

A new adoption system for Aotearoa New Zealand

Discussion Document



MINISTRY OF
JUSTICE
Tabu o te Ture



**Te Kāwanatanga
o Aotearoa**
New Zealand Government



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Ministry of Justice

The Justice Centre, 19 Aitken Street

DX SX10088, Wellington

New Zealand

T +64 4 918 8800

F +64 4 918 8820

E info@justice.govt.nz

W www.justice.govt.nz

We want to hear from you

We want to hear your views on the options for reform we're considering and any other ideas you might have for what adoption law could look like. Your views will be used to help us come up with final adoption policy and proposals.

How to have your say

This discussion document outlines what we heard in the first round of engagement and the reform options we're considering. Questions are listed throughout the document to help you provide your views.



You can share your views online by completing the submission form available at consultations.justice.govt.nz/adoption-law-reform



You can also write your own submission and email it to adoptionlaw@justice.govt.nz or post it to:



Adoption Law Reform
Ministry of Justice
Free Post 113
PO Box 180
Wellington 6140



If you have any questions about this discussion document or the Adoption Law Reform project, please contact adoptionlaw@justice.govt.nz

Translated and accessible versions of this document, including a Te Reo Māori version, are available on the Adoption Law Reform webpage: www.justice.govt.nz/justice-sector-policy/key-initiatives/adoption-law-reform/

A Regulatory Impact Assessment of the options set out in this discussion document is also available on the Adoption Law Reform webpage.

Closing date to share your views

The closing date for all submissions is **5pm Sunday, 7 August 2022**. Submissions received after this time will be considered on a case-by-case basis.

Targeted engagement with Māori

Many options in this discussion document will be of particular interest to Māori. We are planning targeted engagement with Māori during the engagement period. This is consistent with the Crown's obligations to actively protect tino rangatiratanga under Article 2, and to enable Māori to participate in legislative change under Article 3 of Te Tiriti o Waitangi.

If you identify as Māori and would like to be involved in that engagement, please let us know by contacting us at adoptionlaw@justice.govt.nz.

Privacy and Official Information

Please note that your submission may be subject to a request to Te Tāhū o te Ture - Ministry of Justice for information under the Official Information Act 1982. Personal details can be withheld under the Act, including your name and address. If you do not want any information you provide to be released, please state this clearly and explain why. For example, you may wish for some information to be kept confidential because it is sensitive personal information. Te Tāhū o te Ture - Ministry of Justice will take your views into account when responding to such requests.

The Privacy Act 2020 governs how the Ministry collects, holds, uses, and shares personal information about you and the information you provide. You have the right to be given and correct this personal information.

Te Tāhū o te Ture - Ministry of Justice's full privacy policy can be found here: consultations.justice.govt.nz/privacy_policy/

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Glossary

Term used	Definition
Adopted child or adopted person	We refer to the child, young person or adult who has been adopted as an adopted child or adopted person, depending on their age. We use the term 'adopted person' when discussing life-long impacts of adoption on adopted people.
Adoptive parents	<p>We refer to adoptive parents as the people who become the legal parents of the child once an adoption order has been made.</p> <p>Adoptive applicants are the people who have applied to the Court to become adoptive parents.</p>
Birth mother, birth father or birth parents	<p>We refer to the person who was the child's legal mother at birth as the 'birth mother'. We use the term 'birth father' to refer to the person who was legally or biologically the child's father at birth, noting that sometimes a birth father will not be identified on the child's birth certificate. Collectively, we refer to these people as the 'birth parents'.</p> <p>These terms are used to help distinguish between the two sets of parents involved in adoption. Using the term 'birth mother' isn't intended to reduce the role to her biological function.</p>
The Children's Convention	<p>The Children's Convention is formally known as United Nations Convention on the Rights of the Child. It is an international treaty that sets out the rights of children. New Zealand ratified the Convention in 1993.</p> <p>The Children's Convention says that the best interests of the child is to be the primary consideration in all actions concerning children. This means that what is best for a child should be the first and most important thing to think about when making a decision about a child.</p>
Consent	We use 'consent' to describe a person or people (for example, the birth parents) giving their agreement to an adoption taking place.

Term used	Definition
Discharging an adoption order or discharge	Discharging an adoption order describes the situation where an adoption order is reversed and is no longer in place.
Dispense or dispensing with consent	Dispensing with consent is used to describe situations where a judge decides that a person's consent (or agreement) to an adoption isn't needed.
The Hague Convention	The Hague Convention is formally known as The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. It is an international Convention dealing with international adoption and child trafficking. New Zealand ratified the Convention in 1998.
United Nations Convention on the Rights of People with Disabilities	The United Nations Convention on the Rights of People with Disabilities affirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. New Zealand signed and ratified the Convention in 2008.
The United Nations Declaration on the Rights of Indigenous People	The Convention establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous people. New Zealand endorsed the Convention in 2010, but has not ratified it.
Whakapapa	We refer to whakapapa as the multi-generational kinship relationships that help to describe who the person is in terms of their mātua (parents), and tūpuna (ancestors), from whom they descend. This is the same as the definition in the Oranga Tamariki Act 1989.
Whāngai or atawhai	Tamaiti whāngai or tamaiti atawhai is a Māori customary practice where tamariki are placed in the care of others (generally whānau members), instead of the birth parents.

Introduction

In June 2021 we released a discussion document asking people to share their thoughts about current adoption laws and some ideas for change. We heard from over 270 people and organisations from a range of different backgrounds and experiences. We're very grateful for the time, effort and emotional energy people put into engaging with us. We hope that people can see their feedback reflected in the options set out in this document.

Almost everyone we heard from last year agreed change is needed and that more needs to be done to protect children's (and later, adult adopted people's) rights. People told us that adoption shouldn't cut the legal ties between the adopted person and their birth family. They said it's important for people who have been adopted, their parents, and their wider family and whānau, including their descendants, to be able to access information. Specific feedback we heard has been summarised throughout this document.

This discussion document sets out options we're considering for a new adoption system. The options are forward-looking, and have been developed based on what we heard last year and our own research. Together, the options would create a new adoption system that is child-centred and has practical measures to safeguard child's rights, best interests, and welfare.

The system would place importance on the voices of the children who are affected by adoption decisions and make sure they have support to navigate such a significant time in their lives. It would also clearly set out the rights, powers, duties, and responsibilities of birth parents and adoptive parents. Adoptive parents would have a legal status to support a permanent and enduring parent-child relationship, while the adopted person's legal and whakapapa connections to birth family and whānau would also be preserved.

We've aimed to give effect to our te Tiriti o Waitangi ('te Tiriti') obligations and uphold children's right to culture. The options acknowledge the adopted person's culture and whakapapa as taonga and a key part of their identity, requiring protection under Article 2. The options enable the child to stay connected to their culture after an adoption, and recognise wider family and whānau interests. Allowing people to access adoption information will also help people to preserve their identity.

Some people thought that adoption shouldn't continue. Those people said that adoption causes harm and that it treats children and women as commodities. We hear the concerns those people raised and acknowledge the harm many of them experienced. We still think there is a place for adoption in Aotearoa New Zealand, but that it needs to be safe and respect people's rights. We hope that the options in this document address concerns people had about adoption law and practice.

We want to hear your thoughts on the options in this document. Some options you may agree with; some you may disagree with; and with some you may think we've missed something. We want to hear your views on all of these matters.

The options we outline in this document are not final. The views you share with us will be used to help work out what the final policy proposals should look like. After they are developed, the Government will decide whether to progress reform and what changes to make. This might result in a Bill being introduced to Parliament.

Ngā mihi nui ki a koe - thank you again for sharing your views with us.

What this document doesn't cover

Past adoption practice

This discussion document doesn't have options that directly address the harms of past adoption practice. Past adoption practice is being considered by the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-Based Institutions ('the Royal Commission'). The Royal Commission is due to report back on its findings in 2023.

The Government has decided to wait for the Royal Commission's findings on past adoption practice before making decisions about addressing past harm. The Government will consider recommendations made by the Royal Commission on past adoption practice following its report back.

Whāngai

Tamaiti whāngai or tamaiti atawhai is a Māori customary practice where tamariki are cared for by others (generally whānau members), instead of the birth parents. Last year, we asked if there should be changes to the way the law treats whāngai. This discussion document doesn't have any options relating to whāngai. Instead, the Government will be separately engaging with Māori on whether there should be any changes and, if so, how those changes should be progressed.

If you're interested in being a part of that process, please contact us at adoptionlaw@justice.govt.nz.

Surrogacy

We don't include any options on surrogacy and the adoption process in this discussion document. Te Aka Matua te Ture | The Law Commission has recently released its report, Te Kōpū Whāngai: He Arotake | Review of Surrogacy. The Law Commission suggests that adoption and surrogacy need different legal frameworks because they're different ways of forming families. It recommends new processes be created for establishing legal parenthood in surrogacy arrangements.

The Government will consider the recommendations in that report separately. If a Bill is created as a result, you will have opportunities to comment on the content of it when it reaches Select Committee stage.

How to use this document

This document follows on from the first adoption law reform discussion document released in June 2021. The first document can be found on the Ministry of Justice website here: www.justice.govt.nz/justice-sector-policy/key-initiatives/adoption-law-reform

This document asks for your views on options for a new adoption system. We have split the document up into different parts to help you read the options.

You can choose to read the whole document, or you can choose to only read some parts. You don't need to answer every question if you don't want to, or you don't have a view.

Each part of this document is in the same format:

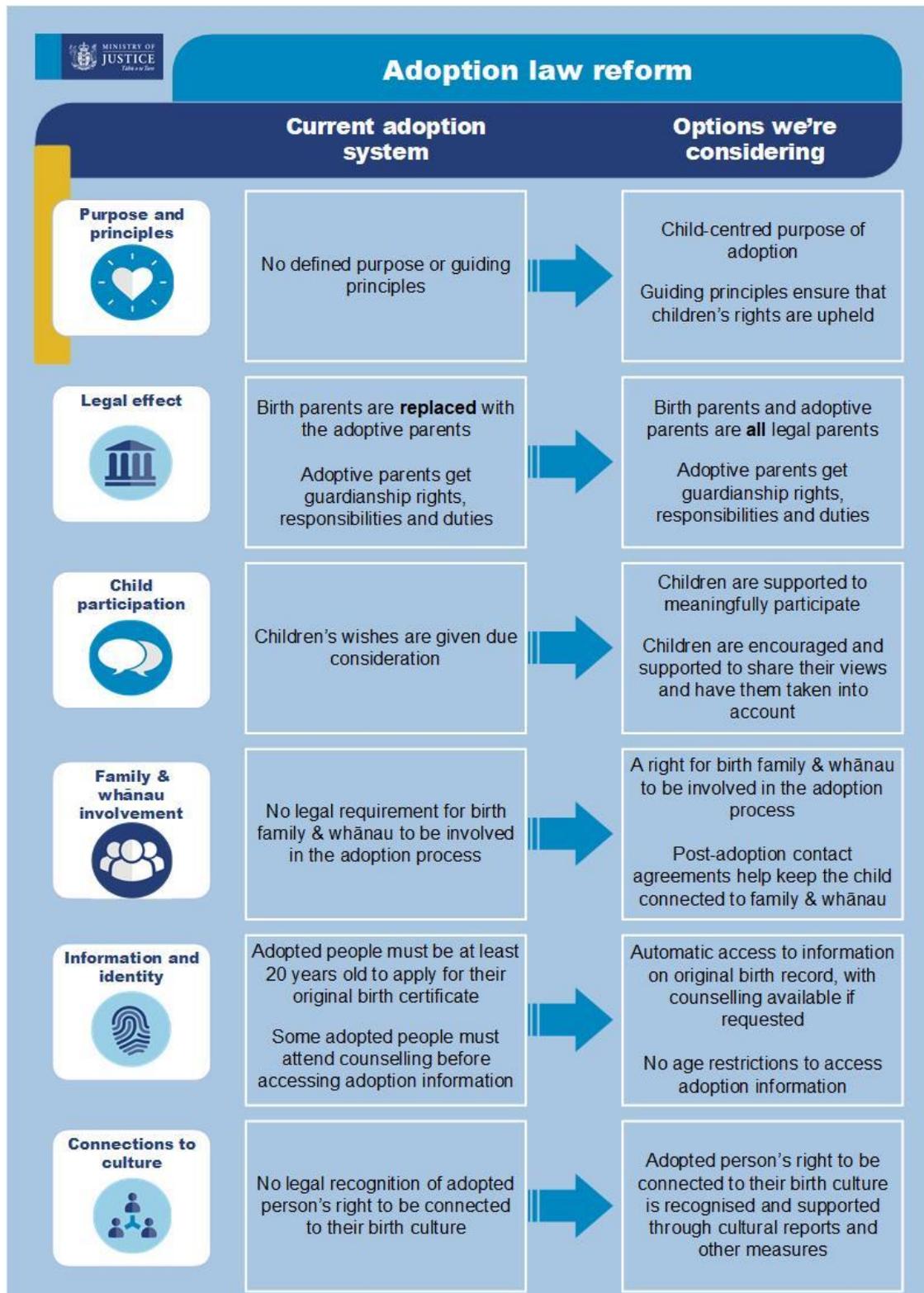
1. Where there are specific options we're considering, it sets them out in blue boxes at the top of each part.
2. It outlines what we heard in the first round of engagement last year. We heard people's views in writing, through an online survey, and by talking to individuals and groups.
3. It briefly outlines why we've included the particular options we're considering. This includes information about other things we have thought about when coming to those options.
4. It asks what you think about the options. Our questions are in the white boxes at the bottom of the part. You can tell us if you agree or disagree with the options. You can also tell us if you have any other ideas that we should think about.
5. Where there aren't specific options we are considering, we provide information on what other options could be considered. In those parts, we also ask you for your thoughts on those other options.

You might want to share your story or opinions on adoption with us. There might be some bits you think we have missed or feel like your feedback doesn't match the questions we've asked. You can also share those thoughts with us if you want to.

If you want a more detailed understanding of how we identified the options we're considering, you can look at the Regulatory Impact Analysis here: www.justice.govt.nz/justice-sector-policy/key-initiatives/adoption-law-reform.

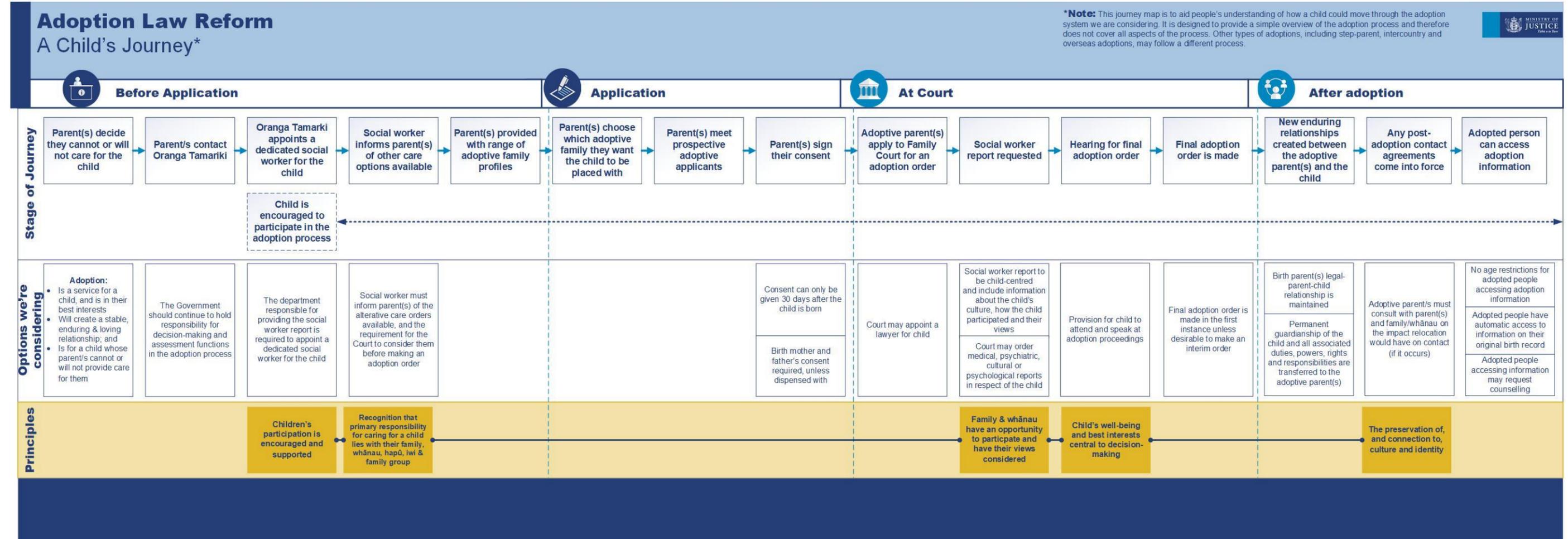
A new adoption system

The diagram below compares key aspects of the current adoption system against the options for change we're considering as set out in this document.



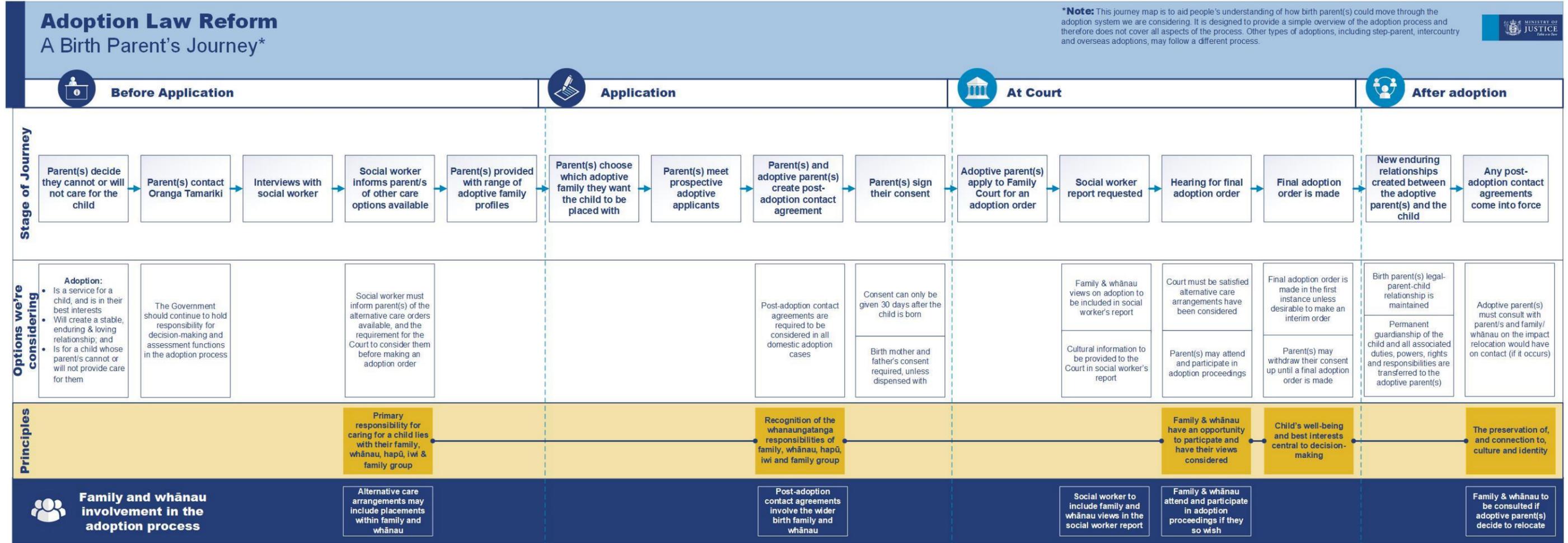
Journey map – Child

This journey map is to aid people's understanding of how a child could move through the adoption system we are considering. It is designed to provide a simple overview of the adoption process and therefore does not cover all aspects of the process. Other types of adoptions, including step-parent, intercountry and overseas adoptions, may follow a different process.



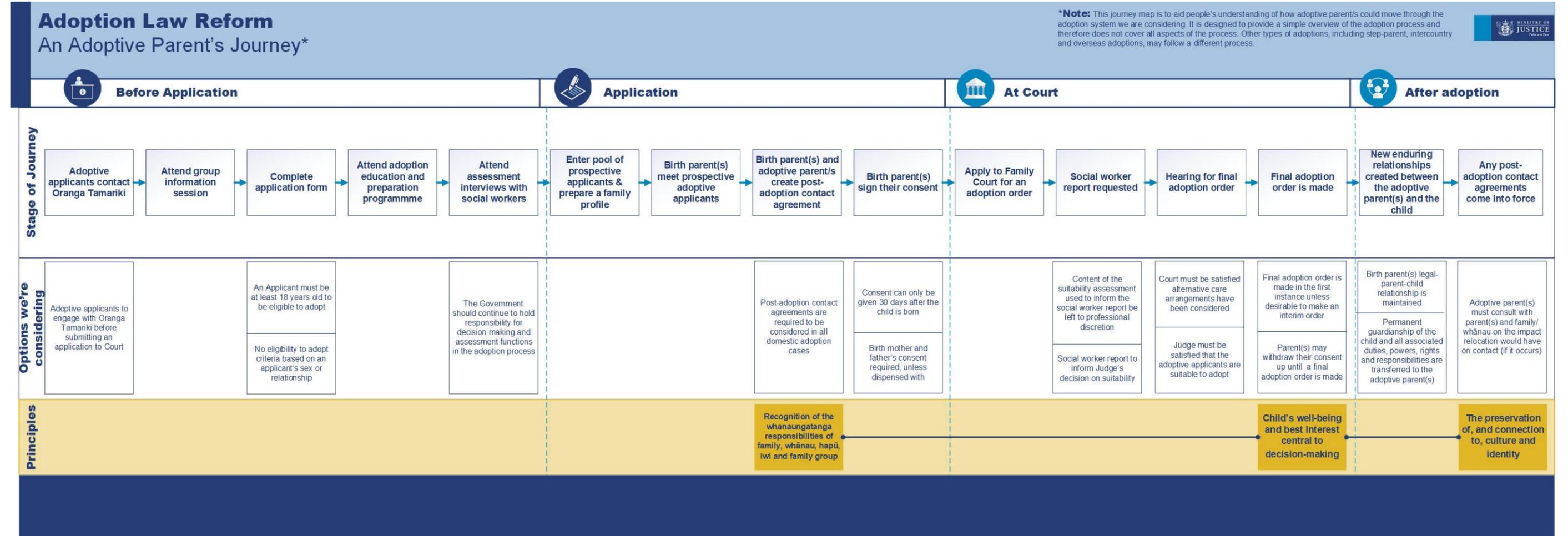
Journey map – Birth parent(s)

This journey map is to aid people's understanding of how birth parent(s) could move through the adoption system we are considering. It is designed to provide a simple overview of the adoption process and therefore does not cover all aspects of the process. Other types of adoptions, including step-parent, intercountry and overseas adoptions, may follow a different process.



Journey map – Adoptive parent(s)

This journey map is to aid people's understanding of how adoptive parent(s) could move through the adoption system we are considering. It is designed to provide a simple overview of the adoption process and therefore does not cover all aspects of the process. Other types of adoptions, including step-parent, intercountry and overseas adoptions, may follow a different process.



Purpose and principles

Purpose of adoption

Option we're considering

That the purpose of adoption be that it:

- is a service for a child, and is in their best interests
- will create a stable, enduring and loving family relationship, and
- is for a child whose parents cannot or will not provide care for them

What we heard

There were mixed views about whether the law should say what the purpose of adoption is. Most people considered that having a purpose in law would make it clear when adoption can be used and help the Court protect the child's best interests. Others said that there are many reasons for people choosing adoption and setting the purpose in law isn't flexible enough.

People supported many purposes of adoption. Themes included stability, security, wellbeing, long-term care, providing a family when the birth family cannot care for child, connection to whānau, and legal recognition. People were less supportive of the purposes of bringing children to Aotearoa New Zealand or out of poverty, because this is not always in the child's best interests, but more about family building.

Option we're considering

We think that the law should set out what the purpose of adoption is. It would help guide decision-making and reflects good practice for creating laws.

The purpose of adoption would place the child's best interests at its centre. This is consistent with other family law in Aotearoa New Zealand (like the Care of Children Act 2004) and our obligations under the Children's Convention and the Hague Convention. It also recognises the significant and permanent impact adoption has on the child.

We suggest that adoption is only appropriate where a child's birth parents cannot or will not provide care. This is because it will usually be in a child's best interests for their birth parents to raise them, and so adoption should only be looked at where that's not an option.

1. **Do you agree with setting out the purpose of adoption in law, centred around the child's best interests? Why or why not?**

Principles for adoption

Options we're considering

That the guiding principles for adoption are:

- that the long-term well-being and best interests of the child or young person are the first and paramount consideration
- that a child is encouraged and supported to participate and give their views in adoption processes, and that their views are considered
- the preservation of, and connection to, culture and identity
- the protection of whakapapa
- recognition of the whanaungatanga responsibilities of family, whānau, hapū, iwi and family group
- recognition that primary responsibility for caring for a child lies with their family, whānau, hapū, iwi and family group
- that family and whānau should have an opportunity to participate and have their views taken into consideration, and
- openness and transparency

What we heard

We didn't ask people's views on principles in the first round of engagement. However, people shared a range of values that could be used as guiding principles for a new adoption system. We heard that adoptions need to be open, prioritise the child's wishes and best interests, and allow them to participate.

We also heard that an adopted person's connections need to be preserved and honoured. That includes connections to their birth family and whānau, family history and whakapapa, and culture and identity. Many people thought that the child's family and whānau should be able to participate in the adoption process, where it's appropriate.

Nearly everyone agreed that the Government has te Tiriti obligations to Māori in relation to adoption. We heard that the adoption process should be more consistent with te Tiriti.

Options we're considering

We think that the law could include a set of principles. Principles can make it clear what the underlying values of a system are and help to guide decision-making. We've suggested the above set of principles that would cover the fundamentals of a new system of adoption and would guide best practice.

The principles support the child-centred purpose of adoption and our obligations under the Children's Convention, such as the child's rights to identity, culture, family connection, participation, and information. Many of the principles also match other family law. For example, the Oranga Tamariki Act 1989 recognises whanaungatanga responsibilities of family and whānau, and that primary responsibility for a child's care lies with the birth family and whānau. Those principles are also consistent with The United Nations Declaration on the Rights of Indigenous Peoples.

We have looked to reflect the Crown's te Tiriti obligations toward Māori in the principles. Recognising the importance of whakapapa, whanaungatanga responsibilities, and family and whānau in the lives of tamariki is consistent with the principle of protection in Article 2 of te Tiriti. We therefore haven't suggested including a specific te Tiriti principle. We will think about whether a specific te Tiriti principle is needed as we finalise all our policy proposals.

- 2. Do you agree with the principles for adoption we are considering? Why or why not?**
- 3. Are there any principles for adoption that you think are missing?**
- 4. Do you think a specific te Tiriti principle for adoption is needed?**

Who can be adopted?

Options we're considering

A child can only be adopted if they are under a certain age

Adults can't be adopted under New Zealand law

What we heard

Last year, we heard that most people thought there should be a maximum age that someone can be adopted. People had different ideas of what the age should be:

- A few people thought that children under 16 years old should be able to be adopted. This would match some family laws. For example, a parenting order can't normally be made for a child over 16 years old.
- Many more people thought that children under 18 years old should be able to be adopted. This would match with the age Aotearoa New Zealand normally agrees an adult is. It also matches with our international agreements.

A small number of people thought adults should be able to be adopted. They said that it would allow important relationships between an adult and the person who raised them to be recognised.

Options we're considering

Because adoption is about providing a child with new legal parents, we think that adoption should focus on the care needs of children. This is consistent with other family law and matches the purpose for adoption we have suggested on page 15. It also matches with our international agreements, for example the Children's Convention and the Hague Convention. Allowing adults to be adopted would be a big change to adoption. It would create new parent-child relationships where a person probably doesn't need parental care.

5. Do you think the age limit for people to be able to be adopted should be:

- 16 years OR
- 18 years,

and why?

Who can adopt?

Options we're considering

A person must be 18 years or older to adopt a child

People aren't prevented from adopting because of their sex or relationship status

Step-parent adoptions should be allowed

What we heard

We heard that the Court should decide if a person can adopt a child on a case-by-case basis. Currently, the law says people can only adopt a child if they are in a certain relationship, of a certain age, or a certain sex (for example, a single male cannot adopt a female child). People thought that the current approach is discriminatory because it stops people from applying to adopt based on their characteristics. They said this approach might stop an adoption that is in a child's best interests from happening and it should be removed.

People had different views on whether a person must be a certain age before they can apply to adopt a child. A few people thought there shouldn't be a minimum age, but most people thought that a minimum age would be a good guide for a person being mature enough to adopt. A few people also said there should be a maximum age for people to be able to adopt.

Most people thought that step-parent adoptions should be allowed and decided case-by-case. They said that legally recognising the relationship between a child and a step-parent was important, especially if the other birth parent isn't in the child's life, or has harmed the child. A small number of people thought that step-parents shouldn't be able to adopt their step-children. They said those adoptions cut the adopted person's connection to one side of their birth family, whānau and whakapapa.

Options we're considering

We've suggested that a person should be at least 18 years old to apply to adopt a child. This is consistent with other laws that have age restrictions based on a person's maturity. It also matches international agreements, like the Children's Convention. We don't think people should be stopped from applying to adopt because of their sex or relationship status. We think it's more important to check that they're suitable to adopt the child. We outline the process for checking whether a person is suitable to adopt a child on page 36.

We agree that adoption decisions should be made on a case-by-case basis. We think that step-parents should be able to adopt step-children if it's in the child's best interests. Other options we're considering, like that other care arrangements should be looked at (see page

24), mean step-parent adoptions may be rare and that they will only be made when they are in the child's best interests. Options we're considering in relation to the legal effect of adoption (page 41) would also mean that the child's legal connections to their birth family and whānau would no longer be severed.

6. **Do you agree that the only criteria for who is able to adopt a child should be that they are 18 years or older? Why or why not?**
7. **Are there any criteria for who is able to adopt a child that you think are missing?**

Adoptions involving different cultures

What we heard

We heard that culture was very important to adopted people. People who lost connections to their culture after their adoption told us that they suffered harm as a result. For Māori, being adopted into a non-Māori family can risk a loss of their connection to whānau, whakapapa and tūrangawaewae.

We heard split views on whether the law should allow cross-cultural adoptions. Some people thought that a child shouldn't be able to be adopted by people from a different culture, unless there were special circumstances. They thought this would better protect an adopted person's connection to their culture. Other people thought that preventing cross-cultural adoptions may mean that adoptions that are in the child's best interests couldn't happen.

Other options we're considering

We're thinking about whether the law should assume that it would normally be in a child's best interests to be adopted by people from the same culture. This would recognise that it can be hard to keep the child connected to their culture if they're adopted by people outside of their culture, but doesn't prevent cross-cultural adoptions from happening altogether. However, it could be hard to decide if a cross-cultural adoption is in a child's best interests. For example:

- if the child is from a mixed cultural background, it might be difficult to find applicants who match the child's culture.
- placing a child in the same culture might be hard if adoption is stigmatised by that culture.

On page 47, we ask whether applicants should need to have a plan for maintaining the child's culture after the adoption. If that option was progressed, there may not need to be an assumption that it would normally be in the child's best interests to be adopted by people from the same culture.

8. Do you think the law should encourage children to be adopted by adoptive parents within their own culture? Why or why not?

What happens if a child is placed for adoption?

Social worker to represent the child

Options we're considering

A dedicated social worker must be appointed for the child

The social worker should be suitably qualified to represent that child, to the extent practicable, by reason of their personality, cultural background, training, and experience

The social worker should provide the child with age-appropriate information about adoption, its impact, and their rights

What we heard

We heard very strongly that children's voices should be encouraged and supported in adoption. People said that if children are too young or can't share their views themselves, they should have someone independent to represent their views. We also heard that people being adopted need more information and support through the adoption process.

We heard that the social workers involved in adoption cases can't fairly represent the child's interests because they also represent the adoptive parents' interests. People suggested that a neutral advocate could be used to represent the child's views and interests.

Options we're considering

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. This requirement is similar to ones in the Oranga Tamariki Act and Care of Children Act.

The social worker would support the child through the adoption process, including to help them participate and share their views where they can do so. It would also include making sure the child has age-appropriate information about the adoption, its effect, and their rights. This option is consistent with our suggested adoption principles and putting children's rights and best interests at the centre of adoption law.

9. Do you agree that a dedicated social worker should be appointed for the child? Why or why not?
10. Do you agree that the dedicated social worker should need to be matched to the child based on their similar characteristics? Why or why not?
11. Do you agree that the dedicated social worker should have to provide the child with age-appropriate information about the adoption? Why or why not?

Placement of children before an adoption order is made

Options we're considering

The social worker may approve the placement of the child with the prospective adoptive parents before an adoption order is made

Option we're considering

We think that the social worker should be able to approve a child's placement with the prospective adoptive parents before the adoption is finalised. This would be on the condition that the birth parents have given informed consent and that the social worker is satisfied the adoptive applicants are suitable before giving their approval.

Sometimes it can take time for an adoption application to be heard by the Court. This option would make sure the child can be cared for while waiting for an adoption order to be made. It would also create time for the child and adoptive applicants to bond.

12. Do you agree that the social worker should be able to approve placement of the child with the prospective adoptive parents before an adoption order is made? Why or why not?

Alternative care arrangements

Options we're considering

The social worker must tell the birth parents about:

- any other types of care arrangements available, and
- the requirement for a Judge to consider alternative care arrangements before making an adoption order.

What we heard

We heard that other care arrangements should be thought about before an adoption order is made. Other care arrangements could include less permanent options like guardianship orders or parenting orders. People thought that other, less permanent care arrangements would sometimes be better than adoption and may be more in the child's best interests.

We also heard from a few people that adoption should be a last resort. That would mean all other care options would have to be looked at before an adoption order was made.

Options we're considering

Adoption has a significant legal effect that permanently changes a child's legal status. Because of this, we think it's important that the birth parents are made aware of other care arrangements that are available. This would mean birth parents are fully informed when making the decision to place their child for adoption.

We think the social worker should have to tell the parents that the judge will also look at whether other care arrangements were considered when it gets to the Court.

- 13. Do you agree that the social worker should need to tell the birth parents about other available care arrangements? Why or why not?**
- 14. Do you agree that the social worker should have to tell the birth parents that the judge will look at whether other care arrangements were considered when the application reaches the Court? Why or why not?**

Who can have a say?

Children being adopted

Options we're considering

The social worker must encourage the child to participate in the adoption process and document how the child participated, including any views expressed by the child, in the social worker report

A lawyer may be appointed to represent the child

The child is able to attend and speak at the adoption proceedings

The child is not required to consent to the adoption

What we heard

We heard that children should have opportunities to participate in the adoption process. Most people said that the child's feelings and views should be an important consideration when thinking about their best interests and making adoption decisions.

A few people thought some children would be too young to participate. They said that the child's age or maturity could be looked at when deciding if they should be able to participate.

We heard that third-party support could help children to participate and express their views. People thought it could be someone like a skilled health professional, social worker, or child psychologist, who could make sure the child's wellbeing is protected. This support would be especially helpful for very young or disabled children who find it hard to communicate. Most people also wanted the child to have an advocate in the Court who is familiar with all aspects of adoption issues, and not just legal processes. People also thought that the child should be given age and understanding-appropriate information about the adoption, its impact, and their rights.

A few people thought that the child should consent to their adoption if they're old or mature enough. They said that not requiring a child's consent treats them as a commodity. Other people didn't think the child should need to consent because making that decision can put a heavy emotional burden on the child.

Options we're considering

We think it's important for the law to support children to participate in their adoption process if they want to. Hearing from the child can help the Court make better decisions. It also makes sure the child feels involved in the decision.

The dedicated social worker for the child (see page 25) will be in a good position to share the child's views with the Court. Social workers are experienced in working with children and helping them to share their views. Recording the child's views in the social worker report will provide a record for the child to look back on how they were involved in the decision later in life if they wish.

Specialised lawyers for children are often appointed to represent children in other family law cases. For example, in care of children disputes or care and protection cases. A lawyer for the child can explain the legal process to the child and make sure their views are presented to the Court. They are also able to advocate for the child's best interests.

Giving the child the right to speak at adoption proceedings would allow the judge to hear directly from the child. They could speak either in court or privately in the judge's chambers.

We haven't included an option for requiring children to consent to their adoption. Research tells us that children often want a role in the process, but don't want to be responsible for making the decision. Options we're considering would allow the child to participate in the adoption process, without putting pressure on them to be the decision-maker. We think this strikes the right balance for child participation.

- 15. Do you agree that the social worker should encourage the child's participation and record the child's views in their report? Why or why not?**
- 16. Do you agree that a lawyer for child should be able to be appointed? Why or why not?**
- 17. Do you agree that a child should be able to attend and speak at adoption proceedings? Why or why not?**
- 18. Do you agree that a child shouldn't be required to consent to their adoption? Why or why not?**

Parents placing their children for adoption

Options we're considering

The birth mother and birth father's consent (or agreement) to the adoption is required, unless it's dispensed with

Birth parents can only give their agreement to the adoption after 30 days from the birth of the child

Birth parents can withdraw (or take back) their consent up until a final adoption order is made

The Court may dispense with consent (or not require the consent) of a birth parent where:

- informing a birth parent about a child's adoption would pose a clear risk to the child or other birth parent, OR
- the parent meets the grounds of having abandoned, neglected, persistently ill-treated or failed to exercise the normal duty and care of parenthood to the child.

The Court can't dispense with a birth parent's consent solely on the basis of mental or physical incapacity

Birth parents have the right to attend and participate in adoption proceedings

Agreeing to the adoption

What we heard

We heard that it's important for both parents to be involved in the decision to place a child for adoption. That means that fathers should have the same rights in the adoption process as mothers. People said that deciding to place a child for adoption was emotionally draining and very difficult. They said that parents should have support to help them to make their decision.

We heard there may be rare situations where a parent shouldn't need to agree to an adoption. People agreed that deciding not to require a parent's consent should be made on a case-by-case basis. That would mean decisions are made based on individual circumstances, taking into account the child's best interests.

We heard that parent's consent shouldn't be dispensed with just because they lack mental or physical capacity (as can currently happen). Examples of when people thought a parent's consent should be dispensed with included if:

- they had used abuse or violence, or otherwise posed a safety or health risk to the other parent or child
- they can't be found, or

- they don't want to be involved.

People had mixed views on when parents should need to agree to an adoption. Some people said consent should be able to be given as soon as possible and some said a longer time was needed. Other people thought there should be flexibility to deal with different situations.

The majority of people agreed that parents should be able to take back their consent to the adoption. They noted that an adoption has huge implications and that parents might change their minds. People said it would probably be in the child's best interests to be raised by their birth parents if they do change their mind. There were different views on when parents should be able to withdraw their consent.

Options we're considering

We think that the rules for who agrees to an adoption should protect the child's right to family and identity. We have suggested that both parents should need to agree to the adoption, regardless of their relationship or guardianship status. Requiring both parents to consent recognises that primary responsibility for the child's care lies with their family and whānau. It would also support decision-making on whether the adoption is in the child's best interests.

We've suggested that a parent can't agree to the adoption until at least 30 days after the child is born, which is the same timeframe chosen by most Australian states. This gives the parents space and time to fully consider the implications of the adoption, taking into account the psychological and physical impacts of pregnancy and childbirth. It could also help protect against the parents being pressured to agree during a vulnerable time.

Allowing parents to take back their consent recognises that adoption is a permanent legal change and would protect parents who might change their mind. This has to be weighed against the need for security and care for the child. We've suggested that consent can be taken back up until the final adoption order is made.

We think that a high threshold should need to be met to remove a parent's ability to consent. We've suggested that it should only happen where the parent poses a risk to the child or other parent's wellbeing or they haven't met their duty of care toward the child.

We also suggest that consent shouldn't be dispensed with solely on the grounds of mental or physical incapacity (as can happen under current adoption law). For example, if a person has a mental illness or disability. Those grounds are discriminatory and aren't consistent with our human rights obligations. For example, under the United Nations Convention on the Rights of People with Disabilities.

Participating at court

What we heard

We heard that birth parents should have a right to participate in adoption proceedings after they've given their consent to the adoption. People thought that birth parent's participation should be voluntary, rather than mandatory, because not all parents will want to keep being involved. People also thought that there should be case-by-case exceptions. For example, ongoing participation might not be appropriate if a birth parent has abused the child.

People said there should be support and information to help the parents to participate and would need to be provided before, during and after an adoption order is made.

Option we're considering

We think that birth parents should be able to participate once the adoption gets to court. Being able to hear from birth parents directly can help the Court decide whether an adoption is in a child's best interests. Playing a more active role in adoption proceedings could also help parents work through the emotional impacts of placing their child for adoption.

- 19. Do you agree that both birth parents' agreement to an adoption should be required? Why or why not?**
- 20. Do you agree that birth parents' agreement to an adoption should only be able to be given 30 days after the child's birth? Why or why not?**
- 21. Do you agree that birth parents should be able to take back their consent up until a final adoption order is made? Why or why not?**
- 22. Do you agree that the Court should be able to not require the consent of a birth parent where:**
 - a. informing a birth parent about a child's adoption would pose a clear risk to the child or other birth parent? Why or why not?**
 - b. the parent meets the grounds of having abandoned, neglected, persistently ill-treated or failed to exercise the normal duty and care of parenthood to the child? Why or why not?**
- 23. Do you agree that the Court shouldn't be able to remove a birth parent's consent solely on the basis of mental or physical incapacity? Why or why not?**
- 24. Do you agree that birth parents should have the right to attend and participate in adoption proceedings? Why or why not?**

Wider family and whānau

Options we're considering

Birth family and whānau views on the adoption must be included in a social worker's report to the Court, unless it would cause unwarranted distress to the child or birth parents

Birth family and whānau can attend adoption proceedings with the right to be heard, unless it would cause unwarranted distress to the child or birth parents

What we heard

Most people supported family and whānau being involved in the adoption process. People thought their involvement would help the Court to make decisions in the child's best interests and help the child to stay connected their family, whānau, culture and identity. Family and whānau involvement could also make sure other care options are explored.

A small number of people thought that there might be safety concerns with involving family and whānau in some cases. People who didn't support family and whānau involvement said that adoption decisions should only be made by the birth parents. They thought that family and whānau involvement could put undue pressure on the parents.

Most people didn't think family and whānau should need to consent (or agree) to the adoption. They thought that allowing the family and whānau to share their views was enough. Similar to the above, people said that requiring their agreement could raise safety concerns and it may cause issues if family and whānau members disagree. They also said it would add more time to the process. Only a few people thought that the birth family and whānau should need to agree to the adoption.

Options we're considering

For Māori and many other non-European groups, wider family and whānau members are often considered to be family as much as parents and children. For example, grandparents, aunts and uncles and cousins. Involving the birth family and whānau in an adoption reflects a collective approach and gives space for their participation. It affirms the mana and role of family and whānau in the child's life. Their participation can also add value to the process because their views and the information they provide could help to inform decision-making.

Presenting family and whānau views on the adoption in the social worker's report means the social worker can involve them early in the process. It would help them to understand the birth parents and child's circumstances. It also means they can get the family and whānau views on the adoption and look at whether other whānau-based care options are available.

Options we're considering would also mean family and whānau could share their views in their own words to the Court. For example, family and whānau could share views on the

adoption or related things, like their contact with the child after the adoption. The Court could ask questions and seek further information if required.

We think there are situations where it might not be appropriate for family and whānau to be involved. Family and whānau relationships can be complex and difficult. In some cases, it might risk serious harm to the birth parents or the child if they are involved. Options we're considering would say that family and whānau won't need to be involved if it would cause unwarranted distress, including harm, to the birth parents. This is a similar model to birth registration under the Births, Deaths, Marriages and Relationships Registration Act 1995. It means that a case-by-case decision can be made that takes all the circumstances of the adoption into account.

25. Do you agree that the child's family and whānau views should be included in the social worker report, unless it would cause unwarranted distress to the child or birth parents? Why or why not?

26. Do you agree that family and whānau should have the right to attend and be heard adoption proceedings, unless it would cause unwarranted distress to the child or birth parents? Why or why not?

Other options we're considering

We want to hear your views on who you think should decide if involving the family and whānau would cause unwarranted distress. The process for making that decision needs to be managed sensitively to make sure it doesn't cause more trauma. We think that the decision should be made by a government department, the Court, or a combination of both.

- **Government department:** Social workers from the department responsible for adoptions would make the decision on unwarranted distress. They build rapport with the birth parents and have more information on the context of the adoption. Social workers would be involved from the beginning of the adoption process, meaning the decision could be made early on.
- **The Court:** A judge would make the decision on unwarranted distress. Judges are experienced decision-makers, and their decision is likely to be viewed as legitimate. However, a Court's decision might be made too late in the process to meaningfully involve the family and whānau. There is also a risk that some family and whānau might not feel comfortable engaging with the Court.

27. Who do you think should decide if involving the family and whānau in adoption proceedings will cause unwarranted distress? Why?

Hapū and iwi

What we heard

Feedback from Māori suggested that giving whānau, hapū and iwi more direct ways to input into adoption proceeding would be more aligned with tikanga Māori.

In other reviews of decision making related to tamariki Māori, the Government has heard a strong voice from Māori about the need for Māori rangatiratanga to be provided for. Waitangi Tribunal findings in the urgent inquiry into Oranga Tamariki (WAI 2915) emphasised the need to allow for more ways for Māori to hold influence and agency over decisions affecting them. The inquiry held that the Article 2 Tiriti commitment to Māori rangatiratanga over kāinga guarantees the right of Māori to care for and raise the next generation.

Other options we are considering

Some other countries require consultation with indigenous groups where an indigenous child is to be adopted. For example, New South Wales in Australia requires a relevant indigenous community organisation to be consulted before an indigenous child is adopted.

Requiring similar consultation with hapū and iwi (or iwi entities, for example) about an adoption of a Māori child from that hapū or iwi would greatly increase their ability to speak to the cultural needs of that child. This would also honour the Tiriti partnership and support Māori collective decision-making processes. It would recognise the distinct rights of hapū and iwi to exercise rangatiratanga in the care and protection of tamariki who whakapapa to them.

We want to know your thoughts on whether a Māori child's hapū and iwi should be consulted before they are adopted.

28. Do you think hapū and iwi should need to be consulted before tamariki Māori are adopted? Why or why not?

Who makes the decisions?

Role of government, courts, and accredited bodies

Options we're considering

The Court continues to be responsible for decision-making in the domestic adoption process

The Government continues to be responsible for assessment functions in the domestic adoption process

What we heard

The majority of submitters said that some Government oversight of the adoption process was needed to monitor the safety of adoption placements and to provide legal recognition for adoptive parents' rights to day-to-day care.

Most people said that the Court process was important as it is fair and follows due process. People said that a court order requires the law to be upheld, and requires evidence and proper records to be kept. We heard that court orders must be inclusive and applicable in a real and substantive sense to Māori people, customs, traditions, and culture. A small minority of people thought the Court shouldn't be involved in adoptions, mostly because of the cost.

Many people said that the responsibility of Oranga Tamariki as the agency in charge of care and protection services was a barrier to it being the agency in charge of adoption services. We heard that the public viewed Oranga Tamariki negatively and that engagement with the agency was stigmatised. People also said that Oranga Tamariki processes were more focused on the needs of adoptive parents, rather than the best interests of the child being adopted.

We heard that that the Government's role in the adoption process could be added to by involving non-Government accredited agencies. People said that this may allow for more specialised and targeted processes to serve the needs of birth parents (mainly mothers) in ways that standardised services can't. Some people also thought that that Māori-specific adoption or whāngai services would better cater to Māori needs.

Others were strongly opposed to the role of accredited agencies. They viewed those agencies as enforcing a market-based vision of adoption that works in favour of the adoptive parents. Those people were sceptical that accredited agencies were capable of operating in the best interests of the child.

Options we're considering

We think that it's appropriate for the Court to continue to make domestic adoption decisions. The Court has legitimacy and strongly established information gathering and advisory processes. It is an impartial decision-maker that is experienced in making other family law orders, such as parenting and guardianship orders. Other options set out in this document will ensure the Court has relevant information available to make well-informed decisions.

We also think assessments and other administrative processes remain best managed by government agencies. We acknowledge that some people won't agree with this approach. However, it's important that the new adoption system protects the best interests of children.

Government agencies are held publicly accountable and are subject to rigorous reporting requirements. Those agencies currently involved in the adoption process work to ensure children's best interests are upheld, despite the issues with the current law. There is a risk that enabling third parties to perform those functions could risk decisions being made that don't safeguard children's rights.

29. Do you agree that the Court should continue to be responsible for decision-making in the domestic adoption process? Why or why not?

30. Do you agree that the Government should continue to be responsible for assessment functions in the adoption process? Why or why not?

Adoption support from Oranga Tamariki

Options we're considering

Adoptive applicants are required to engage with Oranga Tamariki before making an application to the Court

What we heard

Some people privately arrange adoptions and make adoption applications straight to the Court. If an application is made directly to the Court, the adoptive applicants don't engage with Oranga Tamariki. In direct applications, timeframes for the suitability assessment are shortened, which we have heard through engagement can compromise quality. This can present risks to the child being adopted.

We heard that some families may be happy with private adoption arrangements. They said that in those cases there is no need to talk to Oranga Tamariki.

Option we're considering

We suggest that all adoptive applicants would need to engage with Oranga Tamariki before making an application to the Court. This option makes sure that the adoptive applicant's suitability and the child's safety and best interests can be considered early in the process in all cases. It will enable applicants to receive additional support from Oranga Tamariki to understand the distinct nature of parenting through adoption and supporting contact with the birth family. It will also ensure that Oranga Tamariki can complete suitability assessments in reasonable timeframes, which ensures their quality and that children are being placed in appropriate homes.

Requiring people to engage with Oranga Tamariki could also protect the birth parents from undue pressure to agree to an adoption.

31. Do you agree that adoptive applicants should be required to engage with Oranga Tamariki before applying to the Court? Why or why not?

How are adoption decisions made?

Adoptive applicants must be suitable

Options we're considering

A Judge must be satisfied the adoptive applicants are suitable to adopt before making an adoption order

A Judge's decision on suitability should be informed by the social worker report and any other relevant information presented to the Court

What we heard

We heard that there should be flexibility in deciding who is suitable to adopt. This would allow consideration of what suitable adoptive parents look like in each individual case and also allow ideas of suitability to evolve over time. Most people thought that the current approach was a good model for assessing suitability.

We heard that safety concerns, such as criminal convictions, histories of family violence or neglect, and drug or alcohol abuse should stop a person from being considered suitable to adopt. We also heard that chronic health issues and how much someone earns should be part of an assessment. However, most people said that there needs to be flexibility and discretion available when the Court considers suitability.

Options we're considering

In deciding an adoption application, a judge will need to be satisfied that the applicants are eligible to adopt (see page 18). If they are eligible to adopt, we think a judge should then have to be satisfied that the applicants are suitable to adopt.

To provide flexibility and the ability to change over time, we do not think any specific criteria should be set out in law. This matches the status quo. We suggest that the social worker report, and any other information that is provided to the Court, should inform its decision on whether applicants are suitable to adopt.

32. Do you agree that a judge must be satisfied that the applicants are suitable to adopt before making an adoption order? Why or why not?

33. Do you agree that a judge's decision on suitability to adopt should be informed by the social worker report and any other relevant information? Why or why not?

Social worker reports

Options we're considering

There must be a child-centred social worker report on the application

The social worker report must include:

- how the child participated, including any views expressed by the child
- the suitability of the adoptive parents
- the views of birth family and whānau
- cultural information about the child

The suitability assessment that informs the social worker report should be left to professional discretion, rather than set in law

What we heard

We heard that the social worker's report should be comprehensive and have a variety of relevant information. People said it should include post-birth contact intentions and plans. People also said it should set out how the applicants will communicate with the child about the adoption and inform them of the right to obtain their full birth details. We also heard that the report should set out the cultural needs of the child and how they will be addressed, and the views of the wider family and whānau.

A few submitters suggested requiring separate reports from social workers; one about the child's best interests and their family situation, and another reporting on the adoptive parents.

Options we're considering

The Adoption Act 1955 currently requires a social worker to provide a report on an adoption application, but it doesn't require any specific information to be included. We think that the law should set out some matters to be included in the report. The dedicated social worker should document how the child participated, including any views shared by the child. This is consistent with the principles of adoption we are considering set out on page 15.

The report should also include the suitability of the adoptive parents, the views of the child's wider family and whānau, and any cultural information about the child. This will give the judge a full view of the adoption and helps them to make an informed decision about the adoption. We think the suitability assessment should be left to professional discretion, rather than needing to apply a set criteria. This is more flexible, allowing the assessment to adapt over time, and allows the circumstances of each family to be considered individually.

Social workers are experienced in working with, and supporting the participation of children in the adoption process. Requiring the child's participation and views to be recorded in the social worker report will largely formalise existing practice and help to inform judicial decision-making. This aligns with a more child-centred approach to the social worker report. It will also mean the child will be able to look back and see how they participated in their adoption proceedings later in life, if they wish.

34. Do you agree that the social worker report should be child-centred and cover matters related to participation, adoptive applicants' suitability, family and whānau views and cultural information? Why or why not?

35. Do you agree that suitability assessments should be left to professional discretion? Why or why not?

Access to other information

Options we're considering

The Court has the power to order a cultural report

The Court has the power to order a medical, psychiatric or psychologist report

What we heard

We heard that the Court should have access to better information to inform its decisions. People said information like specialist reports and submissions from lawyer for the child (or similar advocate) would be useful. People also suggested that the Court could hear other

evidence from people outside of the application who have a connection to the child. We heard that doing so could prevent a child being placed in an unsuitable home.

Options we're considering

We think that the Court should have tools available to make sure they are fully informed when they make a decision about an adoption. To ensure this, we've suggested that the Court should be able to order other reports. Those reports could give the Court more information about things like the child's cultural background, the child's understanding of the adoption, or any medical issues the child has. This matches the powers the Court has in other family law cases.

36. Do you agree that the Court should be able to order additional reports including cultural, medical, psychiatric and psychologist reports? Why or why not?

Alternative care arrangements

Option we're considering

The Court must be satisfied that alternative care arrangements have been considered before making an adoption order

What we heard

Most people and organisations we heard from agreed that because adoption alters a person's legal status, other care arrangements should be considered before an adoption order is made. Much of the support for alternative care arrangements was tied to the current legal effect of adoption, which severs the child's ties with their birth family.

Option we're considering

We think that judges should be satisfied that alternative care arrangements have been considered before making an adoption. Looking at the other care options available will help the judge decide whether adoption is the most suitable care option and is in the child's best interests.

While the options we're considering would change the legal effect of adoption so that a child retains a connection to their birth parents, it will still permanently alter the adopted person's legal status. Our suggested approach will ensure decisions about a child's care will promote the child's best interests. It may also be more aligned with te ao Māori, as other options can be considered that won't impact on the child's whakapapa.

37. Do you agree that the Court should have to be satisfied that alternative care arrangements have been considered before making an adoption order? Why or why not?

What is the legal effect of adoption?

Final adoption orders

Option we're considering

A Judge must make a final adoption order, unless they consider that an interim order is desirable in the circumstances

What we heard

We heard that requiring interim orders to be made before a final adoption order doesn't serve much purpose. People said that they thought the extra step was unnecessary. They also said that there was no reason for having the extra step because adoptive parents didn't get any additional support during that time.

People told us that the time before a final order is made can cause uncertainty and worry for the child, birth parents, and adoptive parents. It can also cause fear that the child might be removed from the adoptive parents.

Option we're considering

We think that making a final adoption order in the first instance will be appropriate in most cases. It will provide certainty for everyone involved, which will help the relationship between the child and adoptive parents develop.

Other options we're considering would mean the Court will have access to more information to help them decide if it's appropriate, and applicants would have gone through preparation and assessment services. Birth parents would also have a longer time to give their consent than under the current law, and be able to remove their consent if they change their mind before the order is made.

There might still be some situations where an interim order is needed first. We want to hear whether you think there are any circumstances where interim orders should be used. For example, there may be cases where an interim order would provide time for contact agreements to be made.

38. Do you agree that a final adoption order should be made in most circumstances? Why or why not?

39. When do you think an interim adoption order might be suitable?

The legal effect of adoption

Options we're considering

After an adoption, both the birth parents and the adoptive parents are recognised as legal parents of the child

Adoptive parents:

- become the guardians of the child, including all associated duties, powers, rights and responsibilities, including providing day-to-day care for the child
- are financially responsible for the child

Birth parents are no longer guardians of the child and are no longer financially responsible for the child

The child can inherit citizenship from their birth parents and adoptive parents

What we heard

The majority of people we heard from about the legal effect of adoption wanted it to change. People thought that the law shouldn't sever the legal relationship between birth parents and the adopted child. For Māori, we heard that it is the whakapapa of the person which matters in tikanga and this should be reflected in our adoption law.

However, we also heard that adoption should clearly define adoptive parents' rights to care for the child. This can provide the child and adoptive parents with security and stability. We also clearly heard that the adoptive parents should have financial responsibility for the child.

Options we're considering

We think it's important for the adopted person to be able to keep a legal connection to their birth parents as well as have a new connection to their adoptive parents. This upholds the

child's right to identity and family connection, while also providing certainty and security for their new family relationship. It also aligns with the practice of open adoption which has developed over the last 30 years.

This option is more consistent with conceptions of family and childcare in tikanga Māori, whereby childcare duties may be shared but the connections to birth family and whānau never change.

We think it's in the child's best interests for adoptive parents to have the usual responsibilities associated with parenthood, including having day-to-day care of the child. It would also give the adoptive parents the responsibility to determine for or with the child, important matters affecting them. For example, where they live, medical treatment and education choices.

Consistent with the current law, we've suggested that financial responsibility for the child should remain with adoptive parents. We also think that children should still be able to inherit citizenship rights from both sets of parents, like they can under the current law. This is consistent with the option we are considering on the new legal effect as it recognises the child's legal ties to their birth parents and their right to identity.

We also think that guardianship and its associated responsibilities should be removed from the birth parents. It recognises that adoption creates a new permanent and enduring family relationship between the adoptive parents and the child. This provides certainty for everyone involved and reflects the purpose of adoption we've suggested.

40. Do you agree with the options we've suggested for the new legal effect of adoption that:

- a. adoptive parents should have day-to-day responsibility for the child**
- b. the birth parents should keep a legal connection to their child**
- c. financial responsibility should remain with the adoptive parents**
- d. children should be able to inherit citizenship from both sets of parents, and**
- e. guardianship and its associated responsibilities should be removed from the birth parents?**

Why or why not?

Inheriting property

What we heard

We heard from several people that adopted people should be able to inherit from their adopted parents in the same way as a biological child would. Most people we engaged with considered that the adopted person should also be able to inherit from their birth parents.

What we're thinking

Adopted people normally can't inherit from their birth parents. Adopted people have to be specifically mentioned in a will to be able to inherit property from their birth parents as they aren't counted as their children. They aren't covered by the usual rules that apply if a person dies without a will and can't challenge the way their birth parents' property is divided in court. The birth parents can't inherit from the adopted person in a similar way.

This can have a particular impact on Māori adoptees, whose inability to succeed to land can contribute to their sense of disconnect from whakapapa and tūrangawaewae.

In November 2021, Te Aka Matua o te Ture | The Law Commission released its report on the Review of Succession Law. The report made recommendations about Aotearoa New Zealand's succession law (inheritance, or what happens to property after a person dies). However, the report didn't make recommendations about how the law should apply to adopted people.

The Government response to the Law Commission report accepts that reforms in succession law is required, but this would be a significant programme of longer-term work that would need to be balanced against other government priorities.

We think it's important that we consider how succession law applies to adopted people as part of any agreed wider succession work. That means the Government is not likely to make changes to the way adopted people inherit property as part of this reform. However, we are interested in your thoughts on what the succession rules should be for adopted people. We will use your ideas to inform any future work on succession.

41. Do you think we should change how adopted people inherit property from their birth parents when they die? If so, what do you think the law should be?

Adopted people's birth certificates

Option we're considering

Adopted people have two birth certificates:

- one birth certificate with only their adoptive parents listed, and
- one birth certificate with both their birth and adoptive parents listed

What we heard

We heard that birth certificates are fundamental to a person's identity. The majority of people told us that the current approach to birth certificates is inappropriate. We heard that replacing the adopted person's birth parents with the names of the adoptive parents reflects a 'legal fiction' and is harmful.

We also heard that some adopted people may prefer not to have their adoptive status on their birth certificate as it's private information. Birth certificates are used day-to-day (such as to support applications to enrol in education and get a driver's licence) and some people might not want to share their adoptive status in those situations.

Option we're considering

Making two birth certificates available provides choices for adopted people in using their birth certificates. It acknowledges that some adopted people might want to keep their adoption status private, and some may not. This flexible approach also recognises that what an adopted person wants on their birth certificate may change as they get older.

42. Do you agree that adopted people should have access to two birth certificates? Why or why not?

Changing children's names in adoption

Option we're considering

A Judge can consider changing an adopted person's surname at the time of the adoption, where they deem it appropriate

What we heard

We didn't specifically ask about changing children's names during the adoption process in our first discussion document. However, we did hear from people about the issue.

We heard from some people that a person's name is an important part of their identity and shouldn't be changed. Those people told us that a name carries strength and status, and is a connection to family and place. Others said that changing the child's name can help them feel part of their adoptive family. People said it was especially important where the child was born overseas.

Option we're considering

Having a judge consider whether a surname change during an adoption is appropriate recognises that surnames are important to a person's identity and connection to their birth family, family history and whakapapa. For Māori and other non-European groups, names are particularly meaningful as they can hold status or mana. In some cultures, a child's name is chosen and gifted to them by a family member.

The option we're considering balances recognising the importance of a person's name, while also acknowledging that some people may want to share a surname with their adoptive family for a sense of connection and belonging.

43. Do you agree that a judge should be able to consider changing a child's surname during the adoption process? Why or why not?

Other options we're considering

We want to hear your thoughts on whether first name changes should be allowed. We have come up with two options:

- first name changes shouldn't be allowed as part of the adoption process; or
- first name changes should be allowed only when it's in the child's best interests.

Preventing a child's first name being changed as part of the adoption process could help to protect their identity. However, not allowing any first name changes means there is no

flexibility for situations where a change may be in the child's best interests, for example if the child is named after an abusive family member. An assumption against a name change would mean people would have to prove it's in the child's best interests to change their name.

We would also like to hear your thoughts on whether first name changes should be restricted until the adopted person is able to apply to change their name themselves. This would mean adoptive parents couldn't change the child's name after the adoption.

44. Do you think:

- a. a child's first name shouldn't be allowed to be changed, OR**
- b. a child's first name should only be allowed to be changed when it's in their best interests?**

45. Do you think that first name changes should be restricted until the adopted person is able to change their name themselves? Why or why not?

What ongoing contact can adopted children and birth parents have?

Post-adoption contact

Options we're considering

Post adoption contact agreements are introduced, which:

- are required to be considered in all domestic adoption cases
- are agreed to before an adoption is finalised
- allow the child to participate where appropriate
- are flexible and can be amended via mediation, and
- involve the wider birth family and whānau

If the child and the adoptive parents are moving away, the adoptive parents must consult the birth parents and wider family and whānau to consider how post-adoption contact (if it occurs) can best be maintained following relocation

What we heard

We heard that contact agreements could help adopted people stay connected to their birth family and whānau, and support them to form their identity and understand their culture. We also heard that ongoing contact is important for the birth parents and their family and whānau. People thought that agreements should be flexible, so they can change over time and reflect different circumstances. However, changing any agreement needs to be easy and inexpensive.

Options we're considering

Maintaining contact with birth family and whānau after an adoption protects an adopted person's best interests, their right to family connection, and reflects the openness of the new adoption process.

We think it's important that families in an adoption think about making a contact agreement. Agreements are one way to set out the intentions of the families, including the adopted person, and can be referred to over time. We know that things change over time, and so the agreements should be able to be changed.

We have suggested that wider family and whānau should be able to be involved in making the agreement, where it is appropriate. Different families and cultures will have different ideas of who is considered to be 'family'. Enabling flexibility to include a range of people will recognise how important relationships with aunts and uncles, cousins, and grandparents are.

We've also suggested that the adoptive parents should need to talk to the birth parents about how they can stay in contact if they (and the child) are moving away. This doesn't stop the adoptive parents and child from moving, but means they must think about how the child can keep their connection to their birth family and whānau. This might result in a contact agreement being changed.

46. Do you agree that post-adoption contact agreements should be introduced? Why or why not?

47. Do you agree that the adoptive parents should have to consult the birth parents on maintaining contact if they are moving? Why or why not?

Other options we're considering

We're thinking about whether contact agreements should be enforceable. If they were, people could have the agreement enforced in court if it wasn't being followed. This would provide some assurance that the agreement is important and will be honoured. However, enforcing the agreements may be harmful to the child if disputes over contact are escalated to court. The court process could also challenge good-faith relationships.

48. Do you think that contact agreements should be enforceable? Why or why not?

49. If contact agreements were enforceable, what should that look like?

We're also thinking about whether there is a need for post-adoption culture plans to be created if the adoptive applicants are from a different culture to the child. This reinforces that it's in a child's best interests to have their right to culture upheld. It would also make sure that adoptive parents are aware of the cultural needs of their adoptive child and have their intentions for maintaining the child's connection to their culture recorded.

The plan could be prepared by adoptive applicants and given to the Court to help it make a decision on whether the adoption is in the child's best interests. It could form part of the contact agreement. However, culture plans may be inflexible and not be able to respond to the changing needs and interests of the child. They might set out unrealistic expectations

which can't be met. There is also no guarantee that the plan would be followed after the adoption. We would need to consider whether a culture plan can be legally enforced.

50. Do you think adoptive parents should be required to have post-adoption culture plans? Why or why not?

What support can people access?

What we heard

We heard that people who are adopted, birth parents, adoptive parents, and wider family and whānau need support before, during, and after an adoption. Most people said that adopted people's support services should be government-funded. We heard from adopted people and birth parents that they struggled to make sense of the adoption and how it has affected them. A few people said it left them feeling alone.

Adopted people in particular said that they wanted support to help them to deal with the effects of adoption both as a child and as they grew up. They said that adoption had challenging and complex psychological effects on them, and they wanted mental health support to deal with that. Young people told us they wanted access to specialised adoption services including therapy, guidance, cultural programmes, and support groups.

Options we are considering

We think it's important that the new adoption system provide appropriate support for people impacted by adoption. Adoption is deeply personal and emotional, and support services can help people work through the consequences.

We know that everyone impacted by adoption will have different support needs. Support services that work for one person may not work for another. We understand that common types of adoption support used around the world include:

- Counselling or therapy, such as for birth parents before they place their child for adoption or give their consent to the adoption
- Support groups
- Education (before and after an adoption)
- Reunification services.

There are likely to be other types of support that would be helpful that we haven't listed above. We would like to hear from you about what support should be available for people impacted by an adoption and when it should be available.

51. What types of support do you think people impacted by adoption should have access to? Why?

52. When do you think support should be available?

Who can access adoption information and when?

Adoption information

Options we're considering

Adopted people can automatically access information on their original birth record

There are no age restrictions for adopted people accessing their adoption information, but that information could be made age-appropriate where needed

Adopted people aren't required to undergo counselling to access their original birth certificate, but counselling is available if requested

An original birth certificate isn't required to access adoption information held by Oranga Tamariki after 1986

What we heard

We heard that access to identity information is a human right. People told us they had experienced harm from not being able to access adoption information. Wider family, whānau and descendants of adopted people told us they also experienced this harm.

We also heard that the restrictions on adoption information have had a profound effect on people's sense of identity. For Māori in particular, the restrictions have caused a loss of identity, of whakapapa and tūrangawaewae. These lost connections and restrictions on information later in life have lifelong and intergenerational implications.

The current age restrictions for accessing adoption information were described as discriminatory. Adopted people also told us that the requirement for some to undergo counselling in order to access certain information made them feel like they were still being treated as children.

Options we're considering

We think it is important that adopted people be able to access their birth and adoption information. Currently, the law favours the privacy rights of birth parents, rather than the rights of adopted people. Birth information can be a fundamental part of a person's identity. Restricting access to information is contrary to open adoption practice. It's also discriminatory, as it means some adopted people aren't able to access information in the way that non-adopted people are.

The options we're considering would enable adopted people to largely access their adoption information without restriction. This would support people to better understand their identity, and help them connect to their personal history, birth family and whānau, whakapapa and heritage, and culture.

For Māori, this option would provide a source of information about their whānau, hapū, iwi, and whakapapa - all of which is fundamental to understanding identity and tūrangawaewae.

We've suggested removing age restrictions on accessing adoption information. This will mean adopted people can apply to access this information whenever they're ready. We've also suggested that adopted people can access information on their original birth record automatically, in the same way people who are not adopted can.

Currently, adopted adults can access some adoption information that Oranga Tamariki holds without an original birth certificate, but it doesn't include identifying information about their birth parents. We've suggested that for adoptions that took place after 1986, an original birth certificate doesn't have to be provided to access all information held by Oranga Tamariki. This takes away the two-step process currently in place, which would make it faster and easier for adopted people to access that information. We've also suggested that adopted people shouldn't be required to undergo counselling when applying for information on their original birth record.

We are considering how access to court records could be changed in line with the other options we're looking at to increase access to information. We will talk to the judiciary about how we can ensure adopted people can access their adoption information.

53. Do you agree that adopted people should be able to automatically access information on their original birth record, with no age restrictions or counselling requirements? Why or why not?

54. Do you agree that an original birth certificate shouldn't be required to access adoption information held by Oranga Tamariki for adoptions after 1986? Why or why not?

Other options we're considering

As a general rule, the birth register is open, and anyone can order a birth certificate or printout of a birth record about anyone else. However, access to pre-adoption records is currently extremely limited. An adopted person's original birth record is one of the exceptions to the general rule. If someone orders an adopted person's birth certificate, it will only show their post-adoption information. That means the adoptive parents are recorded as if they were their birth parents unless they've chosen to be recorded as adoptive parent.

We want to hear your thoughts on who else should be able to access an adopted person's original birth record, other than the adopted person and their birth parents. Original birth records for adopted people could be open by default, in the same way everyone else's birth records are. Otherwise, original birth records could be limited to the adopted person

themselves, their parents, and their family and whānau. The law could also say that anyone, who has a good reason to, is able to access the birth record.

55. Who do you think should be able to access information on an adopted person's original birth record?

Information protected by vetoes

What we heard

The veto system was introduced under the Adult Adoption Information Act 1985, for adoptions that occurred before that Act came into force. It allowed a birth parent or adopted person to block others involved in the adoption from accessing the other party's identifying information. A veto lasts for 10 years and is infinitely renewable but can be removed by the applicant at any time. No new vetoes can be placed for adoptions after 1 March 1986. There are around 200 vetoes currently in place. Most are held by birth parents.

Many people we heard from told us that vetoes have no place in today's society, and that they should end. Others said that some people decided on adoption because it was secret, and that removing vetoes may be very upsetting for those people.

Other options we're considering

The veto system creates tensions between the right to privacy (of the veto holder) and the right to identity and information (of the person seeking the information). Currently, the balance leans towards the rights of veto holder.

We're thinking about whether the current veto system needs to change. In particular, we're looking for feedback on the following options:

- Keeping the current veto system, so people who have one in place can continue to renew them every 10 years indefinitely; or
- Changing the current veto system so that all vetoes have one final renewal available that lasts for 1-2 years. After that time, the veto would end, and the information can be accessed by the other party. People who would experience unwarranted distress by having their veto expire could apply to have the veto extended further.

The second option would change the current balance and prioritise the rights of the person seeking the information, most of whom are adopted people. This would be more consistent with the objectives for reform. However, it would likely cause harm to those who still have a veto, many of whom are likely to be elderly and may be vulnerable.

56. Do you think that the existing veto system should continue and be renewed every 10 years? Why?

OR

57. Do you think existing vetoes should be able to be renewed one more time for a further 1-2 years and then they expire, with a discretionary process available for people to apply for an extended veto? Why?

What if things go wrong?

Varying an adoption order

What we're thinking

The current law says the Court can vary (or change) an adoption order. However, it's unclear when and why an adoption order might be varied. The only case we could find where an order was varied was to change a child's name because it wasn't recorded correctly.

There may need to be a power to vary an adoption order in case the Court makes a mistake when the order is made. For example, if details are recorded incorrectly on the adoption order. We want to know whether you think there should be a power to vary an adoption order.

58. Do you think the Court needs to be able to vary adoption orders? Why or why not?

59. If yes, when do you think the Court should be able to vary adoption orders?

Discharging adoption orders

Options we're considering

Where the adopted person is still a child, the birth parents or adoptive parents may apply to have the adoption order discharged (or reversed)

Where the adopted person is an adult, they may apply to have the adoption order reversed

An adoption order may be reversed where it's in the interests of the adopted person, and there is:

- a material mistake or misrepresentation in the original adoption proceedings
- mutual consent of birth and adoptive parents
- an irretrievable breakdown in the relationship between adoptive parents and the adopted person

Birth parents and adoptive parents can be involved in adoption proceedings, but don't need to agree to the adoption order being reversed

Where the Court is considering reversing an adoption order in relation to a child, the Court should consider whether other orders under the Care of Children Act or the Oranga Tamariki Act should also be made

What we heard

Discharging (or reversing) adoption orders is rare under the current law. Adoption orders can only be reversed if there has been misrepresentation or material mistake in the original adoption proceeding. People require the consent of the Attorney-General to make an application to reverse an adoption order.

People said that the current approach doesn't centre on the rights and best interests of the adopted person and criticised the high bar for reversing an adoption order. They said it also doesn't allow an order to be reversed because of things that happened after the adoption order was made. We heard that requiring the Attorney-General's consent is unusual, and it adds time and complexity to the process of reversing an adoption.

Adopted people told us that reversing an adoption order could support an adopted child to go back to their birth family where an adoptive placement was abusive. They also said that reversing an adoption order could support their sense of identity, for example, where they wanted to reject the legal connection to their adoptive family due to past harm.

However, people noted that reversing an adoption order has significant legal impacts. For example, the current law restores the birth parents as the adopted person's legal parents. People said there should be a robust process to make sure that it can't be done lightly.

Options we're considering

We think there should be changes to when an adoption order can be reversed. The law should balance the need for an appropriate level of scrutiny, with the importance of allowing orders to be reversed in appropriate cases.

When the adopted person is a child (depending on what age is agreed for who may be adopted as outlined on page 18), we think that the birth parents or the adoptive parents should be able to apply to reverse the adoption order. Children are not generally able to make applications to the court on their own behalf. Many children are likely to not have the capacity to make an informed decision about reversing their adoption order.

Where the adopted person is an adult (depending on what age is agreed for who may be adopted), we think that only they should be able to apply to have the adoption order reversed. That recognises the significance of the decision on the adopted person and their sense of identity. However, as noted below, we're also thinking about whether 16- and 17-year-olds should be able to apply.

We think that there should be changes to the test for reversing an adoption order. Firstly, the Court should be satisfied that reversing the order would be in the adopted person's interests. For a child, this will be similar to assessing whether the adoption is in the child's best interests.

We've also suggested that the grounds for reversing an order be expanded. The extra grounds would allow adoptions to be reversed where birth parents want to resume parental responsibilities and the adoptive parents no longer wish to be the child's legal parents, or if there is a complete breakdown in the adoptive relationship. "Irretrievable breakdown" is a high standard that is used internationally for reversing adoption orders.

We don't think that birth or adoptive parents should need to consent (or agree) to an adoption order being reversed. Reversing an adoption order should focus on the interests of the adopted person, rather than the parents that are party to the adoption. However, we do think they should be able to be involved in the proceedings, so their views are heard.

If the adopted person is a child, the Court will need to consider who will have guardianship of the child (if the birth parents don't want to regain care). We've suggested that the Court should consider whether other orders under the Care of Children Act or the Oranga Tamariki Act should be made when deciding a reversal application. For example, the Court could appoint another adult or Oranga Tamariki as legal guardian of the child.

60. Do you think the birth parents or adoptive parents should be able to apply to have an adoption order reversed where the adopted person is still a child? Why or why not?

61. Do you think an adult adopted person should be able to apply to have an adoption order reversed? Why or why not?

62. Do you agree with the below grounds for reversing an adoption order? Why or why not?

- a. a material mistake or misrepresentation in the original adoption proceedings**
- b. mutual consent of birth and adoptive parents**
- c. an irretrievable breakdown in the relationship between adoptive parents and the adopted person**

63. Do you agree that the birth and adoptive parents should be able to participate in proceedings about, but not need to agree to, an adoption order being reversed? Why or why not?

64. Do you agree that the Court should need to consider whether other orders need to be made when deciding to reverse an adoption order? Why or why not?

Other options we're considering

We're thinking about whether 16- and 17-year-olds should be able to apply to reverse their adoption order with the consent of the Court.

We think 16- and 17-year-olds are likely to be able to make informed decisions about reversing an adoption order. Requiring the Court to consent to those applications would act as a check to make sure they do have capacity and understand the implications of reversing the order. This is similar to approaches in other family law areas, for example, if 16- and 17-year-olds want to get married.

Allowing 16- and 17-year-olds to apply for a reversal recognises their right to participate in decisions affecting them. It would also be more consistent with the right to freedom from discrimination on grounds of age under the New Zealand Bill of Rights Act 1990.

65. Do you think that 16 and 17-year-olds should be able to apply to reverse their own adoption order with the Court's consent? Why or why not?

There are limited situations in New Zealand law that requires the Attorney-General's consent to make an application. For example, the Attorney-General plays a special role in consenting to some more sensitive prosecutions, reporting to the Court in charitable trust matters, and in recognition of certain intercountry adoptions.

Requiring the Attorney-General's consent provides a filter to make sure that only applications with a chance of success come before the Courts. It also means the Crown Law Office gets involved, which can help applicants get information they need to support the application. For example, information from the original court record.

We want to know your views on whether the Attorney-General's consent should be needed to apply to reverse an adoption order. If you have any other ideas for filtering applications or assisting applicants through the process, we also want to hear those.

66. Do you think the Attorney-General's consent should be needed to apply for an adoption order to be reversed? Why or why not?

67. Do you have any views on how to filter applications or assist applicants through the adoption reversal process?

What happens in overseas and intercountry adoptions?

Options we're considering

The law clearly defines overseas and intercountry adoptions:

- Overseas adoptions are those where both the child and adoptive applicant(s) do not live in Aotearoa New Zealand
- Intercountry adoptions are those where the adoptive applicant(s) live in Aotearoa New Zealand and the child lives overseas

Aotearoa New Zealand continues to facilitate adoptions via the established Hague Convention process

A new process be established for intercountry adoptions outside of the Hague Convention

The automatic recognition of overseas adoptions takes place via an administrative process

Overseas adoptions and intercountry adoptions

What we heard

We heard support for recognising overseas adoptions and allowing intercountry adoptions in Aotearoa New Zealand, but people agreed that there needed to be changes. People said that current processes didn't have appropriate safeguards and didn't properly protect children's rights.

Around half of people we heard from thought that intercountry adoptions shouldn't be allowed and that we shouldn't recognise overseas adoptions in Aotearoa New Zealand. Those people said that the adoptions commodified vulnerable children and women. They also said that intercountry adoptions often focussed on the adult's desire to have a family, and not the child's interests.

Other people thought that intercountry adoptions should be made easier and simpler. A few said that doing so may be in children's best interests. We also heard that Aotearoa New Zealand should have more adoption agreements with other countries.

People who had personal experiences with overseas adoptions said they were frustrated with the current system. They said that the current law is unclear, and it has created difficulties for their families. A few people suggested that the overseas adoption should only

need to be a legal adoption in the other country to be recognised in Aotearoa New Zealand. Other people thought there should be extra safeguards in place for recognising an overseas adoption to make sure the adoption was in the child's best interests.

We also heard that intercountry adoptions should have proper safeguards. The safeguards should make sure the adoption is in the child's best interests and protect their safety. People thought safeguards could also help prevent the exploitation, commodification and trafficking of children and women. There were mixed views on what the safeguards should be.

Options we're considering

We think Aotearoa New Zealand should recognise overseas adoptions. It's important that families with adopted children can have their relationships recognised if they move to Aotearoa New Zealand. We also think there's still a place for intercountry adoption. However, we know there can be risks to children's safety and that children's rights need to be protected.

One of the ways we can protect children's rights is by making sure that the right adoption processes are used. One of the options we're considering is that the law could make it clear what is an overseas adoption and what is an intercountry adoption. We have suggested that the law could set out the following definitions:

- Overseas adoptions are ones where both the child and adoptive applicant(s) don't live in Aotearoa New Zealand.
- Intercountry adoptions are ones where the adoptive applicant(s) live in Aotearoa New Zealand and the child lives overseas.

Clearly defining the two types of adoptions will mean people will have to follow the specific processes set up for that adoption pathway. We haven't yet identified specific options for what the processes for each pathway should look like, but we expect there will need to be:

- criteria for when Aotearoa New Zealand recognises an overseas adoption; and
- some new protections for intercountry adoptions to ensure that they are in the child's best interests and are more consistent with the Hague Convention intercountry adoption process.

We haven't got options for what criteria needs to be met to recognise an overseas adoption or how the intercountry adoption process should work. We want to hear your views on what the two new pathways could look like.

We think it's important that overseas adoptions can continue to be recognised through an administrative process (rather than through the Court). This means that families moving to Aotearoa New Zealand won't need to go through an extra step to have the adoption recognised. If overseas adoptions weren't recognised through an administrative process, families would be required to go to court to have it recognised. We think this would put an

unreasonable burden on those families, as the court process can take time and be expensive.

Hague Convention adoptions

What we heard

We heard support for the Hague Convention intercountry adoption process and its safeguards. We heard that the safeguards under the Hague Convention, or similar ones, could be applied to all overseas and intercountry adoptions.

Every person who mentioned Article 23 certificates (which confirm that an adoption has complied with the Hague Convention, and has the same effect as an adoption order in the New Zealand Family Court) said that the child should get New Zealand citizenship regardless of which country issues the certificate.

Option we're considering

Given the support we heard last year and that it reflects international best practice, we also think it's appropriate to continue to allow Hague Convention intercountry adoptions.

Last year, we said that children adopted under the Hague Convention were currently getting different types of citizenship depending on whether the adoption took place in another country or Aotearoa New Zealand. People agreed that all children adopted under the Hague Convention should have the same citizenship rights, no matter where they're adopted. We're currently looking at how best to ensure this happens.

- 68. Do you agree that the law should define an overseas adoption as one where both the child and adoptive applicant(s) do not live in Aotearoa New Zealand? Why or why not?**
- 69. Do you agree the law should define an intercountry adoption as one where the adoptive applicant(s) live in Aotearoa New Zealand and the child lives overseas? Why or why not?**
- 70. What do you think the new intercountry adoption process should look like?**
- 71. What criteria do you think should be met for Aotearoa New Zealand to recognise overseas adoptions?**
- 72. Do you agree that overseas adoptions should be recognised via an administrative process (rather than through the Court)? Why or why not?**
- 73. Do you agree the law should continue to facilitate intercountry adoptions via the established Hague Convention process? Why or why not?**

Ministry of Justice
Tāhū o te Ture

justice.govt.nz

info@justice.govt.nz

0800 COURTS
0800 268 787

National Office
Justice Centre | 19 Aitken St
DX SX10088 | Wellington | New Zealand

