A new adoption system for Aotearoa New Zealand

2022

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Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Organisation description:	The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on **Adoption Law Reform.** NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches. Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website www.nzccss.org.nz.

Tirohanga Whānui | Overview

We support the kaupapa to reform Aotearoa's adoption law. NZCCSS supports an adoption system that first and foremost protects children's rights and best interests, and upholds the mana of all involved.

Taunakitanga | Recommendations

Our main points are:

Item One – Purpose and principles

We support the purpose and principles for adoption suggested in the consultation material acknowledging the transformation these will bring to a new adoption system.

Item Two – Connection to culture

Greater clarification of the definition and priority given to cultural connection within the new adoption system is needed to ensure the child's best interests are paramount.

Item Three – Child participation

More adequate resourcing is required to ensure that the process of adoption is child-centred and safe.

Item Four – Family and whānau involvement
Family and whānau involvement should be encouraged and facilitated but must not undermine the mana of birth parents.

Item Five – Legal effect and access to identity and information

We advocate for an adoption system that upholds children's rights to identity, information and privacy.

Taunakitanga | Recommendations

We raise the following points and recommendations for consideration:

Item One – Purpose and principles

We support the purpose and principles for adoption suggested in the consultation material acknowledging the transformation these will bring to a new adoption system. We commend this approach which clearly centres the child's best interests at the heart of reform and provides guiding principles that recognises the child's long-term wellbeing, participation, connection to culture and protection of whakapapa, the input of family and whānau and openness and transparency.

We believe greater consideration could be given in the application of these principles to the rights and role of birth parents in assessing the best interests of the child above legislative, blanket approaches to adoption processes. We note the potential for these principles to be applied in a manner that elevates the policies and perspectives of government agencies above the wisdom, intuition, and love of a parent for their child and their best interests. We also seek clarity as to how these principles would be prioritised where one may conflict with another. We believe the rights of adopted people to privacy should also be evidenced in the principles alongside the general system principles of openness and transparency.

We commend the reflection of the Crown's responsibilities under Te Tiriti in the proposed system, in particular the upholding of Māori rights under Article 2 to tino rangatiratanga. The rights of Māori to exercise self-determination over taonga, especially tamariki, is of paramount importance to the process of adoption for tamariki Māori. We note the concurrent consultation regarding whāngai and believe that the findings of that consultation will increase understanding of how the wider adoption ecosystem can better enable Te Ao Māori approaches to the care of tamariki.

Recommendation One:
a. Greater consideration for the mana and expertise of birth parents.
b. The inclusion of adopted peoples rights to privacy.

Item Two – Connection to culture

Greater clarification of the definition and priority given to cultural connection within the new adoption system is needed to ensure the child's best interests are paramount.

Among the proposed principles to guide the new adoption system is the *preservation of, and connection to, culture and identity*. We recognise this approach as aligning with the Crown's responsibility under Article 2 of Te Tiriti to protect tino rangatiratanga for Māori and the rights of children under the Convention on the Rights of the Child. We seek clarification of how 'culture' will be defined within the legislation and determined within this process.

Culture can at a basic level be defined as *"the customary beliefs, social forms, and material traits of a racial, religious, or social group"*. (Merriam-Webster, 2022).

We note Article 20.3 of the Convention on the Rights of the Child which states that the following should be considered regarding the placement of children deprived of their family environment:

> *"When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."* (United Nations, 1990)

The discussion within the consultation material suggests that 'cultural' might in its application be interpreted as simply 'ethnicity'. We recommend that this terminology is more clearly defined, and if necessary broadened to ensure cultural consideration encompasses a range of attributes beyond ethnicity.

We are cautious of legislating that it would normally be in the child's best interests to be adopted by people from the same culture, but strongly support policy that prioritises the adoptive parent's ability to ensure the child remains connected to their birth culture(s). Whilst the intention of the proposed system is to alleviate for future adoptees the cultural disconnection expressed by many adopted people under the current law, establishing legislation that encourages a 'blanket approach' to the prioritisation of cultural similarity between a child and its adoptive parents also presents risks. There is a multiplicity of factors that influence both the prospective parent's/parents' suitability for a particular child, and the sense of connection an adopted child establishes with their birth culture.

We are interested to understand how a law that encourages placement within the same culture would be applied in practice, given that it is the birth parents who currently have the right to determine which prospective parents are selected to adopt a child. Would Oranga Tamariki present to the birth parents only those prospective adoptive parents that are a cultural match to the child? Further, would that culture extend across all features of culture (ethnicity, gender, religion / spirituality, age, ability, sexuality, economic status, etc...)? What say would the birth parents have in the extent to which cultural match is prioritised over other factors of relevance for placement? We agree that it could be difficult to determine whether a cross-cultural adoption is in a child's best interests – would birth parents be required to present a case for desiring to select a 'cross-cultural' match above a match of the same culture? As highlighted in the document, this will present challenges where the child is from a range of cultures, if there are limited candidates available within the same culture, or if attitudes to adoption differ within the birth parents' culture. How would certain elements of culture be prioritised – for example, a match in ethnicity vs a match in religion? Again, the wording of this as expressed in the discussion document implies an interpretation of culture as primarily ethnicity.

The proposed process appears to provide the state with greater power in assessing which placement is in the best interests of the child and minimises the role birth parents currently hold in determining with whom a child is placed.

Current Oranga Tamariki guidance relating to placing a child for adoption clearly states:

> *Birth parents choose the whānau or family who will adopt their child.*
>
> *Approved families who wish to adopt provide photos and profiles about themselves and their lifestyles. You'll be given plenty of time to look carefully for a family that feels like the best fit for your child. You're both advised to involve your own family, whānau and friends in this important decision.*

This consultation focuses primarily on the consent of birth parents but not the process with which they will input into the selection of adoptive parents. We seek clarification as to whether the existing level of involvement birth parents have in the selection of adoptive parents will be maintained or adjusted within the new system.

It is assumed that any legislative element which discourages cross-cultural placements would not apply to intercountry or overseas adoptions which, as evidenced in the discussion document, make up most adoptions made and recognised in Aotearoa.

We support the development of a post-adoption cultural plan to support the child's right to culture being upheld in the case of cross-cultural adoptions. We agree that this could be prepared by the adoptive applicants and used to assess the suitability of adoptive parents for a particular child. We suggest however that it would be in the best interests of the child if this process was collaborative and supported, rather than being perceived as a 'test' for the prospective parents. Adoptive parents should be supported in developing a plan, to best ensure their awareness and understanding of the child's potential cultural needs and the resources available to assist them in maintaining the child's connection to culture throughout their childhood. In some cases, birth parents might wish to input their views as to how this might be achieved. We note that a cultural plan is likely to be of use even when a child is placed with adoptive parents of the same culture, noting again that culture is comprised of more than simply ethnicity and that even where there is an ethnic match, there may still be variances in origins, beliefs, custom and language. As highlighted above, we believe clarification of 'culture' is crucial to ensuring cultural plans are holistic. We anticipate complexity in enforcing such plans legally but see value in providing review points throughout a child's life where the child and adoptive parents can review and revise the plan in accordance with the changing needs and interests of the child. This ensures the plan does not remain static and allows for the child's input which may not have occurred at the time of adoption when the original plan is developed.

Recommendation Two: The prioritisation of connection to culture should be applied in an encouraged, rather than legislated, and supported, collaborative manner in order to ensure the best interests of the child.

Item Three – Child participation

More adequate resourcing is required to ensure that the process of adoption is child-centred and safe.

For children to meaningfully participate in the process of adoption there must be sufficient resource to facilitate their safe involvement. We advocate for the provision of a suitably qualified person or people to support and advocate for a child through the adoption process, observing that there are many professionals within New Zealand suitably qualified to work safely with tamariki. We query why this role must be limited to the profession of social work and note that a four-year Bachelors in Social Work contains little training in how to work specifically with tamariki. Similarly, many lawyers have little training in working with children. We advocate for consideration to be given to how individuals with training in other disciplines could be engaged in this process to ensure a more child-centred approach to engaging children in the process.

The discussion document states:

> *We have suggested that a dedicated social worker should be appointed for the child in adoption cases. The social worker should be matched to the child because of their similar*

characteristics, which would mean the child can more easily relate to them. It also means the social worker could adapt to the needs of the child, including any cultural needs.

We view this as a worthy ideal but note the current shortage of social workers which is likely to render such a provision aspirational in many cases. Current workforce shortages are likely to also impact on service provision and the subsequent timeframe for an adoption to be finalised. Again, we query why a broader range of professionals could not be engaged to facilitate children's engagement in adoption processes. We seek clarification as to what efforts will be undertaken to ensure there are sufficient skilled and suitably qualified professionals available to work safely with children within the proposed system.

We support the provision for children's views to be encouraged and recorded in reports to the Court. We also support the provision for children to be able to speak and attend at adoption proceedings. Each of these provisions should be at the child's discretion and applied in practice in a manner that is child-centred and non-coercive. The ability for this to be so is highly reliant on a workforce that is adequately skilled in engaging with children.

We strongly suggest that the voice of children and young people not only be encouraged in the details of their own adoption, but in the current and ongoing formation of the adoption system. If the purpose of adoption law is to uphold the best interests of children, then their views on the process of adoption generally are of continuous concern.

We agree that children shouldn't be required to consent to their adoption noting that this is consistent with their level of decision-making in other aspects of their life. Requiring their consent could place inappropriate pressure on a child. We encourage a system that gives due consideration to the child's views on their adoption and is responsive in the provision of holistic support based on the child's needs in respect to the outcome. We would argue that in most cases the child's perspective be formally recorded. Where there choice is not able to be honoured, that this be formally recorded, in clear and accessible language, that demonstrates that this has been discussed with and explained to the child. To be clear – we believe the child's choice should be followed, and where this is not possible the reasons why are recorded, as well as explained to the child in a formal and accessible way.

We observe that the findings of the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-Based Institutions are likely to provide useful learnings from past practice for how the wider adoption system and social work services could be improved to better support children and young people in the process of adoption. We expect that the learnings from the Inquiry will be given due consideration and integrated into the new system.

Recommendation Three: We strongly recommend increased resourcing to ensure the safety of child participation in adoption processes.

Item Four – Family and whānau involvement

Family and whānau involvement should be encouraged and facilitated but must not undermine the mana of birth parents.

We are supportive of the proposed changes which increase the ability for birth family, whānau, hapū, iwi and family group to be involved in adoption processes but believe this involvement should be encouraged and facilitated but not legislated. We view the ability for increased whānau

involvement as a marked improvement in the Crown's enactment of Te Tiriti for tamariki Māori especially. We agree that there should be opportunities for the views of wider whānau to be reflected in adoption processes and proceedings. As highlighted in the consultation material, such an approach is mana-enhancing for the adoptee's birth whānau and has the potential to add value to the process in providing a wider picture of the child's context. We seek clarification as to how family or whānau would be defined and assume from the consultation material that a marital or genealogical link would be the primary criterion.

Our concern is with respect to the creation of a legislative requirement for this involvement and the subsequent safety and rights of the birth mother or parents who, to exclude family from the process, will need to convince the social worker or judge involved that their inclusion would cause "unwarranted distress". However, the involvement and authority of wider family must be balanced with the rights of birth parent(s) to privacy, safety, and choice. The legislative approach undermines a birth parent's discretion in determining who best to involve in the process, presumes that input from wider family will reflect the best interests of the child and does not adequately allow for the diversity of family dynamics and dysfunctions that exist. There is significant potential for parents to be exposed to conflicting views and unnecessary pressure in an already complex and traumatic time. We query the criteria and consistency with which a social worker (or judge) would assess and determine the likelihood of "unwarranted distress" for birth parent(s) and the additional trauma this process could result in.

A legislated approach presents an interesting balance in the rights of the child, the rights of the birth parent(s) and the rights of their wider family. We contrast this with the rights of parents to make decisions regarding abortion independent of wider family input, and historic legislation which allowed abortion only where medical professionals deemed there was a 'serious danger' to a woman's health in proceeding with a pregnancy. The decision to place a child for adoption is weighty and complex and many parents may desire privacy as they consider and proceed through the process. Legislating involvement of other family members in the process infringes on that privacy, assumes that birth parents don't have their child's best interest at heart and undermines a women's ability to choose the best option for her child.

We observe that in other cases where wider family could claim a genealogical link to a child, but where guardianship is not maintained by a biological parent, such as in surrogacy or gamete donation, there is not a requirement to involve wider biological family in decision making.

We suggest that the birth parent(s) themselves should be the determiner of whether involving wider family and whānau would add value to the process or cause unwarranted distress. We recommend a continued focus on encouraging and facilitating, but not legislating the inclusion of wider family in the adoption process. We disagree that family or whānau should have to consent for an adoption.

We agree that in the case of tamariki Māori a legislative approach requiring consultation with whānau, hapū and iwi has the potential to demonstrate a commitment to rangatiratanga under Article 2 of Te Tiriti, enabling collective decision-making about the care of the next generation.

Recommendation Four:

a. We recommend a continued focus on encouraging and facilitating, but not legislating the inclusion of wider family in the adoption process.

b. We recommend greater consideration for the rights and role of birth parents in determining the best interests of the child.

Item Five – Legal effect and right to identity and information

We advocate for an adoption system that upholds children's rights to identity, information and privacy.

We agree with the options suggested for the new legal effect of adoption, with regards to day-to-day responsibility, legal connection, financial responsibility, citizenship, and guardianship. This approach is reflective of the adoptive parents' relationship and responsibilities to the child, whilst maintaining the child's connection to birth parents.

We agree that the age limit for being adopted should be 18 and the minimum age to adopt should be 18, in line with general legal parameters for childhood and adulthood. Greater consideration for a child's views could be given between the ages of 16-18 where a child is transitioning towards adulthood.

We strongly agree that adopted people should have access to two birth certificates, enabling them both privacy regarding their status as an adoptee, and complete and accurate legal connection to both sets of parents. We agree that adopted people should have automatic access to this information without age restriction or counselling requirements, but that consideration should be given to when a child who is adopted at a young age is made aware of their adoptive status, as part of the post-adoption contact plan. We maintain that counselling should always be made available to adopted people if they seek it. We disagree that original birth records should be open by default for anyone to access as we view this as a breach of an adopted person's privacy.

We agree that a judge should be able to consider changing a child's surname during the adoption process. We believe the ability to change a surname considers the child's wellbeing and sense of identity within their adoptive family. We suggest that the rationale for changing a child's surname and the birth family's views regarding the significance of a surname or given name be provided to the judge. We believe there should be discretion with regards to first name changes during the adoption process. An approach that allows for consideration of first name changes is more flexible to respond to unique circumstances that are in the child's best interests.

We disagree that first name changes should be restricted until the adopted person is able to change their name themselves. One scenario where this would prove problematic is if the adopted child subsequently changed their gender and wished to change their name as part of this transition. If this restriction were in place, they would be prevented from changing their first name, in contrast with non-adopted children who can do so.

We agree that the suitability of prospective parents to adopt should be decided by a judge and informed by suitably qualified professionals. The suitability of a placement should also be decided by a judge and informed by suitably qualified professionals. This includes the ability for the judge to request information about the child via cultural/medical/psychiatric/psychological reports. Again, we note that criteria for suitably qualified professionals may not need to be limited to the profession of social work.

We agree that both parents' consent to an adoption should be required except in the circumstances noted in the consultation material (Item 22) and that their consent shouldn't be dispensed with solely on the grounds of mental or physical capacity in accordance with Human Rights obligations. We support the extension of the period before consent can be given from 12 days to 30 days following the birth of the child recognising the impact the experience of birth may have on this

decision. We agree that the birth parents should be able to take back their consent up until the final adoption order is made, as this is reflective of their legal rights as the child's parents up until the order is finalised. We believe that birth parents should be provided sufficient information about alternative care arrangements to consider and assess these alongside adoption and that a judge could seek evidence of this being undertaken in their consideration of an adoptive placement. Birth parents should have the right to attend and participate in adoption proceedings.

We agree with the introduction of post-adoption contact plans which extend to giving consideration for when a child who is adopted at a young age is given information about their adoptive status and birth family. We believe the development of such plans should be encouraged and supported, with counselling and guidance available to enable both parties to work together to establish a plan that is in the child's best interests. This could be a complex process and plans may need to be revised frequently or unexpectedly. Ongoing support should be available to parents to facilitate this. We are unsure whether contact plans should be enforceable, agreeing that this may present situations that are not in the best interests of the child. Similarly to parenting agreements for where parents separate, these documents need to be dynamic, and focused on the best needs of the child. Access to support, guidance and mediation should be available to alleviate issues relating to contact plans where possible.

We believe that support services such as counselling, support groups, education and reunification services should be available on an ongoing basis for people impacted by adoption, recognising that the impacts of adoption may arise at differing times for those involved. Where there are cultural considerations, support should be available to adoptive parents and adoptees on an ongoing basis to ensure that these connections are maintained to the full extent possible. Education is a critical component of the processes – information provided to birth and adopted parents and wider family members about the process and rights of each party must be done so in a comprehensive, culturally appropriate, and consistent manner. Likewise for the adopted child but with additional regard to the age and stage, emotional and developmental needs of that specific child.

Recommendation Five:

a. **We advocate strongly for children's rights to identity, information, and privacy to be upheld in this system.**
b. **We advocate for ongoing and comprehensive support for people affected by adoption.**

Tohutoro | References

Merriam-Webster Incorporated (2022). *Culture definition & meaning*. https://www.merriam-webster.com/dictionary/culture

United Nations (2 September 1990). *Convention on the Rights of the Child.* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child