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Submission to the Ministry of Justice on the Review of adoption laws in Aotearoa New Zealand

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 14 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
2. This submission has been prepared by the NCWNZ Wellington Branch members and the Parliamentary Watch Committee after wider consultation with the membership of NCWNZ.

Introduction

3. NCWNZ welcomes the Ministry of Justice's review of the adoption laws to make sure they meet the needs of Aotearoa New Zealand in 2021 and that reflect its multicultural nature. This submission draws on NCWNZ policy^{1 2} and submissions from several decades ago reflecting the values and attitudes of the time, but what has been consistent is that the wellbeing of children should be paramount.

¹ NCWNZ. 2012. 115 years of resolution. <http://www.ncwnz.org.nz/wp-content/uploads/2013/06/115-years-Register-everything-2.pdf>.

² NCWNZ. 2021. Appendix "D": Resolutions of National Meetings 2011-2020. https://d3n8a8pro7vhmx.cloudfront.net/ncwnz/pages/1025/attachments/original/1622428501/Appendix_D_Resolutions_2011-2020.pdf?1622428501

What is adoption?

4. Our members believe the law should state the purposes of adoption. Adoption should only be considered when it is in the child's best interests as stated in the Children's Convention³ and the Hague Convention⁴.
5. The child centred examples provided are acceptable to our members.

Who is involved in adoption?

6. NCWNZ members believe the current eligibility criteria for who can adopt a child are in need of change as they don't reflect modern family and whānau structures. The focus should be on whether prospective parent(s) are suitable to care for the child on an individual, case-by-case basis.
7. NCWNZ members believe that if grandparent(s) are prepared to look after the full needs of a grandchild, then their wishes to act as legal guardians in terms of foster parents should be prioritised. They should be subject to the same legal rules and regulations as foster parents and receive the same government support.
8. The child should be provided with age and understanding-appropriate information about the adoption, its impact and their rights, and time and support to decide and share their views. Caution should also be taken as to when and how children learn of their birth details.
9. Ensuring that children's rights, well-being, and needs are at the heart of the adoption process is a key focus of adoption reform where a child is defined to mean a person younger than 18 years old. There should also be consideration of the case of adult adoption, for example, where a person needs lifelong care and support; the same principle applies of ensuring the adoptee's rights, well-being and needs.
10. It is agreed that birth parents should have the right to participate in adoption cases once they get to the Court, should they choose to do so, unless there were significant challenges or in extreme cases where this would pose a risk to the child's safety, including emotional safety.
11. However, there must be safeguards in place so that birth parents cannot interfere with the long-term life of the child after the adoption is complete, unless agreed by the adopting parents, and if they have the capacity to do so, the child.

³ United Nations Human Rights. Office of the High Commissioner. 1989, Convention on the Rights of the Child. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁴ The Hague Conference on Private International Law (HCCH). 1993. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

12. The person giving birth should also have time to change their mind after the birth. This is supported by NCWNZ Policy⁵.
13. Members also strongly support the options suggested in the discussion document to allow the wider family and whānau to participate in adoption proceedings, except in extreme cases where this would pose a risk to the child's safety.
14. It is recommended that roles of the Government, the Court, and accredited bodies in the adoption process, should be adequately resourced and consolidated into one body responsible for managing and approving adoption⁶, and regularly reviewing the policies, processes and procedures surrounding adoption.

Culture and adoption

15. NCWNZ members agree with all the suggestions made to ensure that that New Zealand's adoption laws are more culturally inclusive in the adoption process especially regarding children's cultural and language needs. However, if it is not possible to meet their cultural needs, the priority should be that that the child is placed in a safe, stable family and home.
16. The adopting parents should also provide information on their values and intended parenting strategy, so the child can be placed in a home that will help them to reach their full potential.
17. Birth parents should be encouraged to share some health information and medical history, as the child will often grow up to find they experience the same health issues and may seek out details about this from their past.
18. NCWNZ Resolution 1.1.3⁷ recommends that a child may be brought up in the religion of its adopting parents until the child reaches eighteen years of age.
19. Changes do not need to be made to the way adoption law treats customary adoption. The current approach allows cultural practices to continue without government interference. However, information about obtaining legally recognised parental rights and responsibilities should be made readily available, should that be desired.
20. NCWNZ members believe that the names of the birth parents and adopting parent(s) should be shared, and only not shared if any party opts out, making clear that they do not wish to be contacted or known to the child. This is so that, if the child ever chooses to learn more about their origin or make contact with their birth parents, they can access that information more easily.

Whāngai

⁵ NCWNZ. 2012. 115 years of resolution. 1.1.2, 1954.

<https://d3n8a8pro7vhmx.cloudfront.net/ncwnz/pages/1025/attachments/original/1585374688/115-years-Register-everything-2.pdf?1585374688>

⁶ Ibid 1.1.1, 1951; 1.1.2, 1954, and 12.1.2.7, 1975.

⁷ Ibid 1.1.3, 1955.

21. Members support the proposal that whāngai parents should have legally recognised parental rights and responsibilities toward whāngai tamariki. Not having parental rights legally recognised could cause issues in legal or monetary matters. The views of Māori should take precedence on this issue.

Overseas and intercountry adoption

22. New Zealand's overseas adoption laws should consider countries that have adoption laws that follow from the Hague Convention.

23. If the child's country of origin is not Aotearoa New Zealand, but the adopting parents are living in New Zealand, the child's legal status in New Zealand should not be placed in jeopardy.

Impacts of Adoption

24. NCWNZ members believe adoption information and support services, including counselling, should be available to the following groups before, during, and after the adoption:

- Children and adults who have been adopted
- Children born as a result of surrogacy arrangements
- Birth parents
- Adoptive parents
- Birth family and whānau.

It is important that the child is entering a safe and stable home, and that parent(s) are emotionally and materially able to provide a safe and stable home. It is also important the child understands what it means to be adopted.

25. Concern has been expressed on who and how this support will be funded. There is an expectation that the family will be financially capable of paying the fees, but this may not be the case and so government support should be available. Any counselling would ideally be provided by a government-recommended agency and free of charge.

26. We are concerned that the barriers to accessing adoption information are out of step with current adoption practice, which often results in the child, their adoptive family and whānau, and their birth family and whānau having regular contact. Commercial DNA testing and matching is also now more common, meaning biological connections can be discovered outside of the government's birth record-keeping. We therefore support the options suggested in the discussion document.

Surrogacy and the adoption process

27. Any changes made should ensure that the child's best interests and welfare are paramount.

28. More information should be made available on the adoption process, including the relevant suitability assessments, for those thinking about surrogacy arrangements.

29. The outcomes of the Law Commission’s Te Kōpū Whāngai: He Arotake | Review of Surrogacy⁸ should be considered along with this review.
30. The rate of adoptions both internationally and in New Zealand are declining. This in part corresponds with an increase in surrogacy procedures to assist an infertile person to become a parent. There is now an urgency to update New Zealand's adoption and surrogacy laws so that children are not disadvantaged in any way.

Conclusions

31. The Ministry of Justice is to be commended for consulting on the review of the current New Zealand adoption laws to ensure they protect the rights, best interests and welfare of children, and upholds our international human rights obligations. NCWNZ also supports the putting of children at the heart of the new adoption laws respecting the values and needs of multicultural New Zealand.



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⁸ Law Commission. 2021. Te Kōpū Whāngai: He Arotake | Review of Surrogacy.
<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/Law%20Commission%20-%20Review%20of%20Surrogacy%20-%20Issues%20Paper%2047.pdf>