

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:

- Highlighted 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 perceived 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 highlighted 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 kaumātua 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)