

**Government Response to
declarations of inconsistency by the Human Rights Review
Tribunal
in
*Adoption Action Incorporated v Attorney-General***

Presented to the House of Representatives

Pursuant to section 92K(2) of the Human Rights Act 1993

Government response to declarations of inconsistency by the Human Rights Review Tribunal in *Adoption Action Incorporated v Attorney-General*

Introduction

1. On 7 March 2016, the Human Rights Review Tribunal (the Tribunal), in *Adoption Action Incorporated v Attorney-General* [2016] NZHRRT 9, declared six provisions of the Adoption Act 1955 and one provision of the Adult Adoption Information Act 1985 to be inconsistent with the right to be free from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.
2. In accordance with section 92K(2) of the Human Rights Act 1993, I draw these declarations to the attention of the House and advise on the Government's response to them. The Tribunal declared:

"We declare the following provisions of the Adoption Act are inconsistent with the right to freedom from discrimination affirmed by s 19 of the New Zealand Bill of Rights Act 1990:

Section 3(2)

Section 4(1)(a)

Section 4(2)

Section 7(2)(b)

Section 7(3)(b)

Section 8(1)(b).

We declare the following provisions of the Adult Adoption Information Act 1985 inconsistent with the right to freedom from discrimination affirmed by s 19 of the New Zealand Bill of Rights Act 1990:

Section 4(1)".

Government response

4. The Government notes the Tribunal's findings in *Adoption Action Incorporated v Attorney-General*.
5. The Government does not agree with the Tribunal's findings that the following two provisions are inconsistent with the right to freedom from discrimination affirmed by s 19 of the New Zealand Bill of Rights Act 1990:
 - 5.1. section 3(2) of the Adoption Act 1955 which provides that a joint adoption order must be made in favour of "two spouses", and
 - 5.2. section 7(2)(b) of the Adoption Act which requires the spouse of a sole applicant for an adoption order to consent to any such order being made when the couple are living together.

6. The Tribunal found that “spouse” excludes civil union couples and same-sex de facto couples for the purposes of section 3(2) of the Adoption Act. A Family Court decision released subsequent to the hearing, but prior to the decision in this proceeding, held de facto partners in a same-sex relationship fall within the definition of “spouse”¹. Further, in 2010, the High Court held partners in an opposite sex de facto relationship fell within the definition of “spouse”². The Government is aware of further decisions in the Family Court subsequently applying this finding in granting joint adoption orders in favour of de facto opposite-sex couples.³
7. Current practice by MSD recognises same-sex de facto couples as legitimate adoptive parents by continuing to place both civil union and de facto couples in the adoption pool. It is for MSD and, ultimately, the Courts to continue to apply the Adoption Act in a way that reflects modern legal and social contexts, and that, in practice, results in rights-consistent application.
8. The Government continues to have an ambitious justice legislative programme. Reviewing family violence legislation, work progressing on a new Trusts Act and privacy law reform, as well as modernising Courts and Tribunals all contribute to the significant work load for the Government. To undertake reform of the Adoption Act would require significant resource reallocation, and the Government is committed to advancing its current work programme before beginning other substantial reform.
9. In addition, an extensive reform programme is underway to modernise Child, Youth and Family (CYF) and improve the long-term outcomes for vulnerable children. Any review of adoption law should be cognisant of the overhaul of CYF and, accordingly, would need to occur subsequent to that reform.
10. In time, a review of adoption legislation may be beneficial to ensure it is framed in a way that reflects modern society. Currently, the Government is satisfied that in practice, the provisions of the Adoption Act are interpreted in a rights-consistent manner. As a result, the Government considers that the matters identified by the Tribunal do not significantly impact on adoptions, and therefore do not represent a situation that would move the Government to undertake large scale reform of the Adoption Act at the present time.

Hon Amy Adams
Minister of Justice

¹ *Re Pierney* [2015] NZFC 9404, [2016] NZFLR 53.

² *Re Application by AMM and KJO to adopt a child* [2010] NZFLR 629.

³ *Re G* [2015] NZFC 4441.