO
- allowing surname changes as part of an adoption to be decided by a Judge where they deem it appropriate; YES / NO
- that adopted people should be able to obtain and use one or both of two birth certificates: YES / NO
    - a birth certificate with only their adoptive parents listed, and
    - a birth certificate with both their birth and adoptive parents listed.
- that adopted people should automatically be able to access information on their original birth record (which will have only their birth parents' names on it) YES / NO

Agree to engage on:

- whether to continue to allow vetoes to be renewed, or to end vetoes with veto holders having the ability to apply to have the decision reviewed where it would cause them unnecessary distress to have the veto removed; YES / NO
- whether to ban first name changes as part of the adoption process, or have a presumption against first name changes as part of the adoption process; YES / NO
- whether there is a need to limit adoptive parents' ability to change a child's name after the adoption is finalised; and YES / NO
- who should be able to access copies of an adopted person's birth certificates, other than the adopted person and their birth parents; YES / NO

Enhancing the child's right to family through increased birth family and whānau involvement during and after adoption

116. In February 2022, you agreed in-principle that the birth parents' family and whānau (birth family and whānau) should be involved in the adoption process as a default approach, but with flexibility to allow for circumstances in which it is not appropriate.

117. In order to allow for birth family and whānau to have involvement in the process we recommend the Government's package of preferred options include:

    a. a requirement that birth family and whānau views on adoption be included in a social worker's report to the Court on an adoption, unless this would cause unwarranted distress to birth parents or the child; and

    b. provision for the birth family and whānau to attend adoption proceedings with the right to be heard, unless this would cause unwarranted distress.

118. We recommend further engagement on the process to determine whether involvement of birth family and whānau would cause unwarranted distress.

119. Currently, the birth family and whānau have no input into adoption process and may not even be aware a child within their whānau is being considered for adoption. We heard in engagement that excluding birth family and whānau from a role in the process was against the best interests of children, as well as the interests of wider family and whānau. Provisions that allow for birth family and whānau involvement will give effect to the proposed guiding principles in *Briefing 1 – Overview and Guiding Principles* at paragraph 27.

120. Birth family and whānau involvement is valuable because it means that their views can be taken into account regarding, for example, the best interests of the child, cultural needs of the child, and whether suitable placements within the family and whānau are available. This would support a better-informed assessment of whether adoption would be in the best interests of the child. Additionally, ensuring that family and whānau views are heard and presented affirms the mana and role of family and whānau in the life of the child, and the importance of supporting the child's right to their family. We recommend two provisions that will allow these views to be considered in the process. These are discussed in turn below.

Including birth family and whānau views in the social worker report will involve them early

121. We recommend the Government's package of preferred options include requiring birth family and whānau views on adoption to be included in a social worker's report to the Court on an adoption, unless this would cause unwarranted distress to birth parents or the child. The process for determining unwarranted distress is discussed from paragraph 131.

122. Currently, the law does not require any birth family and whānau involvement before adoption. The social worker's report does not need to consider the impact of an adoption on the child's rights to family, instead focusing on the suitability of the proposed adoptive parents. In practice, we know that Oranga Tamariki social workers encourage birth parents to involve their wider family and whānau in adoption decisions.

123. Requiring family and whānau views to be presented in the social worker report provides the social worker with a clear mandate to engage with the family and whānau early in the process to seek and consider their views. This would enhance the social worker's understanding of the child's circumstances and family and whānau views on the adoption context, and whether whānau-based care options are available, from an early stage in the process. Information on these matters supports the Court when the case is being considered.

124. The social worker's report is discussed with regard to its role in court processes at paragraph 40, with other options for improvement.

Allowing family and whānau to attend adoption proceedings is a mana-enhancing mechanism to allow their views to be shared

125. We recommend the Government's package of preferred options include allowing birth family and whānau to attend adoption proceedings with the right to speak in court, unless this would cause unwarranted distress to birth parents or the child. Determining whether there is unwarranted distress is discussed at paragraph 131.

126. Currently birth family and whānau have no options for being present in Court unless the Judge permits them as a support person to a birth parent. Support persons are not permitted to speak in Court.

127. Allowing the birth family and whānau to attend proceedings and speak in Court would provide a strong mana-enhancing mechanism for family and whānau to share their views in their own words. The Court could also ask questions and seek further information if required. It would also provide an opportunity for family and whānau to share any information with the Court that they deem relevant about their wishes related to the child if an adoption was to go ahead, for example regarding aspects such as ongoing contact and name changes.

128. The provisions explained above provide practical mechanisms for family and whānau involvement within the adoption process, which will work alongside other preferred options in this set of briefings to further support their involvement, including:

    a. strong principles about family and whānau involvement and recognising whanaungatanga rights of family, whānau, hapū and iwi, discussed in *Briefing 1 - Overview and Guiding Principles* at paragraph 27;

    b. post-adoption contact agreements, which is discussed at paragraph 144;

    c. the Court being required to consider alternative care arrangements, discussed at paragraph 53 of *Briefing 3: Legal effect and court processes*.

Alternative approaches we do not recommend

129. We do not recommend giving birth family and whānau decision-making rights in adoption proceedings, for example by providing consent to an adoption. Wider discussion of who should have to consent to an adoption is at paragraph 59 of *Briefing 3 - Legal effect and court processes*. Requiring consent from wider birth family and whānau would be a

fundamental shift away from New Zealand law's current approach which charges parents and guardians with responsibility for decision-making about a child's care. Requiring birth family and whānau consent to an adoption has the potential to prevent an adoption which is in the best interests of the child.

130. We consider an approach that has a strong focus on supporting birth family and whānau participation, without requiring their consent, is preferable.

In determining the circumstances which would make birth family and whānau involvement inappropriate, we should focus on the impact on the birth parents and child

131. We recommend the Government's package of preferred options include an exception to birth family and whānau involvement where it would cause the birth parents or child unwarranted distress. This could provide for situations where their involvement may cause harm to the birth parents or child.

132. We recommend further engagement on the process for determining whether the involvement of birth family and whānau would cause unwarranted distress. Options could include:

    a. a department-led operational process, where Oranga Tamariki make decisions assessing whether involvement would cause unwarranted distress;

    b. a judicial process; or,

    c. a process where a judge could review decisions by Oranga Tamariki.

133. Allowing direct birth family and whānau involvement in adoption decisions, such as speaking in court, comes with risks. We heard in engagement that situations where birth parents have a strong desire not to involve their family and whānau in decision-making about a child's adoption can be exceptionally complex. In many cases, involving wider family and whānau may risk serious harm for the birth parents and the child.

134. Our recommended approach is similar to the test in the Births, Deaths, Marriages and Relationships Registration Act 1995 (the BDMRR Act). Under s 9(2)(c) of the BDMRR Act, the requirement for both parents to register a birth may be waived if registering this information would cause "unwarranted distress" to either parent.

135. This model deals sensitively with birth mothers in difficult situations regarding identifying the birth father and balances a child's right to identity and family with safety considerations for the birth mother and child.

136. "Unwarranted distress" is not defined in the BDMRR Act. In practice the Deputy Registrar of Births, Deaths and Marriages holds the discretion to determine that requiring a parent's details would cause unwarranted distress. Professional discretion is vital to assessing individual cases, acknowledging that there is no one-size-fits-all solution to determining the complexities of difficult family and whānau relationships. Situations that have constituted "unwarranted distress" in this context include:

    a. where there is evidence of an abusive relationship between the parents;

b. where protection orders are in place between the parents; and,

c. where parents do not respond to reasonable requests to confirm paternity/sign form.

137. Adoption is fundamentally different to identifying a parent on the birth certificate. Adoption requires decisions to be made about the best care arrangements for a child, which are made by the judiciary. The involvement (or not) of family and whānau impacts on this decision-making.

138. We recommend further engagement on whether a judge, social worker or other party should be able to decide that family and whānau involvement would cause unwarranted distress. The process will need to consider the needs of different decision-makers in a case at different points. As social workers are required to engage with family and whānau in making a social worker report, they need to be able to make a call on the safety of that involvement early in the process. Once the case gets to Court, the judge will need to apply the guiding principles in determining whether an adoption is in the best interests of the child, and so would need to be confident that not involving family and whānau was appropriate.

139. Decision making at different levels could provide different benefits:

a. Department-led: Social workers can usually spend time building rapport with birth parents to understand their circumstances. They can discuss with birth parents whether family and whānau involvement would be harmful, or whether there are opportunities to involve family and whānau, even in limited ways. Because social workers are involved from the beginning of the process, empowering them to make these decisions facilitates early family and whānau involvement where possible.

b. A judicial process: A judicial process could be initiated once a birth parent refuses to involve family and whānau in the adoption, or a social worker's decision to not to require the involvement of family and whānau could be assessed by the Court. A judicial process would provide formal legitimacy and an experienced decision-maker. However, a Judge would likely rely in part on a social worker's evidence to make a decision. If this decision occurs as part of the adoption case, there is a risk that that a judicial decision could be too late in the process to involve birth family and whānau in a genuine way.

140. With either process there is the potential for trauma if not managed sensitively.

141. Our preliminary view is that social workers should assess and make decisions on whether family and whānau involvement would cause unwarranted distress, with the ability for the judiciary to revisit this once the applications get to Court. This balances the benefits of involving birth family and whānau early so their views can inform the process, with the role of judges as decision-maker about whether an adoption is in the best interests of the child.

142. We recommend engaging on this issue further to fully understand the implications of both options.

Alternative approaches we do not recommend

143. We also considered, but do not recommend, the alternative approach of legislating a set of "specified circumstances," which a birth parent must prove to justify non-involvement of birth family and whānau. There is risk of excluding some circumstances where family and whānau involvement would cause significant harm. The high level of sensitivity required in dealing with these cases necessitates a flexible approach.

Agree that the Government's package of preferred options include:	
• a requirement that birth family and whānau views on adoption be included in a social worker's report to the Court on an adoption, unless this would cause unwarranted distress to birth parents or the child;	YES / NO
• provision for birth family and whānau to attend adoption proceedings with the right to be heard, unless this would cause unwarranted distress; and	YES / NO
Agree to engage on the process for determining whether the involvement of birth family and whānau would cause unwarranted distress, including whether a department-led or a judicial process (or both) would be best.	YES / NO

An established system for post-adoption contact will support the child's right to identity and family

144. In February 2022, you agreed in-principle that a child should be able to retain a connection to their birth family and whānau following an adoption.

145. We recommend that that the Government's package of preferred options include the introduction of post adoption contact agreements, which:

a. are required to be considered in all domestic adoption cases;

b. are agreed to before an adoption is finalised;

c. allow the child to participate, where appropriate;

d. are flexible and can be amended via mediation if there is disagreement later on;

e. involve the wider birth family and whānau, unless this would cause unwarranted distress to the birth parents or the child.

146. We recommend further engagement on whether post-adoption contact agreements should be enforceable.

147. Currently, there is no requirement to create an agreement about post-adoption contact between the birth and adoptive families. However, Oranga Tamariki does encourage families to record their intentions for post-adoption contact before an adoption order is made. These intentions are included in the social worker report to the Court.

148. In the first round of engagement, we heard that:

a. requiring post-adoption contact agreements would be positive for the child in most cases, as agreements could help them retain connections to immediate and wider family, and with their identity formation;

b. post-adoption contact agreements are a good idea, but there is a need to build in some protections, like flexibility for changing circumstances and enforceability; and

c. some people felt that post-adoption contact orders agreements should be mandatory, whereas others felt they should only be used where necessary/where directed by a Judge or entered voluntarily.

149. Post-adoption contact is consistent with protecting an adopted person's best interests, maintaining relationships after an adoption and the principle of openness. Requiring post-adoption contact agreements would ensure that ongoing contact between the child and their birth family and whānau is considered and intentions are documented. Contact agreements would also promote wider family and whakapapa connections for adopted tamariki Māori, and other cultural groups.

150. We recommend that post-adoption contact agreements have the features set out in Table 1 (below).

Table 1: Features of contact agreements and rationale

Condition	Rationale
Birth parents and adoptive parents must consider making a contact agreement	Requiring consideration of a contact agreement reinforces the importance of contact and ensures that everyone involved in the adoption has an opportunity to express their preferences. It stops short of making them compulsory, as contact cannot be forced, and plans will need to be genuine in order to be successful. Some parties may not want, or be ready, to consider post-adoption contact.
Contact agreements are agreed before an adoption order is finalised	Everyone should have a shared understanding of the agreement before final decisions are made, and judges can consider the agreement before they make a decision.
Contact agreements allow the child to participate or give their views on contact arrangements, where appropriate	Allowing the child to give their view on the contact agreement is consistent with the principle of encouraging child participation in the adoption process, but has flexibility for situations where a child either does not want to participate or does not have a view.

Condition	Rationale
Contact agreements are flexible and able to be amended via mediation	Building flexibility into the agreements recognises that circumstances can change, and the needs of adopted people and their families are likely to change over time. Mediation provides a non-adversarial space for non-contact agreements to be renegotiated, which is likely to be a more welcoming environment for parties and is likely to encourage participation. There will be Budget implications in providing a mediation service.
Wider birth family and whānau have a right to be involved, unless this would cause unwarranted distress to birth parents or the child	Requiring the role of wider birth family and whānau to be considered in post-adoption contact (rather than just the birth parents) recognises the important role they often have in children's lives, particularly for tamariki Māori and supports the principle of wider birth family and whānau involvement. Contact with wider family can provide an adopted person with information about their family history and identity even where the birth parents may not want to (or be able to) have ongoing contact with the child

151. Implementation issues, including who would be responsible for supporting birth and adoptive families to negotiate agreements, will be clarified as we refine the policy following the second round of engagement.

Potential for enforceable post-adoption contact orders

152. Further engagement is needed to inform whether post-adoption contact orders should be enforceable, and if so, how. Enforceability would mean that disagreements about post-adoption contact could be escalated. For example, the Court could be available to settle disagreements if they cannot be settled in mediation, or if parties request it, similar to the approach taken in care of children cases.

153. However, enforceability can create an adversarial environment that may not be in the child's best interests, or may be seen as government overstepping into private affairs. Not enforcing contact agreements may reduce contact agreements to good-faith indications of contact, which is largely what occurs in practice under the status quo, although it is not required by law.

154. If we recommend that post-adoption orders be enforceable, further policy work will be required on implementation and feasibility and the form of the enforcement response. We will provide further advice after the second round of engagement.

Agree that the Government's package of preferred options include the introduction of post adoption contact agreements, which:	YES / NO

- are required to be considered in all domestic adoption cases;
- are agreed to before an adoption is finalised;
- allow the child to participate where appropriate;
- are flexible and can be amended via mediation;
- involve the wider birth family and whānau;

Agree to engage on whether post-adoption contact agreements should be enforceable, and if so, how. YES / NO

Eligibility and suitability requirements should protect children's safety and best interests

155. Eligibility and suitability provisions within the Adoption Act help the Court determine whether an adoptive parent is a fit and proper person to care for an adopted child. These provisions also help to determine whether an adoptive placement is in the child's interests.

Current eligibility criteria are discriminatory, and we recommend removing them

156. We recommend that the Government's package of preferred options should not include eligibility criteria relating to sex, relationship status, or age.

157. The Adoption Act has a number of criteria that an applicant must meet to be eligible to adopt a child. Eligibility criteria are intended to set the outer limits of those who may be deemed suitable adoptive parents. Current eligibility criteria are based on the age, sex and relationship status of the applicant.

158. In 2016, the Human Rights Review Tribunal (HRRT) found that the eligibility criteria are discriminatory on the basis of age, sex and marital (relationship) status, and that this discrimination cannot be justified in terms of the NZBORA. The criteria are also in tension with New Zealand's international human rights' obligations.

159. Nearly all those we engaged with supported removing eligibility criteria based on the sex or relationship status of the applicant. These criteria were not considered relevant to an applicant's suitability to care for a child. They may also prevent the most suitable individual to care for a specific child from being eligible to apply for their adoption.

160. Under the Adoption Act, prospective adoptive parents must be at least 20 years old (and sometimes 25 years old). There were mixed views on retaining this age eligibility criterion. Some people consider age ensures that that adoptive parents will be sufficiently mature to care for the adopted child.

161. We consider that judicial assessments of suitability (discussed below at paragraph 163) provide enough of a safeguard to ensure that adoptive applicants are sufficiently mature to care for a child, and that there will be cases where even quite young adoptive applicants will be the best person to care for a child. This aligns with the finding of the HRRT that age does not provide a suitable proxy for maturity. Removing the age criterion would be

consistent with the approach in our other child-centred legislation. For example, there is no age criterion for who may be appointed a child's guardian under the Care of Children Act. We therefore recommend that there no longer be an eligibility criterion based on age.

162. If you prefer to retain an eligibility criterion relating to age, we suggest engaging on a lowered eligibility age. We have identified two alternative options for a lower age for eligibility:

    a. 16 years old – An age of 16 years would meet the minimum standard for age discrimination in the NZBORA. It corresponds to some important decision-making powers associated with maturity, such as the age of sexual consent and the age of consent for medical procedures; or

    b. 18 years old – An age of 18 years would be consistent with other New Zealand laws that contain age restrictions on the basis of a person's maturity, such as the age of marriage (without court consent), and the age of voting. It would also accord with international standards, such as the Children's Convention. s9(2)(f)(iv)

Suitability assessments are an essential safeguard, and should be supported

163. We recommend that, before an adoption order can be made, the Judge must be satisfied that the adoptive applicants are suitable to adopt. A judge's decision on suitability will be informed by the social worker report and any other relevant information presented to the Court.

164. We recommend that the suitability criteria used to inform the social worker report be left to professional discretion, rather than prescribed in law. Oranga Tamariki will continue to develop practice guidance for the suitability assessment, as per the status quo.

165. Currently, a judge must determine whether applicants are 'fit and proper' to have day-to-day care for the child and of sufficient ability to bring up, maintain, and educate the child. Judges make this determination on the basis of a social worker's report which provides an assessment of the applicants against the Oranga Tamariki Caregiver and Adoption Assessment Framework. The Adoption Act Regulations 1959 require the social worker's report to include any details of the applicants' criminal history. The regulations also require applicants to disclose any relevant details of their medical and financial circumstances to the Court.

166. We heard in engagement that the current process for determining suitability through practice was well regarded. Enabling standards for suitability assessments to be determined through Oranga Tamariki practice supports flexibility in assessment of the circumstances of individual cases. The criteria for assessment have been informed by domestic and international best practice. We consider there would be risks in codifying suitability criteria in law, for example that criteria would not be flexible enough to deal with the differences in individual cases, or malleable to changing social expectations. We therefore recommend the legal test for determining the suitability of adoptive applicants be based on the judge's determination that an applicant is suitable, rather than on any criteria

set out in legislation. Further consideration is needed on whether the current wording within the Adoption Act remains appropriate and should be carried over to the proposed new adoption regime.

167. The criminal, financial and medical checks which are built into the suitability assessment process remain necessary in some form, to support assessment that an adoptive applicant will be a safe and capable carer for a child. Having these checks be subject to judicial discretion, rather than setting out standards in law, is appropriate given the flexibility needed to judge what will be a suitable standard in each case. Operational design will need to consider whether the current checks are appropriate, whether improvements could be made, and whether any further checks are required. For example, we will consider the effects medical requirements may have on specific groups, such as people with disabilities.

168. We consider there is scope for the social worker report provided by Oranga Tamariki under the current system to be improved. Preferred options for child-centred social worker reports are discussed at paragraph 40. These reports will provide a judge with fuller information to support their decision whether an applicant is suitable or not.

Alternative approaches we do not recommend

169. We considered, but do not recommend, setting out in legislation specific bars to suitability, such as specified criminal convictions. We consider that a judge should have the discretion to consider what factors would make an applicant unsuitable to adopt, and that these would be given appropriate weight in this decision. However, flexibility will support the best interests of the child, as the judge may weigh factors that might make a person unsuitable against all relevant factors, for example in the case of criminal convictions, the length of time since that/those convictions.

Agree that the Government's package of preferred options should not include eligibility criteria relating to:

- sex; YES / NO
- relationship status; and YES / NO
- age; YES / NO

OR, If you would prefer to retain an eligibility criterion relating to age, then **Agree** to engage on a lower age eligibility criterion of:

- 16 years old; OR YES / NO
- 18 years old. YES / NO

Agree that the Government's package of preferred options provide that:

• before an adoption order can be made, the Judge must be satisfied that the adoptive applicants are suitable to adopt;	YES / NO
• the suitability assessment used to inform the social worker report be left to professional discretion, rather than prescribed in law.	YES / NO
• that a judge's decision on suitability be informed by the social worker report and any other relevant information presented to the Court.	YES / NO

An adoption system should define a child's age to determine who can be adopted

170. In February 2022, you agreed that adoption law reform should not create a pathway for adult adoptions to be recognised. We recommend that the second round of engagement seek views on whether the maximum age that a child can be adopted be set at 16 or 18 years old.

171. As noted in our December briefing, international conventions about children define a child as being under the age of 18 years old. However, domestically, parenting orders (regarding the day-to-day care of children) may not be made in respect of a child aged 16 years or over, unless there are special circumstances. This recognises the evolving capacity and independence of children as they get older. There are also some circumstances, such as entering into marriage, a civil union or de facto relationship, where 16-year-olds are treated as being adult and not requiring parental care.

172. In the first round of engagement, less than half of the people that expressed a view on who they thought should be adopted specified an age they considered appropriate. Our preliminary view is to align the age with international obligations, so that children under 18 years old could be adopted. However, given the lack of specific feedback during the last round of engagement, it is appropriate to seek further views on the appropriate maximum age for children to be adopted.

Agree to engage further on whether the maximum age that a child can be adopted be set at 16 or 18 years old.	YES / NO

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

_____

Hon Kris Faafoi
Minister of Justice

Date / /

DOCUMENT 3

Hon Kris Faafoi, Minister of Justice

Adoption law reform: Briefing 3 - Legal Effect and Court Processes

Date	28 March 2022	**File reference**	

Action sought	**Timeframe**
Agree to the recommendations in this briefing related to reforming New Zealand's adoption laws.	4 April 2022

Contacts for telephone discussion (if required)

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Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Security classification – Sensitive

Purpose

1. This briefing is the third in a suite of four briefings that seek your decisions on policy proposals to progress adoption law reform and inform the second round of engagement. This briefing seeks your decisions on proposals to be included in the Government's package of preferred options relating to the legal effect of adoption and adoption court processes. It also seeks your agreement to further engagement on areas where the feedback we have received to date was insufficient or unclear.

Overview

2. In February 2022, you agreed to include a proposal to change the legal effect of adoption in the second round of engagement. In particular, you agreed that adoption should create new enduring relationships, clarify ongoing rights and responsibilities, but not sever the child's links with their birth family and whānau.

3. The legal effect of adoption can significantly impact the life of the child who is adopted, as well as the life of their birth and adoptive family, whānau, and descendants. We have recommended a new form of legal effect that maintains the child's legal parent-child relationship with their birth parents, as well as creating new legal ties to their adoptive parents.

4. Our recommendations clarify which parties have duties, powers, rights and responsibilities toward the child after an adoption, and how financial responsibility and rights of succession and citizenship attach to those new relationships. In doing so, we note the work currently underway responding to the Law Commission's report, *Review of succession law: rights to a person's property on death* ('Report on Succession'), and recommend considering the issues concurrently.

5. In this briefing, we also make recommendations relating to adoption court processes to better support consideration of children's best interests and judicial decision-making. Those recommendations relate to application processes, birth parents' participation, court powers, alternative care arrangements, consents to adoption, and discharging and varying adoption orders.

6. Finally, we note the current system lacks any support services for the parties involved in an adoption, including the adopted person. We recommend seeking the public's views on what support services would be useful for those involved before, during and after the adoption has occurred.

7. We recommend you read this advice alongside the set of summary A3s attached as Appendix B to *Briefing 1 – Overview and Guiding Principles.*

Changes to the legal effect of adoption will have lifelong and intergenerational impacts for adopted persons

8. In December 2021, we provided you with advice on the legal effect of adoption. We noted longstanding criticism of the legal effect of adoption based on its severance of the adopted person from their birth family and whānau.

9. In February 2022, you agreed that the second round of public engagement should include a proposal that adoption create new enduring legal relationships, clarify ongoing rights and responsibilities for all parties involved, and no longer sever the links between an adopted child and their birth family and whānau.

10. Currently, the legal effect of adoption is that, in law, the adopted person is considered to be the child of the adoptive parents as if they were born to them. This has a number of flow-on impacts, including on:

    a. parents' rights for decision-making about the child, and day-to-day care of the child;

    b. parents' financial responsibility for paying support and maintenance for a child;

    c. the child's succession rights; and

    d. the child's entitlement to citizenship.

11. We have provided you with advice on how the new legal effect could be reflected on birth certificates in *Briefing 2 – Upholding children's rights* at paragraph 109.

The legal effect of adoption should provide clarity about parents' decision-making rights and day-to-day care of the child

12. We heard in engagement that, while adoption should not sever the adopted person's connection to their birth parents, it should clearly define adoptive parents' rights to care for the child in order to provide them with security and stability.

13. We consider that it is in the best interests of the child for adoptive parents to have the usual responsibilities associated with parenthood, and that these responsibilities be removed from the birth parents. We therefore recommend the package of Government's preferred options provide that an adoption order recognises both the birth parents and the adoptive parents as legal parents of the child, but that:

    a. the adoptive parents:

        i. become the permanent guardians of the child and obtain all associated duties, powers, rights and responsibilities, including providing day-to-day care for the child; and

        ii. must consult with birth parents and/or wider family/whānau on how to maintain post-adoption contact (if it occurs) following relocation.

b. the birth parents are no longer guardians of the child and therefore no longer have a role in the child's day-to-day care or determining important matters affecting the child.

14. Our proposed approach aligns with the proposed purpose of adoption, particularly that adoption provides care for a child where birth parents cannot or will not provide care for them. Providing clarity that the adoptive parents become the permanent guardians of the child and that the birth parents are removed as guardians supports the child's wellbeing by providing certainty and security for the new family relationship.

15. All of the associated duties, powers, rights and responsibilities of a guardian as provided in the Care of Children Act 2004 ('Care of Children Act') would attach to the adoptive parents upon the making of an adoption order, including having the role of day-to-day care of the child. This would also provide the adoptive parents with the responsibility to determine for or with the child, important matters affecting them, such as where they reside, medical treatment and education choices.

16. The adopted parent's decision-making powers would be subject to any post-adoption contact agreements. We note that future decisions about moving and therefore relocating the child may have an impact on these agreements. The child's right to identity, culture, whakapapa and family are important, and may be impaired if their adoptive family moves region domestically, and even more so if the adoptive family relocates internationally.

17. We therefore also recommend that, if adoptive parents and the adopted child are relocating, adoptive parents must consult with birth parents or wider family/whānau to consider how post-adoption contact (if it occurs) can best be maintained following relocation. Such consultation could result in a post-adoption contact agreement being varied to deal with the changed circumstances. We consider that this strikes the right balance of enabling the adopted parents to make decisions on behalf of the child, while ensuring the child's links to the birth parents' and their wider birth family/whānau are considered if the adoptive family moves.

18. We considered, but do not recommend, requiring birth parents to consent to the adopted child relocating. This would create complexity and would not align with the purpose of adoption. It would also significantly restrict the life choices of adoptive parents and may prevent them making decisions about their living situation even where that was in the best interests of the child.

19. If birth parents desired a greater ongoing role in the life of their child and have more influence or control over where the child lives, they could consider alternative care arrangements to adoption, such as guardianship. Alternative care arrangements are discussed at paragraph 53.

Financial responsibility for a child aligns with adoptive parents' role as permanent parents for the child following adoption

20. We recommend the Government's package of preferred options include that adoptive parents be financially responsible for the upkeep of the child.

21. In general, our child support laws place the obligation to financially support children on biological parents, except in situations where others have accepted responsibility to maintain a child. The current legal effect of adoption treats adoptive parents as if they are the biological parents and they are financially responsible for the child. Birth parents do not currently have a financial obligation to support a child following an adoption.

22. Almost all people who engaged with us on this issue considered that the adoptive parents should be responsible for financially supporting the child, as the birth parents no longer have parental rights and responsibilities. We consider this responsibility appropriately remains with adoptive parents, as it recognises that adoption creates a new permanent and enduring family relationship between the adoptive parents and the child.

23. We considered, but do not recommend, imposing a maintenance obligation on birth parents that correlates to the level of contact they have with their adoptive child. This would not align with the proposed legal effect of adoption, where responsibility for day-to-day care and other duties, powers, rights and responsibilities will sit with the adoptive parents. This option could also have the perverse effect of appearing to force the birth parents to pay for wanting ongoing contact with their child. This could result in some birth parents avoiding contact, undermining the child's right to family.

We recommend further engagement on how the rules of succession apply to adoption, but making policy decisions as part of the work on the Law Commission's Report on Succession

24. We recommend engaging further on whether specific aspects of the law of succession should apply to the adopted child and birth parent relationship following an adoption.

25. Currently, the legal effect of adoption means that adopted people generally have no succession rights in relation to their birth parents, unless birth parents make a specific bequest in their will. This means an adopted person:

    a. is not included in generic wording such as "my children" in the birth parent's will;

    b. is not covered by the rules of intestacy if the birth parent dies without a will; and

    c. cannot challenge the distribution of a birth parent's estate.

26. Similarly, birth parents are generally not entitled to inherit from a child they placed for adoption under succession rules.

27. We heard from some people during our first round of engagement that adopted people should be able to inherit from their adopted parents in the same way as a biological child would. Most people we engaged with considered that the adopted person should also be able to inherit from their birth parents.

28. In our first round of engagement, we did not explain the different components of succession law (such as intestacy and the ability to challenge wills) and their objectives. The objectives of these different areas of succession law (such as the importance of testamentary intention which respects a person's wishes about their estate unless there is a good reason not to) are relevant to assessing how the birth parent/adoptive child relationship should be covered.

29. On 22 March 2022, we briefed you on the Law Commission reviews of the laws of relationship property and succession. The Law Commission's Report on Succession considered questions about the laws of inheritance of property after a person dies, however it did not specifically make recommendations about how the law should apply to adopted people (except in the context of whāngai where there is also a legal adoption). Given the timing of our work, we recommend that succession rules in cases of adoption be considered as part of our analysis of the Law Commission's report so that we can consider how those rules should apply to the proposed new legal effect of adoption.

30. Despite this, the upcoming engagement round provides us an opportunity to engage directly with people with experience in adoptions about their views on adoption and succession. Feedback received as part of the second round of engagement will help to inform our advice to you when we brief you on the proposed approach to reviewing New Zealand's succession laws.

31. As changes to adoption laws will likely precede those to succession law, temporary changes may be needed to deal with how succession law applies to adopted people in the interim. We will provide further advice on this as we finalise the proposed policy after the second round of engagement.

Allowing citizenship for domestic adoptions to derive from the birth and adoptive parents maintains the connection with both parents

32. We recommend the Government's package of preferred options include retaining the current approach to citizenship following an adoption. At the moment, when a child is adopted:

    a. they may gain New Zealand citizenship from their adoptive parents (if they meet the requirements in the Citizenship Act 1977); and

    b. retain their citizenship of birth.

33. This approach is consistent with the proposed new legal effect of adoption which recognises the child's right to identity and does not sever ties with the birth parents. Overseas countries may have their own rules about citizenship, such as whether dual citizenship is permitted, and New Zealand law does not impact on those rules.

Agree the Government's package of preferred options provide that:

- the legal effect of adoption recognises both birth parents and adoptive parents as legal parents of the child following adoption but transfers permanent guardianship of the child and all associated duties, powers, rights and responsibilities, including providing day-to-day care for the child, to the adoptive parents. YES / NO

- if adoptive parents and the adopted child are relocating, adoptive parents must consult with birth parents or wider family/whānau to consider how post-adoption contact (if it occurs) can best be maintained following relocation. YES / NO

- adoptive parents should hold all financial responsibility for the child following an adoption. YES / NO

- adopted children be able to derive citizenship from their birth and adoptive parents. YES / NO

Agree that work on adoption and succession should be considered as part of the work on the Law Commission's Report on Succession. YES / NO

Agree to engage on whether specific aspects of the law of succession should apply to the adopted child and birth parent relationship following an adoption. YES / NO

Changes to adoption court processes will support the objectives of reform

34. In February 2021, you agreed that government should continue to hold responsibility for decision-making in the adoption process.

35. We have considered how we can ensure court processes are consistent with a child-centred purpose of adoption and support the rights of the child to participation, identity and family. We are recommending that the Government's package of preferred options include:

    a. a requirement for applicants to engage with Oranga Tamariki and not allowing direct applications to the Court;

    b. improving birth parents' ability to participate at Court;

    c. changes to the Court's powers in adoption proceedings, including:

        i. allowing the Court to order more reports about the child;

        ii. simplifying the types of orders the Court may make;

d. a requirement for the Court to consider alternative care arrangements to adoption;

e. changes to consent provisions, including who consents, when they consent, and when consent may be dispensed with;

f. clarifying and expanding when the court can discharge orders; and

g. consulting on what support is available for the adopted person, birth parents and adoptive parents before, during and after an adoption proceeding.

Applications should no longer be able to be made directly to the Court

36. We recommend the Government's package of preferred options include a requirement for adoptive applicants to engage with Oranga Tamariki before submitting an adoption application to the Court. Direct applications to the Court would no longer be permitted.

37. Currently, adoption applications may be made directly to the Family Court. These applications are generally privately arranged adoptions. Where an application is made directly to the Court, adoptive applicants do not engage with Oranga Tamariki, meaning they have not undertaken the adoption preparation support services and assessment.

38. In direct adoption applications, the timeline for suitability assessments that inform the social worker report is compressed, which we heard through engagement can compromise quality. Allowing direct applications also increases the risk that birth parents may be placed under undue pressure to agree to an adoption, as there is no neutral third-party intermediary.

39. We consider that the Government's responsibility for the safety of children, and interest in the post-adoption wellbeing of adoptive families, supports requiring all adoptive applicants to go through Oranga Tamariki adoption preparation and assessment processes before making an application to the Court. This requirement also aligns with feedback we heard in the first round of engagement that most adoptive applicants' value Oranga Tamariki adoption preparation support services and assessments.

40. Requiring applications to go through Oranga Tamariki processes will have social worker resourcing implications, which will need to be considered in implementation planning. However, the number of applications not already following the Oranga Tamariki process are small, and Oranga Tamariki processes for preparation and assessment are well established.

Agree that the Government's package of preferred options require adoptive applicants to engage with Oranga Tamariki before submitting an application to the Court.	YES / NO

Birth parents' participation in adoption proceedings will support decision-making

41. We recommend the Government's package of preferred options include that birth parents have the right to attend and participate in adoption proceedings.

42. Currently, birth parents' role in the adoption process ends once they have provided their consent to the adoption. The first round of engagement showed significant support for birth parents having a right to participate in the adoption process. Submitters noted that enabling birth parents to participate can help the Court make decisions about what is in a child's best interests. It may also help birth parents work through the trauma and emotional impacts of placing a child for adoption.

43. This proposal also aligns with the proposal we recommend at paragraph 117 in *Briefing 2 – Upholding Children's Rights*, that provides for wider birth family and whānau to attend adoption proceedings and be heard, unless it would cause unwarranted distress.

Agree that the Government's package of preferred options include that birth parents can attend and participate in adoption proceedings.	YES / NO

Changes to the Court's powers will help uphold the child's best interests

Allowing courts to obtain expert advice will support them to assess the best interests of the child

44. We recommend the Government's package of preferred options include that the Court have the power to order medical, psychiatric or psychological reports on the child. This is in addition to our proposal for the Court to be able to order cultural reports (see *Briefing 2 – Upholding Children's Rights* at paragraph 53).

45. Currently the Court does not have the power to order additional reports about the child. Allowing the Court to order these reports will help ensure that it has all relevant information when considering whether an adoption will be in the best interests of the child. It is also consistent with existing powers in section 133 of the Care of Children Act. Introducing this power was strongly supported by most of those we heard from in engagement, including the Family Court Judges.

46. We are considering whether criteria for when a report should be ordered needs to be specified in the law. For example, section 133 of the Care of Children Act specifies that medical and psychiatric reports may only be obtained if the information it will provide is essential and is the best source of the information, that proceedings will not be unduly delayed, and that any delay will not have an unacceptable effect on the child. In the case of psychologist reports, the court must not be seeking the report primarily to ascertain the child's wishes.

47. We are aware that there are substantial issues with workforce capacity, especially of psychologists, which already cause delays in the Family Court. Delays in receiving reports would add to the cost and time of adoption proceedings. The use of

legislative criteria alongside other approaches to assist implementation will be considered as we refine our policy proposals.

Allowing the court to make final adoption orders in the first instance will simplify court processes

48. We recommend the Government's package of preferred options include that the Court must make a final adoption order, unless the judge considers that the circumstances of the case make an interim order desirable. We also recommend further engagement on the types of circumstances that would make an interim order desirable.

49. Currently, the law provides that interim orders are to be made in the first instance, unless the Court finds there are special circumstances that make it desirable to make a final adoption order. An interim order is not an adoption order and as such does not make the adoptive parents' legal parents, but does give them responsibility for day-to-day care of the child.

50. Interim orders have been described as a 'trial period' for the child and the adoptive parents, however, in practice, all interim orders have been followed by a final adoption order. We heard in engagement that adoptive parents considered interim orders unnecessary and that they did not receive additional support that might provide a rationale for this 'trial period' being imposed. This view was supported by the Family Court Judges. We also heard in engagement that the small risk of the order not being made final creates uncertainty for the child and the adoptive parents and a fear that the child may be removed.

51. We consider that final adoption orders will be appropriate in most cases, providing certainty for the child and adoptive parents, which will assist with development of the adoptive relationship. Other changes we are recommending, such as a longer minimum consent period (see paragraph 68), the ability to withdraw consent (see paragraph 68) and ensuring the Court has access to all relevant information, will provide safeguards to ensure the making of a final adoption order in the first instance is appropriate.

52. We recommend further engagement on whether the law should provide interim orders to be made in specific circumstances (such as where the adoptive parents are not already known to the child) or at the Court's discretion. This approach would provide flexibility in circumstances where it may not be appropriate to make a final order in the first instance. It will be useful to hear from the public about circumstances in which interim orders remain suitable.

Agree that the Government's package of preferred options:

- give the Court the power to order medical, psychiatric, or psychological reports in respect of the child. YES / NO
- enable the Court to make final adoption orders in the first instance unless the Court finds it is desirable in the circumstances to make an interim order. YES / NO

Agree to engage on the types of circumstances that would make an interim order desirable. YES / NO

The Court should be satisfied that alternative care options have been considered ahead of adoption

53. We recommend the Government's package of preferred options include that:

    a. the Court must be satisfied that alternative care arrangements have been considered before granting an adoption order; and

    b. that the social worker should inform parents of alternative care options and the Court requirement to consider alternative care arrangements.

54. Adoption sits at one end of a spectrum of care of children arrangements, as it has permanent and lifelong legal impacts on the child, their birth parents and the adoptive parents. Currently, the law does not require other types of care arrangements to be considered when deciding whether a child should be adopted. This can result in adoption orders being made where another order, such as a guardianship order (where birth parents can have more involvement in decisions for the child) may be more appropriate. It may also mean that adoption orders are made where different arrangements, such as placement with the birth family and whānau are available, but have not been considered.

55. In engagement, most people and organisations we heard from, including the Family Court Judges, agreed that alternative care arrangements should be considered before granting an adoption order, and that alternative arrangements may often be better for the child. Much of the support for alternative care arrangements referenced the current legal effect of adoption, which severs the child's ties with their birth family.

56. Some of the criticism of the current approach is likely to be resolved by the new approach to legal effect (as set out at paragraph 13) which retains the adopted person's legal connections to their birth family and whānau, and our provisions to promote ongoing contact with their birth family and whānau. However, the proposed new legal effect will still permanently alter the adopted person's legal status and we therefore consider it appropriate that other care arrangements also be considered. This approach will ensure any decisions about a child's care will promote the child's best interests and is consistent with te ao Māori, given the desirability of maintaining whakapapa ties and recognising the child is taonga of the whānau, hapū and iwi.

Despite criticism of step-parent adoptions, we consider they should be allowed in appropriate circumstances

57. We do not recommend prohibiting step-parent adoptions. During consultation, some people suggested that step-parent adoptions should be prohibited as they are unnecessary. These people considered that guardianship orders available under the Care of Children Act can meet the needs to recognise and provide rights to a step-parent. Much of the criticism about step-parent adoption was based on the current legal effect of an adoption order, which severs the child's ties to the other birth parent.

58. We consider that these concerns are mitigated by features of the new regime (such as the proposed new legal effect of adoption and the requirement to consider other care arrangements) which will ensure that step-parent adoptions are only made in appropriate cases. We also note that those adoptions will still be required to meet the new purpose of adoption, including that the birth parents cannot or will not care for them. We do not consider it would be justified to prohibit or make it more difficult for a step-parent to adopt where they otherwise meet the requirements for adoption.

Agree that the Government's package of preferred options require that the Court must be satisfied alternative care orders have been considered before making an adoption order.	YES / NO
Agree that the Government's package of preferred options include that the social worker must inform the birth parents of: • the alternative care orders, and • the requirement for Court to consider them before making an adoption order.	YES / NO
Agree that the Government's package of preferred options should not prohibit step-parent adoptions.	YES / NO

Changes to consent provisions should protect children and birth parents' rights

59. Consent provisions outline who must agree or has the right to not agree to an adoption and in what circumstances. To be consistent with reform objectives, consent rights should reflect the importance of an adopted person's right to identity and family connection and, to the extent appropriate, their right to participate in decisions concerning them.

60. We discuss children consenting to their adoption at paragraph 31 in *Briefing 2 – Upholding Children's Rights*. We also considered, but do not recommend requiring family and whānau consent, as discussed at paragraph 129 in *Briefing 2 – Upholding Children's Rights*. This section discusses the issues and proposed arrangements for birth parents' consent for adoption.

61. Currently, the only people who must consent to an adoption are:

    a. the child's birth mother;

    b. the child's birth father, depending on his status with regard to the child (as discussed at paragraph 64); and,

    c. the spouse of an adoptive applicant who applies to adopt as a single person.

62. This section considers:

    a. requirements for birth mother and birth father's consent;

    b. the minimum time for consent;

    c. options for withdrawal of consent;

    d. whether children can be placed with prospective adoptive parents; and

    e. circumstances where birth parent consent can be dispensed.

Parents' right to consent should protect the child's right to family

63. We recommend the Government's package of preferred options include that both the birth mother and birth father's consent to the adoption be required, unless the Court dispenses with the requirement for their consent (see paragraph 79 of this briefing for a discussion about conditions for dispensation).

64. As noted at paragraph 61, a birth mother's consent to their child's adoption is always required, unless the requirement for their consent is dispensed with. Currently, a birth father's consent is required if he is a guardian of the child or was married to the mother at the time of the child's conception or birth. For non-guardian birth fathers, the law says that the Court may require their consent if the Court considers it 'expedient to do so'.

65. The Human Rights Review Tribunal held that this provision is an unjustified discrimination on the basis of sex, as there is no equivalent circumstance in which it can be ruled "not expedient" for a birth mother to give consent to her child's adoption.[1] During engagement many people also criticised the Court's ability to rule a birth father's consent not expedient. Anecdotally, we have heard that a father's consent has not been required even when it would have been relatively simple to locate and inform him.

66. Where the Court does not consider it expedient to obtain a birth father's consent, the birth father does not get a say in whether the adoption should proceed and his views on the adoption are not heard.

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

67. Requiring birth parents' consent is in line with the proposed new guiding principles for adoption, including the protection of whakapapa and recognising that primary responsibility for caring for a child lies with their birth family and whānau. It also supports the proposal for the Court to consider alternative care arrangements for the child, and therefore whether adoption is in the child's best interests.

Timing of consent and withdrawal of consent provisions should support birth parents to make settled decisions about whether adoption is in the best interests of their child

68. We recommend the Government's package of preferred options include that:

    a. the minimum time for consent to be given be 30 days from the birth of the child; and

    b. withdrawal of consent be allowed up to the point that a final adoption order is made.

69. Currently, a birth mother cannot consent to her child's adoption until the baby is more than 10 days old. A mother's consent cannot be withdrawn while an adoption proceeding is ongoing and is final once an adoption order has been made.

70. We heard in engagement that most people disagreed with the current timeframe for giving consent. They considered that 10 days offers too little time for a parent to deliberate over whether adoption will be in the best interests of their child, particularly for birth mothers who may be isolated and vulnerable directly after the child's birth.

71. Internationally, timeframes for consenting to an adoption vary. Some jurisdictions have no minimum time period, while the United Kingdom requires a period of 42 days. Thirty days after the child's birth is the timeframe chosen by most Australian states. This timeframe has been supported by commentators as a reasonable period for providing a birth mother with information, and was favoured by the Law Commission's review of adoption laws in 2000.[2]

72. Lengthening the consent timeframe would help provide appropriate space and time for a birth parent to consider their decision to place their child for adoption. A longer minimum time for consent would also better protect against the risk of birth parents being unduly pressured to give consent during a vulnerable time.

73. Providing a period within which birth parents may withdraw consent to their child's adoption would also allow birth parents to stop the adoption from proceeding if they change their mind. A withdrawal period recognises the permanence of the legal consequences of an adoption and that some birth parents may change their mind.

74. The benefits of a withdrawal period should be weighed against the benefit of security of placement and care for the child. Allowing a period for withdrawal of consent following a final adoption order being made could decrease the perceived security of

[2] Law Commission (2000) *Adoption and Its Alternatives: A Different Approach and a New Framework* (R65).

an adoption for a child and adoptive parents. For this reason, we consider that withdrawal of consent should be available up to, but not after, a final adoption order has been made. Making a final adoption order in the first instance, as discussed above at paragraph 48, helps counter-balance any additional uncertainty from having a withdrawal period.

75. Adoption decisions would be greatly enhanced by the provision of information and support, discussed further at paragraph 101. Information about the effects of adoption and alternatives to adoption (as discussed at paragraph 53) should be readily available to birth parents.

Oranga Tamariki social worker's approval is required for the lawful placement of children for adoption

76. We recommend that the Government's package of preferred options include that a social worker must approve the placement of a child for the purpose of adoption. Such an approval would canvas informed consent having been provided by birth parent(s) and be contingent on the assessment of suitability of the adoptive applicants.

77. Given the proposal to extend the period before a birth parent can provide their consent to an adoption to 30 days (during which time they can re-evaluate their decision), it should remain that an adoptive placement should not be made until the consent is provided, noting that the proposed timeframe will be longer.

78. Subject to the above, the social worker approval for an adoption placement should allow adoptive applicants to have day-to-day care of the child while adoption proceedings are underway, pending consideration and determination by the Court.

Dispensing with consent should only occur where a parent is a risk to a child's wellbeing or where a parent has not met duty of care thresholds

79. We recommend the Government's package of preferred options include that the Court should only be allowed to dispense with consent of a birth parent where:

    a. informing the birth parent about a child's potential adoption would pose a clear risk to either the child or other birth parent; or

    b. the parent meets the grounds of having abandoned, neglected, persistently ill-treated or failed to exercise the normal duty and care of parenthood to the child.

80. Under the current law, a birth parent's consent may be dispensed with where that parent has abandoned, neglected, persistently ill-treated or failed to exercise the normal duty or care of parenthood towards their child, or on the basis of a parent's physical or mental incapacity.

81. We heard in engagement that a child's right to identity and family is supported by requiring both birth parents to consent to the adoption. We also heard that dispensing

with a birth father's consent should be reserved for cases where requiring consent poses a risk to the birth mother or child, or other rare circumstances, such as where a birth father cannot be found. In cases where a parent has an ongoing desire to maintain their parental responsibilities to the child, it is unlikely that adoption will be in the best interests of the child. In these cases, it is likely that alternative orders, such as guardianship, will be more appropriate. Consideration of alternative care arrangements is discussed at paragraph 53.

82. We consider that dispensing with consent should be rare, however, there should be some circumstances where the Court has discretion to dispense with consent. Requiring the consent of parents in cases where there is a risk to the child or other birth parent, or where they have neglected or ill-treated the child, could have unintended consequences. For example, birth mothers may refuse to name the birth father of children they wish to place for adoption if there is a risk to their safety. Additionally, there may be cases where a parent refuses to engage with an adoption proceeding or to consent to the adoption out of desire to disadvantage the other birth parent, rather than out of a desire for ongoing contact with the child.

83. The current provision enabling the Court to dispense with consent on the grounds of a birth parent's mental or physical disability is discriminatory and we recommend it not be carried over into the new adoption regime. This provision has faced longstanding criticism, including during our engagement last year, and particularly from the disability community. In 2016, the Human Rights Review Tribunal found it to be inconsistent with the New Zealand Bill of Rights Act 1990, and it is also inconsistent with our international human rights obligations.

Agree that the Government's package of preferred options include:

• that a birth mother's consent to an adoption be required, unless it is dispensed with	YES / NO
• that a birth father's consent to an adoption be required, unless it is dispensed with	YES / NO
• the minimum time for consent to be given be 30 days from the birth of the child	YES / NO
• that birth parents may withdraw their consent up until the point that a final adoption order is made	YES / NO
• that children be able to be placed with prospective adoptive parents at the discretion of social workers	YES / NO
• that the Court may dispense with consent of the birth parent where:	

○ informing a birth parent about a child's adoption would pose a clear risk to the child or other birth parent, OR	YES / NO
○ where the parent meets the grounds of having abandoned, neglected, persistently ill-treated or failed to exercise the normal duty and care of parenthood to the child	YES / NO
• not carrying over the provision allowing for dispensation of a birth parent's consent on the basis of mental or physical incapacity.	YES / NO

Changes to when orders may be discharged or varied by the court are needed

84. We consider the law should provide clear rules for discharging adoption orders that balance the need to ensure an appropriate level of scrutiny for such a significant legal change, with the importance of ensuring that adoption can be discharged in appropriate cases.

85. This section outlines proposed grounds for discharging an adoption, and areas for further engagement, including related to the process for discharges and requirements for varying adoption orders,

86. Currently, adoption orders are very rarely discharged. Orders may only be discharged on the grounds of misrepresentation or a material mistake in the original adoption proceeding, and applications may only be made with the consent of the Attorney-General.

87. The high bar to discharging an adoption order was criticised in the first round of engagement as not centring on the rights and best interests of the adopted person. Instead, people thought the focus was on preserving the integrity of the adoption as a legal "contract" and the interests of the adoptive parents in finality of the adoption. People considered this prioritisation of finality is reflected in the fact that the circumstances following an adoption order being made are not grounds for discharge.

88. Adult adopted people told us that discharging an adoption order could support an adopted child to go back to their birth family where an adoptive placement was abusive. They also said that discharging an adoption order could support an adult adopted person's sense of identity, where they strongly wanted to reject the legal connection to their adoptive family on the basis of past harm.

89. However, people noted that discharge has significant legal impacts, including restoring birth parents as the adopted person's legal parents, and that there should be a robust process to ensure that it cannot be done lightly.

Grounds for discharge should be expanded to acknowledge that changes post-adoption may justify discharge

90. We recommend retaining the current grounds for discharging an adoption order: misrepresentation or material mistake in proceedings. These grounds ensure that erroneous or fraudulent adoptions that never should have been made may be discharged.

91. We also recommend introducing two new grounds to reflect there are a wide range of circumstances after the adoption order is made that potentially justify discharge. We recommend that grounds for discharging an adoption order should include where there is:

    a. mutual consent between birth and adoptive parents; or

    b. an irretrievable breakdown in the relationship between adoptive parents and the adopted person.

92. These grounds would enable an adoption to be discharged where birth parents wish to resume parental responsibilities and the adoptive parents no longer wish to be the child's legal parents. They would also allow an adoption to be discharged where there is a complete breakdown in the adoptive relationship. "Irretrievable breakdown" is a high standard that is used internationally to determine eligibility for discharge. Given the high standard, it is likely that discharges will continue to be rare.

Alternatives we considered, but do not recommend

93. Some of those we engaged with supported an adult adopted person having the right to apply for the discharge of an adoption order without needing to provide any grounds for this discharge. We do not recommend this approach as discharging an adoption is a significant legal step and also has legal consequences for the birth parents and whānau and the adoptive family.

Further engagement is needed on whether application for discharge of an adoption order could go directly to Court

94. We recommend further engagement on whether to retain the requirement for applications to discharge an adoption order to be approved by the Attorney-General.

95. We heard in the first round of engagement that the requirement for Attorney-General consent to an application for discharge was unusual. Attorney-General consent to make an application to the Court is only required in a small number of circumstances throughout New Zealand law, most commonly those that involve particularly sensitive offences, national security elements or extraterritoriality. However, requiring Attorney-General consent for an application provides a filter that ensures that only legitimate applications come before the Courts.

96. The requirement for the Attorney-General's consent for an application adds time and complexity to the process of discharging an adoption. We consider that further

engagement should ask specifically whether Attorney-General consent is needed, or whether other mechanisms could ensure that discharge applications are suitable

Further engagement could inform whether it is necessary to keep a requirement to vary adoption orders

97. We recommend further engagement on whether it is necessary to allow the Court to vary adoption orders and, if so, in what circumstances.

98. Currently, a judge has the discretion to vary an order, but there is a lack of clarity on what may be varied in an order in practice as orders generally only contain the names of the child to be adopted and their adoptive parents. The only known case of variation of an order was done to change the name of the child adopted, due to a mistake in its recording.

99. It is possible that variation is still a necessary safeguard to allow for changes based on error of the Court, but we have little knowledge of whether variation of orders has any other use. We suggest engagement on whether variation is necessary, and in what circumstances.

Further work is required on some areas relating to discharging adoption orders

100. There are areas of policy work on discharging adoption orders which require further consideration that we have not been able to confirm in the time available. When we provide you with the discussion document for the second round of engagement we will provide you with further advice on:

s9(2)(f)(iv)

Agree that the Government's package of preferred options include that:	
• adoption orders be able to be discharged where there has been a material mistake or misrepresentation in the original adoption proceedings.	YES / NO
• the grounds for a discharge application be expanded to include mutual consent of birth and adoptive parents, or an irretrievable breakdown in the relationship between adoptive parents and the adopted person.	YES / NO

Agree to engage on:

- whether the requirement for Attorney-General consent to make an application for discharge of an order should be retained. YES / NO
- whether it is necessary to allow the court to vary orders. YES / NO

Providing support to all parties involved in an adoption will improve outcomes

101. We recommend further engagement on the type of support that should be available to different parties to adoption, and how and when those services should be provided.

102. Oranga Tamariki provides prospective adoptive parents with pre-adoption support through information and education courses. In practice, social workers also support the parties throughout the process, unless the application is made directly to Court.

103. Currently, the law requires that the birth parent must be informed about the effect of adoption when giving consent to adoption.[3] However, there is no mechanism to provide support after the adoption. While some non-Government support services are available, these are not necessarily suitable or accessible for everybody, while the lack of central oversight to recognise gaps means that they alone are unlikely to meet the varying needs of adopted people.

104. We consider that the proposed new adoption regime should provide support services for adopted people, birth parents and adoptive parents before, during and after an adoption takes place. Adoption has a significant impact on those involved, particularly the person who is adopted. We heard during engagement that some adopted people wanted support to help them deal with the "traumatic effects of adoption" both as a child and as they grew up.

105. As noted at paragraph 39, we heard that adoptive applicants valued the adoption preparation support services provided by Oranga Tamariki. However, we also heard that that the support tapered off after the adoption, and that more ongoing support would have been appreciated. Birth parents we heard from during engagement noted that there is currently no support available and felt that more support is needed to work through the impacts of placing their child for adoption.

106. We consider it is important for people involved an adoption to receive the support they need. The second round of engagement provides an opportunity to explore the types of services people need to ensure they are well-equipped to navigate the adoption process and the ongoing emotional, social and legal effects of adoption. Our

[3] Section 7(9) of the Adoption Act 1955.

preliminary view is that the provision of support could include things such as support to:

a. understand the adoption process and its legal effect;

b. manage the mental health impacts on those involved in an adoption;

c. maintain contact between people who have been adopted and their birth families in a safe way, recognising that this may change over time;

d. develop tools to support raising an adopted child in a loving and supportive environment; and,

e. provide a culturally responsive environment for adopted children.

107. We recommend engaging further on the types of support that should be available, and how and when these should be provided.

108. s9(2)(f)(iv)

Agree to engage on what support services should be available to different parties to adoption, and how and when those services should be provided.	YES / NO

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kris Faafoi
Minister of Justice
Date / /

DOCUMENT 4

Hon Kris Faafoi, Minister of Justice

Adoption law reform: Briefing 4 - Intercountry and Overseas Adoptions

Date	28 March 2022	**File reference**	

Action sought	**Timeframe**
Agree to the recommendations in this briefing related to reforming New Zealand's adoption laws.	4 April 2022

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**Telephone (a/h)**	**First contact**
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Security classification – Sensitive

Purpose

1. This briefing is the fourth in a suite of four briefings that seek your decisions on policy proposals to progress adoption law reform and inform the second round of engagement. This briefing seeks your decisions on proposals to be included in the Government's package of preferred options relating to overseas and intercountry adoptions, and areas where we consider further engagement is needed.

Overview

2. Overseas and intercountry adoptions make up the majority of adoptions recognised in New Zealand. We have previously briefed you on the risks the four overseas adoption and intercountry adoption pathways pose and the harm occurring to some children as a result.

3. We recommend that adoptions under the established Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention') process continue, but that new processes should be established for recognising overseas adoptions and facilitating intercountry adoptions in New Zealand. In particular, we recommend clearly distinguishing between overseas and intercountry adoptions, and setting up new processes for each that meet our international obligations and provide adequate safeguards for children.

4. Given the complexity of the issues in this space, detailed processes for the new intercountry and overseas adoption pathways are yet to be agreed amongst relevant agencies. We have recommended seeking the public's views on what the new processes should look like as part of the second round of engagement to assist in developing detailed proposals, and will continue to work alongside relevant agencies in the meantime.

5. s6(a) We will be undertaking targeted engagement with Pacific communities alongside public engagement.

6. We recommend you read this advice alongside the set of summary A3s attached as Appendix B to *Briefing 1 – Overview and Guiding Principles.*

Background

7. There are currently four pathways for recognising overseas adoptions and facilitating intercountry adoptions in New Zealand (see Appendix A).

8. In December 2021, we briefed you on the serious risks to children, and harm occurring, as a result of some intercountry and overseas adoptions in the current system. These risks are significant, given the comparatively large number of intercountry and overseas adoptions when compared to domestic adoptions.

9. For context, the New Zealand Family Court granted a total of 111 adoptions in 2021. In that same year, there were:

   a. 16 intercounty adoptions through the established Hague Convention process;

   b. five intercountry adoptions granted in the New Zealand Family Court; and

c. approximately 900 adoptions automatically recognised by the Department of Internal Affairs.[1]

10. As noted in our December briefing, we consider it appropriate that New Zealand continue to permit intercountry adoptions and recognise overseas adoptions, with some additional safeguards. s9(2)(f)(iv)

We recommend establishing new intercountry and overseas adoptions processes

Intercountry adoptions taking place without safeguards should be prevented

11. New Zealand is a contracting state to the Hague Convention and the United Nations Convention on the Rights of the Child ('the Children's Convention'). Under this Convention, New Zealand has committed to ensuring intercountry adoptions are made in the best interests of children and follow processes with suitable safeguards. s9(2)(i)

12. s9(2)(g)(i)

13. The recommendations in this briefing aim to ensure there are appropriate safeguards for children who are adopted overseas, or via intercountry adoptions, in line with the reform objectives set out in paragraph 11 of *Briefing 1 – Overview and Guiding Principles*. As outlined in our December briefing, we consider this requires an overseas and intercountry adoption regime to be created that:

    a. meets our obligations under the Hague Convention;

    b. distinguishes between overseas adoptions and intercountry adoptions (which are currently treated the same);

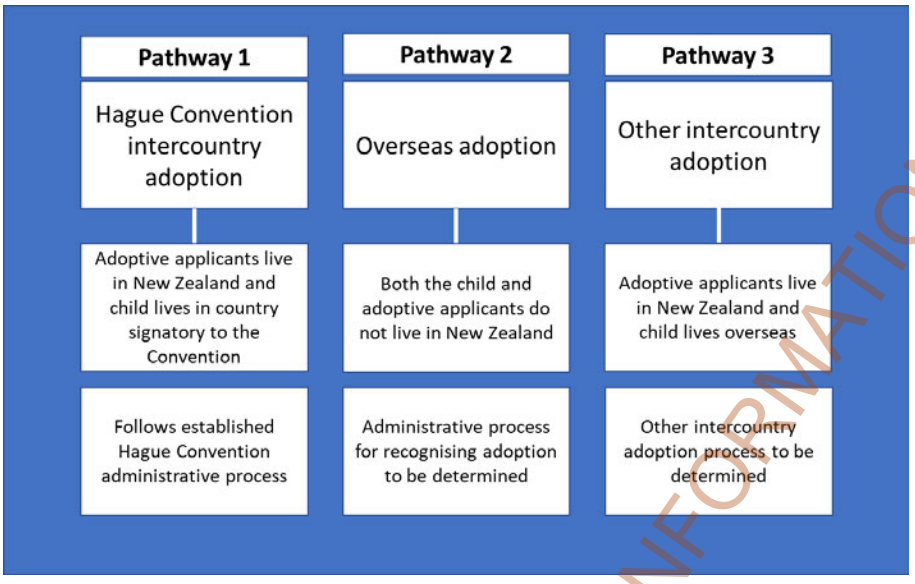
    c. establishes a new process for intercountry adoptions outside of the Hague Convention, but with comparable safeguards to those that occur under the Convention; and,

    d. has a simple process for recognising overseas adoptions.

14. In this briefing, we recommend that the new adoption regime have three narrower intercountry and overseas adoption pathways, as outlined in Figure 1 below.

[1] Some of these adoptions are overseas adoptions, where both the child and adoptive parent(s) live overseas and subsequently move to New Zealand. However, a large portion are intercountry adoptions, where the adoptive parent(s) live in New Zealand and the child lives overseas.

Figure 1: Proposed new intercountry and overseas adoption pathways



15. Given time and resource constraints, and the complexity of the issues raised, work is still progressing with the relevant agencies on the detail of the proposed intercountry and overseas adoption processes. We propose further engagement with the public on what those processes could look like to inform our development of the detailed policy. We will continue to work with the Department of Internal Affairs, Ministry of Business, Innovation and Employment (Immigration New Zealand), Ministry of Foreign Affairs and Trade, Ministry for Pacific Peoples and Oranga Tamariki – Ministry for Children on developing this policy in the meantime.

16. Detailed policy proposals for overseas and intercountry adoptions will be provided to you following the second round of public engagement.

We recommend continuing to facilitate Hague Convention adoptions

17. We recommend that the Government's package of preferred options provide that intercountry adoptions continue to take place via the established Hague Convention process. As noted in our December briefing, the Hague Convention process has established safeguards to protect children and uphold their rights, and we received positive feedback on that process during our engagement.

18. Engagement signalled that some technical changes could be made to the way the Hague Convention process operates in practice, including the countries we have agreements with, and ensuring consistency for the citizenship rights of children adopted under the Convention. s9(2)(f)(iv)

We recommend distinguishing between overseas and intercountry adoptions

19. We recommend that the Government's package of preferred options clearly define overseas adoption and intercountry adoption. In particular, we recommend that we define:

    a. an overseas adoption as one where both the child and adoptive applicant(s) do not live in New Zealand; and,

    b. an intercountry adoption as one where the adoptive applicant(s) live in New Zealand and the child lives overseas.

20. As noted in our December advice, the two types of adoptions are fundamentally different, and distinguishing between the two will help us to ensure each process has adequate safeguards. It will also help to meet our international obligations.

21. s9(2)(f)(iv)

22.

23.

24.

We recommend a new non-Hague Convention intercountry adoption process be established

25. We recommend that the Government's package of preferred options include establishing a new process for intercountry adoptions from countries that are not part of the Hague Convention to take place. As signalled in our December 2021 briefing, we do not propose formally engaging on detailed proposals for a new intercountry adoption process this year. Instead, we recommend that the second round of engagement seek the public's views on what the new intercountry adoption process outside of the Hague Convention should look like.

26. s9(2)(f)(iv)

[2] As defined in the Hague Convention practice note on habitual residence.

s9(2)(f)(iv)

27. Seeking the public's views on what the new intercountry adoption process should look like will assist us in developing detailed policy proposals. In particular, we will be looking for views on whether and to what extent the new intercountry adoption process should align with the Hague Convention and/or the proposed new domestic adoption regime. s6(a)

28. s9(2)(g)(i)

29.

30.

We recommend continuing to recognise overseas adoptions without an onerous process

31. We recommend that the Government's package of preferred options include the continuation of an administrative process for automatically recognising overseas adoptions that meet our proposed definition. We recommend seeking views through engagement on what criteria should be met in order to have an overseas adoption automatically recognised.

32. As noted in Appendix A, there are currently three criteria that must be met for an overseas adoption to be recognised that show whether the legal effect of an adoption in the overseas country is equivalent to adoption in New Zealand. Currently, most overseas adoptions are recognised via an administrative process when applying for citizenship or a visa for the child. Either the Department of Internal Affairs or Immigration New Zealand confirms the criteria are met in determining the citizenship or visa application.

33. This administrative process means that families are not required to go through an additional step to have the adoption recognised as valid, and therefore confirm the legal relationship between parent and child, when migrating to New Zealand. We consider it appropriate that overseas adoptions (as per our proposed new definition) continue to be recognised via an administrative process for ease of access.

34. We consider that the law should set out criteria that must be satisfied before an overseas adoption can be automatically recognised. Criteria will guide the

administrative recognition process, and could help ensure that the adoption meets New Zealand's legal expectations. We recommend seeking the public's views on what these criteria should be, and will continue to work with other agencies on this matter alongside the engagement process.

s6(a)

Consultation

38. The issues and proposals discussed in this paper impact on the Children, Immigration, Internal Affairs, and Foreign Affairs portfolios. The Department of Internal Affairs, Ministry of Business, Innovation and Employment (Immigration New Zealand), Ministry of Foreign Affairs and Trade, and Oranga Tamariki – Ministry for Children were consulted on and are supportive of the proposals in this paper.

Recommendations

39. We recommend that you:

Agree that the Government's package of preferred options include:

- continuing to facilitate adoptions via the established Hague Convention process. YES / NO
- defining an overseas adoption as one where both the child and adoptive applicant(s) do not live in New Zealand. YES / NO
- defining intercountry adoptions as those where the adoptive applicant(s) live in New Zealand and the child lives overseas. YES / NO

- establishing a new process for intercountry adoptions taking place outside of the Hague Convention process. YES / NO
- providing for the automatic recognition of overseas adoptions via an administrative process. YES / NO

Agree that we publicly engage on what the new process for intercountry adoptions taking place outside of the Hague Convention process should look like. YES / NO

Agree that we publicly engage on what criteria should be required to be met to automatically recognise overseas adoptions. YES / NO

s9(2)(f)(iv)

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

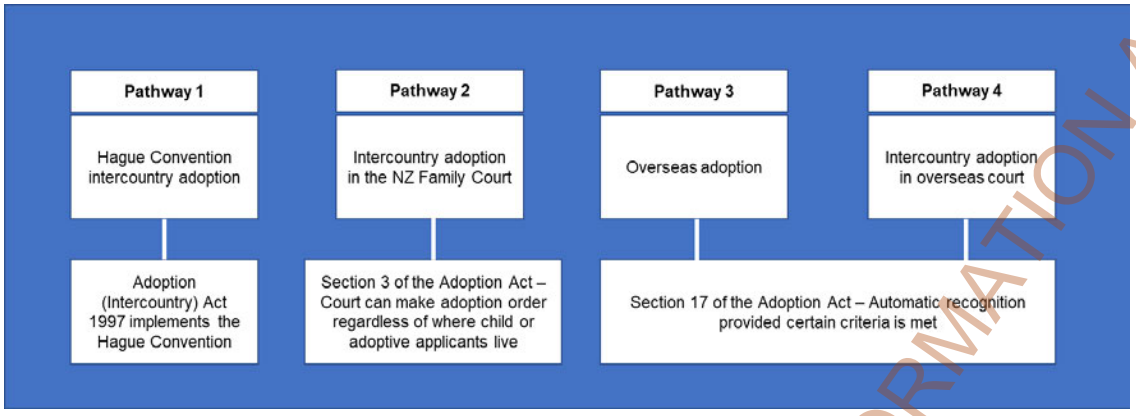
Hon Kris Faafoi
Minister of Justice

Date / /

Attachments:

- Appendix A: Current overseas adoptions and intercountry adoptions pathways in New Zealand

Appendix A: Current overseas adoptions and intercountry adoptions pathways in New Zealand



Pathway 1: Hague Convention intercountry adoption

1. New Zealand recognises intercountry adoptions under Pathway 1 which follow the process set out in the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Hague Convention sets out established safeguards ensuring:

    a. the child is legally available for adoption, meaning they have been deemed to need a new family outside of their own country, by a competent authority in the child's country of origin;

    b. intercountry adoption is in the child's best interests;

    c. that placements in the child's own country have been considered and are not available to provide the child with family like care;

    d. all relevant consents to the adoption have been given freely and in writing, and,

    e. the child's wishes and opinions have been considered.

2. In Hague Convention adoptions, the Central Authorities of the two countries involved facilitate the adoption. Oranga Tamariki – Ministry for Children is the New Zealand Central Authority.

3. New Zealand citizens and permanent residents can adopt children from overseas countries under the Hague Convention process in some circumstances. Whether this is possible depends on if the child lives in a Hague contracting state and whether the adoptive parents are related to the child, or whether New Zealand has an agreement with the other contracting state to facilitate non-kin adoptions. We currently have agreements with seven countries and territories. Many countries are not signatories to the Hague Convention, including almost all of the Pacific Islands (Fiji is the only signatory).

Pathway 2: Intercountry adoption in the New Zealand Family Court

4. If a child does not live in a Hague Convention contracting state, intercountry adoptions are determined in the New Zealand Family Court under section 3 of the Adoption Act 1955. Section 3 allows anyone to make an adoption application from

anywhere, regarding any child, anywhere. The law does not explicitly say that these adoptions need to comply with Hague Convention safeguards, however, the Court has said that the principles of the Hague Convention should apply.

5. Effectively implementing the Hague Convention's principles in these cases is difficult. When the child or adoptive applicant lives overseas it can be hard for the Court to get the information it needs, or to confirm the accuracy of this information. This difficulty is exacerbated if the child is coming from a 'fragile state'. For these reasons, intercountry adoptions in the New Zealand Family Court risk not being in the child's best interests, and do not align with our international obligations under the Hague Convention and Children's Convention.

Pathways 3 and 4: Overseas adoption and intercountry adoption in overseas court

6. Both overseas adoptions and intercountry adoptions made in an overseas court follow the same process. Section 17 of the Adoption Act automatically recognises an adoption order made overseas if the order:

   a. is legally valid in the country it was made;

   b. gives the adoptive parent's greater responsibility for the child's day-to-day care than the birth parents; and,

   c. is made in a specific country, or gives the adoptive parents the same or greater inheritance rights than the birth parents.

7. These criteria compare the similarity of the legal effect of New Zealand's adoption law with the other country's adoption laws. The test has enabled recognition of both overseas adoptions and intercountry adoptions involving New Zealand adopting parents:

   a. Path A - Overseas adoption: A family with adopted children, living overseas, later moves to New Zealand. If the legal criteria are met, New Zealand automatically recognises the overseas adoptions and the relationship between the adoptive parents and children is recognised.

   b. Path B - Intercountry adoption in overseas court: NZ Citizens or permanent residents living in New Zealand travel to another country and adopt a child in that country's court. If the legal criteria are met, New Zealand automatically recognises these adoptions for the purposes of citizenship or residency.

8. Due to the administrative test for recognition, the process does not consider safeguards, such as whether the adoption is in the child's best interests, that relevant consents have been freely given, or that the applicants have been assessed (including Police and child protection checks).

9. The most significant concern relates to people living in New Zealand adopting children via an overseas court (Pathway 4). Because there is no role for New Zealand in these adoptions, many are conducted with an absence of any safeguards for the children involved. These adoptions do not align with our obligations under the Hague Convention and are not necessarily in the child's best interests. In particular, there is no way of verifying a child's identity or ensuring the children are legally

available for adoption, nor any checks regarding the suitability of the adoptive parents.

10. We heard that many children who enter New Zealand under this pathway have a positive experience. However, we know that there are risks. In July 2021, we briefed you on the harm caused to children by some adoptions made in the Samoan courts that were recognised (via Pathway 4) in New Zealand. These adoptions were made to facilitate children immigrating to New Zealand.

11. From January – July 2021, Oranga Tamariki – the Ministry for Children's International Child Protection Unit ('ICPU') received referrals for 50 Samoan adopted children due to concern about their safety and welfare, mostly due to concerns about the adoptive parents. In the majority of cases the risk of harm was known prior to the adoption occurring in the Samoan Court, for example because the adoptive parents had a child protection history and/or convictions for physical and/or sexual offending. In our engagement with Samoan communities we heard about the harm this is causing, and Samoan leaders expressed their support for introducing more safeguards.

12. A high-profile example of the harm experienced by some children as a result of this is demonstrated by the recent case of Mr Joseph Matamata. In March 2020, Matamata was convicted of 10 charges of people trafficking and 13 of slavery. Key victims in the case were three of Matamata's adopted children who had been brought to New Zealand from Samoa (via Pathway 4). All victims in the case were subject to significant control, physical and emotional abuse by Matamata.

DOCUMENT 5

Hon Kris Faafoi, Minister of Justice

Adoption law reform: Summary of policy proposals for inclusion in discussion document

Date	20 April 2022	**File reference**	

Action sought	**Timeframe**
Forward this briefing to your Ministerial colleagues	ASAP

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	First contact
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Security classification – Sensitive

Purpose

1. This briefing provides you with an overview of the package of adoption law reform policy proposals you have agreed be presented as Government-preferred options in the second round of engagement. We recommend you forward this briefing to your Ministerial colleagues.

Key messages

2. Cabinet agreed to progress adoption law reform this parliamentary term. Last year, we ran a first round of engagement seeking the public's views on current adoption laws. Public engagement on our current adoption laws revealed that the current laws have caused harm and that many people agree change is needed. In particular, people agreed that more should be done to protect children's rights.

3. In December 2021, you agreed to a modified form of adoption that would support creating new enduring family relationships for children, without many of the harmful aspects of the current law. In March 2022, you agreed to more detailed policy proposals that support the modified form of adoption. Detailed policy proposals related to the purpose of adoption, guiding principles, upholding children's rights, the legal effect of adoption and court processes, and intercountry and overseas adoptions.

4. This briefing (and the briefing on intercountry and overseas adoptions, attached at Appendix A) responds to your request for an overview of the package of policy proposals that can be sent to your relevant Ministerial colleagues.

5. In May, we will provide you with a draft discussion document seeking feedback on these proposals, to seek Cabinet approval for public release in June 2022. The discussion document will present the proposals as Government-preferred options and will be used as the basis for the second round of engagement. We plan to replicate the approach used last year for public engagement, and we are considering how to improve our targeted engagement approach, particularly for engagement with Māori and Samoan communities.

6. Adoption law and operations sit across multiple agencies and our package of proposals will have cross-portfolio impacts, including for funding implications. We will provide you with Budget advice alongside final policy advice later this year. The discussion document will make it clear that the options it sets out are not a commitment to progress reform or fund new adoption services.

Background

7. You have commissioned adoption law reform to bring adoption laws in line with the needs and expectations of modern New Zealand. The objectives for reform, as noted by Cabinet last year [CBC-21-MIN-0013 refers], are:

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

7.2. To ensure that children's rights are at the heart of Aotearoa New Zealand's adoption laws and practice, and that children's rights, best interests and welfare are safeguarded and promoted throughout the adoption process, including the right to identity and access to information.

7.3. To ensure that adoption laws and practice meet our obligations under Te Tiriti o Waitangi (te Tiriti) and reflect culturally appropriate concepts and principles, in particular, tikanga Māori, where applicable.

7.4. 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.

7.5. 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.

7.6. To ensure Aotearoa meets all of its relevant international obligations, particularly those in the UN Convention on the Rights of the Child ('the Children's Convention') and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention').

8. As you know, we have entered a collaboration agreement with Ināia Tonu Nei[1] for the adoption reform, who have an interest in it due to their focus on social justice reform. Our collaboration with Ināia Tonu Nei is not a substitute for our te Tiriti obligations to engage broadly with Māori, but provides an opportunity for Māori advice and input at all stages of the policy development process. Our proposals in this briefing are informed by advice from Ināia Tonu Nei.

9. In December 2021, we briefed you on the findings of the first round of public and targeted engagement on the reform of adoption laws, and sought your in-principle decisions on a number of the central policy decisions for reform. In February 2022, you agreed to a modified form of adoption that would support creating new enduring family relationships for children, without many of the harmful aspects of our current law. You also agreed to some key features for a modified form of adoption, in line with the reform objectives.

10. On 28 March, we provided you with further advice outlining a package of policy proposals we recommended presenting as Government-preferred options in the second discussion document. Those proposals provide the detail to support your earlier central policy decisions. Our advice also highlighted areas where we consider further engagement is needed to inform policy proposals.

11. We received your decisions on that advice on 8 April. At that time, you requested we prepare a summary briefing outlining our recommended policy proposals that could be sent to your Ministerial colleagues. This briefing (including the briefing on intercountry and overseas adoptions at Appendix A) provides an overview of the package of policy proposals we recommend presenting as Government-preferred options in the second discussion

[1] Ināia Tonu Nei are a kaupapa Māori justice reform movement who have a mana ōrite relationship with Justice Sector agencies.

document (the 'package of policy proposals'). We have not summarised our advice on alternative options that have not been progressed.

Overview

12. The proposals summarised in this briefing provide the building blocks for a substantially different form of adoption that addresses the most significant problems with the current approach.

13. In the first round of engagement, we heard that current adoption laws have caused harm. Many people agreed change is needed and that more should be done to protect children's rights. Key rights that people thought needed to be provided for included the rights to identity and maintaining connections to family, information, culture, and participation. Some people thought that adoption should not continue and that past harms need to be addressed.

14. We developed options based on what we heard through engagement and from previous scholarship about issues with our adoption laws. In assessing options for reform, we have considered the option's impacts on children's rights, the option's effectiveness, whether options are equitable, recognition of the child's culture, consistency with te Tiriti, implementation and feasibility.

15. Cumulatively, the proposals will create a new adoption regime that is child-centred and includes practical measures to safeguard child's rights, best interests and welfare. The proposed adoption regime places importance on hearing the voices of the children being affected by adoption decisions and on ensuring they have the support needed to navigate a significant event in their lives. It would also clearly set out the rights, powers, duties, and responsibilities of birth parents and adoptive parents during and following an adoption. The new adoptive family would have legal status that supports a permanent and enduring parent-child relationship, while preserving legal connections to birth family and whānau.

16. The proposals aim to give effect to our te Tiriti o Waitangi obligations, and uphold children's right to culture, by recognising the child's place within their family, whānau, hapū, iwi and family group. Proposals acknowledge the child's culture and whakapapa as a key part of their identity and look to ensure the child can maintain cultural connections following an adoption. The interests of wider family and whānau will also be protected by enabling their participation in adoption cases and ongoing contact after the adoption.

17. The proposed regime will also ensure we meet our obligations internationally, particularly those under the Children's Convention and the Hague Convention. Our proposals narrow the intercountry and overseas adoption pathways to ensure those adoptions are occurring in children's best interests and to better safeguard children from harm.

The new adoption regime should be guided by a purpose and principles

The purpose of adoption should focus on children's best interests

18. In February, you agreed that a purpose of adoption should be defined in law, which will clearly delineate adoption from the purposes of other care of children options in New

Zealand. You agreed that the package of policy proposals provide that the purpose of adoption be that adoption:

18.1. is a service for a child, and is in their best interests;

18.2. will create a stable, enduring and loving family relationship; and,

18.3. is for a child whose parents cannot or will not provide care for them.

19. Placing children's best interests at the centre of the purpose of adoption reflects a child's rights approach and is consistent with other jurisdictions including the United Kingdom, Canada and Australia. The purpose of adoption has guided the policy direction for the broader package of policy proposals.

Guiding principles will support the direction of adoption policy

20. Principles can help to support the overarching purpose of a legislative regime and guide decision-making. In April, you agreed that the package of policy proposals provide that new adoption system be based on the following set of guiding principles:

20.1. that the long-term well-being and best interests of the child or young person are the first and paramount consideration;

20.2. that a child is encouraged and supported, where practical, to participate and express their views in adoption processes, and that their views are taken into consideration;

20.3. the preservation of, and connection to, culture and identity;

20.4. the protection of whakapapa;

20.5. recognition of the whanaungatanga responsibilities of family, whānau, hapū, iwi and family group;

20.6. recognition that primary responsibility for caring for a child lies with their family, whānau, hapū, iwi and family group;

20.7. that family and whānau should have an opportunity to participate and have their views taken into consideration;

20.8. openness and transparency.

21. These principles support the purpose set out in paragraph 18 and provide a clear direction for future adoption policy. A central focus of the principles is ensuring that children's rights, including rights of participation, identity, culture, and family connection, are upheld. Many of these align with existing principles in the Oranga Tamariki Act 1989.

22. We have looked to reflect te ao Māori in the set of guiding principles in line with the Crown's te Tiriti obligations, however we have not yet provided you with advice on the need for a specific te Tiriti clause in the new adoption laws.

23. Following the second round of engagement, we will consider whether the package of proposals adequately meet our te Tiriti obligations, or whether there is the need for a

descriptive or operative te Tiriti clause in legislation. In any case, we note case law which has found that in any proceedings dealing with the status, future and control of children the law must be interpreted as coloured by the principles of the Treaty of Waitangi.[2]

The adoption regime should uphold children's rights

24. In February, you agreed that children's rights should be at the centre of adoption law reform. In particular, you agreed that:

    24.1. the child's best interests be the paramount consideration in determining whether an adoption is appropriate;

    24.2. children's rights be upheld in the adoption process including the right to identity and family, right to information, right to participation, right to culture and right to safety;

    24.3. adoption be centred on a principle of openness and a primary right to access to information for the adopted person; and

    24.4. child participation be a fundamental part of the new system.

25. These decisions informed the more detailed policy proposals discussed below that would uphold children's rights and form the basis of the new adoption system.

Children should be able to meaningfully participate in the adoption process

26. Participation rights focus on giving children the chance to have their say in the adoption process, encouraging and supporting them to share their views, and taking their views into account. In April, you agreed to a package of preferred options that will support participation, including:

    26.1. the ability for the Court to appoint a lawyer for child (but that it is not required);

    26.2. a requirement for the department responsible for providing the social worker report to appoint a dedicated social worker for the child;

    26.3. a requirement to encourage the child to participate in the adoption process and document how the child participated, including any views expressed by the child, in the social worker report; and

    26.4. provision for the child to attend and speak at the adoption proceeding if they wish to.

27. You also agreed that the package of preferred options include:

    27.1. a requirement for a social worker to provide a child-centred social worker report on the application; and

    27.2. that the social worker report include information about how the child participated, including any views expressed by the child, the suitability of the adoptive parents, and information about the views of the family or whānau.

[2] *Barton-Prescott v Director of Social Welfare* [1997] 3 NZLR 179.

28. Together, the package of preferred options we have recommended will ensure children can meaningfully participate in their adoption process in an age-appropriate way. A dedicated social worker will be able to build a strong relationship with the child and support them, including in their participation, throughout the entire adoption process. Enabling a lawyer for child to be appointed will supplement that role, where necessary, as well as ensuring the child has a legal representative who can advocate for their best interests and welfare.

29. A social worker report is required to be presented to the Court under the current law, however it is focused on the suitability of the adoptive applicants, with a section dedicated to the child. We recommended the report be child-centred, so that the report focuses on the adoption's impact on the child and the adoptive applicant's suitability to adopt that particular child. Prescribing the focus and some of the content of the report will help to ensure children's rights are upheld and consistency across cases.

30. We heard support for requiring children to consent to their adoptions in the first round of engagement. However, as discussed with you in April, given the range of other child participation mechanisms we have recommended, we do not consider that children should be required to consent to their adoption. This approach is consistent with evidence that shows that children often want a role in the decision-making process, but do not want the responsibility for the decision.

Adopted people's right to culture should be maintained following an adoption

31. In February, you agreed, in-principle, that adoption should include measures to support an adopted person to maintain their culture. We consider culture as a broad concept, including, for example, ethnic background, religion, language and disability and sexuality cultures, such as LGBTQIA+ and rainbow cultures (where appropriate).

32. Current laws do not recognise that the child has a right to their culture or require that the child's culture be considered in an adoption. We heard in engagement that loss of culture was a significant harm from adoption, particularly from those who had been adopted in historical closed cross-cultural adoptions. Currently, the law requires that a Māori social worker be appointed where the child placed for adoption is Māori. There are no other requirements for matching a social worker to a case.

33. To give effect to the guiding principle relating to the preservation of, and connection to, culture and identity, you agreed that the package of preferred options include:

    33.1. the power for the Court to order a cultural report;

    33.2. a requirement that a social worker be matched to adoption cases who is, to the extent practicable, suitably qualified to represent the child, by reason of their personality, cultural background, training, and experience social worker reporting to the Court on relevant cultural information; and

    33.3. a requirement for cultural information to be provided to the Court in the social worker report.

34. The options at paras 33.1 and 33.2 above are consistent with other family legislation, including the Oranga Tamariki Act 1989 and Care of Children Act 2004. Matching a child

with a social worker who shares similar characteristics will better support the child through the adoption process. The child will be more likely to relate to the social worker, and the social worker can adapt their practice to suit the needs, including cultural, of the particular child. Ensuring children's cultural information can be presented to the Court will support informed decision-making that is in the child's best interests and aligns with the Crown's Tiriti obligation to protect the rights and interests of Māori. Collecting and providing cultural information to the Court will need to be managed appropriately, as cultural and identity information is of high privacy and sensitivity for many cultures. We will consider information management when working through implementation issues.

35. You also agreed that the discussion document should engage further on:

    35.1. whether there should be a presumption against cross-cultural adoptions and when the presumption could be rebutted;

    35.2. whether, in cross-cultural adoptions, prospective adoptive parents should be required to complete plans for how they will maintain the child's culture post-adoption; and

    35.3. how and to what extent hapū and iwi should be consulted before a Māori child is adopted.

36. Nearly all of those we engaged with acknowledged that cross-cultural adoptions come with additional difficulties for supporting the child's right to their culture. This has also been extensively supported in research.[3]

37. A presumption against cross-cultural adoptions would reinforce the policy position that, in general, it will not be in a child's best interests to be cross-culturally adopted. This recognises the harm and loss of identity that may result from a cross-cultural adoption; however it could risk privileging the child's right to culture over and against other rights and needs of the child.

38. Requiring adoptive parents to make plans for how to maintain the child's culture post-adoption could also alleviate risks associated with cross-cultural adoptions. A plan may help adoptive parents to understand the adoptive child's cultural needs and help them generate a clear intention to engage with their child's culture. However, they may also set unrealistic or inflexible expectations.

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[3] See, for example, Anita Gibbs. (2017) "Beyond colour-blindness: Enhancing cultural and racial identity for adopted and fostered children in cross-cultural and transracial families". *Journal of Aotearoa New Zealand Social Work*. Vol 27. No 4 , 74-83; Maria Haenga-Collins & Anita Gibbs (2015). "Walking between worlds": The experiences of New Zealand Māori cross-cultural adoptees". *Adoption and Fostering*, 39(1), 62–75; Scherman, R., & Harré, N. (2004). "Intercountry adoption of Eastern European children in New Zealand: Parents' attitudes toward the importance of culture." *Adoption & Fostering*, 28(3), 62–72.

39. During engagement we will also test whether the guiding principles, particularly relating to culture and child's best interests, are sufficient to address concerns related to cross-cultural adoptions without additional requirements.

40. Feedback from Māori suggested that allowing whānau, hapū and iwi more direct mechanisms to have input into individual adoption proceedings will enable greater consistency of the adoption process with tikanga Māori. In other reviews of decision making related to tamariki Māori, the Government has heard a strong voice from Māori about the need for Māori rangatiratanga to be provided for.[4]

41. Some international jurisdictions require consultation with indigenous groups where an indigenous child from that group is to be adopted. Requiring similar consultation with hapū and iwi would greatly increase their ability to speak to the cultural needs of that child. It would also reflect a Tiriti partnership approach, recognising the distinct rights of iwi and tamariki Māori under te Tiriti to an approach to adoption that recognises Māori collective decision-making processes.

Adopted people's right to identity and information should be central to the new adoption regime

42. The current approach to adoption changes an adopted person's legal identity, severing their links to their birth identity and family, whānau and whakapapa. Restrictions on accessing adoption information can further prevent adopted people from connecting to their identity. The age restrictions on accessing information are discriminatory and are inconsistent with the right to identity outlined in the Children's Convention. For Māori and other cultural groups, the status quo is also inconsistent with the right to identity outlined in the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). Many adopted people consider restrictions on accessing their information to be a fundamental breach of their rights.

43. To support the principles relating to whakapapa, preservation of identity, and openness and transparency, you agreed that the package of preferred options include:

    43.1. that adopted people should automatically be able to access information on their original birth record (which will have only their birth parents' names on it);

    43.2. no age restrictions for adopted people accessing any types of adoption information, but that information should be made age-appropriate (where relevant);

    43.3. that adopted people accessing adoption information may request counselling, but that counselling should no longer be compulsory before accessing the information;

    43.4. not requiring an original birth certificate to be presented to access adoption information held by Oranga Tamariki;

    43.5. continuing to allow surname changes as part of an adoption to be decided by a Judge where they deem it appropriate; and

[4] See, for example, WAI2915, which held that the Tiriti commitment to Māori rangatiratanga over kāinga guarantees the right of Māori to care for and raise the next generation.

43.6. that adopted people should be able to obtain and use one or both of two birth certificates:

43.6.1. a birth certificate with only their adoptive parents listed, and

43.6.2. a birth certificate with both their birth and adoptive parents listed.

44. Removing age restrictions and current procedural requirements to accessing adoption information will better support adopted people's right to identity and information. These changes align with the principles of open adoption and allow adopted people to access their birth information in the same way as non-adopted people. Ensuring information provided by agencies is age-appropriate will support peoples' understanding of the information they are receiving.

45. Providing adopted people with access to two birth certificates will help to address the heavily criticised 'legal fiction' of the current system, whereby the birth parents' names are replaced with the adoptive parents' name on the birth certificate with no indication that an adoption has occurred. For Māori adopted people and their descendants, the proposed approach would ensure they can access important information about their whakapapa, iwi and tūrangawaewae.

46. Retaining the ability for a judge to change an adopted person's surname, where appropriate, recognises that some adopted people may want to share a surname with their adoptive family for the sense of connection and belonging, while balancing the importance names have to a person's identity and connection to their birth family, family history and whakapapa.

47. You also agreed that that the discussion document engage further on:

47.1. whether to prevent first name changes as part of the adoption process, or have a presumption against first name changes as part of the adoption process (with the ability for a judge to override the presumption in special circumstances);

47.2. whether there is a need to limit adoptive parents' ability to change a child's name after the adoption is finalised; and

47.3. who should be able to access copies of an adopted person's birth certificates, other than the adopted person and their birth parents.

Further engagement is needed on how to deal with adoption information covered by the veto system

48. The veto system was introduced by the Adult Adoption Information Act 1985 for adoptions that occurred before 1 March 1986 and marked the transition from the era of 'closed adoptions' based on secrecy, to a more open system. It allowed a birth parent or adopted person to block others involved in the adoption from being able to access the other party's identifying information. A veto lasts for 10 years and is infinitely renewable, but can be removed at the direction of the applicant at any time. No new vetoes can be placed for adoptions after 1 March 1986.

49. There are currently 201 vetoes; most of these have been put in place by birth parents with a very small number (27) held by adopted people. These numbers are reducing over time as people pass away. Given the era these vetoes relate to, many veto holders are also likely to be elderly and potentially vulnerable.

50. The current system prioritises veto holders' rights to privacy, but there is a tension between that right and the right of the adopted person (and subsequent generations of the adopted person's family) who cannot access information about themselves. Ending vetoes would better align with the objectives for reform to uphold adopted the adopted person's rights to identity and information, and would be more consistent with te Tiriti.

51. Given the contentious nature of the veto system, and the harm that results from either option, we consider that presenting options for reform provides an opportunity for affected people to share their views. You therefore agreed that the discussion document engage further on:

    51.1. whether to continue to allow existing vetoes to be renewed, or to end vetoes with veto holders having the ability to apply to have the decision reviewed where it would cause them unnecessary distress to have the veto removed.

Further engagement is also needed on whether first name changes should be allowed

52. We did not seek specific feedback on changing an adopted person's first name in the first round of engagement, but we heard that some people felt that they lost a part of their identity when their name was changed. Names can be fundamental identity markers, particularly in many non-European cultures where names carry family history and mana.

53. Not allowing first name changes would be simple to enforce given its blanket application, whereas a presumption against changing a first name would provide flexibility for exceptional circumstances. Both options reinforce that, in general, it will not be in a child's best interests to change a child's first name, and that it is important to protect an adopted person's name as a fundamental part of their identity. Given name changes can also occur using standard processes after the adoption, engagement would also ask whether post-adoption first name changes should also be limited.

We will also seek views on who else should have access to adopted people's birth certificates

54. Further engagement on who else should be able to access birth certificates will allow us to test adopted people's appetite for having their adoption information made more widely available. For example, access could be limited to family and whānau of the adopted person, for example, or anyone who can prove to the Department of Internal Affairs that they have a legitimate interest in the information on the birth certificate.

Family and whānau involvement can help to preserve an adopted person's identity

55. Currently, a child's birth family and whānau have no right to be involved in an adoption process and may not even be aware a child within their whānau is being considered for adoption. There is also no legal ability or requirement to provide for a child to maintain

contact with their birth parents, family and whānau following an adoption. In practice, intentions for post-adoption contact are recorded in the social worker's report to the Court.

56. We heard in engagement that excluding birth family and whānau from a role in the process was not in a child's best interests or in the interests of wider family and whānau. We also heard that providing for post-adoption contact agreements could help children with identity formation and to retain their connections to immediate and wider family. Views were mixed on whether agreements should be mandatory or voluntary, and submitters noted the need to build in protections, such as flexibility for changing circumstances and enforceability.

57. In February, you agreed in-principle that:

    57.1. a child should be able to retain a connection to their birth family and whānau following an adoption; and

    57.2. the child's birth family and whānau should be involved in the adoption process as a default approach, but with flexibility to allow for circumstances in which it is not appropriate.

58. In line with that approach, in April you also agreed that the package of preferred options include:

    58.1. a requirement that birth family and whānau views on adoption be included in a social worker's report to the Court on an adoption, unless this would cause unwarranted distress to birth parents or the child;

    58.2. provision for birth family and whānau to attend adoption proceedings with the right to be heard, unless this would cause unwarranted distress; and

    58.3. the introduction of post adoption contact agreements, which:

        58.3.1. are required to be considered in all domestic adoption cases;

        58.3.2. are agreed to before an adoption is finalised;

        58.3.3. allow the child to participate where appropriate;

        58.3.4. are flexible and can be amended via mediation;

        58.3.5. involve the wider birth family and whānau.

59. Requiring family and whānau views to be presented in the social worker report and providing them with the right to be heard in proceedings (unless it would cause unwarranted distress) would support the Court in its decision-making. It would enhance the social worker and Court's understanding of the child's circumstances and family and whānau views on the adoption, and whether whānau-based care options are available. It would also provide a strong mana-enhancing mechanism for family and whānau to share their views in their own words.

60. Allowing direct birth family and whānau involvement in adoption decisions, such as speaking in court, comes with risks. We heard in engagement that situations where birth

parents have a strong desire not to involve their family and whānau in decision-making about a child's adoption can be exceptionally complex. In some cases, involving wider family and whānau may risk serious harm for the birth parents and the child. Allowing family and whānau involvement to be waived where it would cause unwarranted distress addresses those risks.

61. Post-adoption contact agreements would reinforce the importance of contact, not only with birth parents but with the child's birth family and whānau too, and ensures that everyone involved in the adoption has an opportunity to express their preferences. Ensuring they are voluntary recognises that some parties may not want, or be ready, to consider contact and that they need to be genuine in order to be successful.

62. You also agreed that the discussion document engage further on:

    62.1. the process for determining whether the involvement of birth family and whānau would cause unwarranted distress, including whether a department-led or a judicial process (or both) would be best; and

    62.2. whether post-adoption contact agreements should be enforceable and, if so, how.

63. Professional discretion in determining whether family and whānau involvement would cause unwarranted distress is vital to assessing individual cases, acknowledging that there is no one-size-fits-all solution to determining the complexities of difficult family and whānau relationships.

64. A department-led process with social workers would allow birth parents to discuss their circumstances with someone they have rapport with and could ensure involvement from early in the process. A judicial process would provide formal legitimacy and an experienced decision-maker, however it may occur too late in the process. With either process there is the potential for trauma if not managed sensitively.

65. Enabling post-adoption contact agreements to be enforced would mean that disagreements about post-adoption contact could be escalated and the child's family connections maintained. However, enforceability can create an adversarial environment that may not be in the child's best interests, or may be seen as the Government overstepping into private affairs. Further engagement, particularly from those with experiences in maintaining contact after an adoption, would help to inform a policy position.

Eligibility and suitability of adoptive applicants should be used to ensure a child's best interests are protected

66. Eligibility and suitability requirements help the Court determine whether an adoptive parent is a fit and proper person to care for an adopted child. These provisions also help to determine whether an adoptive placement is in the child's interests. However, current eligibility criteria are discriminatory and may prevent the most suitable person from being eligible to apply to adopt. We heard in engagement that many people supported removing eligibility criteria based on an applicant's sex and relationship status. We also heard in engagement that the current process for determining adoptive applicants' suitability through practice was well regarded.

67. In April, you agreed that the package of preferred options include that:

67.1. there be no eligibility to adopt criteria based on an applicant's sex or relationship status;

67.2. an applicant must be at least 18 years old to be eligible to adopt;

67.3. before an adoption order can be made, the Judge must be satisfied that the adoptive applicants are suitable to adopt;

67.4. the content of the suitability assessment used to inform the social worker report be left to professional discretion, rather than prescribed in law; and

67.5. a judge's decision on suitability be informed by the social worker report and any other relevant information presented to the Court.

68. The approach we have proposed retains the fit-for-purpose parts of the current system that ensure adoptive applicants are safe and capable carers for the child. Requiring judges to be satisfied adoptive applicants are suitable to adopt, informed by a social worker report and other relevant information, enables a holistic assessment to take place. These proposals also ensure there is the flexibility to allow suitability assessments to adapt over time in line with domestic and international best practice.

69. In our advice, we considered that all eligibility criteria, including age, could be removed, and instead we could rely on judicial assessments to determine if adoptive applicants are suitable to care for a child. However, we noted that if you preferred to retain an age criterion, that the age be set at 16 or 18 years. Your decision that the age criterion should be set at 18 years old is consistent with other New Zealand laws that contain age restrictions, such as marriage and the age of voting, and international obligations.

70. You also agreed that the discussion document engage further on whether the maximum age that a child can be adopted should be set at 16 or 18 years old. This followed from your decision in February in which you agreed that adoption reform should not create a pathway for adult adoptions to be recognised.

The legal effect of an adoption should not perpetuate a legal fiction

71. Currently, the legal effect of adoption is that, in law, the adopted person is considered to be the child of the adoptive parents as if they were born to them. This has flow on impacts for who makes decisions about the child, who has day-to-day care and financial responsibility for the child, and the child's succession and citizenship entitlements. There is longstanding criticism of the legal effect of adoption due to the fact it severs the adopted person from their birth family and whānau.

72. In February, you agreed that the second round of public engagement should include a proposal that adoption create new enduring legal relationships, clarify ongoing rights and responsibilities for all parties involved, and no longer sever the links between an adopted child and their birth family and whānau.

73. In line with that approach, in April you agreed that the package of preferred options include that:

73.1. the legal effect of adoption recognise both birth parents and adoptive parents as legal parents of the child following adoption but transfers permanent guardianship of the child and all associated duties, powers, rights and responsibilities, including providing day-to-day care for the child, to the adoptive parents;

73.2. if adoptive parents and the adopted child are relocating, adoptive parents must consult with birth parents or wider family/whānau to consider how post-adoption contact (if it occurs) can best be maintained following relocation;

73.3. adoptive parents should hold all financial responsibility for the child following an adoption; and

73.4. adopted children be able to derive citizenship from their birth and adoptive parents.

74. Our proposed approach enables the child to maintain a legal connection to their birth family and whānau, while also providing certainty and security for their new family relationship with the adoptive parents. All of the associated duties, powers, rights and responsibilities of a guardian as provided in the Care of Children Act 2004 ('Care of Children Act') would attach to the adoptive parents upon the making of an adoption order, including having the role of day-to-day care of the child. This would also provide the adoptive parents with the responsibility to determine for or with the child, important matters affecting them, such as where they reside, medical treatment and education choices. The birth parents would relinquish guardianship.

75. The requirement to consult on how post-adoption contact with the birth family can be maintained following relocation recognises that the child's rights to identity, culture, whakapapa and family may be affected if their adoptive family moves away from birth family. This requirement would not prevent the child and their family from relocating, but mean active consideration would need to be given to how contact can continue.

76. As per the status quo, we consider that financial responsibility for the child appropriately remains with adoptive parents, as it recognises that adoption creates a new permanent and enduring family relationship between the adoptive parents and the child. Likewise, we have recommended retaining the status quo for the child's citizenship entitlements. This means children obtain new citizenship entitlements from their adoptive parents, while retaining those they inherited from their birth parents.

77. You also agreed that work on how adoption affects succession rights should be considered as part of the work on the Law Commission's Report on Succession. However, you agreed that the discussion document should engage on whether specific aspects of succession law should apply to the adopted child and birth parent relationship, as the Law Commission didn't consider this issue.

Adoption court processes should enable decisions to be made in the best interests of children

78. In February, you agreed that government should continue to hold responsibility for assessment functions and decision-making in the adoption process. In April, you also agreed that the package of preferred options include that:

    78.1. adoptive applicants be required to engage with Oranga Tamariki before submitting an application to the Court;

    78.2. birth parents be able to attend and participate in adoption proceedings;

    78.3. the Court has the power to order medical, psychiatric, or psychological reports in respect of the child;

    78.4. the Court must be satisfied alternative care orders have been considered before making an adoption order;

    78.5. the social worker must inform the birth parents of the alternative care orders available, and the requirement for Court to consider them before making an adoption order;

    78.6. step-parent adoptions should not be prohibited; and

    78.7. the Court may make final adoption orders in the first instance unless it finds it is desirable in the circumstances to make an interim order.

79. These proposals help to ensure court processes are consistent with a child-centred purpose of adoption and support the child's rights to participation, identity and family. New Court powers to order reports and enabling birth parents to attend proceedings will support judicial decision-making by ensuring it has all relevant information to determine if an adoption will be in the best interests of the child.

80. We heard that in some cases alternative care arrangements, such as guardianship orders, may be better for the child. Requiring alternative care arrangements to be considered before an adoption order is made takes into account the permanent and lifelong legal impacts of adoption on the child, and will ensure that adoption is an appropriate care option for the child and is in their best interests.

81. Enabling final adoption orders to be made in the first instance and requiring adoptive applicants to engage with Oranga Tamariki before making an application will make the adoption process more efficient. Currently, interim orders (which have been described as a 'trial period') are made in the first instance, with a final adoption order made later on. In practice, all interim orders have been followed by a final adoption order. We heard that the interim order step was unnecessary and that the small risk of the order not being made final creates uncertainty for the child and the adoptive parents and a fear that the child may be removed.

82. Direct applications are essentially privately organised adoptions. When direct applications are made to the Court, a social worker report prepared by Oranga Tamariki is still required,

but the timeline for the suitability assessments that inform the social worker report is compressed, which we heard can compromise quality. In addition, in direct applications adoptive applicants have not undertaken the adoption preparation support services and assessment provided by Oranga Tamariki. There is also an increased risk that birth parents may be placed under undue pressure to agree to an adoption, as there is no neutral third-party intermediary.

Consent provisions should recognise the significance of an adoption decision

83. Consent provisions outline who must agree to an adoption and in what circumstances. Currently, the only people who must consent to an adoption are the child's birth mother, the child's birth father, depending on his status with regard to the child, and the spouse of an adoptive applicant who applies to adopt as a single person.

84. Current consent provisions have been criticised as being discriminatory, and not recognising the vulnerability of mothers following the birth of the child and the significance of the decision to place a child for adoption. In April, you agreed that the package of preferred options include that:

    84.1. a birth mother's consent to an adoption be required, unless it is dispensed with by the Court;

    84.2. a birth father's consent to an adoption be required, unless it is dispensed with by the Court;

    84.3. the minimum time for consent be 30 days from the birth of the child;

    84.4. birth parents may withdraw their consent up until a final adoption order is made;

    84.5. children be able to be placed with prospective adoptive parents at the discretion of social workers;

    84.6. the Court may dispense with consent of the birth parent where:

        84.6.1. informing a birth parent about a child's adoption would pose a clear risk to the child or other birth parent; or

        84.6.2. where the parent meets the grounds of having abandoned, neglected, persistently ill-treated or failed to exercise the normal duty and care of parenthood to the child; and

    84.7. a birth parent's consent may not be dispensed with on the basis of mental or physical incapacity.

85. Requiring both birth parents' consent is in line with the proposed guiding principles for adoption, including the protection of whakapapa and recognising that primary responsibility for caring for a child lies with their birth family and whānau.

86. Lengthening the consent timeframe would help provide appropriate space and time for a birth parent to consider their decision to place their child for adoption and protect against undue pressure to give consent during a vulnerable time. Likewise, providing a period for

withdrawal of consent recognises the permanence of the legal consequences of an adoption and that some birth parents may change their mind. These proposals also protect the child's right to be cared for by their family.

87. In cases where a parent has an ongoing desire to maintain their parental responsibilities to the child, it is unlikely that adoption will be in the best interests of the child. However, there are some rare situations where it is appropriate for the Court to have the power to dispense with the consent of a birth parent.

88. Requiring a birth parent's consent where they pose a risk to the other birth parent or the child or have ill-treated or neglected the child could have unintended consequences. For example, birth mothers may refuse to name the birth father of children they wish to place for adoption if there is a risk to their safety. There may also be cases where a parent refuses to engage with an adoption proceeding or to consent to the adoption out of desire to disadvantage the other birth parent, rather than out of a desire for ongoing contact with the child. The proposed approach to dispensing with consent deals with these rare situations.

Adoption orders should be able to be discharged where necessary

89. Currently, adoption orders are very rarely discharged. Orders may only be discharged on the grounds of misrepresentation or a material mistake in the original adoption proceeding, and applications may only be made with the consent of the Attorney-General.

90. The high threshold for discharging an adoption order was criticised during engagement as not centring on the rights and best interests of the adopted person. Adult adopted people told us that discharging an adoption order could support an adopted person's identity where they strongly wanted to reject the legal connection to their adoptive family on the basis of past harm. However, people noted that discharge has significant legal impacts for adopted people, birth parents and adoptive parents, and that there should be a robust process to ensure that it cannot be done lightly

91. In April, you agreed that the package of preferred options include that:

    91.1. adoption orders be able to be discharged where there has been a material mistake or misrepresentation in the original adoption proceedings; and

    91.2. the grounds for a discharge application be expanded to include mutual consent of birth and adoptive parents, or an irretrievable breakdown in the relationship between adoptive parents and the adopted person.

92. These grounds would enable an adoption to be discharged where birth parents wish to resume parental responsibilities, or reinstate a relationship with an adult adopted person, and the adoptive parents no longer wish to be the adopted person's legal parents. They would also allow an adoption to be discharged where there is a complete breakdown in the adoptive relationship. "Irretrievable breakdown" is a high standard that is used internationally to determine eligibility for discharge. Given the high standard, it is likely that discharges will continue to be rare.

93. You also agreed that the discussion document should engage further on:

93.1. whether the requirement for Attorney-General consent to make an application for discharge of an order should be retained; and

93.2. whether it is necessary to allow the Court to vary adoption orders and, if so, when.

94. The requirement for the Attorney-General to consent to an application to discharge an adoption order is unusual and, elsewhere in the law, commonly relates to those that involve particularly sensitive offences, national security elements or extraterritoriality. However, it provides a filter that ensures that only legitimate applications come before the Courts.

95. Currently, there is a power to vary an adoption order, but it is unclear what may be varied in practice as orders generally only contain the names of the child to be adopted and their adoptive parents. The only known case of variation of an order was done to change the name of the child adopted, due to a mistake in its recording. Further engagement on these technical matters, particularly with the legal profession, will help to inform policy development.

96. Some policy areas related to discharging adoption order require further work. We will advise you on the following matters in our next briefing to you on 5 May:

96.1. whether different rules are needed for adult adoptees seeking discharge than for child applicants;

96.2. who should be able to apply for the discharge of an adoption order;

96.3. whether the Court should be satisfied of other matters in approving a discharge in addition to the specified grounds (for example, whether the order is in the best interest of the child); and,

96.4. the legal effect of the discharge of an adoption order (for example, status of birth parents in relation to the adopted person).

Adoption support services are needed throughout the adoption process

97. Currently, the law requires that the birth parent must be informed about the effect of adoption when giving consent to adoption.[5] However, there is no mechanism to provide any parties to adoption with support after the adoption. While some non-Government support services are available, these are not necessarily suitable or accessible for everybody, and the lack of central oversight to recognise gaps means that they alone are unlikely to meet the varying needs of adopted people.

98. We consider that the proposed new adoption regime should provide support services for adopted people, birth parents and adoptive parents before, during and after an adoption takes place. Adoption has a significant impact on those involved, particularly the person who is adopted. We heard during engagement that some adopted people wanted support to help them deal with the "traumatic effects of adoption" both as a child and as they grew up.

99. You agreed that the discussion document should engage further on:

[5] Section 7(9) of the Adoption Act 1955.

99.1. the types of support that should be available; and

99.2. how and when support should be provided.

100. You also agreed that, once the types of support needed have been determined, further work should be undertaken to explore the possibility for delegation of support functions in the adoption process to non-government providers or iwi/Māori services.

We will be re-engaging with Māori on whether changes are needed to the way the law treats whāngai

101. In February, you agreed that the new law should not carry over s 19 of the Adoption Act 1955, which states that Māori customary adoptions (whāngai or atawhai) do not have legal effect. During the first round of engagement we heard broad agreement that s 19 should be repealed because it means that, in law, no Māori person is capable of practicing their own tikanga with regard to whāngai. Below is a summary of how submitters stated how te Tiriti applies in this context, and is breached:

101.1. Article One granted the Crown kāwanatanga – the right to make laws and govern its citizens in Aotearoa.

101.2. Article Two guaranteed that the Crown would protect tino rangatiratanga. This requires the Crown to protect Māori in the practice of their tikanga, which includes whāngai.

101.3. Article Three is the link between the two: it provides for Māori to participate in Pākehā society, over which the Crown exercises kāwanatanga, by extending to them the same rights and privileges of British citizens. This is not how adoption law currently operates, because it specifically excludes whāngai from being recognised in law as a legitimate form of childcare arrangement by someone other than the child's birth parent. This prevents Māori participation in Pākehā society.

102. Based on the feedback we received, we consider that the Government has a Tiriti obligation to remove barriers to Māori practicing whāngai.

103. During the first round of engagement, we heard from some Māori with personal experience of whāngai, and a number of important Māori groups, such as Te Hunga Rōia Māori o Aotearoa (Māori Law Society) and Ināia Tonu Nei in respect of whāngai, however we only heard from two iwi as groups, and only one iwi (Waikato-Tainui). We heard mixed views on whether it is appropriate to legally recognise the practice of whāngai. We heard concerns from some Māori that legal recognition could undermine the mana of whāngai as a practice of tikanga. Others stated that it would be inappropriate for the Ministry of Justice, as a Crown agency, to lead the development of any process to recognise whāngai in law.

104. Some of those we heard from on whāngai expressed views that it was a matter for Māori to hold tino rangatiratanga or autonomy over. We heard, for example, that there could be a process by which Māori decide on the arrangement, and the Crown issues an order that enables this arrangement to be recognised in law, thereby removing any legal barriers preventing tamariki whāngai and their parents from accessing the systems of kāwanatanga.

105. You agreed that second round of engagement should engage more extensively with Māori on whether they support legal recognition of whāngai. We consider that this approach respects tino rangatiratanga over whāngai as it allows the Government to provide space for, and give weight to, Māori views regarding the need for and approach to further work on whāngai.

106. s9(2)(g)(i)

Ināia Tonu Nei is continuing to advise the Ministry on its approach to engagement with Māori. Ināia Tonu Nei is supporting the Ministry in pre-engagement with interested Māori groups to seek advice and assistance to ensure we engage more effectively than in our last round of consultation (see Table 1 on page 22).

107. We will provide you with an overview of our proposed engagement approach, including engagement with Māori, in our briefing on 5 May.

Further policy work is needed on some areas

108. Given the breadth and complexity of the policy issues raised in adoption reform, there are some policy areas that require further work to develop preferred policy options. This includes, but is not limited to:

    108.1. developing detailed processes for recognising overseas adoptions in New Zealand and intercountry adoptions taking place outside of the Hague Convention (as noted in the briefing at Appendix A);

    108.2. customary adoptions;

    108.3. adoption-related offences;

    108.4. relationship status following an adoption for the purposes of marriage and civil union law.

109. We will provide you with advice on these matters later this year as we refine final policy proposals. Transitional and implementation issues will also be considered at that time.

Next steps

110. We are currently preparing a discussion document based on your decisions that will be used as the basis of the second round of engagement. The discussion document will present the proposals as a package of Government preferred options for reform. We will emphasise that the preferred options are not final policy proposals or a commitment to change. The purpose of the discussion document will be to signal what the new system could look like if the Government agrees to progress reform, and seek the public's feedback on that system.

111. The discussion document will require Cabinet approval for it to be publicly released. We will provide the discussion document, draft Cabinet paper and engagement plan for your approval on 5 May.

112. We are planning for engagement to be carried out in June, July and early August 2022, subject to meeting current planned timeframes for Cabinet approval of a discussion document.

113. Key aspects of the engagement plan we are preparing are set out below. We would welcome any views you have on our approach to the second round of engagement so we can factor this into our planning.

Table 1: Engagement approach

Information/publicity	We will replicate the approach taken in the 2021 engagement, comprising publicity through various channels, including: • Ministry of Justice website • Communications via other agencies' and interested organisations' websites and newsletters • Release of discussion document, translations and accessible versions • Targeted emails • Social media
Collecting feedback	• Online survey based on discussion document • Written submissions • Analysis of submissions
Targeted engagement (Māori)	• Pre-engagement with interested Māori groups to inform the design of the second round of engagement with Māori, iwi and hapū and ensure it is culturally appropriate and respects their position as the Crown's Tiriti partner. • A Māori engagement plan will be provided to you in May as part of the wider adoption engagement plan.

Targeted engagement (specific stakeholders)	• Online engagements with:
	  ○ People impacted by adoption
	  ○ Samoan communities
	  ○ Key Pacific communities
	  ○ Ethnic communities
	  ○ Young people over the age of 18

	• If possible and safe, we will engage with children under 18 with adoption experiences (method TBC).

Policy proposals impact on other Ministerial portfolios

114. We recommend you forward this briefing to your Ministerial colleagues and discuss the proposals with them so that they are aware of the general direction of reforms. We recommend this include the Prime Minister, Attorney-General, Minister for Children, Associate Minister for Children (who has a delegation relating to adoption law reform), Minister of Foreign Affairs, Minister of Internal Affairs, Minister of Courts and Minister for Pacific Peoples. We can provide you with talking points should you wish.

115. Many of the policy proposals will impact on the portfolio areas of your colleagues identified above. For example, the majority of proposals will impact on the Children's portfolio, as Oranga Tamariki has operational responsibility for the adoption system. Proposals relating to birth certificates and access to adoption information will also impact on the Internal Affairs portfolio.

116. We will be considering operational and funding implications across relevant portfolios as final policy proposals are refined. It is important for relevant agencies and Ministers to be across this work as early as possible to ensure they can consider the impacts to their portfolio.

s9(2)(f)(iv)

We consulted relevant agencies on the package of policy proposals

120. We consulted the following agencies on the package of policy proposals and further options for engagement: Crown Law Office; Customs New Zealand, Department of Internal Affairs; Department of Prime Minister and Cabinet; Ināia Tonu Nei; Ministry of Business, Innovation and Employment; Ministry of Education; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry for Pacific Peoples; Ministry of Social Development; Ministry for Women; New Zealand Police; Office of the Privacy Commissioner; Office for Disability Issues; Oranga Tamariki – Ministry for Children; Statistics New Zealand; Te Arawhiti; Te Kawa Mataaho Public Service Commission; Te Puni Kōkiri; and The Treasury.

Recommendations

121. We recommend that you:

1.	**Forward** this briefing to the Prime Minister, Rt Hon Jacinda Ardern, Attorney-General, Hon David Parker, Minister of Children, Hon Kelvin Davis, Associate Minister of Children, Hon Poto Williams, Minister of Foreign Affairs, Hon Nanaia Mahuta, Minister for Internal Affairs, Hon Jan Tinetti, and Minister of Courts and for Pacific Peoples, Hon William Aupito Sio.	YES / NO
2.	**Note** officials are available to support you in discussions with your Ministerial colleagues.	

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kris Faafoi
Minister of Justice

Date / /

Attachments:

- Appendix A: Adoption law reform: Briefing 4 – Intercountry and Overseas Adoptions

DOCUMENT 6

Hon Kris Faafoi, Minister of Justice

Adoption law reform: Approval of discussion document for second engagement round

Date	5 May 2022	**File reference**	

Action sought	**Timeframe**
Approve the attached draft discussion document and draft Cabinet paper.	12 May 2022
Agree to our engagement approach with Māori on whāngai.	
Forward the attached draft discussion document and draft Cabinet paper to your colleagues for Ministerial consultation.	

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**(a/h)**	**First contact**
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Purpose

1. This briefing seeks your approval of the attached draft discussion document, *A new adoption system for Aotearoa New Zealand*, and associated draft Cabinet paper. It recommends that you circulate those documents to your colleagues for Ministerial consultation before lodging it for Cabinet consideration on 26 May.

2. This briefing also seeks your in-principle agreement to outstanding issues relating to discharging adoption orders policy. It outlines our engagement plan and seeks your agreement to our proposed approach for engaging with Māori on whāngai.

Key messages

3. In February and April 2022, you agreed, in-principle, to a package of adoption law reform policy proposals to be presented as options in the second round of engagement. In line with your decisions, we have developed a discussion document that provides an overview of the package of proposals.

4. The discussion document is structured into 13 parts and contains three journey maps (for the child, birth parents and adoptive parents). We have highlighted areas of the discussion document we consider may be of high interest, including the new legal effect of adoption, family and whānau involvement, intercountry and overseas adoptions, and access to adoption information. We seek your approval of that discussion document and an associated Cabinet paper. We recommend you circulate it with your Ministerial colleagues before lodging it for Cabinet consideration.

5. As noted in our March 2022 briefing, we have undertaken further policy work on discharging adoption orders and are seeking your agreement to further in-principle policy decisions. In particular, we seek your decisions on matters relating to who may apply to discharge an order, what the Court must be satisfied of when granting a discharge, and who may participate in proceedings.

6. We are close to finalising our plans for the second round of engagement. Our plan includes targeted engagement with people impacted by adoption, Māori (on both adoption and whāngai), Samoan communities, other Pacific communities, and young people.

7. We have proposed holding a one-day, Māori-led wānanga to engage with Māori on whāngai and we seek your agreement to that approach. A wānanga would provide space for Māori to consider and discuss whether there should be changes to the way the law treats whāngai. s9(2)(g)(i)

8. s9(2)(g)(i)

Background

9. You commissioned adoption law reform to bring adoption laws in line with the needs and expectations of modern New Zealand. In December 2021, we briefed you on the findings of the first round of public and targeted engagement on the reform of adoption laws, and sought your in-principle decisions on a number of the central policy decisions for reform.

10. In February 2022, you agreed, in-principle, to a modified form of adoption that would support creating new enduring family relationships for children, without many of the harmful aspects of our current law. You also agreed to some key features for a modified form of adoption, in line with the reform objectives.

11. In April 2022, you agreed to a more detailed package of proposals that we recommended be presented as a package of options in the second round of engagement. The proposals focused on creating a new adoption regime that is child-centred and includes practical measures to safeguard children's rights, best interests and welfare.

12. Following our meeting with you in early April, we provided you with an aide memoire outlining our proposed approach to engaging with Māori on adoption law reform. You signalled that you wished to test the proposed approach with Labour's Māori caucus. As outlined in that aide memoire, we have not yet finalised that part of our engagement plan as we await your feedback.

We seek your approval of the discussion document and Cabinet paper

The discussion document will form the basis of public engagement

13. We have prepared the discussion document, *Adoption in Aotearoa New Zealand – Discussion document: A new adoption system,* which reflects your previous decisions and will form the basis of the second round of engagement.

14. The discussion document sets out what was heard during the first round of engagement, options for reform we are considering, and questions relating to the options provided. In areas where we indicated we would like to engage further we provide an overview of the other options we are considering and related questions. As noted in our previous advice, the preferred options are not commitments to change the law or to fund initiatives. Instead, they seek the public's feedback on our preferred policy position. This is reiterated in the discussion document.

15. The format of the discussion document is designed to follow a person's journey through the adoption process, with most headings focusing on the adopted person's experience. Some of the technical steps of the adoption process will stay the same as the status quo (i.e. birth parents selecting adoptive parents). At the beginning of the document, we present journey map diagrams outlining how adopted people, birth parents (including family and whānau) and the adoptive parents would move through the new system.

16. The discussion document is then split into 13 sections. We have framed the proposals as "options we are considering" to reflect that Cabinet has not made any policy decisions at this stage in the process:

Section	Content
Purpose and principles	Options for the purpose of adoption and the eight guiding principles.
Who can be adopted?	Option that adults are not able to be adopted. Seeks people's views on whether the maximum age for adoption should be 16 or 18 years.
Who can adopt?	Options that a person must be 18 years old to adopt, and that no eligibility criteria relating to other characteristics should be included. Also seeks views on whether cross-cultural adoptions should occur.

Section	Content
What happens if I am placed for adoption?	Options relating to a dedicated social worker being appointed for the child, allowing the placement of the child before an adoption order is made, and requirement to consider alternative care arrangements.
Who can have a say?	Options relating to children's participation, birth parents' consent to the adoption and participation in proceedings, family and whānau participation in the adoption process. Seeks people's views on who should decide if involving the family and whānau would cause unwarranted distress, and whether hapū and iwi should be consulted when tamariki Māori are placed for adoption.
Who makes the decisions?	Options relating to the government and Court's continued role in adoption decision-making and the requirement to engage with Oranga Tamariki before applying to adopt.
How do they decide?	Options relating to suitability assessments, information and reports the Court can access when considering an adoption application, and the requirement to consider alternative care orders.
What is the effect?	Options relating to making final adoption orders in the first instance and the new legal effect of adoption that creates enduring relationships between the adopted person, their birth parents and adoptive parents. Sets out options relating to an adopted person's birth certificates and changing a child's surname. Seeks the public's views on succession rules and allowing first name changes.
What contact can I have after an adoption?	Options relating to post-adoption contact agreements. Seeks the public's views on whether those agreements should be enforceable and whether post-adoption culture plans should be required.
What support can I get?	Seeks the public's views on what support should be available to people involved in the adoption process.
What information can I access?	Options that adopted people can access their adoption information by default. It also seeks the public's views on who else should be able to access that information, and what the changes to the current veto system should be.
What if things go wrong?	Seeks people's views on whether adoption orders should be able to be varied and sets out preferred options relating to discharging adoption orders.
What if I'm adopted from overseas?	Outlines options for the new defined intercountry and overseas adoption pathways, and retaining the Hague Convention adoption process.

17. The discussion document also notes it does not cover matters relating to past adoption practice, whāngai, and surrogacy.

Some areas of the discussion document are likely to be of high public interest

18. There are some areas of the discussion document we expect will be of high interest to the public:

The legal effect of adoption

19. One of the most fundamental options presented is relating to changing the legal effect of adoption. Currently, the legal effect of adoption is that the birth parents are "replaced" with the adoptive parents. The new legal effect would recognise both the birth parents and the adoptive parents as the adopted person's legal parents following an adoption. However, guardianship rights, responsibilities and duties would continue to be transferred to the adoptive parents and removed from the birth parents.

20. The discussion document also outlines a further option that if adoptive parents and the child are relocating, they must consult with the birth parents or wider family and whānau on how post-adoption contact (if it occurs) can best be maintained.

21. The current legal effect of adoption has received heavy criticism for many years, including being described as a 'statutory guillotine' and 'legal fiction'. We expect that the suggested new legal effect is likely to be of high interest given it is a significant departure from the status quo. It would result in adopted children having up to four legal parents, even though birth parents would not have any responsibilities or rights. This reflects a more open approach (consistent with current practice) and ensures the child can maintain legal connections with their birth family and whānau.

22. Some people may consider the new legal effect dilutes adoptive parents' rights. People may view the proposed requirement to consult the birth parents on how contact can be maintained after relocating as infringing on parental decision-making rights.

23. We note that the new legal effect would expand the child's legal relationships, but would not change the rights, duties and responsibilities adoptive parents currently have toward adopted children. Adoptive parents would still have superior rights in relation to the day-to-day care for the child. We also think the requirement to consult on how contact can be maintained if the adoptive family is relocating is a proportionate measure to support the adopted person's continued connection to their birth family.

Family and whānau involvement in the adoption process

24. In practice, Oranga Tamariki encourages birth parents to involve their family and whānau. However, there is no provision for family and whānau to be involved in the adoption process under the current law. During engagement we heard the important role that wider family and whānau (such as grandparents, aunts, uncles and cousins) play in a child's life. We also heard the harm and disconnect that some people have experienced by being adopted and being unable to maintain a relationship with their family and whānau.

25. There are several options set out in the discussion document that would enhance the role of family and whānau in the adoption process. For example, family and whānau would be able to be involved in adoption proceedings (unless it would cause unwarranted distress) and would be able to be involved in the making of a post-adoption contact agreement.

26. These changes reflect a shift in adoption policy that may be of interest to the public. In particular, some people may question whether the options strike the right balance in terms of enabling family and whānau involvement, while protecting the autonomy of birth parents to make decisions about their children.

27. We consider the presented options strike the right balance and would ensure that children's best interests can be maintained. The options acknowledge the child is taonga of the family and whānau, and that responsibility for caring for the child should lie with them, while also ensuring family and whānau involvement can be overridden where it would pose a risk to the child or parents.

Access to adoption information

28. During engagement, many adopted people criticised the barriers faced in access to adoption information and support. Some people said that the inability to access this information is a fundamental breach of their right to identity and to maintain connections with their birth family and whānau. Many people said that not being able to access their information has caused them harm.

29. The discussion document signals that the options we are considering include that adopted persons would have automatic access to information on their original birth record, and that the information should be available to adopted persons without age restriction.

30. It also seeks views on retaining existing vetoes on releasing adoption information set by birth parents, or on the phased removal of these vetoes. The removal of vetoes would result in the release of private adoption information that veto holders (primarily birth parents) have consistently requested to be withheld over the last 35 years.

31. Access to adoption information engages deeply personal areas of privacy and the right to identity. Where birth parents hold the veto, these options create tension between the rights of the child to identity, and the rights of the birth parents to privacy. We expect that some people may disagree that the options should favour the rights of the adopted person over the birth parents right to privacy.

Intercountry and overseas adoptions

32. Current adoption laws allow intercountry adoptions to be finalised either by the New Zealand Family Court, or overseas and automatically recognised in New Zealand. The discussion document outlines that the options we are considering include defining what is an intercountry adoption and what is an overseas adoption.

33. This approach would make it clear which pathway adoptions should follow and would enable specific safeguards to be created which address the risks each pathway presents. We expect there will be a high level of interest in how the new pathways would impact on current adoptions with an international aspect, particularly within Samoan communities.

34. s9(2)(g)(i)

35. To ensure we get a good understanding of the impact the options may have on Pacific communities, we are planning targeted engagement with a broader range of Pacific communities in the second round of engagement. More detail on our engagement plan, including consultation with the Samoan Government, is outlined from para 50 below.

Cabinet approval to publicly release the discussion is needed

36. The Cabinet Manual requires Cabinet to consider discussion documents before they are publicly released. We have prepared the attached draft Cabinet paper that seeks Cabinet approval of the discussion document and provides an overview of our engagement plan. We recommend you circulate the attached discussion document and Cabinet paper to your Ministerial colleagues in line with the timeframes set out at para 81 below.

37. The Cabinet paper seeks authorisation for you to make any minor or technical changes to the discussion document and to approve the final version. This ensures you can approve any minor changes that are made to the discussion document following its plain-English edit and as it is finalised. Following consideration and approval by Cabinet, we will send a final version of the discussion document to you for final approval before it is publicly released.

38. We recommend you forward this briefing and associated materials to the Prime Minister, Minister of Foreign Affairs, Minister for Children, Associate Minister for Children, Minister of Internal Affairs, and the Minister of Courts and Minister for Pacific Peoples, given their overlapping portfolio areas.

Further advice on discharging adoption orders

39. As noted in our previous advice, we consider that the law relating to discharging an adoption order should balance the need for an appropriate level of scrutiny, with the importance of allowing adoption orders to be discharged in appropriate cases. In April, you agreed that:

    39.1. adoption orders should be able to be discharged where there has been a material mistake or misrepresentation in the original adoption proceedings; and

    39.2. the grounds for a discharge application should be expanded to include mutual consent of birth and adoptive parents, or an irretrievable breakdown in the relationship between adoptive parents and the adopted person.

40. You also agreed to engage further on whether the requirement for Attorney-General consent to make an application for discharge of an order should be retained. At that time, we noted that we had not been able to confirm some related policy work in the time available and that we would provide you with further advice in May.

41. We have now completed the further policy work and set out some policy options below. The options relate to who may apply to discharge an adoption order, what the Court must be satisfied of in granting a discharge, and who may participate in proceedings. These options have been included in the draft discussion document; however they can be removed if you disagree with this approach.

The law should make clear who can apply to have an adoption order discharged

42. Currently, the law does not make it clear who may apply to discharge an adoption order. We consider that the law should set out who can apply, and that there should be different rules for who can apply to discharge an adoption order, depending on the age of the adopted person. We recommend that:

42.1. where the adopted person is a child (depending on what age is agreed for who may be adopted), either the birth parents or the adoptive parents should be able to apply to have the adoption order discharged; and

42.2. where the adopted person is an adult (depending on what age is agreed for who may be adopted), the adopted person themselves should be able to apply to have the adoption order discharged.

43. Providing that only adult adopted people can apply to discharge their adoption order is consistent with protecting an adopted person's rights and wellbeing. It provides adult adopted people with autonomy and, by not allowing applications from other parties, recognises that the most significant impact of adoption is on the adopted person. We think it is appropriate for either the birth parents or adoptive parents to be able to apply to discharge an order where the adopted person is still a child. This recognises that the child would likely still require parental care, and that they may not have capacity to make such a decision.

44. We think we should also engage further on whether 16- and 17-year-olds should be able to apply to discharge their adoption order with the consent of the Court. Many 16- and 17-year-olds would have the capacity to understand the consequences of discharging an order and make an informed decision. Requiring the Court's consent would act as a safeguard to ensure they do have capacity and understand the implications of discharging an adoption order. This would be consistent with approaches in other family law, such as 16- or 17-year-olds who require the Court's consent when they wish to get married.

Discharging an adoption order should be in the adopted person's interest

45. As noted at para 39, in April you agreed to expand the grounds for discharging an adoption order. A judge will need to be satisfied one of those grounds has been met when deciding whether to discharge an adoption order.

46. In addition to meeting one of those grounds, we consider that the Court should have to be satisfied that discharging the adoption order will be in the adopted person's interests. This would allow the Court to make a holistic assessment of the impact discharging the order would have on the adopted person. It would also mean an order could not just be discharged where another party (e.g. the birth parents or adoptive parents) want it.

We do not consider it appropriate to require a birth parent's consent to discharge an order

47. The consequences of discharging an adoption order are that the adoptive parents are removed as the adopted person's legal parents, meaning the birth parents regain status as the adopted person's sole legal parents. If the adopted person is a child, this may mean that guardianship rights, duties and responsibilities are reinstated (except as provided below at para 49). In line with our previous advice, we will consider how the law of succession will apply to adopted people as part of the succession review. Decisions in this area may impact how a discharge of adoption affects succession rights.

48. We consider that birth parents and adoptive parents should be able to be involved in discharge proceedings. Their involvement would ensure the judge has all relevant information available to make their decision. However, we do not consider that they should be required to consent to an adoption order being discharged. Discharging an adoption order should focus on the interests of the adopted person, rather than the other adults involved. Requiring their consent may mean adopted people are forced to retain a relationship with adoptive parents with whom there has been an irretrievable breakdown

because either (or both) sets of parents do not agree to the order being discharged. Neither parents' consent is required under the current law, so this approach would reflect the status quo.

49. As noted above, if an adoption order involving a child is discharged, the birth parents may have their guardianship rights, duties and responsibilities reinstated against their will. In those cases, it is appropriate that the Court be able to consider other care arrangements available and make any relevant orders. We therefore recommend that where the Court is considering discharging an adoption order in relation to a child, it should be required consider whether other orders under the Care of Children Act 2004 or the Oranga Tamariki Act 1989 should also be made.

Planning for second round of public engagement

We are finalising our engagement plans

50. Our plans for engaging with the public and targeted stakeholders on the discussion document are well advanced, with only a few remaining areas to be confirmed. We are planning to carry out the engagement over an 8-week period from 13 June to 7 August 2022, subject to Cabinet agreement to the release of the discussion document. The engagement plan is attached as a summary table Appendix 1. As noted below at para 58, we seek your agreement to our approach for engaging with Māori on whāngai.

51. As noted in our March briefing, we plan to replicate our approach from 2021 for the second round of public engagement. This includes:

    51.1. publicly releasing the discussion document and receiving submissions in writing, via email and an online survey;

    51.2. translating the discussion document into other languages and accessible versions; and

    51.3. advertising public engagement via targeted emails to stakeholders, on the Ministry of Justice website, other agencies' and interested organisations' websites and newsletters, and social media.

52. For targeted engagement, we plan to engage with iwi and hapū as our Tiriti partners, as well as Māori individuals and communities generally, and other key stakeholder groups such as: people impacted by adoption, academics and adoption professionals; Samoan communities in New Zealand; four Pacific communities in New Zealand (Fiji, Tonga, Tuvalu and Kiribati); young people; ethnic, disability and LGBTQI+ communities. We also plan to consult with the Samoan Government.

53. On 21 April 2022, we provided you with an aide memoire setting out our proposed approach to engaging with Māori. You signalled that you wished to test the proposed approach with Labour's Māori caucus. We set out our proposed approach for engaging Māori below, and we seek your agreement to that approach so that we can finalise our engagement plans.

54. Other details, including the selection of and contracts with external providers, also need to be finalised. We will work towards finalising the plan during May and early June.

We are planning for better reach into Māori communities in the second round of engagement

55. As signalled in our aide memoire to you on 21 April, we have engaged the National Iwi Chairs Forum about partnering to deliver two strands of engagement:

    55.1. wānanga on whāngai (set out in more detail in the following section); and

    55.2. facilitated small-group discussion sessions (community workshops), which would engage Māori communities and whānau, to hear their experiences with adoption and whāngai, and gather and reflect back their feedback on the adoption proposals.

56. Working with Iwi Chairs will ensure the engagement has reach into Māori communities, given Iwi Chairs' networks with iwi representative groups. For both strands, we would also invite Māori with adoption and whāngai experiences, Māori academics working in adoption and whāngai issues, and other prominent Māori to act as "champions", to publicise the engagement with their own networks and attend engagement events. Our pre-engagement with Māori academics Dr Erica Newman and Dr Annabel Ahuriri-Driscoll, who work in the Māori adoption area, suggested that this would be an appropriate way to ensure engagement with some people who may not generally feel comfortable to participate in a Crown-led engagement process.

57. We also plan to hold a workshop with Waikato Tainui, at their request, as we did in the first round of engagement. The workshop would be primarily for Waikato Tainui members who have been impacted by adoption.

We seek your approval to hold a wānanga as part of our Māori engagement

58. We seek your agreement to a one-day Māori-led wānanga during the engagement period, to seek feedback from Māori on whether and how whāngai should be legally recognised. This is the key component of the whāngai aspect of our Māori engagement plan.

59. Iwi Chairs and Ināia Tonu Nei would partner to design, convene, and facilitate the wānanga and invite relevant contacts from their networks. They would work with Māori champions to ensure a broad representation of adopted Māori who may not be actively connected with their iwi. Participants would include iwi representatives and people with expertise in tikanga Māori, whāngai and adoption. We will look at holding the wānanga in-person, if Covid-19 safety considerations allow.

60. The content, format and likely outputs of the wānanga require further consideration. Ināia Tonu Nei has proposed an example wānanga format, where an overall topic would be set (such as "Providing for whāngai in contemporary Aotearoa") and coordinated discussions would consider the current issues faced by whāngai, whether these issues can be addressed by legal recognition, and, if so, the process required to develop proposals to legally recognise whāngai.

61. The Ministry would support the wānanga by being involved in organisation and providing funding. Ministry officials would attend the wānanga to give a presentation and participate in the discussions. There is likely to be an opportunity for you to be involved in the wānanga should you wish to. Should you agree to the wānanga, we will provide further advice on format, content and your potential role.

62. s9(2)(g)(i)

63. We have already heard that legal recognition of whāngai should be a Māori-led process. If there is clear direction from the wānanga endorsing this approach, further engagement would be required to design a bespoke process that accommodates a higher level of Māori involvement, before embarking on the policy work to develop solutions. This will have further implications on the timeframe for progressing any recommendations that may result from the wānanga. Any work that needs to be supported by the Ministry may have resourcing and funding implications.

64. If a wānanga is held, we would ensure there was clear communications about the timing and approach for further work on the legal recognition of whāngai.

There are alternative ways to engage with Māori if you disagree with our proposed approach

65. If you do not agree to a wānanga on whāngai, the topics covered by the Iwi Chairs-convened community workshops could be broadened to cover participants views on whether there should be changes to the way the law treats whāngai. This would allow us to receive broader feedback than the 2021 engagement process, which focused on individuals experiences of whāngai.

66. The risk with this approach is that it would not necessarily reflect a representative or informed view on the legal recognition of whāngai, as the community workshops would focus on the views of individual iwi/whānau members. During pre-engagement with Māori we heard that a wānanga on this topic is the most appropriate way of getting a more representative approach and assists to comply with our Tiriti obligations to engage with meaningfully Māori.

67. We note a further option could be to postpone engagement on whāngai for the time being. The wānanga could instead be held at a later date when there would be more capacity to undertake any follow up work. This approach would mean, depending on the timing, that Māori could consider how the new adoption system might impact on whāngai arrangements before considering whether there should be changes to the way the law treats whāngai. For example, some Māori might consider that the new legal effect of adoption (which would retain connections with birth family and whānau) makes adoption a more palatable option for creating a legal relationship with whāngai tamariki.

68. However, it is unclear if we will have capacity to pick up engagement on whāngai at a later date. As you know, the Ministry has an ambitious work programme and some trade-offs would need to be made (see further discussion at para 87). There is also a risk that postponing engagement on whāngai is seen as delaying work on an issue that is important to Māori. If you are interested in postponing engagement on whāngai, we can discuss its timing in the context of the overall policy work programme.

We are making good progress with plans to engage with Samoan and other Pacific communities

69. We are considering whether a third-party provider and the Ministry of Pacific Peoples (MPP) could partner to design a face-to-face engagement process with a broad range of Samoan community members, including more leaders than were engaged with in 2021. We would also look at encouraging participants to reflect the views of adopted young people or involve them in the talanoa, where appropriate, to help us understand their perspectives on the options we are considering.

70. We have had initial conversations with MartinJenkins about whether it could deliver engagement with Samoan communities again. If we were to contract MartinJenkins, it could draw on the Samoan networks it engaged with last year, along with any further networks MPP identifies, to provide a series of talanoa.

71. We are working with the Ministry of Foreign Affairs and Trade (MFAT), with the support of MPP, to design engagements with four Pacific communities that are relatively large users of New Zealand's adoption system (Fiji, Tonga, Tuvalu, Kiribati). We envisage an information-sharing session, followed by one feedback talanoa/fono for each community. We are planning for these talanoa/fono to be in person, where possible, given your preference for face-to-face engagement.

72. We are also working with MFAT to formally consult the Samoan Government on the proposals. Some Samoan officials are expected to be in NZ in June/July and we may be able to meet with them in person. If not, we will aim to have online discussions in June/July.

We are also planning targeted engagement with young people and people impacted by adoption

73. A key focus of adoption reform is to place children's rights at the centre of the law. It is important we hear from young people during engagement to inform our policy work.

74. We are looking to contract a third party to undertake targeted engagement with young people impacted by adoption. Last year, MartinJenkins interviewed six adopted young people, two young people with experience of long-term care, and heard from young people through focus groups and online consultation.

75. We expect the third party will undertake 10-15 interviews with young people aged between 16-22 years old with adoption experiences. Given the time available and the ethical considerations associated with engaging directly with children, we do not expect the third party will be able to interview people younger than 16 years old. While we would prefer to have been able to hear directly from children to inform our policy work, we are satisfied that our proposed approach will ensure we hear from a range of young people with adoption experiences in a safe way.

76. We will be reaching out to community organisations used by young people, such as Youth One Stop Shops, asking them to share our content with the young people they work with. We have discussed our overall engagement approach with the Office of the Children's Commissioner and incorporated its feedback into our plan. It has also offered to assist in developing collateral material young people will be able to engage with.

77. We are also planning to contract a third party to run focus groups with people impacted by adoption and people with expertise, such as academics and professionals. People from the disability community, LGBTIQ+ community, and other ethnic communities would be encouraged to join those focus groups. The groups will enable us to hear views on the options and further understand peoples' experiences with the current system.

Other agencies were consulted on the draft discussion document and Cabinet paper

78. The following agencies were consulted on the draft discussion document and draft Cabinet paper: Crown Law Office; Customs New Zealand; Department of Internal Affairs; Department of Prime Minister and Cabinet; Ināia Tonu Nei; Inland Revenue Department; Joint Venture Business Unit; Ministry of Business, Innovation and Employment; Ministry of Education; Ministry for Ethnic Communities; Ministry of Health; Ministry for Pacific Peoples; Ministry of Social Development; Ministry for Women; New Zealand Police; Office for Disability Issues; Office of the Privacy Commissioner; Oranga Tamariki – Ministry for Children; Statistics New Zealand; Te Arawhiti; Te Kawa Mataaho Public Service Commission; Te Puni Kōkiri; The Treasury.

Regulatory Impact Analysis

79. A regulatory impact analysis ('RIA') assessment is required to be lodged alongside the discussion document and Cabinet paper. Similar to last year, we have chosen to publish the RIA alongside the discussion document, rather than incorporate it into the discussion document. The RIA is complex, and we think including it in the discussion document will affect the discussion document's accessibility.

80. We will provide a copy of the RIA to you along with the agreed documents to be lodged for Cabinet the week beginning 23 May. The final RIA will be published on The Treasury and Ministry of Justice websites.

Timing and next steps

81. If you approve the discussion document, we recommend the following timeframes be followed to ensure public engagement can begin in June:

Table 1: Timeframes for lodging discussion document for Cabinet consideration

Action	Timing
Ministerial consultation begins	12 May
Lodge paper, discussion document for Social Wellbeing Cabinet Committee consideration	26 May
Social Wellbeing Cabinet Committee meeting	1 June
Lodge paper, discussion document for Cabinet consideration	2 June
Cabinet meeting	7 June
Final version of discussion document provided to you for approval	Week of 6 June
Discussion document publicly released	Week of 13 June

82. We may need to amend these timeframes if you would like any substantive changes to be made to the discussion document before Ministerial consultation begins. As noted below at paragraph 86, if the timeframes for public engagement are pushed out, this will affect our ability to meet your key milestone of having a Bill introduced before the end of this parliamentary term.

83. We will provide you with an aide memoire with background information before the Social Wellbeing Cabinet Committee meeting on 1 June.

Overall timeframes for adoption law reform

84. s9(2)(f)(iv)

Table 2: Adoption reform milestones

Milestone	Timing
Second round of engagement	Mid-June - August 2022
s9(2)(f)(iv)	

85. s9(2)(g)(i)

86. This week you received advice about the Ministry's policy work programme. That briefing summarises the outcome of Budget decisions, identifies priorities which have emerged on our programme this year and discusses the cumulative impact of all the projects on our programme. The briefing advises on trade-offs needed to balance competing priorities.

87. The timing of our adoption law reform work will depend on your decisions on the Ministry policy work programme. We can provide further information in relation to adoption law reform, or about postponing engagement on whāngai (as noted at para 67 above), if required to support a work programme discussion.

You will receive a briefing on the Law Commission's surrogacy report next week

88. In our briefing to you in December 2021 we recommended not consulting further on surrogacy as part of the second round of engagement as the Law Commission has been undertaking a review of surrogacy laws. As such, and noted at para 17, we have not included any options on surrogacy and the adoption process in the enclosed discussion document.

89. On 29 April you were provided with an advance copy of Te Aka Matua o te Ture | Law Commission Report 146, *Te Kōpū Whāngai: He Arotake | Review of Surrogacy*. Printed

copies of the report will be provided to you when they are ready, so you can present the Report to Parliament. We will provide you with an initial briefing on the Report in the week of the 9th May 2022.

Recommendations

90. It is recommended that you:

90.1.	**Approve** the draft discussion document, *A new adoption system for Aotearoa New Zealand*, and draft Cabinet paper;	YES / NO
90.2.	**Forward** the draft discussion document, *A new adoption system for Aotearoa New Zealand*, and draft Cabinet paper to your colleagues for Ministerial consultation;	YES / NO
	Discharging adoption orders	
90.3.	**Agree** that, when the adopted person is a child, the birth parents or the adoptive parents may apply to have the adoption order discharged;	YES / NO
90.4.	**Agree** that, when the adopted person is an adult, they may apply to have the adoption order discharged;	YES / NO
90.5.	**Agree** to engage further on whether 16- and 17-year-olds should be able to apply to discharge their adoption order;	YES / NO
90.6.	**Agree** that the Court must be satisfied that discharging an adoption order is in the adopted person's interests, before granting the discharge;	YES / NO
90.7.	**Agree** that birth parents and adoptive parents should be able to be involved in discharge proceedings, but that they do not need to consent to the adoption order being discharged;	YES / NO
90.8.	**Agree** that, where the Court is considering discharging an adoption order in relation to a child, it must consider whether other orders under the Care of Children Act 2004 or Oranga Tamariki Act 1989 should also be made;	YES / NO
	Next steps and engagement approach	
90.9.	**Note** that following Cabinet consideration and approval, the discussion document will be provided to you for final approval on 9th of June;	
90.10.	**Note** that, subject to your and Cabinet's approval, public engagement will begin in June 2022;	
90.11.	**Agree** that our engagement plan should include a one-day Māori-led wānanga to seek feedback from Māori on whether and how whāngai should be legally recognised;	YES / NO
90.12.	**Note** our plans for engaging with Samoan and other Pacific communities are well underway;	

90.13. **Note** that we will update you on the progress of public and targeted engagement as it occurs; and

90.14. **Forward** this briefing and associated documents to the Prime Minister, Minister of Foreign Affairs, Minister for Children, Associate Minister for Children, Minister of Internal Affairs, and Minister for Courts and Pacific Peoples. YES / NO

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kris Faafoi
Minister of Justice

Date / /

Attachments:

- Appendix 1: Adoption engagement plan overview
- Draft *A new adoption system for Aotearoa New Zealand* discussion document
- Draft Cabinet paper, *Adoption in Aotearoa New Zealand: Release of Discussion Document*

Appendix 1: Adoption engagement plan overview

Stakeholder:	Purpose:	Objectives:	Format:
Māori, iwi, hapū	Engage with Māori on proposals for adoption reform	• Understand Māori views on and reactions to the options for reform to feed into further advice on final proposals • Understand Māori views on the extent the proposals meet the Crown's obligations under te Tiriti and reflect tikanga Māori • Identify any further options for reform that should be considered • Provide a tikanga-based space for Māori to share their experiences with adoption, to inform responses to proposals	**20 [TBC] community workshops** 20 iwi Chairs' facilitated community workshops, with support from Māori champions (people identified as having an adoption interest)
	Engage with Waikato Tainui at their request	• Understand Waikato Tainui views on and reactions to the options for reform to feed into further advice on final proposals • Understand Waikato Tainui views on the extent the proposals meet the Crown's obligations under te Tiriti and reflect tikanga Māori • Identify any further options for reform that should be considered	**1 workshop with Waikato-Tainui** Waikato Tainui is a priority relationship for the Ministry
	Engage with Māori on whether and how the law should provide for whāngai	• Attract sufficient Māori engagement on whāngai by providing an engagement opportunity that Māori would want to attend (by Māori, for Māori) • Understand whether Māori think there is a need to change the way the law treats whāngai • Understand the approach Māori would want to take if Māori decide there is a need to change the way the law treats whāngai • Be able to provide update to Minister on Māori views and next steps (including if there are any next steps for the Crown)	**1 wānanga on whāngai [subject to Ministerial approval]** Hosted on marae, online (or a hybrid version). Convened and led by Ināia Tonu Nei and Iwi Chairs Forum jointly. Enlist support of Māori champions (people identified as having an adoption interest)

Stakeholder:	Purpose:	Objectives:	Format:
Samoan communities in NZ	Engage with Samoan communities in NZ on proposals for adoption reform	• Understand Samoan communities' views on and reactions to the options for reform to feed into further advice on final proposals Identify any further options for reform that should be considered • Understand the impact the proposals with have on Samoan communities in NZ and in Samoa	**5 [TBC] Samoan talanoa** Organised and facilitated by external provider [TBC] in partnership with Ministry for Pacific Peoples
Pacific communities in NZ	Engage with specific Pacific communities (Tonga, Tuvalu, Kiribati, and Fiji) on proposals for adoption reform [Medium resource]	• Understand Pacific communities' views on and reactions to the options for reform to feed into further advice on final proposals • Identify any further options for reform that should be considered • Understand the impact the proposals with have on Pacific communities in NZ	**5 Pacific Talanoa** Organised and facilitated by MFAT (Fiji, Tonga, Tuvalu, Kiribati) with support from Ministry for Pacific Peoples
Young people	Engage with children and young people with adoption experiences on proposals for adoption reform	• Understand some children and young people's experiences with the current adoption system and whether they think changes are needed • Understand some children and young people's views on and reactions to key options for reform [topics TBC] to feed into further advice on final proposals • Identify any further options for reform that should be considered	**[TBC]** **10-15 interviews with young people** External provider to run one-on-one interviews
People impacted by adoption / academics /adoption professionals, including people from	Engage with people impacted by adoption on proposals for adoption reform	• Understand people's views on and reactions to the options for reform to feed into further advice on final proposals • Identify any further options for reform that should be considered • Further understand people's experiences with the current adoption system and what they think should be changed	**6 focus groups** Organised and facilitated by external provider [TBC] on specific proposal topic areas.

Stakeholder:	Purpose:	Objectives:	Format:
disability, ethnic and LGBTIQ+ communities	Engage with adopted person network with strong views	• Understand people's views on and reactions to the options for reform to feed into further advice on final proposals • Identify any further options for reform that should be considered • Further understand people's experiences with the current adoption system and what they think should be changed	**1 focus group with adopted network** One workshop organised and facilitated by the Ministry on proposal topic areas selected by participants
Ethnic communities	Engage with ethnic community members on proposals for adoption reform	• Understand ethnic community members' views on and reactions to the options for reform to feed into further advice on final proposals • Identify any further options for reform that should be considered • Further understand ethnic community members' experiences with the current adoption system and what they think should be changed	**Engage with ethnic community members via other engagement method [TBC]** Ethnic community members invited to join discussions with other targeted engagement stakeholder groups
Public engagement	Public engagement on proposals for adoption reform	• Understand the public's views on and reactions to the options for reform to feed into further advice on final proposals • Identify any further options for reform that should be considered	**Public engagement materials** • Discussion document (translated into 7 [TBC] languages and accessible formats) • Online survey (Citizen Space) • Written and email submissions • Ministry of Justice website • Communications material eg website material, email text
To support public engagement	Ministerial launch	• Raise awareness that public engagement is beginning	• Low key public launch event • Press release

Stakeholder:	Purpose:	Objectives:	Format:
	Social media campaign	• Raise awareness that public engagement is beginning/underway • Encourage the public to make submissions and engage with the reform • Broaden base of people consulted	• Facebook post (comments turned off) • Twitter post • Google promotion of search results
	Emails to key stakeholders	• Raise awareness that public engagement is beginning/underway • Encourage the public to make submissions and engage with the reform	• Emails directly to stakeholders
	Comms via other agencies	• Raise awareness that public engagement is beginning/underway • Encourage the public to make submissions and engage with the reform	• Information available on other agencies websites • Agencies can push information out to people who contact them
Samoan Government	Consult with the Samoan Government in accordance with obligations under the Treaty of Friendship	• Understand the Samoan Government's interest in NZ's adoption law reform • Understand the Samoan Government's views on and reactions to the options for reform • Identify any further options for reform that should be considered	• **Meet with Samoan Government officials** on proposals for adoption reform

Aide memoire: Adoption law reform discussion document
Hon Kris Faafoi, Minister of Justice
Social Wellbeing Cabinet Committee: 1 June 2022

Purpose

1. This aide memoire provides you with information to support your presentation of the discussion document, *A new adoption system for Aotearoa New Zealand*, and associated Cabinet paper to the Social Wellbeing Cabinet Committee ('SWC') on 1 June.

You are progressing adoption law reform

2. In November 2020 you agreed to progress adoption law reform this parliamentary term. In February 2021, Cabinet noted the objectives for reform [CBC-21-MIN-0018 refers].

3. In June 2021, Cabinet approved the release of the first discussion document, *Adoption in Aotearoa New Zealand*, and supplementary summary document [SWC-21-MIN-0061 refers]. Cabinet also agreed to a two-stage public engagement process for reforming of New Zealand's adoption laws.

4. The first round of public and targeted engagement concluded in November last year. The Ministry received 271 written submissions and met with 27 individuals and groups with an interest in adoption reform. Targeted engagement with key stakeholder groups also took place during that period, including with Māori, Samoan communities in New Zealand, other ethnic communities, and young people impacted by adoption.

You are seeking Cabinet approval to publicly release the discussion document for the second round of engagement

5. You are seeking Cabinet approval to publicly release the second discussion document. The discussion document seeks the public's views on options the Government is considering for a new adoption system. The options do not represent a Government commitment to change or fund, but rather options which are to be refined and considered further by the Government following the second round of engagement.

6. The discussion document will form the basis of public engagement. It will be made available on the Ministry's website and online consultation platform, Citizen Space, as a survey. Submissions will be able to be made in writing or via the online survey. Public engagement is scheduled to run from 13 June – 7 August this year.

7. The discussion document will be translated into te reo Māori, New Zealand Sign Language, Samoan, Tongan, and simplified and traditional Chinese. Accessible versions of the discussion document will be made available and, as like last year, submissions will be able to be made in alternate formats (e.g. video or audio submissions).

8. You are also seeking Cabinet approval to allow you to make any minor or technical changes to the discussion document as its design is finalised. We will seek your approval of the final version of the discussion document before it is publicly released.

Approved by: Naomi Stephen-Smith, Policy Manager, Family Law

9. s9(2)(f)(iv)

10.

Targeted engagement with communities who are most impacted by adoption is planned

11. We plan to undertake targeted engagement with the communities that are most impacted by adoption. These include our te Tiriti o Waitangi partners, Samoan communities in New Zealand, Pacific communities in New Zealand (Fiji, Tonga, Tuvalu and Kiribati), ethnic communities, young people with adoption experiences, and other people who have been impacted by adoption. These will include people from disability and LGBTQI+ communities. We will also consult with the Samoan Government.

Targeted engagement with Māori

12. We are planning for better reach into Māori communities in the second round of engagement. We have engaged Iwi Chairs to deliver two strands of engagement: facilitated small-group discussion sessions (community workshops) and a wānanga on whāngai (details provided below).

13. Iwi Chairs, supported by Ināia Tonu Nei, will deliver 20 community workshops with whānau Māori. Five workshops will be in person with the rest held online. Each workshop will have five to eight people attending. Invitees will include iwi representatives, people with lived experience of adoption, and people with expertise and knowledge in tikanga Māori, whāngai, or adoption. Iwi Chairs will also work with Māori 'champions' to ensure a broad representation of adopted Māori who are not necessarily connected with their hapū or iwi.

14. We also plan to hold a workshop with Waikato-Tainui, at their request, as we did in the first round of engagement. The workshop would be primarily for Waikato Tainui members who have been impacted by adoption.

There may be high interest in some parts of the discussion document

15. Areas of the discussion document we consider may be of high interest are highlighted in paragraphs 53 – 69 of the Cabinet paper. These relate to legal effect, family and whānau involvement in the adoption process, access to adoption information, and intercountry and overseas adoptions.

Matters related to whāngai and surrogacy are not included in the discussion document

Whāngai

16. During engagement, some Māori groups and individuals shared their views that further engagement on whāngai should not be in the scope of adoption reform. You

have agreed that we should hear more from Māori before separating discussions on whāngai from the adoption reform process.

17. We are finalising plans to contract the National Iwi Chairs Forum ('Iwi Chairs'), with support from Ināia Tonu Nei, to plan and provide a one-day, Māori-led wānanga. The objective of the wānanga is to seek Māori views on whāngai and whether there is a need to change the way whāngai is treated in law.

18. Plans for the wānanga are currently being finalised. It is likely to include an experienced Māori facilitator, a tohunga or person with knowledge of tikanga Māori, and a speaker to discuss to the links between whāngai and adoption, and the impact of adoption on Māori. A key outcome of the wānanga will be an action plan to give the Ministry clear guidance on Māori aspirations for whāngai and what process should be followed (if any) to undertake work on how to recognise the existing practice of whāngai in law.

Surrogacy

19. Paragraphs 37 – 41 of the Cabinet paper note Te Aka Matua o te Ture | The Law Commission's ('the Law Commission') work reviewing New Zealand's surrogacy laws. You may wish to inform your colleagues that the Law Commission has now completed its report *Te Kōpū Whāngai: He Arotake | Review of Surrogacy* and that you presented the Law Commission's report to the House on Friday 27 May 2022.

20. As noted in our previous advice to you, the discussion document does not include options relating to surrogacy matters, as the Law Commission recently complete its extensive review of surrogacy laws. In its report, the Law Commission suggests that adoption and surrogacy need different legal frameworks because they reflect different ways of forming families. It recommends that new processes be created for establishing legal parenthood in surrogacy arrangements.

21. We are now considering the Law Commission's recommendations, including their alignment with the direction of adoption work, and awaiting your direction on proposed timeframes for the work. s9(2)(g)(i)

22. You may wish to inform your colleagues that you will consider the advice of the Law Commission and your officials in determining the appropriate Government response and will report back in due course.

The Cabinet paper incorporates feedback received from Ministerial and agency consultation

23. You received feedback on the Cabinet paper from the offices of the Prime Minister, the Minister for Children and the Minister for Pacific Peoples during Ministerial consultation. Their feedback and our response are set out below:

    23.1. Feedback from the Prime Minister's office was largely technical and editorial, and has been incorporated throughout the Cabinet paper. The Prime Minister's office raised a question around timeframes for targeted engagement and paragraph 51 was subsequently updated to clarify the timing for engagement and associated risks.

23.2. The Minister for Children's office asked whether targeted engagement is being extended to Realm nations populations in New Zealand (Cook Island, Niue and Tokelau). We explained that we have targeted our engagement toward populations that are most significantly impacted by adoption, but note that people who identify as Cook Island, Niuean, or Tokelau will be able to attend the focus group sessions for people with adoption experiences.

23.3. The Minister for Pacific Peoples raised concerns that our engagement with Pacific peoples in New Zealand focuses too heavily on Samoan communities, to the exclusion of other Pacific communities. Paragraphs 46 and 67 of the Cabinet paper were updated to explain that the focus on engaging with Samoan communities is due to the high number of Samoan adoptions currently recognised under New Zealand's adoption laws. An overview of all engagement activities planned with Pacific peoples in New Zealand was also provided to the Minister for Pacific Peoples office.

24. The following agencies also provided feedback on the Cabinet paper: Ministry for Health, Ministry for Women, Oranga Tamariki – Ministry for Children, Te Arawhiti, and The Treasury. Ināia Tonu Nei also provided feedback. Feedback from those agencies was minimal and is largely incorporated throughout the Cabinet paper.

Appendix

Milestone	Timing
Second round of engagement	Mid-June - August 2022
s9(2)(f)(iv)	

Hon Kiri Allan, Minister of Justice

Adoption in Aotearoa New Zealand: Approval of discussion document for public release and update on engagement planning

Date	14/06/2022	File reference	

Action sought	**Timeframe**
Approve the final version of the document, *A new adoption system for Aotearoa New Zealand: Discussion document* for public release.	15 June 2022

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	First contact
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Aisiri Ravindra	Policy Advisor, Family Law	04 495 1210	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Purpose

1. This briefing seeks your approval of the final version of the discussion document, *A new adoption system for Aotearoa New Zealand*. It also provides you with an overview on the progress of adoption law reform so far, updates you on the second round of engagement activities planned for adoption law reform, and provides a draft press release to accompany the release of the discussion document.

Key messages

2. In late 2020, the previous Minister of Justice, Hon Kris Faafoi, directed Ministry of Justice officials to progress adoption law reform to bring adoption laws in line with the needs and expectations of modern New Zealand.

3. On 7 June 2022, Cabinet approved the release of the second discussion document on adoption law reform. It also authorised the Minister of Justice to make any minor and technical changes prior to public release, to enable changes to be made as a result of an internal Ministry of Justice plain-English review and preparation for publication.

4. The plain-English review is complete and the discussion document is now ready for publication. We therefore seek your approval of the final version of the discussion document, *A new adoption system for Aotearoa New Zealand*.

5. We have also attached a summary document for your information. The summary document is a simplified version of the discussion document and provides a high-level overview of the options set out in the discussion document. The summary document will be used to create accessible versions of the discussion document for public release.

6. Planning for public and targeted engagement is well underway. Subject to your agreement, engagement will be carried out from 15 June to 7 August 2022. We will continue to liaise with your office as details for the launch of the engagement period are finalised. A draft press release for the launch is annexed for your use, if you wish.

Background

Objectives of adoption law reform

7. The Ministry of Justice began a review of adoption law in 2019. In late 2020, the previous Minister of Justice, Hon Kris Faafoi, directed Ministry of Justice officials to progress adoption law reform with a view to having a Bill introduced to the House by the end of the current parliamentary term.

8. In February 2021, Cabinet approved the Government response to the Social Services and Community Committee report on matters related to forced adoption. The response noted that the Minister proposed reform, and noted six key objectives developed to guide adoption law reform [CBC-21-MIN-0018 refers].

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

8.2. To ensure that children's rights are at the heart of Aotearoa New Zealand's adoption laws and practice, and that children's rights, best interests and welfare are safeguarded and promoted throughout the adoption process, including the right to identity and access to information.

8.3. To ensure that adoption laws and practice meet our obligations under Te Tiriti o Waitangi (te Tiriti) and reflect culturally appropriate concepts and principles, in particular, tikanga Māori, where applicable.

8.4. 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.

8.5. 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.

8.6. To ensure Aotearoa New Zealand meets all of its relevant international obligations, particularly those in the UN Convention on the Rights of the Child ('the Children's Convention') and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention').

Public engagement so far on adoption law reform

9. In June 2021, Cabinet approved the release of the first discussion document, *Adoption in Aotearoa New Zealand,* and supplementary summary document [SWC-21-MIN-0061 refers). Cabinet also agreed to a two-stage public engagement process for reform.

10. Ministry of Justice officials carried out the first round of public engagement between July and November 2021. The Ministry received 271 written submissions, including 23 from organisations with an interest in adoption law reform. Targeted engagement with key stakeholder groups also took place during that period, including with those individuals with a direct interest in adoption, young people, Māori communities, whānau, hapū and iwi, Pacific communities, other ethnic communities, and the judiciary.

11. In December 2021, we briefed the previous Minister of Justice on the findings of the first round of public and targeted engagement on the reform of adoption laws, and sought his in-principle decisions on a number of the central policy decisions for reform. We received the previous Minister's decisions related to this briefing in February 2022. The Minister agreed to reform centring on a modified form of adoption that would support creating new enduring family relationships for children. He also agreed to some key features for a modified form of adoption, in line with reform objectives.

12. In March 2022, the previous Minister of Justice agreed to a set of detailed options for reform. These proposals built on the high-level policy decisions made in February 2022. The options were developed based on what we heard through the first round of engagement, and from previous research about issues with our current adoption laws.

13. We can provide copies of these previous briefings to you if you wish.

14. The options formed the basis of our second discussion document, *A new adoption system in Aotearoa New Zealand*. The discussion document was approved by Cabinet on 7 June 2022 [SWC-22-SUB-0102 refers].

We seek your approval of the final version of the discussion document

15. We seek your approval of the final version of the discussion document, *A new adoption system for Aotearoa New Zealand*.

16. The discussion document provides an overview of what we heard in the first round of engagement and seeks views on options for reform we are considering to the adoption system. The options provided are not a final package of policy proposals but have been included to assist the public in submitting their ideas for reform. They will be further refined, changed or removed following feedback from this round of engagement.

17. On 7 June 2022, Cabinet approved the release of the discussion document, *A new adoption system for Aotearoa New Zealand*, for public engagement [SWC-22-SUB-0102 refers]. At the same time, Cabinet authorised the Minister of Justice to make any minor or technical changes to the discussion document prior to its release. That authorisation was sought so we could make changes identified during a plain-English review and preparation for publication.

18. We have completed the plain-English review of the discussion document. The discussion document has been updated by:

    18.1. updating the instruction section to make it clear that where no specific options are being considered, we have provided information on what options could be considered;

    18.2. updating placeholder references to surrogacy following the release of the Law Commission's Review on Surrogacy;

    18.3. updating the language to reflect that the reform will create a new adoption system, rather than making changes to the existing system;

    18.4. updating the language used for options we are considering, to reflect that the options are not final policy proposals;

    18.5. simplifying sentences and concepts where the plain-English review identified them as being complex; and

    18.6. making minor proofreading, grammatical and formatting changes throughout.

19. We have attached the final version of the discussion document and a version with tracked changes for your reference.

20. We have also attached a summary document for your information. The summary document is a simplified version of the discussion document and provides a high-level overview of the options set out in the discussion document. The summary document will be used to produce an accessible version of the discussion document for disabled communities, to be publicly released.

21. On the launch of the engagement period, we will publicly release two documents that summarise the feedback received through the first round of public and targeted engagement. We have attached them to this briefing for your reference:

    21.1. *Targeted engagement Adoption Law Reform Report*, prepared by MartinJenkins to summarise the findings from their engagement with Māori, Samoan communities and young people impacted by adoption; and

    21.2. *Summary of feedback on adoption in Aotearoa New Zealand: Discussion Document*, prepared by the Ministry.

22. We have reviewed these documents for redactions and risks prior to their release. Following consultation with MartinJenkins and the Principal Family Court Judge, we have:

    22.1. redacted information that could identify of individuals involved in the engagement process; and

    22.2. s9(2)(g)(i)

Public and targeted engagement planning is well underway

23. Planning for public and targeted engagement is well advanced. Subject to your approval of the final discussion document, we will carry out engagement from 15 June to 7 August 2022.

24. We will continue to work with your office to confirm relevant launch activities. A draft press release is annexed for your information. Other relevant supporting material, such as questions and answers, will also be provided.

We have finalised information for public engagement

25. We have finalised the material to be released alongside the discussion document, when the engagement is launched, including:

    25.1. translations of the discussion document in te reo Māori, Samoan, Tongan, Simplified Chinese and Traditional Chinese;

    25.2. a summary document in accessible formats for disabled communities. Some formats, in particular New Zealand Sign Language and Easy Read, will not be available on the launch of engagement due to the limited providers for creating accessible versions in New Zealand. We will signal that this material will be provided at a later date;

    25.3. a survey based on the questions in the discussion document, which will be released on the Ministry's online consultation platform, Citizen Space; and

    25.4. information to support the engagement for other agencies to circulate through their websites and newsletters.

We are finalising our targeted engagement with Māori

26. As part of supporting engagement with Māori, and meeting our Crown obligations as Tiriti partner, we entered a collaboration agreement with Ināia Tonu Nei[1] for the adoption reform, who have an interest in it due to their focus on social justice reform. Our collaboration with Ināia Tonu Nei is not a substitute for our te Tiriti obligations to engage broadly with Māori, but provides an opportunity for Māori advice and input at all stages of the policy development process. Ināia Tonu Nei have supported reform with work on developing policy proposals and designing engagement for Māori.

27. We have finalised arrangements with the National Iwi Chairs Forum ('Iwi Chairs') to provide 20 facilitated workshops with whānau Māori. We plan to release information about dates and venues for the workshops on launch of the engagement, so participants can register their attendance.

28. Ināia Tonu Nei is taking the lead on designing the delivery and content of a wānanga on whāngai. Iwi Chairs will co-host and facilitate the wānanga. We can provide you with copies of previous advice on the wānanga if you wish, however, we will also be briefing you shortly on the extent to which you wish to be involved in the wānanga.

29. We plan to release the date and venue for the wānanga on launch of the engagement, so participants can register their attendance.

30. Iwi Chairs, Ināia Tonu Nei and Māori adoption academics Dr Annabel Ahuriri-Driscoll and Dr Erica Newman have met to discuss how they will work together on the engagement workshops and wānanga on whāngai.

31. Drs Ahuriri-Driscoll and Erica Newman both noted they would like to be part of the facilitated workshops, and present and be involved with the wānanga. They also noted they would be willing to share the engagement opportunities with their Māori networks.

We have finalised plans to engage with Samoan, other Pacific communities and people with adoption experience

32. We have engaged MartinJenkins, working with the Ministry of Pacific Peoples (MPP), to provide four in-person talanoa with Samoan communities and to provide in-depth interviews with 10-15 young people. They are currently planning to hold the talanoa in the last week of June and first week of July. MartinJenkins and MPP will invite attendees from their existing networks. The interviews will be carried out throughout the engagement period and numbers will depend on the number of young people with adoption experience who can be recruited to participate.

33. We have agreed on the approach suggested by the Ministry of Foreign Affairs and Trade (MFAT), with the support of MPP, to provide talanoa with communities from Fiji, Tonga, Tuvalu and Kiribati. The talanoa will be held in Auckland on 21 and 22 June. MFAT and MPP will invite attendees from their existing networks.

[1] Ināia Tonu Nei is a kaupapa Māori justice reform movement with a mana ōrite relationship with the Justice Sector Leadership Board, which comprises the heads of the six core Justice Sector agencies.

34. We are engaging a provider to organise and facilitate seven focus groups for people impacted by adoption, and other stakeholders who would like to discuss the options for reform. Four focus groups will be in person, in Auckland, Wellington and Christchurch, and will be limited to 12 people per group. Three focus groups will be online and will be able to accommodate more participants per group. We plan to release the dates of the focus groups on launch of the engagement, so participants can register their attendance.

We are finalising workshops with other ethnic communities

35. We are close to finalising plans for three online facilitated workshops for members of ethnic communities. These will be provided and organised by Iwi Chairs, which has relationships with ethnic communities through the National Action Plan Against Racism engagements they have run for the Ministry. We will work with the Ministry for Ethnic Communities to ensure their networks, and in particular interested participants from the 2021 engagement, are aware of the workshops.

We will send letters to Realm countries and Samoa on opportunities to engage

36. We are working with MFAT on letters from the Ministry advising the governments of the Realm countries (Niue, Cook Islands and Tokelau) and Samoa of the timeframe for the second round of adoption engagement and inviting their contributions.

37. We are writing to the Samoan government to fulfil New Zealand's obligation to consult contained in the Treaty of Friendship between our countries. MFAT assisted with similar letters from the Ministry relating to last year's engagement, and will convey the letters to the governments of these nations on the Ministry's behalf.

Next steps

38. We will continue to liaise with your office to confirm the launch for the second round of engagement, and other relevant launch activities.

39. You will also shortly receive a briefing that outlines the approach, and provides further detail on, the wānanga on whāngai.

40. We can provide copies of previous advice provided to the Minister of Justice on adoption law reform if you wish.

Recommendations

41. It is recommended that you:

1. **Note** that Cabinet authorised the Minister of Justice to make any minor or technical changes to the discussion document prior to its release;

2. **Approve** the final version of the document, *A new adoption system for Aotearoa New Zealand: Discussion document* for public release; YES / NO

3. **Note** the final version of the document, *A new adoption system for Aotearoa New Zealand: Summary document* for public release;

4. **Note** the final version of two documents summarising the feedback from last year's engagement, being the report by MartinJenkins *Targeted engagement Adoption Law Reform Report* and *Summary of feedback on adoption in Aotearoa New Zealand: Discussion Document,* for public release;

5. **Indicate** whether you require copies of previous advice provided to the Minister of Justice on adoption law reform; and YES / NO

6. **Note** that the second round of public consultation and targeted engagement between 15 June 2022 and 7 August 2022 is finalised for launch.

Naomi Stephen-Smith

Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kiri Allan

Minister of Justice

Date / /

Attachments:

- *Draft press release: adoption law reform engagement*
- *A new adoption system for Aotearoa New Zealand: Discussion document* – final
- *A new adoption system for Aotearoa New Zealand: Discussion document* – track changes
- *A new adoption system for Aotearoa New Zealand: Summary document*
- *Targeted engagement Adoption Law Reform Report* – marked up
- *Targeted engagement Adoption Law Reform Report* – redacted
- *Summary of feedback on adoption in Aotearoa New Zealand: Discussion Document*

* documents withheld in full under s9(2)(g)(i) or refused under s18(d) - please refer to the response letter for weblinks.

DOCUMENT 9

Hon Kiri Allan, Minister of Justice

Adoption in Aotearoa New Zealand: Whāngai wānanga

Date	14 July 2022	File reference	

Action sought	**Timeframe**
Indicate if you would like to attend the whāngai wānanga on 10 August 2022.	21 July 2022
Forward this briefing to Hon Kelvin Davis, Minister for Children.	21 July 2022

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**(a/h)**	**First contact**
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Policy Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

Purpose

1. This briefing provides you with background information on our approach to whāngai within the scope of adoption law reform. It also provides you with an overview of our plans for engaging with Māori through a wānanga on whāngai, and seeks your decision on whether you would like to attend the wānanga.

Key messages

2. On 27 June at your weekly meeting with officials, you requested further advice on the objectives and format of the wānanga and proposed attendees, and on progressing work on whāngai at the same time as adoption.

3. The objectives of the wānanga will be:

    3.1. to develop a shared understanding of the issues and clearly define the problem with the current legal approach to whāngai; and

    3.2. for attendees to determine and agree on what actions they would like to see happen, including:

        3.2.1. whether they want to see a change to the way the law treats whāngai; and

        3.2.2. if so, what they want that process to look like, including what actions they would like the Government to take.

4. The wānanga will begin with addresses by key individuals with experience and knowledge of tikanga, adoption or whāngai, and academia. Attendees will then be split into small discussion groups. Discussions will focus on the status quo, what a future where whāngai is practised without legal barriers would look like, and how to get there. At the end of the day, there will be a facilitated plenary session which will focus on developing an action plan. The action plan will help to inform our advice to you on next steps regarding whāngai. A draft run sheet for the wānanga is attached to this briefing (Attachment 1).

5. Invited attendees include tikanga experts, Māori academics and legal professionals with relevant expertise and iwi and hapū representatives, however attendance is open to all Māori. In-person attendance is capped at 50, with online participation available. As of 14 July, 42 participants had registered to attend. Ministry of Justice and Oranga Tamariki representatives will also attend.

6. We seek your decision on whether you would like to attend the wānanga. If you do wish to attend, you could choose to provide an opening address, participate in group discussions, or provide a closing address. We would provide you with any required briefing material before the wānanga, and officials would be available to support you on the day.

7. While engagements on adoption reform and whāngai are currently separate, whāngai (and whether there should be changes to the way the law treats whāngai) is still within the scope of adoption law reform. We will keep you updated on our engagements via your weekly report. Following our engagements, we will have better understanding of what people want to see in the law regarding adoption and whāngai, and will brief you on next steps in September. If

whāngai progresses as part of adoption law reform, it may have an impact on the overall timeframes for the adoption law reform project.

Background

Despite being practised in Aotearoa New Zealand today, adoption laws explicitly prevent whāngai from being legally recognised

8. Current adoption laws do not provide for legal recognition of whāngai or atawhai arrangements. Section 19 of the Adoption Act 1955 provides that no adoptions in accordance with Māori custom shall have any force or effect, whether in respect of intestate succession to Māori land or otherwise.

9. There are limited circumstances in which other parts of the law recognise whāngai. For example, Te Ture Whenua Māori Act 1993 provides that the Court may determine whāngai and descent relationships of whāngai in line with tikanga Māori and that its provisions prevail over s 19 of the Adoption Act for the purposes of succession to Māori land. Whāngai arrangements may also be recognised for the purpose of paid parental leave if they meet the definition of 'primary carer' of the child set out in law.

10. During previous adoption reform work in 2003 and 2004, there was no support for legally recognising whāngai arrangements, particularly due to the difficulties associated with defining the concept and the need to allow for iwi-specific practices. However, this view may have changed as nearly 20 years have now passed.

11. As noted in our 14 June briefing, *Adoption in Aotearoa New Zealand: Approval of discussion document for public release and update on engagement planning*, as part of supporting engagement with Māori, and meeting our Crown obligations as Tiriti partner, we entered a collaboration agreement with Ināia Tonu Nei[1] for the adoption reform. Ināia Tonu Nei have an interest in adoption due to their focus on social justice reform. Our collaboration with Ināia Tonu Nei is not a substitute for our te Tiriti obligations to engage broadly with Māori, but provides an opportunity for Māori advice and input at all stages of the policy development process. Ināia Tonu Nei have supported reform with work on developing policy proposals and designing engagement for Māori.

Last year we had limited uptake in our engagement with Māori and there were mixed views on whether there should be changes to the way the law treats whāngai

12. While we heard from some Māori with personal experience of whāngai and some Māori groups, such as Te Hunga Rōia Māori o Aotearoa (Māori Law Society) and Ināia Tonu Nei, we only received written submissions from two iwi, and only met with one iwi (Waikato-Tainui) in respect of whāngai.

13. Of those we did hear from, many agreed that the lack of legal recognition of whāngai can cause practical barriers as mātua whāngai do not have the same parental or guardianship rights toward tamariki whāngai as those parents and children have a legal adoption.

[1] Ināia Tonu Nei is a kaupapa Māori justice reform movement with a mana ōrite relationship with the Justice Sector Leadership Board, which comprises the heads of the six core Justice Sector agencies.

14. If those legal parent-child relationships do not exist, we heard that mātua whāngai can face difficulties accessing government, educational or medical assistance or records for tamariki whāngai as generally those services require a legal parent or guardian. While the current law makes it clear that whāngai arrangements have no legal effect or force (and therefore the relationship between tamariki whāngai and mātua whāngai is not that of a legal parent or guardian), we understand that current practice may be inconsistent in that sometimes those relationships will be recognised because they are not formally checked. This can enable them to access those services, however, there is no guarantee or absolute entitlement in law to access them. If further work were progressed, we would look to gather more information about operational practice across government.

15. During engagement last year, we heard broad agreement that s 19 of the Adoption Act should be repealed because it is discriminatory, unnecessary and means that, in law, no Māori person is capable of practising their own tikanga with regard to whāngai. Despite this, we heard mixed views on whether it is appropriate to legally recognise whāngai. We heard concerns that legal recognition could undermine the mana of whāngai as a practice of tikanga. Others stated that it would be inappropriate for the Ministry of Justice, as a Crown agency, to lead the development of any process to recognise whāngai in law.

16. Those we heard from on whāngai expressed views that it was a matter for Māori to hold tino rangatiratanga or autonomy over. We heard, for example, that there could be a process by which Māori decide on the arrangement, with the Crown then issuing an order that enables the arrangement to be recognised in law, thereby removing any legal barriers preventing tamariki whāngai and their parents from accessing the systems of kāwanatanga.

The previous Minister of Justice made some decisions in relation to whāngai

17. In December 2021, alongside adoption law reform options, the previous Minister agreed that:

    17.1. the second round of engagement should engage more extensively with Māori on whether they support the legal recognition of whāngai; and

    17.2. the new adoption law should not carry over s 19 of the Adoption Act, which would mean, at the very least, the law would not explicitly prevent the legal recognition of whāngai. s9(2)(g)(i)

18. s9(2)(g)(i)

19. s9(2)(g)(i)

20. s9(2)(g)(i)

We sought advice on how to more effectively engage with Māori

21. In April 2022, the Ministry, in partnership with Ināia Tonu Nei, undertook targeted pre-engagement with the National Iwi Chairs Forum Pou Tikanga ('Pou Tikanga') to seek advice on how to achieve better engagement with Māori in the second round of engagement and to answer the questions on if and how whāngai should be treated legally. Following this, Ināia Tonu Nei proposed two workstreams:

    21.1. facilitated small-group community workshops with Māori communities and whānau to hear their experiences with adoption and whāngai, and gather feedback on the adoption proposals, delivered by Pou Tikanga; and

    21.2. a one-day, Māori-led wānanga to seek Māori views on whether there should be changes to the way whāngai is treated in law and, if so, what the process for making those changes should be.

22. We then tested this approach with Māori academics and Te Arawhiti. The approach was modified following those further discussions to ensure that engagement would reach all Māori, including those who may not be connected to their iwi. As part of this pre-engagement, we also discussed with Ināia Tonu Nei the need to manage expectations at the wānanga about the timing and decision-making for future work.

23. On 9 May 2022, the previous Minister agreed to this approach to engaging with Māori. The previous Minister consulted the Labour Party's Māori caucus in deciding whether to proceed with this approach.

A whāngai wānanga is planned for early August

24. Details for the whāngai wānanga are now largely confirmed. The wānanga will be held on 10 August at Wharewaka o Pōneke and is planned to run from 9.30am until 3pm. The wānanga will be co-hosted by Ināia Tonu Nei and Pou Tikanga, with the Ministry providing support.

The purpose of the wānanga will be to understand the issues and identify actions

25. The key objectives of the wānanga will be:

    25.1. to develop a shared understanding of the issues associated with the current legal approach and clearly define the problem with the current approach;

    25.2. for attendees to agree an action statement and determine what actions the attendees would like to see going forward, including in relation to:

        25.2.1. whether they want to see a change to the way the law treats whāngai;

        25.2.2. if they do want to see a change, what they want the process for making those changes to look like; and

25.2.3. what actions the attendees would like the Government to take and what actions attendees may take themselves.

26. We expect people will also share their own experiences of adoption and whāngai while expressing their views. This may lead to a better understanding of what whāngai looks like in modern Aotearoa and the variations, similarities, and differences of practice across the country. It is also intended (and will be explained to participants) that the outcomes of the day will help to inform decisions the Government may make about if and how work should be progressed on changing the way the law treats whāngai.

Ināia Tonu Nei and Pou Tikanga are confirming the format of the wānanga

27. Ināia Tonu Nei and Pou Tikanga are confirming the run sheet for the wānanga and background information for participants. A draft of the run sheet is attached (see Attachment 1).

28. Following a pōwhiri or mihi whakatau, it is expected the day will begin with a series of addresses by key individuals. These are likely to include representatives of Ināia Tonu Nei and Pou Tikanga as the co-hosts, a tikanga expert, a Māori adoptee or whāngai, or an adoption academic. Dr Annabel Ahuriri-Driscoll, a Māori adoptee and academic, and Dr Erica Newman, a descendant of a Māori adoptee and academic, have been confirmed as speakers for the wānanga. Waihoroi Shortland, a tamaiti atawhai and tikanga expert, has also been invited to speak.

29. Attendees will discuss three kaupapa kōrero about the status quo, what a future where whāngai is practised without legal barriers looks like, and how to get there. At the end of each kaupapa kōrero, groups will feed back the key points of their discussions to the whole wānanga.

30. The wānanga will end with a plenary session involving all attendees. Based on the group discussions throughout the day, a facilitator will guide attendees towards agreeing a statement for change and actions to achieve it.

We expect there will be a range of attendees at the wānanga

31. We want to ensure that a wide range of people are able to attend the wānanga. To enable this, the format of the wānanga will have in-person and online attendance. A maximum of 50 people will be able to attend in-person.

32. We have worked with Ināia Tonu Nei and Pou Tikanga to identify a range of invitees, including whāngai and Māori adoptees, Māori adoption academics, tikanga experts, Māori lawyers, and iwi and hapū representatives. Invitations were sent on 28 June and, as of 14 July, 27 people were registered to attend in person and 15 to attend online.

33. Senior Ministry of Justice officials will also be attending the wānanga, with other advisors attending in a supporting and notetaking capacity. We also expect two senior Oranga Tamariki officials will attend the wānanga.

We seek your decision on whether you wish to attend the wānanga

34. We seek your decision on whether you wish to attend all or part of the wānanga. We consider your attendance will send a clear signal that the Government is keen to listen to ideas about if and how the way the law treats whāngai should be changed.

35. If you do wish to attend, there are several ways you could be involved on the day:

    35.1. Provide an opening address – speak to the aims of the adoption reform and what you hope to hear from the wānanga;

    35.2. Participate in group discussions – hear directly from wānanga attendees in a more candid way and actively participate in the kōrero; and

    35.3. Provide a closing address – respond to the agreement of a statement of change and action plan, signalling that you have heard what the wānanga have said.

36. If you are unable to attend all of the wānanga, we recommend attending the beginning of the wānanga and giving an opening address, which would help to set the scene for the day. Ministry officials would also be available to support you on the day in whichever capacity you are able to attend.

You requested advice on progressing work on whāngai at the same time as adoption

37. At your weekly meeting with officials on 27 June, you also requested further advice be provided on whether work on whāngai could be progressed at the same time as the adoption reform work. Despite being a separate engagement workstream, whāngai currently remains within the scope of the adoption law reform work.

38. Following the wānanga and other engagements, we will provide you with advice on next steps for the policy process for both adoption and whāngai in September. If engagement signals that there is support for changing the way the law treats whāngai, we would provide advice on how and when that work could be progressed. There will be choices for how that work should proceed, for example, it could be Māori-led, co-designed, or Government-led, and we will outline the benefits and risks of those approaches in our September advice.

39. If it is decided that changes should be made to the way the law treat whāngai, progressing that work at the same time as part of adoption law reform process is likely to impact on the timeframes of the wider project. s9(2)(f)(iv)

40. In addition, further work will be needed to understand the scope and scale of progressing any work on changing the way the law treats whāngai. This work was deferred following the decision last year that further engagement with Māori was required. Pending the outcome of our engagements, our September briefing will outline the scale and scope of that work and impacts on the timing of progressing the adoption law reforms.

Next steps

41. If you indicate that you wish to attend the wānanga, we will liaise with your office to set aside time in your diary and provide you with relevant background information prior to the wānanga. Officials are also available to discuss the content of this briefing with you, should you wish.

42. Hon Kelvin Davis may also be interested in attending the wānanga in his role as Minister for Children. We recommend you forward this briefing to him.

43. We plan to provide you with further advice in September following the wānanga and other engagements, including if there should be any changes to the way it is treated in law and, if so, what the process for progressing any changes should be. We can provide you with further advice outlining timeframe options for progressing the adoption and whāngai workstreams together at that time.

Recommendations

44. It is recommended that you:

1. **Note** in December 2021 the previous Minister of Justice agreed that the second round of engagement on adoption law reform adoption should engage more extensively with Māori on whether they support the legal recognition of whāngai;

2. **Note** a whāngai wānanga has been planned for 10 August 2022 to seek Māori views on whether there should be any changes to the way the law treats whāngai and, if so, how those changes should be progressed;

3. **Indicate** whether you wish to attend the whāngai wānanga; YES / NO

4. **Forward** this briefing to Hon Kelvin Davis, Minister for Children; and YES / NO

5. **Note** that officials are available to discuss this briefing with you.

PP

Naomi Stephen-Smith

Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kiri Allan

Minister of Justice

Date / /

Attachments:

- Attachment 1 – Draft run sheet for whāngai wānanga

Attachment 1 – Draft run sheet for whāngai wānanga

Time	Kaupapa	Details
9:15am	Arrival	• Manuhiri arrive at Wharewaka
9:30am	Mihi whakatau	• Manuhiri welcomed to wānanga
10:00am	Opening kōrero	• Facilitator to introduce self and give overview of the purpose and objectives for the day. • Facilitator to introduce co-hosts and invite them to speak • Co-hosts to speak about respective rōpū (Pou Tikanga and ITN) and relevance to this kaupapa, what they hope to get out of it • Minister to respond (TBC)
10:30am	Morning tea	• Attendees to get kai/coffee/tea, then take seats in allocated groups
10:45am	Housekeeping	• Facilitator to explain how the group sessions will work
11:00am	Kaupapa Kōrero 1: Where are we now and where have we come from?	• Opening kōrero to be given by Waihoroi Shortland, describing the history and cultural significance of whāngai as a tikanga (10 mins) • Extra time allowed for each table to whakawhanaunga (10 mins) • Groups to discuss the kaupapa (15-20 mins). • Once kōrero has ended, tables invited by facilitator to share key points (5 mins)
11:45am	Kaupapa Kōrero 2: Where do we want to be?	• Opening kōrero by Erica Newman, offering perspective on what an Aotearoa looks like where whāngai can be practised legally without barriers (10 mins) • Groups to discuss the kaupapa (15-20 mins) • Once kōrero has ended, tables invited by facilitator to share key points (5 mins)
12:15pm	Lunch	
12:45pm	Kaupapa Kōrero 3: How do we get there?	• Opening kōrero by Annabel Ahuriri-Driscoll, suggesting what practical steps might need to happen (10 mins) • Groups to discuss the kaupapa (15-20mins) • Once kōrero has ended, tables invited by facilitator to share key points (5 mins)
1:15pm	Plenary session: Agreed statement and action plan	• Facilitator to sum up key points from each Kaupapa Kōrero • Facilitator to invite and encourage kōrero from the floor, identifying the key points and actions desired from attendees
2:00pm	Afternoon tea	• During this time, the Facilitator, co-hosts, and ITN kaimahi will work on wordsmithing the statement and action plan to ensure it is captured accurately
2:15pm	Closing and next steps	• Co-hosts to present statement and action plan to attendees, seeking any comments or changes • Co-hosts to make any closing comments
2:45pm	Karakia whakamutunga	• Hau kāinga or co-hosts to close wānanga, attendees depart • Pack down

From: Frost, Kerryn
To: Ravindra, Aisiri
Subject: FW: Adoption law reform focus groups - draft report
Date: Thursday, 19 January 2023 11:42:12 am

From: Frost, Kerryn
Sent: Tuesday, 23 August 2022 4:33 pm
To: 'Lana Perese' <lana.perese@malatest-intl.com>
Cc: Shilston, Zachary <Zachary.Shilston@justice.govt.nz>; Gunn, Sarah <Sarah.Gunn@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - draft report

Kia ora Lana,

Great, thank you for sending through the final report! Really appreciate it and can't wait to have a thorough read through.

Re the invoice, you can send it direct to accounts.payable@justice.govt.nz who will start processing it through our internal sign out process.

Ngā mihi nui
Kerryn

Kerryn Frost (she/her)
Senior Advisor | Family Law
Courts and Justice Services | Policy Group
Ministry of Justice | Tāhū o te Ture
Ext: 55384| DDI: 04 466 0384
www.justice.govt.nz

My work hours are from Monday to Thursday – I do not work Friday's

---

From: Lana Perese <lana.perese@malatest-intl.com>
Sent: Tuesday, 23 August 2022 3:46 pm
To: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: Shilston, Zachary <Zachary.Shilston@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - draft report

Kia ora Kerryn and Zac,

Thanks again for your feedback. Please find attached the final report with all feedback provided below addressed. Also, as previously mentioned, I asked s9(2)(a) and s9(2)(a) to review section 3 (you will see some additional but very minor amendments based on a conversation I had with s9(2)(a) today).

Are you happy for me to send through our final invoice or I'm happy to wait until Sarah returns from leave

Please don't hesitate to let me know if you have any further questions.

Nga mihi nui,

Lana

From: Lana Perese
Sent: Tuesday, 23 August 2022 12:42 pm
To: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>

Cc: Shilston, Zachary <Zachary.Shilston@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - draft report

Kia ora Kerry and Zac,

Brilliant, thanks so much for such a swift review – I'll make the changes and forward through the final report soon.

Much appreciated,

Lana

From: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Sent: Tuesday, 23 August 2022 12:33 pm
To: Lana Perese <lana.perese@malatest-intl.com>
Cc: Shilston, Zachary <Zachary.Shilston@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - draft report

Kia ora Lana,

We have reviewed the report and think it's looking great. We think it has the right level of detail, and is a good mix of analysis and quotes. There are a couple of points we picked up on (set out below), but once those have been addressed (and a couple of typos throughout) I think you can go ahead and finalise the report.

Comments re age and discharging adoptions in exec summary and at pg 34

> *The age, I think [they're] debating is 16 or 18. I'm just thinking about my [child], and others with fetal alcohol spectrum disorder, their chronological age isn't the same as their development age....Maybe, could be case by case, but maybe 18 is a rule of thumb, but then maybe under certain circumstances it could be older if the court suggests it's in the best interests of the child. (F4 – adoptive parent)*

This comment was not in relation to age for discharge, it was in relation to the age of adoption. The participant was advocating for an exceptional circumstances allowance for people to be able to be adopted at an older age

Pg 24 – the following quote is difficult to understand in context of what was going on in the conversation
Ensure the protection of an adopted child in the event of adoptive parent's death.

> *My [child], if I was to pop my clogs today and [they] inherited what I have, that goes back to [their] whānau, who [child] doesn't have a connection to...The adoption law at the moment is not clear enough about what happens with that property because [child is under age] so can't own the property...The law needs to be a lot more clear. (F6 – adopted person/adoptive parent)*

I would add a bit more contextual brackets as follows

[Based on the proposed new legal effect of adoption where birth parents are still legal parents} *My [child], if I was to pop my clogs today and [they] inherited what I have, [would] that goes back to [their] whānau, who [child] doesn't have a connection to...The [proposed new] adoption law at the moment is not clear enough about what happens with that property because [child is under age] so can't own the property...The law needs to be a lot more clear. (F6 – adopted person/adoptive parent)*

Pg 16 – first quote, query 16 vs 60. 60 years as generalisation seems to make more sense than 16 specifically

Ngā mihi nui
Kerryn

Kerryn Frost (she/her)
Senior Advisor | Family Law
Courts and Justice Services | Policy Group
Ministry of Justice | Tāhū o te Ture
Ext: 55384| DDI: 04 466 0384
www.justice.govt.nz

My work hours are from Monday to Thursday – I do not work Friday's

From: Lana Perese <lana.perese@malatest-intl.com>
Sent: Tuesday, 23 August 2022 8:18 am
To: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Subject: Adoption law reform focus groups - draft report

Mōrena Kerryn,

So sorry to miss the COP deadline as promised yesterday. Please find attached the focus group report for your review. I'm happy to receive any feedback you may have and will finalise the report immediately.

Much appreciated, happy to discuss anything further.

Lana

From: Lana Perese
Sent: Monday, 22 August 2022 7:58 am
To: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - touching base

Mōrena Kerryn,

Again, sincerest apologies – I'm still working on it but will definitely have the report with you asap before COP today.

Ngā mihi nui,

Lana

From: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Sent: Monday, 22 August 2022 7:54 am
To: Lana Perese <lana.perese@malatest-intl.com>
Subject: RE: Adoption law reform focus groups - touching base

Mōrena Lana,

Thank you for getting in touch. Will we receive the report from you today? In order to meet our timeframes we are needing to have final versions of all our engagement reports today.

Ngā mihi
Kerryn

From: Lana Perese <lana.perese@malatest-intl.com>
Sent: Friday, 19 August 2022 7:32 am
To: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - touching base

Morena Kerryn,

My sincerest apologies the draft report is not yet with you. We want to ensure that we produce as high quality a draft as possible and have taken extra care to ensure we have interpreted what participants shared appropriately. On that note, I hope to have the draft with you by COP today or over the weekend at the latest.

Again, my apologies, I hope this doesn't put you out too much.

Nga mihi nui,

Lana

From: Gunn, Sarah <Sarah.Gunn@justice.govt.nz>
Sent: Thursday, 11 August 2022 4:38 pm
To: Lana Perese <lana.perese@malatest-intl.com>
Cc: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Subject: RE: Adoption law reform focus groups - touching base

Fantastic – thanks Lana

From: Lana Perese <lana.perese@malatest-intl.com>
Sent: Thursday, 11 August 2022 4:29 pm
To: Gunn, Sarah <Sarah.Gunn@justice.govt.nz>
Cc: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Subject: Re: Adoption law reform focus groups - touching base

Kia Sarah,

Yes mid-next week is definitely possible. I'll forward the draft to you and Kerryn earlier if possible.

Nga mihi,

Lana

Sent from my iPhone

> On 11/08/2022, at 4:23 PM, Gunn, Sarah <Sarah.Gunn@justice.govt.nz> wrote:
>
> Kia ora Lana
>
> Thanks for your email and letting us know your suggested timing. We are really keen to finalise the report by Monday 22 August, or at least early that week, to feed into our policy advice going forward.
>
> Would it be possible for you to provide us with a draft to review early to mid-next week? We'd be happy for you to send us an early draft if that helps!
>
> Ngā mihi, Sarah
>
> ---
>
> **From:** Lana Perese <lana.perese@malatest-intl.com>
> **Sent:** Thursday, 11 August 2022 3:40 pm
> **To:** Gunn, Sarah <Sarah.Gunn@justice.govt.nz>
> **Cc:** Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
> **Subject:** RE: Adoption law reform focus groups - touching base
>
> Kia ora Sarah,
>
> Many thanks to you and the team, it was a pleasure to work alongside you all. I'm glad the process worked well for all – especially the participants (many commented directly to us that they felt safe and willing to share their stories).
>
> Yes, we're working on the draft report and hope to have it with you by Friday next week – or early

the following week if that works for you/Kerryn.

I hope you enjoy your leave, and I look forward to connecting again on your return.

Nga mihi,

Lana

From: Gunn, Sarah <Sarah.Gunn@justice.govt.nz>
Sent: Thursday, 11 August 2022 3:31 pm
To: Lana Perese <lana.perese@malatest-intl.com>
Cc: Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Subject: Adoption law reform focus groups - touching base

Kia ora Lana

Thanks for all your work on the focus groups, and for completing the final one last week.

We think the process worked really well, and really appreciate the help from you and your team at some of the more challenging groups.

I see from the workplan that you are planning to provide us with a draft report by mid-August (next week!). Can you please give us an update on when we should expect it to arrive?

Just letting you know that I'm on leave from tomorrow for the next two weeks, so could you please send the draft report to Kerryn so we can arrange a review at our end?

Ngā mihi, Sarah

MINISTRY OF JUSTICE
Tāhū o te Ture

Sarah Gunn
Senior Advisor | Family Law
Courts and Justice Services | Policy Group
Ministry of Justice | Tāhū o te Ture
P +64 s9(2)(a)
sarah.gunn@justice.govt.nz | justice.govt.nz

Please note I don't work on Fridays

Malatest International

Final report:

Adoption Law Reform – a synthesis of focus group findings

August 2022

Table of contents

Acknowledgements

We acknowledge and thank all of our participants who shared their lived realities, honesty, pain, courage and wisdom. We are grateful for the opportunity and privilege to listen to so many passionate people from across Aotearoa New Zealand and overseas.

We also thank the Ministry of Justice for funding this project and a close working relationship.

> *The trauma of adoption is a filter. It slowly allows the fine kind of granules of who we are, our authentic selves, to pass through. And hopefully they pass through in the form of wisdom. This process can take decades or a lifetime and it is informed by events, such as when we lose someone close, when we watch someone we love die, when we give birth to our own children, when we bury them, when we experience deep love, joy and loss. And importantly, if we are willing to bear the pain of remembering, we learn and grow and reform our adoption narrative. You're looking at the future, but humans haven't changed beyond the need to belong...everyone has this deep, deep longing to belong...We see what harm happens when we don't find that belonging. (F7 – adopted person)*

Executive summary

Background

The government is committed to the reform of Aotearoa New Zealand's adoption laws. The Ministry of Justice (MoJ) lead two rounds of public and targeted engagement to understand people's views on the options the government is considering for a new adoption system.

- The first round of engagement was held between June and December 2021, to gather feedback on the Ministry's discussion document *Adoption in Aotearoa New Zealand*.
- A second round of engagement was carried out from mid-June – early August 2022. The aim of the second round of engagement was to report back on feedback and seek the public's views on reform options the government is considering. A second discussion document setting out the reform options was released on the Ministry's adoption webpage the week beginning 20 June 2022.

In June 2022, MoJ commissioned Malatest International for the second round of engagement to design, organise, deliver and report back on seven focus groups with people with adoption experiences.

Adoption law reform focus groups

Four online and three in-person focus groups (in Auckland, Wellington and Christchurch) were held between 27 June and 4 August 2022 with a total of 51 participants (adopted people, adoptive parents, birth and adoptive family and whānau) located across Aotearoa New Zealand and overseas.

Participants' views about the package of options for adoption law reform

Purpose of adoption: All participants agreed that the purpose of adoption should prioritise the child. Many also noted that adoption law should:

- Acknowledge that the adopted child will evolve into an adult with a changed sense of self, worldview and life experiences
- Recognise that provision of a loving family relationship cannot be guaranteed, evidenced or monitored.

Principles for adoption: All participants commonly agreed with the principles for adoption but noted the principle of last resort was missing, and a te Tiriti principle

for adoption was needed. The principle of openness and transparency was considered important for all involved in the adoption process – including government agencies.

Who can be adopted? Some participants noted the age a child can be adopted should align with the Hague Convention (18 years) – consideration of children with neurodiverse and intellectual disabilities was noted.

Who can adopt? Most participants agreed with the options proposed and all agreed that people should not be prevented from adopting because of their sex or relationship status. Some participants also higlighted a need for adoption law to explicitly prioritise keeping siblings together, and disagreed that step-parents should be allowed to adopt.

Participants provided mixed views about whether the law should assume that it is normally in a child's best interests to be adopted by people from the same culture noting limitations with the principle of 'matching for marginality', and a need to consider children with multiple ethnic identities. Some participants placed equal importance on profiling and assessment of adoptive parent eligibility to provide a stable home.

What happens if a child is placed for adoption? All participants agreed that having a social worker represent and support the child throughout the adoption process was necessary. Some participants also noted it was also critical that adoption law remain high-level to allow flexibility within future policy and regulatory contexts, and identify at which point in the adoption process a social worker is appointed to represent a child. Matching social worker to a child's cultural background, in light of limited workforce capability and capacity within Oranga Tamariki was considered *magical thinking*. Participants emphasised a need to allocate adoption specialist social workers, and ensure the child has the right to refuse a social worker if their relationship is not working.

Who can have a say? All participants agreed that the child should have a voice and a social worker and lawyer appointed to represent their views. Many noted that babies and young children will require multiple support people to represent their voice at different ages and developmental stages.

Many participants also agreed that child consent to the adoption should not be required and noted that birth parents' agreement to adoption does not represent child consent; adoption minimises the choices children can make as adults; inviting children of an appropriate age to consent to their own adoption can help to minimise the risk of their wishes being overwritten.

Many participants agreed that both birth parents should consent to their child's adoption unless it caused unwarranted distress. It was also important that adoption

law clarify that a social worker can recommend child placement sooner than 30 days and acknowledge the voice and role of adoptive parents.

All participants agreed that the wider family and whānau should at least have knowledge that the child exists and an opportunity to be part of decision-making. A requirement for MoJ to work with iwi and consider tribal advocacy as part of the adoption journey for tamariki Māori was highlighted.

Who makes the decisions? Many participants commonly agreed with the role of government, courts and accredited bodies and provided mixed views about whether adoption law should explicitly name government agencies, their role and purpose. Participants agreed that all adoptive applicants should be required to engage with Oranga Tamariki and highlighted the importance of ensuring adequate workforce capacity and resources were in place. A requirement for adoption support and government oversight over the life-long journey of adoption was recommended.

How are adoption decisions made? The suitability of adoptive parents was noted as requiring the involvement of several specialists working with a social worker. Participants highlighted a need for adoption law to remain high level and allow flexibility within policy and regulatory contexts about details to be included in a social worker report; mandate the establishment of a lived experience panel to review social worker reports and assessment of lifelong decisions made on behalf of the child; commit and ring-fence funds for cultural, psychiatric and psychological assessments, reports and workforce capacity/capability.

What is the legal effect of adoption? Participants agreed that guardianship responsibilities should be transferred from birth to adoptive parents and emphasised that adequate education and support would be required to ensure clear and shared understandings for birth and adoptive parents.

Many participants provided mixed views about the option for adopted people to have two birth certificates. Some participants agreed and saw that this aligned well with inheriting citizenship from birth and adoptive parents.Others supported a move to a digital model such as that proposed by Birth, Deaths and Marriages (BDM) and the provision of one birth certificate with bespoke information identified by and for adopted people.

Some participants also noted a need for adoption law to reinforce a moral right for adopted people to inherit property from their birth parents, and ensure the protection of an adopted child in the event of adoptive parent's death.

Mixed views were provided about the options for changing an adopted person's surname. Some participants did not agree that a judge and/or adoptive parents should have the right to change a child's name. A robust process and application to the family court was noted as a necessary requirement for any name change to

occur. A small number of participants did agree that a judge could consider changing a person's name for safety purposes only – and with input from adopted parents.

What ongoing contact can adopted children and their birth parents have? Almost all participants agreed that post-adoption contact agreements should be introduced, and noted a need for adoption law to acknowledge that contact agreements will change and require review at different ages and developmental stages (including the voice of the child at an appropriate age in any review was recommended); ensure adequate support is in place for birth and adoptive parents to develop meaningful and realistic contact agreements; consider multiple contact agreements with birth siblings and wider whānau.

Most adopted people noted that birth and adoptive parents should not be able to opt out of a contact agreement. Adopted parents provided mixed views about whether an agreement should be enforced.

Some participants agreed that culture plans should be required, but that it was also necessary for adoption law to consider how this could be applied for children with multiple ethnicities. Culture plans were considered necessary at the start of the adoption process rather than post-adoption.

What support can people access? Overall, most participants noted that current opportunities for adoption support are fragmented and inadequate, and adoption law should strengthen these for:

- Adopted people and their family and whānau – there is a need for equitable and increased access and choice to specialist non-pathologising support for adopted people and their family and whānau throughout an adoption journey; a current directory of registered, qualified, adoption and trauma-informed specialists (with an understanding of the severity of harm and trauma inflicted by the 1955 Act); a government commitment to developing specialist workforce capacity and capability.
- Adoptive parents – there is a need for mandatory counselling and education as part of the adoption process, and opportunities for a peer support network and engagement.
- Birth parents – there is a need for mandatory counselling and education before any decision is made to place a child up for adoption.

Participants acknowledged a need for education about adoption and it's impacts for all support services and workforces that engage in the adoption space (health, social services, education etc), prospective adoptive parents and birth parents, and the general Aotearoa New Zealand public.

Who can access adoption information and when? All participants agreed that access to adoption information for adopted people was a basic human right and

accessibility should be made faster and easier for all adopted people resident in Aotearoa New Zealand and overseas. Adoption law should ensure a simple and easy process is in place to access information and that all government departments have a clear understanding; information should be available from birth, information should not be redacted and access should be free. Participants noted a need to specify that adoption information is inclusive of all health, court and other departmental files.

Most participants agreed vetoes should be removed, and that the only veto to exist should be if an adopted person chooses to veto their records.

What if things go wrong? Participants considered discharging an adoption order as a significant responsibility for 16–17-year-olds and recommended an increase in age up to 25 years. Participants also considered that discharging an adoption order should not be an option for adopted parents without requirement of adequate support and processes.

What happens in overseas and intercountry adoptions? Participants noted a need for adoption law to include the same considerations as domestic adoptions, reconsider, review and refine the Hague Convention process, specify that robust family court processes are needed to assess adoptions formalised overseas, and require and enforce a pre- and post-adoption culture plan from the country of birth and Aotearoa New Zealand.

Participants' views about further options for adoption law reform that should be considered

All participants commonly highlighted additional contextual factors perceived to be of significant relevance to adoption law reform and noted a need to:

- Consider alternative care options
- Use relevant, strengths-based and non-discriminatory language
- Recognise different child development ages and stages
- Prioritise issues of importance that are identified by adopted people
- Establish adequate and standardised data collection and monitoring processes
- Commit to adoption law reform and Royal Commission recommendations for adopted people
- Consider options informed by adopted people to manage, co-ordinate and contribute to all aspects of the adoption journey.

1. Focus groups for adoption law reform

1.1. Background

The government is committed to the reform of Aotearoa New Zealand's adoption laws. The Ministry of Justice (MoJ) lead two rounds of public and targeted engagement to understand people's views on the options the government is considering for a new adoption system.

- The first round of engagement was held between June and December 2021, to gather feedback on the Ministry's discussion document *Adoption in Aotearoa New Zealand*.
- A second round of engagement was carried out from mid-June – early August 2022. The aim of the second round of engagement was to report back on feedback and seek the public's views on reform options the government is considering. A second discussion document setting out the reform options was released on the Ministry's adoption webpage the week beginning 20 June 2022.

In June 2022, MoJ commissioned Malatest International for the second round of engagement to design, organise, deliver and report back on seven focus groups with people with adoption experiences (four online focus groups and three in-person focus groups). The focus groups were conducted alongside multiple other initiatives led by other agencies to gather different stakeholder groups perspectives, including Māori and Pacific (Samoan) engagements and talanoa, written submissions and an online survey.

The focus groups aimed to:

- Understand people's views on and reactions to the package of options the Government is considering for a new adoption system
- Identify any further options for reform that should be considered
- Understand how people's experiences with the current adoption system inform what they think should be changed

1.2 Our approach

The project consisted of a four-phased approach for the second round of engagement and focus groups (Figure 1).

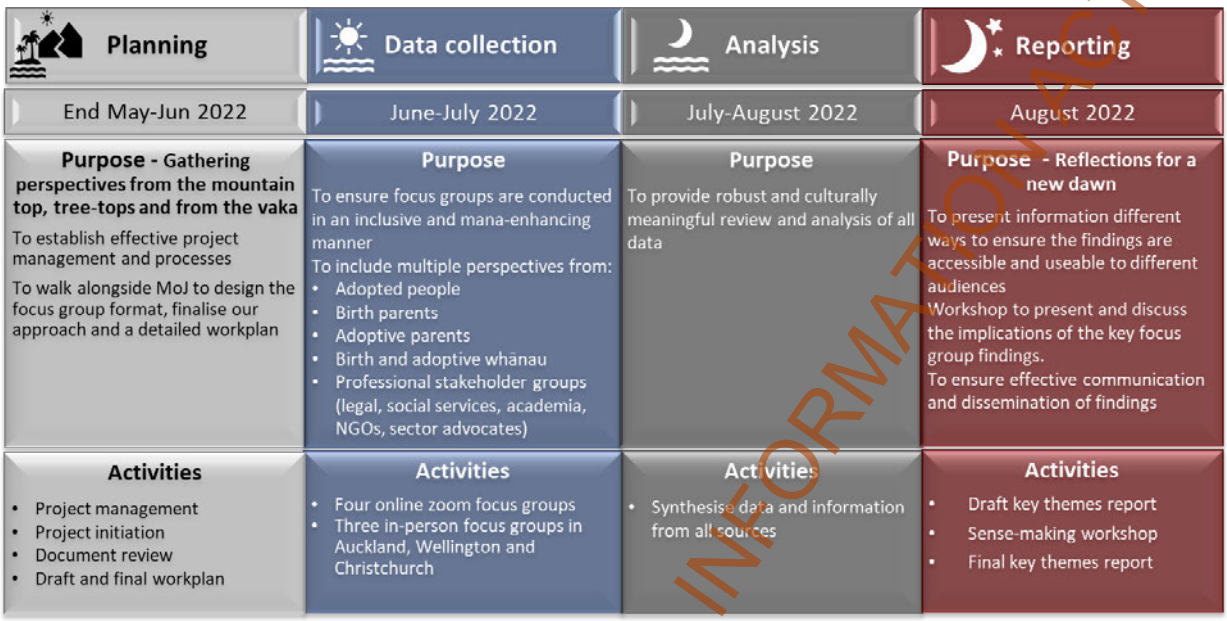

Figure 1: Our approach

1.3. Data collection and analysis

Seven focus groups were held with a range of people with different adoption experiences[1].

- Four online focus groups were held on:
  - Monday 27 June 2022 (from 5pm-7pm)
  - Monday 4 July 2022 (from 5pm-7pm)
  - Monday 11 July 2022 (from 5pm to 7pm)
  - Thursday 4 August 2022 (from 10am-12pm)
- Three in-person focus groups were held in:
  - Auckland on 6 July 2022 (from 1pm-3pm)
  - Wellington on 13 July 2022 (from 1pm-3pm)
  - Christchurch on 22 July 2022 (from 1pm-3pm).

A total of 51 participants provided feedback on the MoJ discussion document and adoption law reform options proposed[2]. Focus groups were approximately two hours long. The group discussions were audio-recorded and transcribed. All participants were provided with a $40 koha, and light refreshments were provided for in-person focus groups as a token of appreciation for participant involvement.

[1] Including adopted people, adoptive parents, and birth and adoptive family and whānau.
[2] The evaluation team engaged with two individual adopted persons who were unable to attend focus group discussions.

1.3.1. Participant recruitment

Focus group details and zoom links were promoted on the Ministry's adoption page at the same time the second discussion document was released the week of 20 June 2022. Participants interested in contributing to a focus group discussion contacted the research team to access further details about the range of focus group options. The reserach team engaged with potential participants to determine a time and date that suited them best; act as an intermediary between participants and MoJ, and respond to any questions; provide venue details and/or zoom links and background information; encourage them to inform their wider networks about opportunities to participate in the focus groups.

1.3.2. Participant consent

Information sheets were provided to participants and discussed prior to the start of the focus groups. Verbal consent to audio record discussions was provided at the start of each focus group.

1.3.3. Focus group question guides

Key questions aligned with the discussion document were intended to guide conversations and allow participants to raise relevant topics important to them. The focus group guide was reviewed following initial focus groups to ensure the required information was being collected.

1.3.4. Focus group facilitation

Our approach to facilitation prioritised setting a trusting and safe space and relationship for sharing. We focussed on demonstrating respectful and neutral behaviour through whanaungatanga and engagement with participants, and in establishing connections participants.

A genuine and mutually respectful relationship was established before focus group discussions commenced (for example, each group started with a prayer or other means of engagement [e.g., inspirational quote], introductions/connections and in some groups an ice-breaker activity). Facilitators emphasised that the study valued participants' opinions and experiences and that the focus group aimed to centre their voices on their experiences and views about the proposed options for adoption law reform. A synthesis of options for law reform detailed in the discussion document were used to initiate discussion with participants, explore their views/perspectives about these options and reflections/experiences/contexts that informed their reasoning.

The research team were also aware that there might also be different dynamics and considerations within participant groups, for example on the basis of different ages,

gender and adoption experiences and/or position that could influence participants' engagement in a group setting. Because of this, our team of facilitators were prepared to arrange breakout groups by adoption status and other factors – however, this was not required and all participants were comfortable to talk within the wider group setting. Two focus groups were arranged only with adopted people.

Facilitating Zoom focus groups provided a different set of dynamics. The use of Zoom was a means of communication participants had become familiar with either before or during the first COVID-19 lockdown in Aotearoa New Zealand. It did not inhibit their sharing and contribution to the kōrero. Participants shared their views verbally and in the chat option. Our team of experienced facilitators were also well versed in virtual engagements and effectively staying connected with participants through active listening, clear, efficient and respectful communications.

1.4. Analysis

A general inductive approach was used to guide the analysis of qualitative data. A coding framework was developed to identify emergent themes. Our team met frequently throughout the project to discuss emergent themes and explore intra- and inter- similarities and differences between and across groups and different intersectional contexts. Focus group discussions were transcribed verbatim. This report includes quotes and authentic language (inclusive of expletive language) to signify participants' passion and expressiveness.

Common themes are referenced as 'most' (almost all participants), 'many' (more than half of participants interviewed) or 'some' (fewer than half of participants). Specific and/or less common themes are referenced as 'one participant' or 'a small number of participants'.

1.5. Strengths and limitations

The strengths of this research include:

- The qualitative research methodology allowed the research team to gain insights into the complex nature of adoption experiences from diverse perspectives.
- The research team's approach to engaging with all participants created a safe space for them to actively participate in focus group discussions.
- The synergistic nature of focus group discussions used in this research enabled participants to share and build on each other's experiences and insights in ways that would be less possible in individual interviews. Focus groups also provoked rationalisation and explicit reasoning and helped to

unpack more nuanced understandings of different points of discussion. For many, the focus groups were their first engagement with adopted people sharing and hearing similar experiences was valued.

- A close working relationship between the research team and MoJ and focus group co-facilitation helped to ensure questions posed during focus groups were addressed adequately.

Limitations of this research include:

- Participants in the focus groups reflected on their vast personal adoption experiences (as adopted people and adoptive parents) – the findings cannot be generalised, but they provide in-depth insights from a diverse range of adopted people that broaden the evidence base and can be used to inform future policy and research directions
- Common and dominant themes that emerged across different focus groups were supported by verbatim transcript material and quotes from multiple discussions/participants – it was not possible to include all quotes of relevance to the theme. However, interpretations and descriptions of themes attempt to capture the depth, passion and richness of participants' expression.
- Amalgamating adopted people and adoptive parents' experiences of adoption provides useful insights but also diminishes the strength, meaning and voice for each group. Adopted peoples shared a wealth of information that would benefit from further investigation.
- A specific focus on Māori and Samoan (Pacific) adoption experiences were out of scope for the project – however it was intended that findings from these focus groups would be used to complement information shared in separate hui and fono commissioned by MoJ.
- It is important to recognise that the number of adopted people that input into focus group discussions was not proportionate to the total population of adopted people.

I equally know a number of people who are adopted who I reached out to and said, come and be part of this and they said, we can't it's too painful. It's too painful for us to come and relive these things in our lives. (F5 – adopted person)

2. Participants' views about the package of options for adoption law reform

All participants considered adoption law reform in Aotearoa New Zealand an absolute necessity and unprecedented opportunity for the government to be courageous and ambitious in minimising the trauma and harms experienced by adopted people and their successive generations.

> *It's the first step in the right direction, but [should go] further, a lot further. End this madness now...No adopted person wins from being cautious. If we know things cause trauma, stop doing them...it doesn't matter if you've had a great experience, you've still been torn apart from your whakapapa and to get back to it is so challenging, so hard...it causes harm. (F8 – adopted person)*

All participants shared extensive insights on the package of options the government is considering for a new adoption system.

2.1. Purpose and principles of adoption

Purpose of adoption: All participants agreed that the purpose of adoption should prioritise the child.

> *Is it actually about meeting the parents' needs so they've got this nice new baby, or is it actually about the child?... It needs to be about a home for a child... And the child's needs need to be paramount. (F3 - adopted person)*

Many participants also noted that it was critical that adoption law and the purpose of adoption:

- Acknowledge that the adopted child will evolve into an adult with a changed sense of self, worldview and life experiences

  As we grow from adopted children into adopted adults, our understanding of ourselves and our world and so much about what it is to be human, transforms and changes as life events bring us growth, and often paradoxically, also, simultaneously, regression. What we don't lose is the deep, deep trauma of adoption that has wired our brains at our first abandonment...So many of us bury this trauma...Sometimes people just live in what's called the fog of adoption for their lives...Our adoption narratives change overtime. (F7 – adopted person)

- Recognise that provision of a loving family relationship cannot be guaranteed, evidenced or monitored.

  There is no evidence that adoption creates valuable, enduring and loving family relationships. (F1 – adopted person)

  How do you ensure that? Like they seem loving? They held hands at an interview in an office? (F8 – adopted person)

Principles for adoption: All participants commonly agreed that the principles for adoption should apply to adoption law.

> *Strongly support having a set of principles that requires the child to be the most important thing. Sometimes things get skewed in terms of where the birth parents are at in their process and it's particularly for children where the whānau don't know about that person. (F4 – adopted parent)*

- **Openness and transparency:** Some participants commented on the principle of 'openness and transparency' and how important this is for adopted people and all others involved in an adoption including, multiple government agencies.

  The spirit of openness is really important from a cultural perspective, in terms of culture within the Department of Internal Affairs, at Oranga Tamariki or whoever is going to be looking after this. We've all been really hurt by the culture within those departments and the way that we've been treated…One of the things that could help is looking through everything with that lens of the spirit of openness. (F5 – adopted person)

  One participant noted that openness and transparency had implications for consent and should be considered on a case-by-case basis – *it's about keeping all parties in the adoption safe.*

  That's a real case by case thing, because our baby was conceived in a violent act there's a lot of secrecy… (F2 – adoptive parent)

- **Principle of last resort:** Some participants highlighted that the principle of last resort was missing, and although discussed later in the discussion document, should be highlighted as a key for adoption law.

  The principle is that you have to leave no stone unturned in terms of trying to keep the child with the parents and if not with the parents, with the kin. And if you have demonstrated that you left no stone unturned, then the stewardship model kicks in and other people have the day to day rights and responsibilities for caring for the child. (F5 – adopted person)

  If that's paramount, then [my] great grandmother could have claimed her right to keep me with her family. (F8 – adopted person)

- **Te Tiriti principle for adoption:** Some participants agreed a specific te Tiriti principle was needed – one participant specifically noted this should align with Article Two of te Tiriti.

  It's all about family connection, whakapapa…so my baby can inherent my Māori whenua, but [they] can't inherent [their] birth whenua…[they] can't enrol in my iwi…It's completely not looking after [them] as a Māori baby, as a Māori child, as a Māori person being adopted in this country. That's what needs to be remedied…te Tiriti principles and making that important for [their] own indigenous inheritance in this country needs to be maintained. (F2 – adoptive parent)

2.2. Who can be adopted? Who can adopt?

Who can be adopted: Some participants considered that it made logical sense that the age a child can be adopted aligned with the Hague Convention (18 years) – but it was also important to recognise that guardianship stopped at 16 years

> *Well it makes sense to go in line with the Hague Convention. But then also if we look at our guardianship, guardianship stops at 16. 18 then is technically the age of maturity. (F3 – adopted person)*

Some participants also noted that additional special circumstances would need to be considered for adopted people with neurodiverse and intellectual disabilities.

> *The age, I think [they're] debating is 16 or 18. I'm just thinking about my [child], and others with fetal alcohol spectrum disorder, their chronological age isn't the same as their development age....Maybe, could be case by case, but maybe 18 is a rule of thumb, but then maybe under certain circumstances it could be older if the court suggests it's in the best interests of the child. (F4 – adoptive parent)*

Who can adopt: Most participants agreed with the options proposed, and all agreed that people should not be prevented from adopting because of their sex or relationship status. Some participants:

- Higlighted a need for adoption law to explicitly prioritise keeping siblings together

  > *What happens if the 12 year old wants to adopt their six year old [sibling] so they can't be separated? I don't have the answer for that, just sometimes situations happen, maybe both parents die, or the children are both in foster care and they want to stay together. (F6 – adopted person)*

- Disagreed that step-parents should be allowed to adopt, and percieved this as prioritising the interests of an adult rather than the child.

  > *I can see a step-parent, who will have maybe raised the child his or her whole life wanting to be the acknowledged as the legal parent. But that's about the adult, not the child...For me personally, I would be quite against that. I cannot imagine any circumstances where that might be in the child's best interest. We have other options in terms of guardianship. We have other options. (F3 – adopted person)*

Adoption involving different cultures: Some participants provided mixed views about whether the law should assume that it is normally in a child's best interests to be adopted by people from the same culture. A small number of participants noted that the principle of 'matching for marginality' had not previously worked. One participant also highlighted a need to consider children with multiple ethnic identities.

> *Just interculture. You can't assume all children, both parents are the same culture. That's really dangerous to assume that children can't be more than one culture. So*

who decides? And I worry that the judge will decide if this child is Māori or pākehā, if this child is Samoan or Tongan. Who is deciding? (F6 – adopted person)

Matching for marginality...we know that that doesn't work in adoption itself. (F1 – adopted person)

Many adoptive parents noted that assumptions about people from the same culture should only be considered on a case-by-case basis. Profiling and assessment of prospective adoptive parent eligibility to provide a stable home was noted to be of equal importance, alongside the birth mother's autonomy and selection of adoptive parents.

I think with what Oranga Tamariki do currently with the profiling of the couples or the single person that's adopting, and the kind of cultural background that they collect on potential adoptive parents, I think is enough...(F2 – adoptive parent)

I absolutely recognise and support the need for adopted persons to be supported in understanding their culture...having connections to culture, to knowing people and having real relationships with people from their culture, if they don't have those with their family of origin. But I think there needs to be great care to ensure that racial matching doesn't override other things...it's one factor that should be considered but not one that should override everything. (F4 – adoptive parent)

2.3. What happens if a child is placed for adoption?

Social worker to represent the child: All participants agreed that having a social worker represent and support the child throughout the adoption process was necessary – and provided an opportunity for a child to access support focused solely on their rights.

I quite like the idea of having a social worker and a legal representative in there somehow so that the social worker's on the personal lived experience and journey with the adopted person, helping them to access support, counseling and the parents whatever, helping them to navigate the lived experience of adoption. (F7 - adopted person)

Social workers to approve, strongly agree. Courts are too slow. Social workers should have that option. (F3 – adopted person/adoptive parent)

Some participants noted it was also critical that:

- Adoption law remain high-level to allow flexibility within future policy and regulatory contexts – one participant recommended only including 'Social worker to represent the child' with all detail noted below to be included in policies and/or regulations.

Maybe the top bit is the law, but the rest might be more put into regulation or policy so that there's a little bit more flexibility if you simply don't have social workers that

match the cultural [requirement]. Once it's in legislation, it's kind of fixed. Policy can be a bit more flexible. (F3 – adopted person/adoptive parent)

In line with the view about matching a social worker to a child's cultural background, another participant reiterated evidence that matching for marginality in adoption does not work and questioned the extension of this to a social worker, particularly in light of current social work workforce capability and capacity within Oranga Tamariki.

I don't know why we think [matching for marginality] would work with social workers…Our last 60 years of evidence in this country shows just how dangerous social workers are and continue to be today…I don't know where this new…environment where there's going to be social workers that somehow meet these needs are going to come from. It seems like magical thinking to me. (F1 – adopted person)

- Adoption law identify at which point in the adoption process a social worker is appointed to represent a child to avoid blurred lines with the rights of the birth mother

  More clarity around that would be cool…maybe put that in the process journey when that social worker is established to represent baby, like at the Court, or at the start with when birth mother first comes to Oranga Tamariki. (F3 – adoptive parent)

- The social worker specialises in providing neutral adoption support and is neither pro– nor anti–adoption

  One that's not biased on either side...I think it's very important that the social worker isn't anti-adoption or anti-foster or any of those things. The whole focus is all about the child. (F1 – adoptive parent – international)

  Have specialist social workers who are trained to a very high level. So anyone involved knows they're going to have 100% safe experience. Not I'm a social worker, so this is one of the things I do. That's not good enough. It's too important placing a child. (F8 – adopted person)

- A child has the right to refuse a social worker if their relationship is not working. A few participants also noted the need to allocate two social workers to a child if possible – particularly in light of high workforce turnover and a need to ensure children have a stable source of support.

  I would question the single social worker...sometimes you just end up with someone who just doesn't work...And maybe rather than just going one to one, you might just [have] two [options]. At least you can then kind of not have so much disruption. (F6 – adopted person)

2.4. Who can have a say?

Children being adopted

The child is able to attend and speak at the adoption proceedings: All participants agreed that the child should have a voice and a social worker and lawyer appointed to represent their views.

> *I like in the new legislation being proposed the fact that it's actually saying, where appropriate, I think that's age appropriate more than anything, the adopted person has a voice into the process. That is a positive change in a sense, because it's actually saying we have a voice into this. (F5 – adopted person)*

Many participants also noted it was important that adoption law recognise that a baby or young child would not have a voice or the emotional maturity to articulate or understand their situation, experience and/or potential trauma, and may require multiple support people to represent their voice at different ages and developmental stages.

> *Who is this mythical child who's old enough to engage in the process and mature enough to understand the lifetime impacts? (F1 – adopted person)*

> *If you adopt someone out 30 days old, they don't have a voice for some considerable time and there's a lot of unspoken trauma that that child can't deal with until they get to a point where they can speak to a social worker or to someone else that can try and make sense of it...When [the child is] going into some form of stewardship or adoption [they] will need support people of varying degrees throughout their journey (F5 – adopted person)*

The child is not required to consent to the adoption: Many participants agreed that child consent should not be required.

> *How does a child give consent and understand what it means to have identity changed for a lifetime and that of your descendants? (F1 – adopted person)*

Some participants also highlighted that it is important for adoption law to recognise that:

- Birth parents' agreement to adoption does not represent child consent

> *Birth parents giving the agreement to adoption taking place doesn't actually recognise we give our consent to this process happening to us. So I think that that might like to change. (F5 – adopted person)*

- A child's needs and life experience change as they develop – adoption ties children into a *lifetime contract* and minimises opportunities to make informed choices as adults.

> *[Someone I spoke with said, as a child] I just wanted to be fed and to have nice clothes, I did not consider how this would stay with me all my life and I will never get to age out of the care arrangement made for me as a child...If you don't tie a person*

into a lifetime contract, and you do use something like a form of enduring guardianship, then the child is covered for those years when their say is based on their immediate need, and then they get to choose when they're an adult. They can stay within that family that they've been living with or they can move out of that if they wish. We have to offer a choice. (F1 – adopted person)

It is important to note that a small number of participants disagreed, and felt that inviting children of an appropriate age to consent to their own adoption can help to minimise the risk of their wishes being overwritten.

I do find that, although, the child is supposed to be the focus of all this, there are an awful lot of places in the document where there's huge potential for the child's wishes to be overwritten and that is one of the problems with the fact that you have opted, despite at clashing with virtually every other jurisdiction, for a child of appropriate age not to have to consent to their adoption. And you've justified that by saying that the child doesn't want to be making the decision. The child is not making the decision, the judge is making the decision, so that is not a valid reason. (F5 – adopted person)

Parents placing their child for adoption: Many participants agreed that both birth parents should consent to their child's adoption unless it caused unwarranted distress.

Because currently that's not the case, correct? She can make these decisions without him ever knowing the child exists? (F3 – adopted person)

Many also noted it was important that adoption law clarifies that a social worker can recommend the child is placed in an adopted family sooner than 30 days.

The 30 days, I was just thinking about how that is of the interest of the child. Because if it's a straightforward adoption, why does the child have to be with a caregiver and why not put it into the home straightaway to reduce that trauma or to create that attachment straightaway as soon as the child is ready to go? (F2 – adoptive parent)

A small number of participants noted that the proposed options provide little recognition of the voice and rights of adoptive parents and that:

- Placing the child in care pending an adoption order enhances risks of extended developmental delays and opportunities for bonding and attachment during critical formative years

When you reference the concept of the child-centric approach and then we put on the table something like that where basically it appears to be slightly carte blanche around the timings for when a child could essentially have a bond severed right at the beginning of their life. And if, in terms of developmental biology, the first three years of life are profoundly affected by the bonding of a primary caregiver, then having two major traumas in the first year of life, I question what that means. (F6 – adopted person/adoptive parent)

- Prospective adoptive parents often cover extensive legal costs and remain at the behest of a birth mother who has the right to change her mind

  In my case, a 16 year old lady controlled our rights and...adoptive parents have a right, after adopting...We had to pay lawyers cost for us [and the] birth mothers lawyers.The more a birth mother talk to lawyer [the more] we have to pay ..The day adoption baby came, she refused. Law support birth mother. We don't have any human rights. (F6 – adoptive parent)

- The provision of time for birth parents to withdraw consent opposes the purpose of ensuring 'stability' for the child.

  Stability is definitely in the best interests of the child and so it's obviously incredibly sad and regrettable that the current state of things sadly creates a situation of incredible instability that can be massively counterproductive in those formative months, if not years, for a child. (F6 – adoptive parent)

  We understand that a birth mother essentially could change her mind because of the bond she feels with this child, but if a process has actually been followed through, including whānau, to bring clarity around a decision, the right to withdraw the consent seems to undermine that whole process.(F6 – adoptive parent)

Wider family and whānau: All participants agreed that the wider family and whānau should at least have knowledge that the child exists and an opportunity to be part of decision-making. Some participants also highlighed a need to:

- Clarify who would determine whether wider whānau engagement can proceed or not – and how

  I think that could get quite grey...Who then makes the decision about that proceeding? Who makes the decision about whether that family should be approached or not? You can't have a child in care for long periods of time, while that goes before a judge, for someone to make a decision about whether that whānau should be approached or not. So I think that really needs to be carefully looked at or even removed. (F3 – adopted person)

- Acknowledge that finding and engaging with family and whānau is resource intensive and not necessarily within the skillset of some social workers.

  It needs to be properly resourced. Because knowing how to find family and doing that thoroughly, that's a known challenge and it's underestimated. You have to know how to find people and that's a specific skill, actually, not necessarily a social work skill. (F5 – adopted person)

One participant noted that, in recognition of international honour killings in some cultures, it is important that birth parents are supported, educated and encouraged to tell their wider family and whānau rather than being required to by law.

I like the way you said there was opportunity, not required. We need to be sensitive to all cultures and have opportunity not requirements...It shouldn't be an absolute fixed requirement in the legislation. (F3 – adopted person/adoptive parent)

Another participant suggested that identification of a family and whānau representative may help to manage wide and extensive input from distanced birth relatives.

> *You don't want just an open invite to anyone who's got a distant link. It may be a case of saying that there's an intentional effort to include a family or whānau representative as part of the court proceedings...If there's too much kind of going on, it has the potential to add unnecessary complexity or complication to the process.(F6 – adoptive parent)*

Hapu and iwi: One participant noted that adoption law should require MoJ to work with iwi and consider tribal advocacy as part of the adoption journey for tamariki Māori who are placed for adoption.

> *When you're saying you want a say of hapū, iwi or whānau, if, say, Māori children are not necessarily connected or the birth parents aren't connected to their hapū, iwi, whānau space, does that still apply? And could the Ministry of Justice work with iwi or tribal groups to be a part of that if that's what this new act is going to be around? (F2 – adoptive parent)*

A small number of participants also highlighted the importance of engaging with kaumatua and kuia:

- For the placement and ongoing tikanga and kawa for the child

  I recommend the tautoko of a kaumātua and kuia around a placement and the reason why is because in just about every iwi or hapū there are expertise or kaumātua and kuia who know the whakapapa lines for their particular iwi. And so if they're over the placement of a child, it prevents that secrecy or that avoidance...kaumātua or kuia will lay down the instructions for how these things take place because that's tikanga and kawa. Whereas the current act only allows permission to be given by the mother. (F4 – adopted person)

- To maintain cultural connectedness for a child (especially those with multiple ethnicities and or entering into cross-cultural adoption)

  If they see that it's appropriate and in the best interest of the child, they can smooth that situation so that even if it's not the parents that you'll have a connection with, that you have connection with someone within that wider whānau network. (F4 - adopted person)

- To support/unpack the concept of adoption within Te Ao Māori.

  The Adoption Act was used to be able to acquire land, so I know in some situations where a child is supposed to be tuakana and [in line for] succession, that land has fallen into the hands of the crown, because that person has been removed from the whānau...I really believe in the ability of being able to bring the wider whānau into the process, rather than just having one or two people make those decisions. (F4 – adopted person)

2.5. Who makes the decisions?

Role of government, courts and accredited bodies: Many participants commonly agreed with the role of government, courts and accredited bodies and also noted that adoption law should:

- Clarify what government agencies/organisations are involved, including their role/purpose/function and mandate to ensure the interests of the child remain paramount.

  I feel that's what's missing in this is any clarity about who's going to do what. And it is complex because there are there are so many organisations involved, and that makes it really difficult sometimes for the interests of the child to remain paramount.. We've all got a role in it and it's really confusing...I would like the detail about who does what... (F5 – adopted person)

  In contrast, a small number of participants did not agree that government agencies should be named so the law could accommodate potential unknown and future public sector changes

  Don't go and name a particular government department, because it may not exist in that shape or form in 20 years... (F6 – adopted person)

- Include te Tiriti inclusiveness and tribal representation in decision making.

  There needs to be made room for Māori entities or some kind of tribal representative in that decision making whether it's in the court or in a social worker level for Māori children. (F2 – adoptive parent)

Adoption support from Oranga Tamariki: Some participants agreed that all adoptive applicants should be required to engage with Oranga Tamariki before making an application to the Court, and that it was just as important that:

- Oranga Tamariki workforce capacity and resources were in place to adequately deal with applications in a timely manner

  I'd be a bit concerned about timeframes. It takes about a year and a half to be approved to be an adoptive parent through OT... I think it's good principle, I'm just hoping OT would actually have the resources to deal with that efficiently. (F3 – adopted person)

  Many participants highlighted significant workforce capacity and capability limitations for adopted people within Oranga Tamariki.

  Having a dedicated social worker for the child - yes, and that it shouldn't be Oranga Tamariki. Sorry, but it shouldn't be... (F6 – adopted person)

  Not just any old person who's stretched and overworked and has 46 cases live at the moment just for themselves. (F8 -adopted person)

- Adoption support should extend beyond the process for making an application. Many adopted people commonly noted it was important for government to maintain oversight of the life-long adoption journey, and request that adoptive parents participate in regular check-ins.

  If we have to have adoption…people's suitability to be adopters…all this assessment, then it's like a sign-off and then that's it. It's like, good luck child with that ride…There needs to be check-ins all along, all through that child's life…If that makes the people who adopted them feel uncomfortable, they probably shouldn't be doing that. If they can't handle that this is somebody else's baby and you're providing care for them, then sorry, you automatically don't qualify. (F8 – adopted person)

2.6. How are adoption decisions made?

Suitability of adoptive parents: Some participants highlighted that assessing the suitability of adoptive parents should be conducted by several specialists and professionals and not just social workers.

> *If there is going to be an assessment of human beings, that shouldn't come down to maybe an individual. It should be maybe even beyond two individuals who are assessing someone's appropriateness to care for a child to build some robustness into that process so that personality (clash) is eliminated. (F6 – adopted person)*

Social worker reports: Many participants highlighted that adoption law should:

- Remain high level and allow flexibility within policy and regulatory contexts about details to be included in a social worker report – This may help to avoid potential risk of specifying outdated and irrelevant legal requirements in the future

  You shouldn't be writing into legislation what the report should include. If we look back as to what was thought to be important 40/50 years ago [it is not anymore], we might not get [another] law change for another 50/60 years, the views could change. I'd rather see a general overall statement. (F3 – adopted person/adoptive parent)

- Mandate the establishment of a lived experience panel to review social worker reports and assess lifelong decisions made on behalf of the child.

  These are significant decisions, lifelong decisions being made, you always want something peer reviewed. So having social workers, sorry, people, you do a nice job, but we don't know what your pressures are on that. Give it to somebody else. Just let's take a look. (F6 – adopted person)

Access to other information: Some participants noted a need for adoption law to ring-fence adequate funding, resource and workforce capacity and capability for cultural, psychiatric and psychological assessments and reports.

I was interested in access to other information. If you're going to get a psychologist report, you're talking $2,000. Who pays? The court pay for them currently when they order them in the care and protection space. So does that mean there would make money available in legislation to pay for them in the adoption space as well? (F3 – adopted person)

2.7. What is the legal effect of adoption?

Legal effect: Most participants agreed that guardianship responsibilities should be transferred from birth to adoptive parents.

I'm not saying this is perfect, I'm just saying this is the legal effect of adoption they're saying should be changed and that itself will actually do away with the fiction of 'as if born to these people in legal wedlock', and that's a highly significant thing that is being done there and that affects every other aspect of adoption law. So in that respect, I mean, that is the one thing that's really been tackled. (F5 – adopted person)

However, many also emphasised that adequate education and support would be needed to ensure:

- Clear and shared understandings about these legislative changes for birth and adoptive parents

  A lot of people are going to need a lot of support to understand that and to understand what it means...This move to a child having legal belonging in both their adoptive family and their family of origin is going to be difficult for people to actually get their heads around. (F4 – adoptive parent - international)

- The proposed options are not viewed as shared parenting.

  It sounds like the legality in the definitions might need working out...If you make it so that both sets of parents are the legal parents, you're now creating shared parenting, and that's gonna be problematic in practice, not just in law. (F3 – adopted person)

Adopted people's birth certificates: Many participants provided mixed views about the option for adopted people to have two birth certificates. Some participants agreed and saw that this aligned well with inheriting citizenship from birth and adoptive parents.

What I did like hearing was the fact that we could have a birth certificate that has every parent on there. And what I don't think is out of order is to give us access to every parent's legal rights. We are floaters. We don't have any solid grounding. We should be allowed that... (F7 – adopted person)

Others did not agree - *Why do we need two? Why do we need to be 'othered' again? (F8 – adopted person) –* and suggested a need for adoption law to:

- Support a move to providing digital access to information

Personally I don't support two birth certificates...I think we need something more aligned to the digital way in which we now live. (F5 – adopted person)

- Align with the digital model for Birth, Deaths and Marriages (BDM) and provide options for one birth certificate inclusive of bespoke information identified by and for adopted people.

  With respect, I think the department has not been listening to BDM, because BDM are doing everything digitally and they are working on a model where you would go and you would ask for a certificate which contains the information you want...you could have any number of different combinations and that will be up to the person who's certificate it is. So the idea of two certificates...the way it's been put [in the discussion document] is far too rigid...BDM are working on a completely different model which will allow people to get what they want. (F5 – adopted person)

Inheritance: Some participants noted a need for adoption law to:

- Emphasise and reinforce a moral right for adopted people to inherit property from their birth parents

  My birth mother said to me recently, she said, I know legally I have no obligation to give you anything when I die, but morally I do and I think that actually the legislation should reinforce the fact that actually, yep, you're entitled to inherit from your family. (F5 – adopted person)

  Inheritance is an interesting question. How much money did he save by not raising me? I mean, it sounds silly, but his choice was [text deleted] rather than me...There are consequences to his choices. (F6 – adopted person)

- Ensure the protection of an adopted child in the event of adoptive parent's death.

  [Based on the propopsed new legal effect of adoption where birth parents are still legal parents] My [child], if I was to pop my clogs today and [they] inherited what I have [it would go] back to [their] whānau, who [child] doesn't have a connection to...The [proposed new] adoption law at the moment is not clear enough about what happens with that property because [child is under age] so can't own the property...The law needs to be a lot more clear. (F6 – adopted person/adoptive parent)

  In line with this view, two participants also noted a need for adoption law to recognise birth parents on an adopted persons death certificate and consider the care arrangements for an adopted child in the event of the death of an adoptive parent.

  What I think wasn't mentioned around property is also the legal effect of death. So if the adoptive parents die...my child becomes a foster child again, my family are not her family. They're not considered in law that she would go and live with my brother and her cousins, who as far as she's concerned are completely family. She becomes a nobody and that's not actually mentioned in the legal

effect of what would happen to that child if the adoptive parents die. Is the child taken back at, say, 14? (F6 – adoptive parent)

- Acknowledge inheritance of Māori whenua is on a tikanga basis with the Māori Land Court. Participants also noted that despite this:
  - MoJ should have a position/stance on Māori inheritance.
    I don't see why the Ministry of Justice could at least have a position on that or support Māori adopted children that they have a right to the inheritance. (F2 – adoptive parent)
  - Further understanding is needed from an indigenous Māori context.
    As indigenous people of Aotearoa New Zealand, that they need to be able to inherent their tribal inheritance from both sets of parents. If you're going to do citizenship, it seems incredibly unfair and I'm not too sure how to remedy that, of course. The adoption Act severs those ties so I don't know how to reconcile that. (F2 – adoptive parent)

Changing children's names in adoption: Participants provided mixed views about the options for changing an adopted person's surname. Some participants did not agree that a judge and/or adoptive parents should have the right to change a child's name. A robust process and application to the family court was noted as a necessary requirement for any name change to occur.

> *I do not believe adopters should have the ability to change names willy nilly. I would suggest a high bar for name changes, either first name or surname, and that would be application to the family court and nothing less. (F5 – adopted person)*
>
> *That's their name, leave it, it belongs to them. If they hate it later on, they can change it. And certainly not a judge deciding if somebody can have their name taken from them. (F8 – adopted person)*

In contrast, a small number of participants did agree that a judge could consider changing a person's name for safety purposes only – and with input from adopted parents.

> *I was actually advised to change my [child's] first name for her own safety...for the judge to be allowed to decide in the best interests, with everybody's input, I think is quite important. (F6 – adopted person/adoptive parent)*

2.8. What ongoing contact can adopted childen and birth parents have?

Almost all participants agreed that post-adoption contact agreements between adoptive and birth parents and whānau should be introduced. Some participants highlighted that these would ideally be a *meaningful connection* and one participant suggested changing the term 'contact agreement' to 'relationship agreement'.

It's not just about having contact, it's actually about having meaningful connections and relationships. So it might not be shared parenting, but it is certainly a connection between families. From my perspective, that's what we'd be wanting to try and create legally or support, legally, is the ability for people to grow up with that in place. So that your contract agreement that is made would be just as binding as one that had been made if it was a shared parenting agreement so it would have those restrictions in place around, you know, if you're thinking of moving, then you would have to take that into account. That's what we want. (F3 – adopted person)

Many participants also noted that adoption law should:

- Acknowledge that contact agreements will change and require review at different ages and stages – participants considered it important to include the child's voice in a review of contact agreements when the child is of an appropriate age

  If it is, in fact, a child centered approach, then this decision would have to be revisited when the child can weigh in. So making that decision as an infant would actually be a birth parents and parents decision, in which case that is not a child approach. So I don't know how you make decisions on behalf of children, is it science based? Is it faith based? I don't know how you make decisions for children and maybe because of that fact, you simply can't. (F6 – adopted person)

- Recognise that adequate support is needed for birth and adoptive parents to develop a meaningful, realistic and long-term contact agreement

  It needs to be a space where everyone can be on the same level and everyone speaks and everyone hears everyone and you don't stop until that's done...Come away with a document everyone's agreed to. (F8 – adopted person)

- Consider multiple contact agreements with siblings and wider whānau (e.g., grandparents, aunts, uncles) in situations where birth parents may initially be reluctant to commit to an agreement

  In my experience contact plans are often between immediate whānau members, adoptive parents and birth parents and I just know in practice sometimes birth parents find contact really difficult in the first few years and for whatever reasons might not have contact. But that child might have siblings or other whānau members, grandparents, whatever that might look like, and I just wonder if there's some scope to broaden the wording somewhat... (F3 – adopted person)

  In line with this view, and the understanding that some birth parents may not immediately be in a position to confirm post-adoption contact arrangements, participants noted a need for adoption law to allow birth parents an opportunity to amend or augment contact agreements.

  We also do some research that found that the decisions that people made at the start were not the decisions that they would have made later and when reflecting back, they said, I would have done it differently which suggests that those early decisions maybe shouldn't be held in stone.. (F3 – adopted person)

- Clarify that birth parents cannot prevent adoptive families from moving away.

  So it's not like you have to seek permission from the birth parents of anything or legally obliged to ask for the permission? (F2 – adoptive parent)

A small number of participants disagreed that a post-adoption contact agreement should be introduced, and questioned whether evidence existed about contact agreements being in the best interests of a child.

> *Is there actually any evidence that post adoption context does more good than harm for a child..I really question that at the moment. Who is deciding that four times a year minimum is the best?...Risking the rejection of [contact] not happening, which so often happens...forcing that child to go back to something that the [birth] parents wanted them not involved in. (F6 – adoptive parent)*

Enforceability of a contact agreement: Most adopted people noted that birth and adoptive parents should not be able to opt out of a contact agreement.

> *Both birth and adoptive parents can choose to opt in or out of contact relationships doesn't feel great from the adopted perspective...I think if you're signing up to be an adoptive parent, then you don't get to choose whether your child is going to maintain contact. (F3 – adopted person)*

Adopted parents provided mixed views about whether an agreement should be enforced, noting that enforceability:

- Could supported the intended levels of contact they hoped to have with their child's birth parents

  As an adopted parent, I strongly support the direction the bill is taking...We had intended to have a high level of contact with the birth parents of my [child], but they reneged on that for their own reasons...hugely damaging for our [child]...If that would have been in place, we [would be] able to require some level of contact. (F4 – adoptive parent)

- May impose contact on a birth parent and disregard their reasons for adoption.

  The danger of imposing upon [birth parents] the necessity of ongoing contact with their child goes against the decision that they've actually made to forego the parental responsibilities...It may be that in the child's best interests that there not be any contact at all. (F6 – adoptive parent)

Post-adoption culture plans: Some participants agreed that culture plans should be required, but that it was also necessary for adoption law to consider how this could be applied for children with multiple ethnicities.

> *Post adoption culture plans are already required if people are adopting internationally. So why not within Aotearoa New Zealand if it's a different culture? The question is, when it's two or three cultures. (F3 – adopted person)*

Some participants also recommended a need for culture plans to be requried at the start of the adoption process rather than post-adoption, and informed by a social worker, birth parents and adoptive parents.

> *It should be something that should happen when they're actually sizing up the adoptive parents. I think with the support of social workers, representing all the different parties. (F2 – adoptive parent)*

2.9. What support can people access?

Counselling, therapy and support groups - Overall, most participants noted that current opportunities for adoption support are fragmented, inadequate and adoption law should strengthen these for:

Adopted people – almost all participants highlighted a need for:

- Equitable and increased access and choice to specialist support for adopted people, a current directory of registered, qualified, adoption and trauma-informed specialists and a government commitment to developing workforce capacity and capability

  An adopted person is not an adopted person by choice, they find themselves in that situation, there's no end to adoption. It's a lifelong thing that we all become a part of. Both of our parents and ourselves and our children are in this. So we need to have equity and fairness about the ability to access that kind of support service. (F4 – adopted person)

  Yes it's all trauma, but you don't want to go to any old counsellor who deals with trauma. It's no use. You have someone who's had the appropriate training, and probably even the lived experience. (F5 – adopted person)

  Participants also emphasised the importance of gaining access to:

  - Trauma-informed specialists and support at all different transitions and periods along the adoption pathway (e.g., reunion with birth families, discharge of an adoption order etc)

    Reunion with your birth family...It's potentially when you're at another point where you need a whole another level of support...The loss that comes from a positive situation as well and what you have to work through and think about, and to navigate all of those relationships. (F3 – adopted person)

    Even if you're allowed access to records and things, you've still got to deal with the feelings of the people who adopted you and that can be harder than anything. People wait until people die so they don't upset them. (F8 – adopted person)

  - Adoption-informed specialists with an understanding of the severity of harm and trauma experienced by people adopted under the 1955 Act

I'm very mindful that the current discussion document says this is not looking at historic redress...the reality is what your document currently says is, actually, we're not even interested in it...We're the only traumatised group that has to be grateful and thankful for being traumatised. (F5 – adopted person)

- Adoption support that is cognisant of intergenerational impacts and trauma, free, and available at any point in time if/when adopted people and or their family/whānau require access to support. Participants also emphasised that adoption care models and support should not re-traumatise adopted people nor be limited by contractual specifications.

  Currently there's very little support for adopted adults. And we all know the impact of abandonment and relinquishment doesn't just come up when you're a teenager or 21. It's when you're 40 or 50, had children, lose a parent. We're just ignored, there's no funding available for adopted adults. (F3 – adopted person)

  Thinking about who should be able to have access to those services as well…It's intergenerational...I think ensuring there's [accessible support] that's not too restrictive...children of adult adopted persons .our children, our grandchildren who I see carry our shit. (F3 – adopted person)

  I would like to see that they have much better publicly available support services free of charge for a reasonable amount of time, if not as much as they need. (F7 – adopted person)

  I've wasted tens of thousands of dollars on counselling. Wasted. Because they're not adoption competent. (F5 – adopted person)

- Support that is preventative, non-pathologising and pro-active.

  We must stop pathologising the life experience of adopted people. We don't need a diagnosis. We need some help...It's just the life experience that we've had. (F7 - adopted person)

  In line with this view, participants noted a need to broaden current and/or new networks and opportunities for peer support for adopted people.

  I really feel when everyone's talking that it feels like there really is a need adopted persons could voice their experiences and their grief and their pain in this way more often and not just when there is a law reform. (F7 – adopted person)

Adoptive parents – many participants highlighted a need for mandatory counselling and education as part of the adoption process for prospective adoptive parents to understand:

- The trauma of adoption

  I think there is just a woeful lack of education for adopting parents around what they are taking on under stewardship or whatever term we're going to use. And I know I've spoken to adoption social workers who have just done their very best, but it's just give me the baby, give me the baby, give me the baby and they don't want to

understand the potential trauma, no matter how good the situation. (F5 – adopted person)

- How to deal with confronting and sensitive questions when adopted children develop and start to question their identity

  Support group include positive parenting course for me. Because one day my [child] said, why birth mother didn't contact...How to answer those difficult questions. (F6 – adoptive parent)

- Child and teenage development – and how some behaviours may reflect adolescence rather than an adopted persons psyche and worldview.

  I think parents don't realise that it's just normal teenage stuff still sometimes. Not displaying everything, oh they're adopted so they're acting like this. That's where I think, for the counselling of the parents, if it can be made available to make them aware that it's not just because the child is adopted, it can be a normal family where you can get kids that suddenly go off on drugs or whatever. So it doesn't necessarily have to be because they're adopted. (F1 – adoptive parent – international)

Adoptive parents also valued the establishment of a peer support network and opportunities to engage with each other.

I love the thought of a support group kind of thing. For us, we kind of missed out on like a plunket group. So we just were like, we've got a child and we don't kind of have any parental friends. But to have other families that you can build connection with who are kind of in the same boat, facing some of the same challenges, I could see some real value in that. The onus shouldn't be on us to set up a Facebook page and to facilitate it and admin it. It shouldn't fall on the family to do yet another job on that. (F6 – adoptive parent)

Birth parents – some participants highlighted a need for mandatory counselling and an education requirement for birth parents to make informed decision before placing child up for adoption:

People are potentially in a traumatic situation, they're in crisis, so how do you propose some sort of mandatory counseling before you get to make that decision? They might make a different decision based on whether they've had some information about maternal separation at birth and what that might mean for their child, or this is what we know about adopted people and what they experienced as they're older and it might change their views. (F3 – adopted person)

We don't take pups of their mothers until they're eight weeks old...It should be something like six months of pastoral, physical, practical support of the natural parents to have that child in their wider family being educated about the decision they are looking at making and a substantial period of time where that child is still cared for and maybe the adopting parents are part of that equation. (F5 – adopted person)

Education (before and after adoption) – Overall, participants acknowledged a need for education about adoption and it's impacts for:

- All support services and workforces that engage in the adoption space – participants highlighted a need for health, legal representatives, social services and education providers to be upskilled and updated on new adoption laws and adoption-informed practices:

  Our clinicians are horribly under educated when it comes to adoption experiences. So often psychiatric or psychological or even medical are not well informed...There's value in rolling out education to go with [new law changes] we have so few clinicians who can address [adopted people's] needs. (F3 – adopted person)

  I'm a trained [health professional], I never even got adoption spoken about...and I work in trauma. So there are so many health professionals that probably don't even understand anything about adoption or surrogacy or anything else to do with little children...I am incredibly concerned as a healthcare provider. (F5 – adopted person)

- Prospective adoptive parents and parents who are considering adopting out their children:

  I think we're trying to create definitive legislation around what is social, cultural aspects, familial and relationship aspects, as opposed to legal aspects of family. And I mean, I completely agree, the best practice here and in every country that has adoption, has found that open relationships...or the fact that a child has access to the answers that he or she needs at the stage and the life that they're asking those questions and has contact with birth family with whakapapa is essential, but how we make that into a legal relationship? I can't answer that. (F3 – adopted person)

- The general public – participants noted that Australia's public apology increased public awareness and understanding about the experiences of adopted people

  I personally think the general public could be educated, but they're obviously not our mandate. (F3 – adopted person)

  I think the 2013 apology in Australia went a long way in terms of education of historical beliefs around adoption, and moving more into how we're operating now. So that was a step. I'm not sure whether that's a consideration here in Aotearoa, but it was a good public understanding. (F3 – adopted person)

2.10. Who can access adoption information and when?

Access to adoption information: All participants agreed that access to adoption information for adopted people was a basic human right and accessibility should be made faster and easier. In line with this view, participants highlighted a need to eliminate bureaucratic challenges and barriers to information and ensure easy access for all including adopted people residing overseas.

We should have basic human rights to know what happened, to have a birth story, to have a birth record. (F1 – adopted person)

It's got to be blanket, everyone has everything available to them all of the time from the minute they're born...have all your medical records, know who all of your people are, and keep your goddam name. (F8- adopted person)

All participants generally supported all options provided in the discussion document and also noted it as critical that access to adoption information was:

- A simple and easy process that all government departments also had a clear understanding about

  This whole access thing means we have to actively do something...[our information should come with us]...wherever [we] go in life, [we] don't have to figure out a government department or bereaucracy, [we] don't have to go through the emotions of upsetting the adopted parents, or doing it is secret or getting turned away if somebody in an office stuffs up and feeling like an annoyance (F8 – adopted person)

- Available from birth and at any point throughout an adopted person's life

  If we're putting the child's best interests as paramount, then they should have access to that information all of their life, not sealed, available to them when they want it, provided to them for their entire life. (F5 – adopted person)

  I felt like under the current framework, there shouldn't be a need that as a teenager you should be searching, you should have that information from birth... there shouldn't be a, I'm 16 and I have no idea who I am. Which doesn't feel okay ever. (F3 – adopted person)

- Available to people adopted under the 1955 Act

  I was heartened when [MOJ] said a little bit about that with the suggestions going forward, around access to information, no secrecy, all the records been available for adopted people, is potentially going to be the same for us for past adoption, because I think it's incongruent for that not to be alongside. It doesn't make any sense that this group of people are born into this era and they have access and those of us born into a different one don't. I don't think we should operate like that here. (F7 – adopted person)

- Open and transparent – participants strongly emphasised how important access to information with no redactions is to one's identity and insights for prohibited relationships. Redactions were described as being based on a Privacy Act established to manage credit card fraud and an *excuse for not sharing information*.

  These children, going forward, need to have all this information and when they ask for it, with no redactions at all. Please no redactions...These children need to know who [they are]...and [their] proper identity and [their] ancestry. (F5 - adoptee)

When I was 15, it was suggested 'you should only date people who come from other countries just in case – that's not fair. (F8 – adopted person)

- Free and void of financial barriers.

  As the person finding the information, have to pay the lot. Wherever you go it's cost, cost, cost, cost, cost, cost, cost, cost. So that is a barrier to a lot of people who want to come in and find about themselves. (F7 – adopted person)

Some participants also highlighted a need for adoption law to:

- Detail and define the term 'adoption information' and ensure inclusivity of all health files, court files and departmental files about an individual, including their original birth certificate.

  You haven't spelt out what adoption information means you have to deduce it by hunting around. There's the social work record, the Social Work report, there's the court report. All of those things are mentioned here and there. But adoption information has to be spelled out as to what it contains. (F5 – adopted person)

  Access to hospital and medical records was specifically noted as critical for adopted children/people and adoptive parents to access.

  I don't know if everyone gets dementia at 60 in my father's family...or if there's prevalence towards a certain cancer or anything like that...I don't know, my [child] doesn't know... I'll just have to wait and see...Who benefits from us not knowing every single thing about ourselves? (F8 – adopted person)

  We went back to try and find information about birth parents, birth mother in particular, around fetal alcohol and exposure to drugs, there just wasn't any. The information on that was minimised. There was no record of the social worker even having told us that on file. There was no support access, no pediatrician assessments, no access to any of that kind of information that would have helped us as adoptive parents put the right supports in place for our [child] going forward. (F4 – adoptive parent)

- Provide clarity about who else may have access to adoption information

  If it's a child, is there going to be an expectation that the adoptive parent have some information, know about it, have to buy into it, have to approve it, has to be part of it? That I can see as problematic...if there's some nuance to that idea that access is going to be openly available, is how I interpreted that. (F3 – adopted person)

  A small number of participants noted that the discussion document did not mention access to information for birth parents (aside from access to original birth certificates which is already in place). These participants considered it important for birth parents to be able to access the same adoption information as adopted people.

  There is nothing saying that the birth parents should also have a copy of the Social Work report and the court record and all of that. Everything that an adopted person has access to, birth parents should have access to it too. And I know that currently

they are supposed to choose the parents, which is completely, of course, absent from the legislation, it's purely practice, there's no legislative backing to it at all , and also that they're still going to be legal parents and all that. But connections get lost they still have to be able to come back and access that. (F5 – adopted person)

- Ensure a child under 18 years has adequate support available to access and understand their information.

  You might want to look at, if the persons under 18, that there's a child advocate alongside them helping them to go through that information...navigate those relationships...You wouldn't want to restrict that young person having access to that information, or that it would need to be agreed by the adoptive parent so I think there'll be some ways to support that process...It's not just open it up entirely because I think we create new problems if we do that. (F3 – adopted person)

Information protected by vetoes: Most participants agreed vetoes should be removed, and the options proposed to keep and or change the current veto system were neither aspirational nor in the best interests of the child.

[The discussion document is] suggesting two alternatives to a veto, but nothing about taking the veto off completely. (F5)

I was actually quite shocked as well, when I read through the notes that they were considering keeping the vetoes as they are. One of the options was to keep it or to have it slowly taken out over two years. That's sort of the opposite of child centric, keeping it. (F6 – adopted person)

A small number of participants suggested that the only veto that should exist should be if an adopted person chooses to veto their records.

If this truly is legislation that's about us, the adopted person, the only veto that should remain is if the adopted person chooses to have a veto on their records. Because ultimately, they may decide I don't want to be connected with my original family, they have a right to that. That's the only veto that should remain in my view (F5 – adoptee).

2.11. What if things go wrong?

Discharging an adoption order: Many participants considered the options for discharging an adoption order:

- Placed a significant life-changing decision and responsibility on 16/17-year-olds – particularly in light of developing cognition and brain development throughout one's teenage years. Some participants recommended a need to increase the age at which a young person can apply on their own behalf to between 18-25 years and ensure adequate support is provided (see section 3.11)

The only thing that really jumped out at me was the thought that a 16 or 17 year old was wise enough to make a decision. I thought, Oh, really, have you been a parent?. Maybe when someone's 25, there should be an option, but I don't think a 16/17 year old should have the wisdom to make this decision... we need a wider perspective, not putting such a serious responsibility on to 16/17 year olds. (F3 adopted person/adoptive parent)

- Should not be an option for adopted parents without a requirement for them to access adequate support and processes before any variation occurred

  For adoptive parents, having the ability to discharge an adoption is not a good thing, I think as well, because these breakdowns can be avoided with the right support, in my opinion...historically, the support hasn't been there...and that is why there have been many relationship breakdowns. But if we're looking at this from a different angle, it can be avoided [with adequate] education and support. (F3 adopted person/adoptive parent)

  In line with this view, participants did not agree with broadening the parameters for adopted parents to reverse an adoption order.

  The other issue that comes up, but it hasn't even been mentioned, is your great widening of the provision for the adoptive parents to reject the adoption, to reverse the adoption...Guardianship under this new regime, would revert to the birth parents, whether they want it to or not...To have adoptive parents able to just say, Oh, well, thanks very much but we don't want [this child], I think you're going to have to think very, very seriously about that provision. (F5 – adopted person)

- Should eliminate all barriers and discriminatory practices for adopted adults to annul or reverse their adoption.

  When it comes to adopted adults who may choose to annul or reverse their adoption, my view here is pretty simple, don't make us jump through hoops. What was done to us was unnatural, unjust, and if we want it annulled, it should be annulled, no questions asked. I never consented to my adoption and I do not give my consent retrospectively. I want my adoption discharged and I don't believe I should have to jump through hoops or get anyone's permission, the natural parents, adoptive parents, in order to do this. (F5 – adopted person)

  I'm just about to start that process and I have to go to the Attorney General, I have to hire lawyers, I have to go to court and prove why material misrepresentation. Now, most people can't do that because they need to be able to show their files, they can't get their files because they can't prove a reason that is special enough, as the judge said to me, so we've got a system that is set up to actively discriminate against a very large cohort of Aotearoa New Zealanders. (F1 – adopted person)

2.12. What happens in overseas and intercountry adoptions?

Some participants acknowledged *there would always be a need for inter-country adoption* but the proposed options for overseas and intercountry adoptions were limited and insufficient, require a more detailed explanation of current law to identify the benefits of proposed options for law reform, and should include the same considerations as domestic adoptions.

> *When it comes to overseas and intercountry adoption...this is an incredibly complicated area...That's the one thing I hardly can say anything about because you've been so loose about it, and you basically said, we don't know what we should do, you tell us...that is an abdication of responsibility in your area. (F5 – adopted person)*

> *A lot of the things that I think are really good with your view on domestic adoptions feels like it's really lacking when it comes to the inter country ones. (F4 – adopted person – international)*

Some participants also noted a need for adoption law to:

- Review and refine the Hague Convention process: A small number of participants did not consider the Hague Convention provided an adequate safeguard for adopted children/people and supported that a new process be established for intercountry adoptions. Participants primarily noted a risk for fraudulent overseas activity and paperwork and less government monitoring and support for the adopted child coming into Aotearoa New Zealand.

  > *My experience with the Hague Convention is that you can't just rely on it to safeguard the interests of adopted people...fraudulent paperwork is a way to circumvent the whole convention...We can't really know for sure when we're in one country, what's going on in a different one. (F4 – adopted person – international)*

  > *That's actually a risk in itself, that you have children who are being placed with people who've been approved as adoptive parents...the law recognises them as if they were born into that family...and doesn't have capacity to respond to that [if things go wrong]. (F4 – adpoptive parent – international)*

  Other participants supported the Hague Convention inter-country adoption standards. For some, this was on the proviso of a review and refinement of Sections 3 and 17.

  > *I fully agree with the need to bring family adoptions into line with the Hague Convention...in the child's best interests...for the purposes of creating a new family...that needs to be brought into line [to avoid] people just trying to get around immigration through adoption. (F3 – adopted person/adoptive parent)*

  > *We've got one standard here with Hague Convention, where authorised people are facilitating this. It's an exchange of information about the applicants and the child*

and there's counseling involved. So that's the kind of standard that you want for an intercountry adoption. (F5 – adopted person)

One participant noted that the option for every proposed adoption in Aotearoa New Zealand to go to Oranga Tamariki first was a positive change under Section 3 – however, a review was recommended to assess overseas representation and connections to Aotearoa New Zealand. Section 17 was considered loose and in need of extensive review and refinement.

Section 3, which is like anybody, anywhere in the world can lodge an application in the Aotearoa New Zealand family court for any kid anywhere in the world...Our court is going to be considering making an adoption order which will give the child Aotearoa New Zealand citizenship without any conversation with the representatives in the overseas country. And then there isn't any specificity about what would anybody's overseas attachment to Aotearoa New Zealand be to be able to use our court? What's the connection here? (F5 – adopted person)

Section 17, just accepting any adoption that isn't from a Hague Convention country that meets those tiny three little criteria...really needs a serious look at. (F5 – adopted person)

- Specify that robust family court processes are needed to assess adoptions formalised overseas – the proposed administrative process was not considered acceptable

  There's a second proposal in the discussion document, which says that we should recognise overseas adoptions by an administrative process. I am totally opposed to this...This will result in Aotearoa New Zealand becoming a clearinghouse for predatory adopters who have gone overseas and had an adoption formalised in another country where there's no checks and balances...So what I want is for overseas adoptions to be recognised, you will need to apply to the family court and there will need to be significant scrutiny and it will need to be a family court judge who does that, not an administrative process. (F5 – adopted person)

- Require and enforce a pre- and post-adoption culture plan from the country of birth and Aotearoa New Zealand

  For me, I think it's extremely important that they know their culture and it's not law when we place kids in different countries that they make them aware of the cultural background. And I think it would be fantastic if it's somehow implemented that they have to retain their culture or be taught about their cultural or aware their culture. (F1 – adoptive parent – international)

- Support adoptive parents to establish a peer support group, network and share experiences and learning opportunities.

  The adoptive parents are really important…I always also organise groups on Facebook (for overseas adoptive parents) they all talk and they share their thoughts and they help each other and they get together as a group maybe once every couple of years…it's fantastic for the kids because they know that there's other kids in the

same situation as them, and these parents are much more engaged in the culture. (F1 – adoptive parent – international)

A lot of the parents they didn't really know too much about how to teach their children about the culture growing up...As a child, I always had so many questions about where I had come from and I always wanted to know. I was always very proud of where I come from, but also very proud of my home here in Aotearoa New Zealand growing up. So I think identity is a huge thing for a lot of adopted persons in the community that I've come across. (F4 – adopted person)

A small number of participants advocated the need to consider banning intercountry adoption *– it is child trafficking*

So the proposals around inter country adoption I was most concerned about. My point of view is intercountry adoption is straightforward child trafficking, it ought to be a crime...There's laws against child trafficking, inter country adoption should be banned. (F5 – adopted person)

3. Participants' views about further options for adoption law reform that should be considered

All participants commonly highlighted additional contextual factors perceived to be of significant relevance to adoption law reform.

3.1. Consider alternative care options

Many adopted people perceived that overall, the proposed options for law reform were less aspirational than they hoped and:

- Advocated the abolition of adoption in light of the extensive trauma and harm adopted people have and continue to endure throughout their lives

  I think adoption should be abolished and the reason for that is because adoption is intrinsically harmful to children, intrinsically exploitative, intrinsically traumatising. (F5 – adopted person)

  Participants considered that the discussion document disregarded a need to demonstrate consensus across Aotearoa New Zealand about whether adoption should still exist. Adoption law reform and the government's stance on adoption was described as *fait accompli*:

  In the discussion document it says, we agree that adoption should still exist, there should be adoption. However, in the summary of feedback, the Family Court judges submission says that it's not needed, that adoption isn't necessary anymore and that it could go under the Care of Children's Act (a declaration of permanent parenting as part of the continuum of care). (F5 – adopted person)

- Noted that adoption was often *presented as the benchmark* and considered this a *long-term solution to a short-term problem*:

  …parents placing their children for adoption, that's a very complex situation…If you don't have family preservation at the very heart of any legislation, then the reasons for people relinquishing their children are often financial or lack of support or single parents, and what you're talking about here is a long term solution to a short term problem and the permanency that goes around that is incredibly limiting when it doesn't need to be. There are many mechanisms we could use. (F1 – adopted person)

  Participants emphasised the importance of ensuring family preservation was at the forefront of any legislative requirements, funding and belief systems.

  Family preservation, if that was our entire belief system as our beginning point, it would alter the paradigm around adoption…A person who cannot be cared for in their family of origin should not have to pay for the family's dysfunction with the loss of their identity. (F1 – adopted person)

- Advocated that the government consider alternative legislative care options such as:
    - Enduring guardianship – to ensure *permanence for an adopted person without the legal restrictions that they then have to maintain for all their lives. (F1 – adoptee)*

      Principles of guardianship…that's really putting the child at the centre. They're still themselves, they don't change to another person and then spend their life trying to figure out which of the people they are. (F8 – adopted person)

      It is important to note adoptive parents provided contrasting views to adopted people and highlighted the importance of being legally recognised as parents rather than guardians.

      I remember vividly the day that we went to the Family Court and the adoption order was granted. I was surprised by how significant that was for us as parents to be recognised in the eyes of the law as full legal parents, not as guardians...I would be discouraged greatly if all of the proposals were all around, 'oh, we don't actually want to allow there to be a way to have the full legal title of a parent'. (F7 – adoptive parent)
    - A stewardship model:

      In order for a child to be placed with others, I would suggest under a stewardship model rather than adoption because I'm opposed to the language of adoption and believe adoption, the word, should be removed from the new law...If you have demonstrated that you left no stone unturned, then the stewardship model kicks in and other people have the day to day rights and responsibilities for caring for the child. (F5 – adopted person)
    - A parental care order:

      I have felt like a fraud for a long time with adoption, because it was a step-parent adoption...Knowing how much pain I feel with my adoption...if there has to be adoption, which I don't believe there should be adoption, I believe there should be a parental care order, or whatever it's called, if a child cannot live with their family. (F7 – adopted person)

Some adopted parents explicitly disagreed with the abolition of adoption and noted limitations with fostering. In contrast to the views expressed by adopted people, these participants perceived adoption as providing permanence for children and families.

> *Children…know [foster care] it's not permanent, they know that it might end. There's not full security to know that maybe it won't work out and they'll be sent to another foster home. So for my experience, I would say that clear cut adoption gives the kids more security. (F1 – adoptive parent – international)*

3.2. Use relevant, strengths-based and non-discriminatory language

Many adopted people noted a need to for adoption law to review the language utilised throughout the discussion document to ensure that various terms and definitions:

- *Reflect a fresh start for new legislation* and do not carry perceived negative connotations from previous practices and policies:

  I don't see there is any opportunity to consider a different term other than adoption...I think that we do definitely need something that is sort of enduring care for children...It just seems to me that the word adopted is so tainted in practices of the past. I feel like it needs to be retired in the same way that the legislation is retired. It should not be associated and be synonymous with that era in our history because of the damage that it's caused. (F7 – adopted person)

- Are relevant and up-to-date:

  *It says that the purpose of adoption will be **to create** a stable, enduring and loving family relationship, and I think that phrase in itself is quite last century. It really is about **providing** that stable family environment for a child. So just being really cautious and careful around how language is used. (F4 – adopted person)*

- Do not stigmatise and discriminate against adopted people:

  I have a problem with the word adoption. I'm not a cat from the SPCA. It's a very harsh word...There must be a word that isn't adoption. It's a nasty, vile word that we, I presume, have all been bullied about. Because it makes me different to you. It makes me different. (F5 – adopted person)

- Resonate with lived experiences and acknowldge that there is ***no after-adoption.***

  For us there is no after an adoption, for our children there's no after an adoption...Through the new legislation, we need to just be mindful of the terminology and just be mindful that when we are talking about it, that this is a lifelong process for adopted people. So it has the impacts for their lives, for their children's lives, for their grandchildren's lives. (F4 – adopted person)

3.3. Recognise different child development ages and stages

Many adopted people emphasised that the discussion document and law reform require a clear definition for the term 'child-centred'.

> *We have no definition of what child-centred actually means. I mean, a child is a child for a very short time. (F1 – adopted person)*

Although elements of a child-centred focus were evident throughout different sections of the discussion document – participants generally noted that although

adoption law must be child-centred, it must also accomodate, recognise and be responsive to the needs of the person as they develop into adulthood.

> *The acknowledgement that children grow up and that whatever we're doing for the child might not be the best thing to do for the person when they're an adult. It doesn't need to be worded that way, but you understand the principle. (F3 – adopted person)*

> *What you're talking about is a child who is requiring a certain thing or a young person, you're not talking about what happens when they grow up, when they become older, because there's no aging out of adoption (F1 – adopted person)*

3.4. Prioritise issues of importance that are identified by adopted people

Many adopted people emphasised the importance of acknowleding that adoption is an ongoing lived experience that most adopted people did not choose. It was considered critical that legislation provides adopted people with choices that were previously taken from them.

> *The act of adoption, it's not a one-off thing, it's an ongoing, every day experience. It doesn't happen once; it happens every single day of an adopted person's life. And if there's no position to age out or to make a choice for identity, then what kind of legislation is that, that controls people? (F1 – adopted person)*

Participants emphasised a need to meaningfully draft/amend the law by prioritising issues of importance to adopted people.

> *...Inheriting property is probably right down the bottom of the list of importance to adopted people. There are much more important issues in terms of identity...and knowing who your family and whānau are...I'd like to see legislation drafted in a really meaningful way and some of the really important issues dealt with first. (F4 - adopted person)*

> *Property isn't anything, it's connection [and] knowing where you come from. It's knowing your tūrangwaewae, it's knowing your maunga. That's the taonga, the important thing that you're cut off from, and having to make a bullshit pepeha. So it's inheriting pepeha, it's inheriting whakapapa that's you, that's come down from all those people. That's the inheritance that we don't have. (F8 – adopted person)*

3.5. Establish adequate and standardised data collection and monitoring processes

Adopted people overwhelmingly agreed that current data collection and monitoring for adopted people was significantly lacking and inadequate.

> *...we have no mechanisms to collect information. So for instance, doctors never ask about adoption status. They do constantly ask about hereditary illnesses and then you are required to say you're adopted, so you don't know, they pass right over that.*

The coroner doesn't collect adoption statistics in terms of suicide. There is no collection of self-harm statistics in relation to adoption. The Census does not look at adoption in any way. It doesn't look at outcomes for adopted people, education levels of adopted people. We don't know. (F1 – adopted person)

Participants strongly highlighted a need for legislation to:

- Support the establishment of robust, adequate and standardised measures, indicators and data collection practices for adopted people across all government agencies and routinely collected datasets

  I think what's really critical is actually data collection. If you don't collect the data, if you don't know what's happening, then you don't know how to respond, you don't know where the issues are, you don't know where the problems are, and especially identifying where there are problems or even if there are problems. If you aren't collecting data, you don't know. (F4 – adoptive parent – international)

- Enforce and monitor the collection of accurate and standardised information for all adopted people from birth, to eliminate historical practices and the potential to falsify documentation, records and information.

  Data collection, making sure that it's consistent. That there are metadata elements that are identified so that we know exactly what information should and must be provided. (F4 – adopted person)

  When I got my files, the lawyers had written that I was completely healthy and sound and fit for adoption, which was a lie. When I was born, I had a heart condition...because of my mom and step-parent's religion, I was denied lifesaving surgery because of a blood transfusion. (F7 -adopted person)

  The first thing we need to deal with is there's a whole bunch of birth certificates[3] from my era that are inaccurate and are not holding proper information. The fact that we had the Crown at that point and we had a system at that point that was going to take even a birth certificate and not fill it out correctly, to me, what the hell's that thinking? (F6 – adopted person)

3.6. Commit to adoption law reform and Royal Commission recommendations for adopted people

All adopted people supported Adoption Law Reform and the Abuse in Care - Royal Commission of Inquiry but noted that the undertaking of two major pieces of work at the same time has required a lot of time, emotional strength and courage from many adopted people.

[3] This latter view exemplifies historical risks for adopted peoples' birth certificates to contain incorrect information and should be read in conjunction with participants overall views about adopted people's birth certificates in section 3.7.

I'm with you on the exhaustion bit and how hard it is...especially with two things happening at once here in Aotearoa New Zealand. It's like living and breathing adoption every single second of every day. (F7 – adopted person)

Participants strongly recommended a need to ensure:

- Consistent and clear communications for adopted people about:
  - How to input into the Royal Commission process

    We've talked about the abuse in care, why are we lumped into that process? [the harm for adopted people is] the result of state sanction trauma...I don't think [adopted peoples'] voices are going to be heard [by the Royal Commission]...please don't let it be too late for us to have a voice around that aspect. (F5 -adopted person)

    There is a comms issue...because when the Royal Commission started up, I rang them immediately and said, I want to speak to you, and they said, we're not interested in you because you're adopted, it's nothing to do with adoption...The comms around the whole issue is problematic. (F5 – adopted person)

  - Recommendations informed by the Royal Commission Inquiry

    It says that the discussion document doesn't have options that directly address the harms of past adoption practice and that past adoption practice is being considered by the Royal Commission...The government will consider recommendations made by the Royal Commission on past adoption practice following its report back. So I don't know how you're going to get that information out to adopted people and other people impacted, but I'd really like to see something happen in this process, as a result of these two discussion documents, about how that information is going to be communicated to people, because that's really important for people that have been impacted by adoption. (F5 – adopted person)

- Government commitment to action the Royal Commission recommendations and prioritise future actions that specifically address the harm and trauma previously inflicted on adopted people

  I'm very aware that what we're talking about is discussion documents and potential policy changes which have to go through legislation and goodness only knows. We all know what happens in select committees and things, and I guess that's what really concerns me about the Royal Commission of Inquiry only mak[ing] recommendations. Governments then have to look at them and decide whether they're going to accept them. There's a long history of Royal Commissions and Commission's of Inquiry in this country where recommendations have been made and nothing's ever been done about it. (F7 – adopted person)

- Recognition that beauraucratic challenges contribute to the re-traumatisation of adopted people – such as:

- Adding the trauma of adoption to the scope of the Royal Commission Inquiry – some participants advocated a need for a separate Inquiry for adopted people

  About the Royal Commission, if I'm sitting on the other side, being one of those poor people in care, I'd be quite insulted to know, now we're going to just add trauma of adoption to this one, we're going to extend the terms of reference. That is such a Wellington, parliamentary bureaucratic, my world process...I'd say to...the Royal Commission, think about that because I think that one needs to be deal dealt with in its own right. (F7 – adopted person)

  It doesn't just damage me, it damages my children and eventually it'll damage my grandchildren, and it's just not on. It's time something was done about it, and that's why I was so angry when I read your discussion document and saw it had all just been hit off to the Royal Commission. (F7 – adopted person)

- Limited action and commitment from successive governments to address the harm and trauma inflicted on people adopted under the 1955 Act.

  Now this has sat around and gone and been battered everywhere in Parliament by all the politicians because it doesn't score votes. But they've got to recognise, someone's got to get in amongst them and get all the parties lined up and say, look, let's just get it through. What thinking's been put there? (F7 - adopted person)

  We're a small group and we're really easy to sweep under the carpet and we've been swept under the carpet for decades, and that's why we're all so hurt. (F7 – adopted person)

It is important to note that these experiences of re-traumatisation occur in conjunction with those experienced through engagement with various support services and government agencies (see section 3.9).

- Formal acknowledgement of the harm, trauma and pain experienced by people adopted under the 1955 Act through a formal government apology.

  Just an observation as an adopted person, we've got to stop saying sorry. We say sorry for the most trivial things...We are sorry and we don't even know what we're sorry for...because we've been put into a situation which was none of our making and now we have to live with it for the rest of our lives. And everyone who is associated with us also has to live with it and manage their way around us. And there's not a lot out there to assist us to live our life. There isn't. And it hurts. It's painful and it sucks...It needs to change. It's not good enough. And I also want to see an apology. (F5 – adopted person)

  I think that the discussion document doesn't have any options to deal with past practices.Personally I want to see an apology to adopted people and people impacted by adoption. (F7 – adopted person)

3.7. Consider options informed by adopted people to manage, co-ordinate and contribute to all aspects of the adoption journey

You can't make decisions for people like us if you don't have us at the table. (F8 – adopted person)

Adopted people commonly emphasised the importance of including the voice and insights of those with lived experience throughout all phases of the adoption process moving forward. Participants recommended the need for adoption law to consider a range of proposed options purposed to ensure that lived experience is integrated into an authentic child-focused adoption system:

- Establish a lived experience working group, non-government agency or panel to work with MoJ to review and advise on law reform adoption unit policies and processes

  I think there's a huge piece there around, not only do we not have adoption informed and adoption experienced people as part of this policy development, but there's such a lack of adoption informed counselors and support people around. (F5 – adopted person)

- Establish a lived experience working group, non-government agency or panel to to provide specialist oversight and advice about the multi-faceted support requirements for adopted people and all those involved in one's adoption journey (see section 2.9)

  There's quite a lot of us who'd be prepared to do that...what's the best thing for this little person?...That would hold the child's safety more strongly than a professional doing it as part of their job. (F8 – adopted person)

  I mean at the moment, [education and awareness raising is] just happening privately in small ways. [Lived experience professional] is now going to conferences of psychologists and social workers and trying to educate, but pays to go to these things...There's just tiny pockets of people trying to do stuff. So I've got a big question about what's going to be the centralised or the functional setup to support all of this need? Who's going to be managing that? And who's going to be funding that? Where's the training for all professionals that touch adopted people in this country? (F5 – adopted person)

- Establish a lived experience working group, non-government agency or panel to work alongside social workers and lawyers appointed to represent a child.

  Anyone can front up and look good. Like going to a job interview and you've got your best shirt on and you're smiling and nodding. And we know from experience that people have turned out to be horrible people and really messed up children's lives. And even the nice ones, it's still complicated. It's just left to professional discretion, like again, professional specialists...'Hi, I'm a lawyer and I work in an office, I have decided as a professional, these people should get a child'...What would be really

great is if, throughout this, there were adult adopted persons to advise and support to just keep that up there. (F8 – adopted person)

Many participants highlighted that the working group, non-government agency or panel should be:

- Lead by people with lived adoption experience.

  I think it needs to be external to government. I think it needs to be external to any accredited agencies that work to support adoptions. I think it needs to be centralised. And it's a huge ask, but it needs to encompass all of the people who are inside, around part of, bump up against adoption in one form or another. So I'm talking about uncles, cousins, children, grandchildren, partners of people that are adopted. (F4 – adopted person)

- Informed by a cost-benefit analysis – participants identified a need to reallocate funding to the areas of most need for adopted people .

  The cost to the country in people who have challenges working, challenges in relationships, challenges financially, challenges with mental health, challenges with physical health. Like these were all caused by that [adoption trauma] and they cost a lot of money...It's a cost saving thing [to] just take a little bit of that money and put it into the awesome advisory group of strength and power and goodness. (F8 – adopted person)

DOCUMENT 12

From: Frost, Kerryn
To: Ravindra, Aisiri
Subject: FW: Timelines for adoption and surrogacy
Date: Thursday, 19 January 2023 11:39:05 am

From: s9(2)(a)
Sent: Thursday, 15 September 2022 3:54 pm
To: Marjoribanks, Jennie <Jennie.Marjoribanks@justice.govt.nz>; Large, Zoe <Zoe.Large@justice.govt.nz>; McDonald, Helen <Helen.McDonald@justice.govt.nz>; Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: s9(2)(a)
Subject: RE: Timelines for adoption and surrogacy

Thanks!

s9(2)(a)

Private Secretary – Justice | Office of Hon Kiri Allan
s9(2)(a)
Parliament Buildings | Wellington 6160 | New Zealand

Authorised by Hon Kiri Allan MP, Parliament Buildings, Wellington 6011

From: Marjoribanks, Jennie [mailto:Jennie.Marjoribanks@justice.govt.nz]
Sent: Thursday, 15 September 2022 3:49 PM
To: s9(2)(a) Large, Zoe <Zoe.Large@justice.govt.nz>; McDonald, Helen <Helen.McDonald@justice.govt.nz>; Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: s9(2)(a)
Subject: RE: Timelines for adoption and surrogacy

Hi

s9(2)(f)(iv)

Hope that makes sense – happy to discuss!
Jennie

From: s9(2)(a)
Sent: Thursday, 15 September 2022 3:30 pm
To: Large, Zoe <Zoe.Large@justice.govt.nz>; McDonald, Helen <Helen.McDonald@justice.govt.nz>; Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: s9(2)(a) Marjoribanks, Jennie <Jennie.Marjoribanks@justice.govt.nz>
Subject: RE: Timelines for adoption and surrogacy

Hey Zoe

Sorry another question

s9(2)(f)(iv)

s9(
2)
(a)

Private Secretary – Justice | Office of Hon Kiri Allan
s9(2)(a)
Parliament Buildings | Wellington 6160 | New Zealand

Authorised by Hon Kiri Allan MP, Parliament Buildings, Wellington 6011

From: Large, Zoe [mailto:Zoe.Large@justice.govt.nz]
Sent: Thursday, 15 September 2022 3:15 PM
To: s9(2)(a) McDonald, Helen <Helen.McDonald@justice.govt.nz>; Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: s9(2)(a) Marjoribanks, Jennie <Jennie.Marjoribanks@justice.govt.nz>
Subject: RE: Timelines for adoption and surrogacy

Hi

Out of scope

Thanks,
Zoe

Zoë Large
Senior Policy Advisor | Surrogacy Law Reform
Access to Justice
Ministry of Justice | Tāhū o te Ture
L6 Justice Centre Building | 19 Aitken Street
DX Box SX10088 | Wellington
zoe.large@justice.govt.nz | s9(2)(a) |justice.govt.nz

From: s9(2)(a)
Sent: Thursday, 15 September 2022 2:46 pm
To: Large, Zoe <Zoe.Large@justice.govt.nz>; McDonald, Helen <Helen.McDonald@justice.govt.nz>;

Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: s9(2)(a) Marjoribanks, Jennie <Jennie.Marjoribanks@justice.govt.nz>
Subject: RE: Timelines for adoption and surrogacy

Out of scope

s9(2)(a)
Private Secretary – Justice | Office of Hon Kiri Allan
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Parliament Buildings | Wellington 6160 | New Zealand

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From: Large, Zoe [mailto:Zoe.Large@justice.govt.nz]
Sent: Thursday, 15 September 2022 2:41 PM
To: s9(2)(a) McDonald, Helen <Helen.McDonald@justice.govt.nz>; Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>
Cc: s9(2)(a) Marjoribanks, Jennie <Jennie.Marjoribanks@justice.govt.nz>
Subject: RE: Timelines for adoption and surrogacy

Kia ora

Find below the information requested, let us know if you require anything further.

Out of scope

Out of scope

Out of scope

Adoption

The table below outlines the latest adoption timeframes based on the Minister's work programme discussion. We'll be asking the Minister to confirm these timeframes in our briefing at the end of the month.

Milestone	Timing
s9(2)(f)(iv)	

Thanks,

Zoë Large
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From: s9(2)(a)
Sent: Thursday, 15 September 2022 11:37 am
To: McDonald, Helen <Helen.McDonald@justice.govt.nz>; Stephen-Smith, Naomi <Naomi.Stephen-Smith@justice.govt.nz>; Frost, Kerryn <Kerryn.Frost@justice.govt.nz>; Large, Zoe <Zoe.Large@justice.govt.nz>
Cc: s9(2)(a) Marjoribanks, Jennie

<Jennie.Marjoribanks@justice.govt.nz>
Subject: Timelines for adoption and surrogacy

Hi team

PMO are asking us for the latest timing for both adoption and surrogacy work.

Could you possibly send through timelines for the adoption and surrogacy reforms? Would be good to get this by **3pm today** if possible.

Re surrogacy – can we please also include when is the govt response due and what is the timeline on Tamati Coffey's Bill?

Thank you

s9(2)(a)
Private Secretary – Justice | Office of Hon Kiri Allan
s9(2)(a)
Parliament Buildings | Wellington 6160 | New Zealand

Authorised by Hon Kiri Allan MP, Parliament Buildings, Wellington 6011

DOCUMENT 13

Hon Kiri Allan, Minister of Justice

Adoption law reform: Publishing summary of engagements,

Date	28 September 2022	**File reference**	

Action sought	**Timeframe**
Agree to the recommendations in this paper.	12 October 2022

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**(a/h)**	**First contact**
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Kerryn Frost	Senior Policy Advisor, Family Law	04 466 0384	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

IN CONFIDENCE

Purpose

1. This briefing reports back on the adoption law reform's second round of engagement. It summarises the outcome of the wānanga whāngai, and seeks your views on next steps for work on whāngai. Finally, it seeks your confirmation of the updated timeframes for adoption law reform.

Executive summary

2. The Ministry of Justice ('the Ministry') ran a second round of engagement on adoption law reform from June until August. During engagement, the Ministry received over 140 written submissions and attended over 20 in-person and online engagements with interested groups. Interested groups included people impacted by adoption, young, adopted people, Māori, Samoan communities, and other Pacific communities.

3. We heard general support for the options set out in the discussion document *A new adoption system for Aotearoa New Zealand* and we are using feedback received to refine our policy proposals. Key themes from our engagement included:

   3.1. the importance of identity, information, openness and transparency;

   3.2. support for children's best interests being at the centre of the reform;

   3.3. support for the Crown's te Tiriti o Waitangi obligations to be reflected in the new adoption system;

   3.4. that Pacific communities want to be able to continue their adoption practices; and

   3.5. comments on past adoption practice and some calls for there to be no more adoptions.

4. The Ministry also supported a wānanga whāngai as part of the engagement. The general view at the wānanga was that any further work on whāngai should progress separately to adoption reform and concluded with a proposal to hold further wānanga.

5. We seek your views on next steps for whāngai, including whether you would like to progress any further work. s9(2)(f)(iv)

6. During engagement we also heard feedback on s 19 of the Adoption Act 1955 ('the Adoption Act'). Section 19 specifically prevents whāngai from having legal effect, and we heard it creates barriers to practising tikanga, is discriminatory, and is a breach of te Tiriti o Waitangi. We recommend that you confirm the previous Minister of Justice's decision to repeal s 19 of the Adoption Act.

7. Finally, we seek your confirmation of the adoption law reform timeframes, s9(2)(f)(iv)

s9(2)(f)(iv)

The second round of public and targeted engagement is now complete

8. In June, you approved the public release of the discussion document, *A new adoption system for Aotearoa New Zealand* ('the discussion document'). Public and targeted engagement ran from 20 June to 7 August 2022.

9. We received over 140 written submissions, including 14 from key organisations such as the Human Rights Commission, Te Kāhui Ture o Aotearoa/the New Zealand Law Society, Aotearoa New Zealand Association of Social Workers and the Office of the Privacy Commissioner. Almost three quarters of those who made written submissions identified themselves as people who had been adopted, with eight of those adopted people identifying as Māori and one identifying as a Pacific person. Around a third identified themselves as having a professional interest in adoption.

10. In addition to written submissions, we commissioned over 20 other in-person and online engagements, where we engaged with over 200 people. A summary of those engagements is provided below:

    10.1. **With people impacted by adoption** – We contracted Malatest International to run a series of focus groups for people with adoption experiences or who were otherwise interested in adoption. It convened seven focus groups using a mix of online and in-person engagements in Auckland, Wellington and Christchurch. A total of 51 people attended those focus groups. Participants included adopted people, adoptive parents, birth and adoptive family and whānau.

    10.2. **Young, adopted people** – We re-contracted MartinJenkins to perform in-depth interviews with young, adopted people.[1] MartinJenkins interviewed 10 adopted people aged between 16 – 32 years old.

    10.3. **Māori** – We partnered with the National Iwi Chairs Forum Pou Tikanga ('Pou Tikanga') to deliver community workshops with interested whānau, hapū and iwi Māori. Five workshops were held as a mix of in-person and online hui. A total of 23 people attended the workshops. We also met with Waikato Tainui and Ngāi Tahu. Pou Tikanga and Ināia Tonu Nei convened a wānanga in Wellington, also attended by Ministry officials, to discuss issues relating to whāngai. Fifty people attended the wānanga.

    10.4. **Samoan communities** – We re-contracted MartinJenkins to deliver a series of talanoa with Samoan communities within New Zealand. Four talanoa were held in Auckland, Wellington and Christchurch, with some follow up interviews held with Wellington-based community members due to a low number of attendees at the talanoa. Overall, 57 people attended the in-person talanoa, with eight people interviewed via video call.

[1] In 2021, MartinJenkins interviewed 30 people with adoption experiences as part of the first round of adoption law reform engagement.

10.5. **Other Pacific communities** – We partnered with the Pacific Connections team at the Ministry of Foreign Affairs and Trade and the Ministry for Pacific Peoples to deliver three talanoa with Tonga, Tuvalu and Kiribati communities in New Zealand. Overall, we met with 24 people through these talanoa. A talanoa with Fijian community members was also planned but was cancelled due to low interest.

We heard general support for the direction of reform

11. In general, we heard support for the overall approach of the reform and for the options set out in the discussion document across all our engagements. While some people suggested changes could be made to some options and Pacific communities raised concerns about the possible changes to intercountry adoptions, it appeared that the options we proposed to form the basis of the new adoption system remain sound. We are using the feedback we received during engagement to assist with refining our final policy proposals.

12. Key themes across our engagements included:

12.1. **The importance of identity, information, openness and transparency**. Across our engagements, we heard about the importance of identity, providing unrestricted access to information, and openness and transparency in the adoption process. The large majority of people we engaged with agreed with the principles for adoption, which refer to preserving culture, identity and providing for openness and transparency, and many talked about preserving the child's identity. In engagements with Māori, we heard it is important for tamariki to maintain connections to their culture and whakapapa. Over 80% of people we heard from supported adopted people being able to automatically access information on their birth record without restrictions.

12.2. **Support for children's best interests being at the centre of the reform.** Upholding the best interests of the child was raised as a key consideration across many of the options for the new adoption system. A majority of people we engaged with agreed with setting out a purpose for adoption, centred around the child's best interests. Similarly, a majority agreed with the principles for adoption, in particular, that the long-term well-being and best interests of the child or young person are the first and paramount consideration. In our engagements with Māori and Pacific communities, there was some discussion about the tension between protecting a child's individual rights and being mindful of collective cultural values.

12.3. **Support for the Crown's Te Tiriti o Waitangi obligations to be reflected in the new adoption system.** We heard particularly strong support from Māori for the Crown's obligations under te Tiriti to be incorporated into a new adoption system. Some Māori thought the options for new adoption processes were a recognition of the Crown's Tiriti obligations for tamariki Māori. For example, the principles relating to the recognition of whanaungatanga responsibilities and protection of whakapapa, the ability for family and whānau to participate in adoption decisions, and the proposed new legal effect of adoption which would maintain adopted people's connections to their birth family. Around a quarter of those who addressed inclusion of a te Tiriti principle in written submissions, and others we engaged with, supported a specific principle to give effect to the Crown's obligations under te Tiriti. The majority of submitters who commented, believed a Tiriti principle was essential because it would

reflect the Crown's commitment to te Tiriti and align with other pieces of domestic legislation and the other principles suggested for adoption.

12.4. **Pacific communities want to be able to continue their adoption practices.** Participants in the Samoan and other Pacific engagements clearly signalled that intercountry adoptions from the Pacific to New Zealand should continue. We heard that adoption is a common cultural practice for these communities, with children often being adopted in Samoa and other Pacific nations by New Zealand residents and brought to live here.[2] We heard support for ensuring there are appropriate safeguards in the adoption process to protect children's well-being, including better vetting of adoptive parents from appropriate cultural perspectives. We also heard significant concern from those communities that the proposed options may restrict the ability for them to practice their adoption customs and remove the adoption pathway that has been used to bring children to New Zealand. We will continue to liaise with the Ministry for Pacific Peoples and Ministry of Foreign Affairs and Trade on these issues as we finalise policy proposals.

12.5. **Past adoption practice and some calls for there to be no more adoptions.** Many people talked about their concerns about past adoption practice and their own experiences of adoption. Some people questioned whether aspects of the new adoption system would apply retrospectively to adoptions made under the Adoption Act 1955. In particular, this was raised in relation to options covering access to information and support (e.g. counselling), changing the legal effect of adoption and providing two birth certificates for adopted people. A small number of people strongly advocated for adoption as a practice to be discontinued and for consideration of the harms of, and redress for, past practice to form part of the current law reform process.

13. We are currently preparing a formal summary of submissions. We will look to publicly release the summary later this year and will seek your agreement beforehand.

There are options for progressing work relating to whāngai

14. As part of our support for a Māori-led approach to engagement on whāngai, we supported Pou Tikanga and Ināia Tonu Nei to co-host a wānanga whāngai on 10 August. We took this approach in response to feedback from iwi and Māori that whāngai is not the same as adoption and therefore should be considered as a separate issue from adoption. We believed that a wānanga specifically about whāngai would inform decisions on whether whāngai should stay within the scope of the adoption reform.

15. To help determine whether whāngai should remain in scope, the wānanga was intended to achieve three key outcomes:

15.1. greater insight into Māori views about whāngai, atawhai and adoption law;

15.2. a statement about the attendees' aspirations for whāngai and atawhai; and

[2] For instance, in 2020, approximately 820 children adopted overseas were granted citizenship by descent, the majority of whom were from Pacific Island countries. Children adopted overseas may also enter New Zealand on a Dependent Child Category resident visa.

15.3. a high-level action plan to achieve the above statement.

16. There were a range of attendees at the wānanga, including tamariki whāngai, matua whāngai, Māori adoptees, and academics. Your presence at the morning session was well-received by those attending.

The wānanga whāngai and other engagements signalled there are issues with the status quo

17. Attendees at the wānanga noted there are issues with the current law as it expressly prevents whāngai from having legal effect. Section 19 of the Adoption Act says that adoptions according to Māori custom (i.e. whāngai) shall have no force or effect, meaning whāngai arrangements have no legal recognition unless the law expressly provides for it.[3] Matua whāngai described experiencing challenges accessing services (e.g. medical and education) for tamariki whāngai. We also heard at the wānanga and in previous engagements that s 19 breaches te Tiriti, is a barrier to practicing tikanga and is discriminatory.

18. There were mixed views on what the way forward looks like for whāngai in terms of legal recognition, with attendees acknowledging the complexities in this space. However, we heard general agreement that:

18.1. decisions on whāngai should be made by Māori;

18.2. whāngai needs to be viewed and treated as separate to adoption, as adoption is not a Māori system and it would be hard to meaningfully incorporate whāngai within that framework;

18.3. tamariki whāngai need equal and equitable access to services, as adopted children have; and

18.4. there need to be further Māori-led wānanga with whānau, hapū and iwi to understand what whāngai looks like and means in contemporary Aotearoa, before there can be consideration of whether it should be reflected in Pākehā law. Attendees suggested a one-to-three-year timeframe for holding those wānanga.

19. What we heard at the wānanga aligned closely with what we heard during our other engagements with Māori. Some people commented that whāngai is a good example of what adoption should be and the options being considered would move the adoption system closer towards the concept of whāngai. However, some tamariki whāngai noted that they also experienced feelings of loss in a similar way to those who had been adopted.

We are interested in your views on next steps for progressing any further work on whāngai

20. As noted above, the general view at the wānanga was that any further work on whāngai should progress separately to adoption reform. To date, work on whāngai has formed part of the adoption reform project because of s 19 of the Adoption Act. In December 2021, the previous Minister of Justice, Hon Kris Faafoi, agreed that s 19 should be repealed (or not carried over to new adoption legislation) for the reasons set out at paragraph 17. For those

[3] See, for example, s 114A of Te Ture Whenua Māori Act 1993, which expressly provides that section prevails over s 19 of the Adoption Act 1955.

same reasons, we recommend you confirm the former Minister of Justice's decision to repeal s 19 of the Adoption Act as part of the adoption law reform process. Confirming the repeal of s 19 now means our advice to you next year can focus solely on the reform of the adoption system.

21. s9(2)(f)(iv)

s9(2)(f)(iv)

s9(2)(f)(iv), s9(2)(g)(i)

Table 1: Adoption reform milestones

Milestone	Timing
Summary of submissions to Minister	October 2022
Public release of summary of submissions	November 2022
s9(2)(f)(iv)	

25. s9(2)(g)(i)

26. s9(2)(f)(iv)

Following your decisions on this briefing, we will prepare communications material to assist with any queries regarding the timeframes for adoption law reform.

Next steps

27. If you indicate you would like to progress further work on whāngai, in addition to repealing s 19 of the Adoption Act, we will take the steps set out in paragraphs 21.1 and/or 21.2. We will keep you updated on the progress of that work via your weekly report.

28. s9(2)(f)(iv)

29. We will seek your agreement to publicly release a summary of submissions later this year. Officials are available to discuss this advice with you, should you wish.

Recommendations

30. It's recommended that you:

1.	**Note** that the second round of engagement finished on 7 August and that we are now undertaking work to finalise policy proposals;	
2.	**Note** that the previous Minister of Justice agreed to repeal s 19 of the Adoption Act 1955, which prevents whāngai from having legal effect;	
3.	**Agree** to confirm the former Minister of Justice's decision to repeal s 19 as part of the adoption law reform process;	YES / NO
4.	**Indicate** whether you wish to officials to progress any of the following further work on whāngai:	
4.1.	Supporting (including possibly funding) further Māori-led wānanga on whāngai in contemporary New Zealand;	YES / NO
4.2.	Identifying operational barriers and solutions to the recognition of whāngai across government services;	YES / NO
5.	**Agree** to not legislate for whāngai at this time;	YES / NO
6.	s9(2)(f)(iv)	YES / NO
7.	**Note** that officials are available to discuss this advice with you.	

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kiri Allan
Minister of Justice
Date / /

DOCUMENT 14

Hon Kiri Allan, Minister of Justice

Adoption law reform: Public release of summary of engagement

Date	31 October 2022	**File reference**	

Action sought	**Timeframe**
Agree to the public release of the summary report of findings from the 2022 public and targeted engagement on adoption law reform	8 November 2022

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**(a/h)**	**First contact**
Sam Kunowski	General Manager, Courts and Justice Services Policy	04 913 9172	s9(2)(a)	☐
Naomi Stephen-Smith	Policy Manager, Family Law	04 466 0998	s9(2)(a)	☒
Zac Shilston	Policy Advisor, Family Law	04 918 8746	-	☐

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office's comments

IN CONFIDENCE

Purpose

1. This briefing seeks your agreement to publish the summary of the 2022 engagement on adoption law reform.

The second round of public and targeted engagement on adoption law reform is complete

2. In September, we briefed you on the high-level results of public and targeted engagement on the discussion document, *A new adoption system for Aotearoa New Zealand* ("the discussion document'). The engagement period ran from 20 June to 7 August 2022.

3. In that briefing, we noted that:

   3.1. the discussion document received over 140 written submissions, and that targeted engagement (in person or online) was carried out with more than 200 people. Targeted engagement occurred through a combination of direct Ministry-run and contracted engagements with adopted persons (including, specifically, young adopted persons), Māori, Samoan communities and other Pacific communities.

   3.2. we heard general support for the direction of reform and for the options set out in the discussion document across all our engagements. While some people suggested changes could be made to some options, and Pacific communities raised concerns about the possible changes to intercountry adoptions, it appeared that the options we proposed to form the basis of the new adoption system remain sound.

   3.3. we are using the feedback we received during engagement to assist with refining policy proposals.

4. In our September briefing, we signalled that we would seek your approval to publicly release a summary of engagement.

We recommend releasing a summary report of adoption law reform engagement findings

5. The summary of submissions is attached to this briefing (Attachment 1). The summary provides an overview of engagement, outlines key themes we heard, and then details the views we heard on the proposed options and questions in each section of the discussion document.

6. The key themes of the summary report are:

   6.1. The importance of identity, information, openness and transparency.

   6.2. Support for children's best interests being at the centre of the reform.

   6.3. Support for the Crown's Te Tiriti o Waitangi obligations being reflected in the new adoption system.

   6.4. Pacific communities want to be able to continue their adoption practices.

   6.5. The harms of past adoption practice, and some calls for there to be no more adoptions.

7. We seek your agreement to publicly release the summary. Should you agree, we will liaise with your office regarding timing for release.

Releasing the summary of engagement can be coordinated with communications on the ongoing progress of reform

8. In our September briefing we signalled that we were intending to prepare updated communications material for responding to queries from the public and media about reform.

9. There are likely to be questions from those we engaged with, and potentially the media, about the report of what we heard in engagement. In addition, following engagement, those we engaged with and other groups with an interest in adoption reform have a strong interest in and expectation of further reform progress. The release of the engagement summary report is likely to provoke questions about the next steps on the reform and timelines. We have already received enquiries from key stakeholders regarding the outcomes of engagement and the next steps for reform.

10. We have prepared communications material related to the second round of engagement and forward work on reform. This includes draft media questions and answers, lines for public and internal messaging, email communications for those we engaged with, and specific email communications for key stakeholders. We will liaise with your office regarding the use of this material. The communications pack is attached to this briefing (Attachment 2).

Next steps

11. If you agree to release the summary report of engagement findings, we will engage with your office on timeframes for release.

Recommendations

12. It's recommended that you:

1. **Agree** to the public release of the summary report of findings from the 2022 public and targeted engagement on adoption law reform YES / NO

2. **Note** that we have provided your office with communications material on the results of engagement and ongoing reform to accompany public release of the summary report

Naomi Stephen-Smith
Policy Manager, Family Law

APPROVED SEEN NOT AGREED

Hon Kiri Allan
Minister of Justice

Date / /