



**National Council of  
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Government Administration Select Committee on  
Adoption – Options for Reform Law Commission Report 65 -  
Adoption and its Alternatives**

**Introduction**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 46 nationally organised societies. It has 35 branches spread throughout the country to which women of some 150 societies are affiliated. NCWNZ works to improve the quality of life for women, families and society.

NCWNZ welcomed the 1999 Discussion Paper (Preliminary Paper 38) and commended the Law Commission on its thorough and comprehensive treatment of the issues related to adoption. At the time of the submission NCWNZ noted that, due to time frame constraints particularly with the usual December/January hiatus, we were not able to fully canvass membership opinion on these issues, and the many pertinent questions raised in the Discussion Paper. This process normally takes several months. However, we believed that an organisation such as ours has an invaluable contribution to make in this review and reform process. Accordingly, in 2000, NCWNZ canvassed its members on the issues raised and can now make a more detailed response to the Report.

Comments were received from a very wide range of NCWNZ membership - from nationally organised societies (8 responses), branches (21 responses) and individuals (11 responses). Almost without exception these responses indicated that many of our members have, if not a personal experience of adoption, as parent or child, then at least anecdotal evidence of the benefits or disadvantages of the process as it is today.

NCWNZ has had as one of its major focuses throughout its long history the welfare of children, and as early as 1896 we find past resolutions on guardianship and care of children.

In 1951 the remits on adoption emerge and of particular note is a remit in 1955 which asked for:

“The prevention of hasty adoption, allowing the mother six weeks after the birth of the child to make a decision whether she wished the child to be adopted.”

It is noted that nearly 50 years on, the Law Commission is suggesting that there be a longer period after birth before the decision is made.

**GENERAL COMMENTS**

At the time of the submission to the Law Commission on its Discussion Paper NCWNZ supported the Minister of Justice in the recognition that it is high time the 1955 Adoption Act was reviewed, and appropriate changes made. As noted in the Discussion Paper, we live in a different social climate to when the Act was enacted, and the purposes and practice of adoption have changed considerably since that time. It bears repeating that we noted, with some concern, that the



Reviews conducted in 1979, 1987, 1990, and 1993 and consequent recommendations, have not resulted in legislative reform.

NCWNZ policy on adoption may be similarly outdated (other than in respect of the time frame) in its relevance to current membership views and attitudes, as resolutions pertaining to adoption were mostly passed in the early 1950s, and relate specifically to the development of the 1955 Act.

Yet NCWNZ is well aware that there are a number of fundamental issues that create challenges to traditional ideals and affect the society in which we live today. Among these, as noted in the Discussion Paper, are changes to the nuclear family, its definition and reality, the increase in the number of de facto and same-sex relationships, and the impact of new reproductive technologies, all of which have an impact on adoption. In the area of reproductive technologies, in particular, this organisation has done considerable work in canvassing membership opinion, and feel that legislation is urgently required. NCWNZ sees this as an issue that should be considered simultaneously with Adoption Law Reform. Copies of our submissions on this matter could be provided if you are interested. Changes in attitudes as reflected in the increase in number of open adoptions also necessitate changes in the legislation.

Nevertheless, NCWNZ recognises that the child is the most vulnerable part of the adoption triangle, and stresses that any legislative changes should, at all times, have primary regard to the best interests of the child.

## **SPECIFIC COMMENT ON THE LIST OF RECOMMENDATIONS**

### **Chapter 5 - A Care of Children Act**

Although responses from NCWNZ membership were almost unanimously of the view that adoption should be retained as an institution this was as a comparison with the institution of guardianship, which was felt to be a less secure environment, particularly for the child. There was support for an “opening up” of the adoption process and some support for the concept of legal parenthood. NCWNZ would view bringing together the Adoption Act, the Guardianship Act and the CYP&F Act relating to the placement of children in a Care of Children Act as a logical and reasonable solution.

The other recommendations based on Chapter 5, whilst not discussed specifically by the membership, are logical consequences of setting up such an encompassing Act. NCWNZ would, in general terms, support them although would be interested to comment on how they might be defined in terms of an Act when a Bill is brought forward for public submission.

### **Chapter 8 - Guiding Principles**

NCWNZ supports inclusion in a new Act of Guiding Principles. It is considered that this is essential in order to encapsulate Parliament’s intentions and thus to assist interpretation of the Act. Membership was overwhelmingly of the view that the most important principle was the paramountcy of the child, that its welfare, safety, health and interests should be considered before all else. There was also the view widely expressed that the interests of the birth mother and adoptive parent(s) should also be considered, but be secondary to the interests of the child. NCWNZ members suggested other factors that should be considered when determining the “best interests” of the child - these included information on health (child and parents), cultural background, including ethnicity, culture, religion and genealogy.



NCWNZ agrees that a new Act should state the purpose of adoption, and supports the fundamental purpose of adoption as recommended. A view has not been expressed that placement in the extended family, where practicable, is preferable to placement with strangers, although in view of some of the reported (media) recent occurrences with intrafamily placements, this recommendation must be regarded with suspicion. Every child's case is different and should be treated so. We could not support this statement as a Guiding Principle unless further clarification was included.

### **Chapter 9 - Cultural Adoption Practices**

NCWNZ would support all the recommendations made in this Chapter in general terms, although several NCWNZ responses commented that the future of the child should be paramount and this may have to over-ride cultural considerations. There was also comment that different cultures viewed pregnancy outside marriage and sole parenthood with disapproval and that the safety of the birth mother may need to be a consideration. Most NCWNZ responses were strongly of the view that no matter what culture was involved, there should be "one law for all" and that regulations should apply to everyone equally.

### **Chapter 10 - Support Services**

NCWNZ strongly supports the mandatory pre-adoptive and post-adoptive counselling of birth parent(s) and adoptive parent(s) and would agree that adoption consents taken without counselling should be invalid. There was also strong support for counselling for the adopted person as well as other family members who wished it.

NCWNZ would support only not-for-profit organisations being entitled to receive accreditation, and that a Government agency should retain full and tight control of the processes.

NCWNZ would support State funded counselling for adopted persons, birth parents and adoptive parents and strongly supports a cap (financial) being imposed on the number of State funded post-adoptive counselling sessions. There should also be a cap on the cost of the sessions, particularly if private counselling-providers are accredited. However NCWNZ would not support an imposed time limit for post-adoption counselling. There must be flexibility to allow for exceptional circumstances, since issues may arise many years after the initial adoption process.

### **Chapter 13 - Who May Adopt?**

This question received the most comment and was also the most divided in members' responses. There was strong support for married couples only or for heterosexual couples "in a stable relationship" (18 responses). Many branches also reported divided comment from their membership. There was very negative comment from nine responses concerning same sex couples being allowed to adopt and six responses which did not support single parents, although there was some support for a single family member being able to adopt a child of that family.

Many were of the view that the most important consideration was the well being of the child. A number of responses indicated that the birth-mother should be consulted at all times; that there should be stringent requirements for adopting parent(s) and these applied to all cases.

Some comments in support of de facto, single and same sex partners adopting were:

*"The criteria for adoption (parents) should be stability, emotional maturity and appropriate reasons for wanting to adopt. Appropriate would mean the best benefit for the child. Whether married, de*



*facto or same sex adoptive parents...it would need to be proved that they could offer a balanced upbringing for the child, including both male and female influences”.*

*“The important thing is the quality of parenting likely to be offered by the prospective adoptive parents”.*

Notwithstanding some of the responses received, NCWNZ is an organisation that has fought for and supported the Human Rights legislation with strong and consistent policy over many years. This Organisation would not support legislation that discriminated against individuals or groups of people.

#### **Chapter 14 - Consent to an Adoption Application**

There was a variety of responses to the question of an appropriate period after childbirth before consent can be given, but the general consensus was that *“not so soon that informed consent can be properly obtained, and not so late that the adoptive parents do not have the security to properly bond with the child or the child has to remain in foster care.”*

There was a feeling that the law written should be reasonably flexible because different situations often required different actions.

There was much comment on the necessity for adequate consultation and counselling before any decisions were made.

There was general support for six months as the time frame for final consent. NCWNZ would support the recommendations that independent legal advice is taken before signing a consent, and that there be a set charge on the legal aid fund for this purpose.

We would also support the recommendations:

- That regulations be set out in plain English the circumstances in which consent can be withdrawn. We would further recommend that there be translations of these regulations into other key languages extant in New Zealand today.
- That new legislation refers simply to incapacity when setting out grounds for dispensing with the consent of the parent for adoption.
- That there be provision for the court to dispense with the birth father’s consent where a social worker has been unable to confirm his identity or location.
- That where practicable CYFS should facilitate the involvement of birth parents in choosing the adoption placement of the child.
- That a child’s views relating to his or her adoption must be ascertained, where that child is capable of forming his or her own views, those views being given due weight in accordance with the child’s age and maturity.

#### **Chapter 16 - Access to Adoption Information**



There was considerable support for the 'veto' system in place at present as being a protection for both the birth mother and adopting parents.

NCWNZ, in general, supports all of the recommendations in this Chapter. Despite the support for the present veto system, there was also widespread support for the availability of such information as health issues (particularly the possibility of inherited illnesses), social and cultural background, genealogy etc and the child's right to this knowledge.

### **Appendix B - Issues for Further Consideration Assisted Reproductive Technologies**

NCWNZ has commented on the issues of Assisted Reproductive Technologies on a number of occasions. We would be extremely concerned if this 'challenge' became, like the adoption law reform, a series of reports called for with nothing ever done because it is "too hard". NCWNZ consider that the challenges are already upon us and it is imperative that these issues are faced and dealt with along with this recommended Care of Children Act.

Notwithstanding NCWNZ's previous submissions and comment on this topic we will give our membership yet another opportunity to comment on the questions and recommendations raised in this Appendix.

### **Conclusion**

NCWNZ congratulates the Law Commission for its comprehensive and far-reaching "different approach and new framework" with its recommendations to the Minister, and thanks the Government Administration Committee for this further opportunity to comment on proposed reforms to New Zealand's adoption law.

NCWNZ considers that the interest and well being of the child must be paramount. Although the interests of the birth parents and adoptive parent(s) are also important, they should be secondary to those of the child. However NCWNZ urges the Government, in drawing up an Act, to maintain a flexible approach, since there will be cases with exceptional circumstances which may not fit within the guidelines of a rigid law. We also urge the Government to uphold the tenets of the Human Rights Act and ensure that there is no discrimination, as defined in this Act, of any person or group of persons.

NCWNZ would also urge the Government to include in any new Act the issue of Assisted Reproductive Technologies as a matter of priority.

NCWNZ looks forward to the results of this stage of consultation. We would be pleased to appear before the Committee to discuss our submission should this be required.

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**National President**

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**Convener, Family Affairs Standing Committee**