



Aide-mémoire

Date: 03 May 2021

Security Level: In Confidence

For: Hon Poto Williams

File reference: REP-OT/21/04/125

Advice for Minister Williams on the adoption law reform

Purpose

This aide-mémoire provides you with advice on the adoption law reform discussion document to support any comments you may have during Ministerial consultation.

The public discussion document, supplementary summary document and associated Cabinet paper have been circulated for Ministerial consultation.

We are generally supportive of the Cabinet paper seeking agreement to release the discussion document and the supplementary summary document for public consultation.

Summary of the discussion document

The discussion document sets out the state of adoption in New Zealand and seeks people's views on reform. It outlines current adoption laws and practice, some of the issues they raise and sets out some high-level options for ways the law could be changed. There are no preferred options in the paper, and it does not reflect a set of proposals for reform. The document is divided into the following key sections:

- **What is adoption:** An overview of adoption, its purpose, and the general process in New Zealand.
- **Who is involved in adoption:** Sets out who is involved in the process and what their role is.
- **Culture and adoption:** The importance of culture in adoptions, the Māori customary practice of whāngai, and other customary adoptions.
- **How the adoption process works:** This discusses overseas and intercountry adoptions, and how the domestic adoption process in New Zealand works in practice.
- **Impacts of adoption:** The impacts that adoption can have on those involved in the process includes the child's right to identity and access to adoption information and support.
- **Surrogacy and the adoption process:** Currently, adoption is the only mechanism to transfer full legal parentage from the surrogate to the intending parents.

We provided significant feedback during departmental consultation on the discussion document and much of this has been incorporated. s9(2)(f)(ii)

s9(2)(f)(ii)

[Redacted]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

Released Under Official Information Act 1982

s9(2)(f)(ii) [redacted]
[redacted]
[redacted]
[redacted]

Key risk identified for the adoption law reform Risk of harm to children in intercountry adoptions from Pacific Island countries

s9(2)(f)(iv) [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

The lack of checks that take place before an overseas adoption is recognised means that children are being adopted by applicants who New Zealand authorities would consider unsuitable. The risk of harm was evident in the case of Joseph Matamata, who was convicted in March 2020 of 23 charges of trafficking and slavery. Key victims in the case were s9(2)(a) of Mr Matamata's adopted children who had been brought to New Zealand from Samoa.

Until adoption laws are reformed, the overseas adoption pathway will continue to exist and pose significant risks to some of the children involved. Officials from Oranga Tamariki, Ministry of Business, Innovation and Employment, Department of Internal Affairs, Ministry of Foreign Affairs and Trade, and Ministry of Justice are continuing to monitor and respond to care and protection cases resulting from these adoptions. We will provide you with a more detailed briefing report (Ministry of Justice is leading) about this issue in the coming weeks.

Next steps

If the discussion document is approved by Cabinet, then public and targeted consultation will occur over the three months from June to August 2021. Policy proposals will then be presented to Ministers in late 2021/early 2022.

We will provide you with regular updates as this work progresses and would welcome the opportunity to meet with you to discuss the issues raised and answer any questions you may have about adoption law reform process.

Key milestones for the adoption law reform:

12 May 2021	Social Wellbeing Committee
June – August 2021	Public and targeted consultation
s9(2)(f)(iv) [redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Aide-mémoire

Cabinet paper

Date: 20 July 2020 **Security Level:** In-confidence

For: Hon Tracey Martin, Minister for Children

File Reference: REP-OT/20/7/155

Update on the sentencing of Mr Joseph Matamata on trafficking and slavery convictions

Purpose To provide you with an update about the upcoming sentencing (27 July 2020) of Mr Joseph Matamata on trafficking and slavery convictions.

Background In February 2020, we advised you that a criminal trial was due to commence around the prosecution of Mr Matamata for 13 charges of dealing in slaves and 11 charges of human trafficking [REP-OT/20/2/011 refers].
s9(2)(a) of the victims were brought to New Zealand via the non-Hague Convention intercountry adoption pathway, and one of them is in the care of Oranga Tamariki. The victims were adopted from Samoa, a non-contracting State to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention).¹

The trial On 17 March 2020, Mr Matamata was **found guilty on all 13 charges for dealing in slaves and guilty on 10 of the 11 charges of human trafficking.**

This is the first case in New Zealand where combined trafficking and slavery charges have been laid against a New Zealand permanent resident.

s9(2)(a)
[REDACTED]

The trial received media attention in New Zealand, Samoa and the United Kingdom with a brief commentary **s9(2)(a)** who came to New Zealand via the non-Hague Convention intercountry adoption pathway. See Appendix One for information about how Mr Matamata was able to use this pathway.

¹ The Hague Convention is the international convention which establishes protections for children who are adopted across borders. This Convention has been implemented into the law of New Zealand through the Adoption (Intercountry) Act 1997. Non-contracting States have not ratified this agreement and are not bound by the safeguarding processes it stipulates.

Work underway

There are currently three pieces of work underway to respond to concerns about the intercountry adoption pathway [REP-OT/20/6/134 refers].

- Drafting of **Practice Guidelines for Oranga Tamariki staff on both child trafficking and modern slavery**. This has been done with a view to strengthen the identification of victims of trafficking.
- s6(a) [REDACTED]
- A Cabinet paper on **adoption law reform** has been delayed because of COVID-19. The Ministry of Justice now expects the process to be pushed out by six months, with a paper to Cabinet on the scope, objectives and timeframes for reform considered post-election.

s6(c) [REDACTED]

[REDACTED]

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Appendix One: Adoption reform implications for intercountry adoptions

Section 17 of the Adoption Act 1955 creates a pathway that enables intercountry adoptions to occur outside the process established by the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention).

Adoptions concluded in an overseas Court may be recognised by Section 17 as having the same effect as a New Zealand Adoption Order, even if the adoption process lacks adequate safeguards for the children involved. The child may then be entitled to New Zealand citizenship or residency and brought to New Zealand by their adoptive parent. The absence of child-safeguarding measures may result in children coming to the attention of Oranga Tamariki due to care and protection concerns. Officials from the Ministry of Justice have advised Oranga Tamariki that section 17 of the Adoption Act 1955 will be reviewed as part of adoption law reform.

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ORANGA TAMARIKI
Ministry for Children

SECTION 17 PROVISIONS OF THE ADOPTION ACT 1955
AND THE
MOVEMENT OF PACIFIC CHILDREN ACROSS NEW ZEALAND BORDERS

International Child Protection Unit

September 2021

Released Under Official Information Act 1982

Introduction

The New Zealand Adoption Act 1955 (the Adoption Act) was drafted post-war and during a time when societal attitudes and beliefs were not accommodating of single women becoming pregnant; the rights of children were not recognised within statutes; and when Pasifika made up less than 1% of the New Zealand population. This Act has not been significantly amended or reformed since its enactment in 1955, however the domestic and international environment in which it operates has changed considerably over the past 60 years.¹

Significant changes in the domestic environment include New Zealand becoming a contracting state of international conventions which are aimed at protecting the rights of children², and changes to population demographics. New Zealand has a growing Pacific population which now accounts for over 8% of the total population, compared to 1% in 1955. Additionally, the current international environment is characterised by increased human mobility and migration, humanitarian issues such as conflict, population displacement and pandemics, human rights issues such as trafficking, smuggling and slavery, and the ever-increasing impact of climate change on vulnerable nations. International literature has shown that these characteristics produce drivers for children being adopted across borders, however they also bring significant risks for children when an intercountry adoption pathway does not have adequate safeguarding measures in place.

The inherent risks that are now present for children who are the subject of an intercountry adoption were not considered when the Adoption Act 1955 was enacted. The current application of the Act within New Zealand's domestic and international landscapes gives rise to concerns that overseas born children who are the subject of adoptions, may not be afforded the protection that they require and are entitled to.

Section 17 – Effect of an overseas adoption

As a result of changes in the domestic and international landscape and the flexibility of the Adoption Act, an 'adoption pathway' has emerged where risks have been identified for overseas born children who are adopted by people who reside in New Zealand. These people are usually relatives. These risks are related to section 17³ of the Adoption Act. This section recognises adoptions finalised in some overseas countries as having the same effect as an adoption made pursuant to the Adoption Act when the adoption laws in those countries are compatible to New Zealand's adoption laws. The countries this law engages are not contracting states to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention). The key risk arising from adoptions being concluded in an overseas Court and subsequently being recognised under the s17 provisions, is the potential absence of adequate safeguards to ensure the rights and interests of the adopted child are upheld.

s6(a)

¹ The New Zealand Government is currently undergoing a review of its adoption laws. More information is available on the website of the New Zealand Ministry of Justice: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/adoption-law-reform/>

² United Nations Convention on the Rights of the Child (UNCROC) and Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

³ Section 17: Effect of an overseas adoption (1) Where a person has been adopted (whether before or after the commencement of this section) in any place outside New Zealand according to the law of that place, and the adoption is one to which this section applies, then, for the purposes of this Act and all other New Zealand enactments and laws, the adoption shall have the same effect as an adoption order validly made under this Act, and shall have no other effect

⁴ Sections 3(2)(b) and 7 Citizenship Act 1977

overseas Court in a manner recognised by section 17 of the Adoption Act by a New Zealand citizen other than by descent, is afforded the right to obtain New Zealand citizenship by descent, provided the child was aged under 14 years at the time the adoption order was granted.

Section 17 also has an immigration-related effect for recognised overseas adoptions of overseas born children/young people aged 14-25 years. The intersect between section 17 and New Zealand immigration instructions allows these adopted children/young people to obtain a Dependent Child Residence Visa, enabling them to enter and reside permanently in New Zealand.

Section 17 within a Pacific context

Fiji is the only Pacific Island country which is a signatory to the Hague Convention. Applications for children who are domiciled in Fiji to be adopted by Fijian relatives in New Zealand, must comply with the Hague Convention. Section 17 of the Adoption Act 1955 is therefore not applicable for adoptions from Fiji.

For the remaining Pacific Island countries, New Zealand citizens or residents are often able to file adoption applications in the Court of the Pacific country where the children reside. The adoption laws of these Pacific countries are compatible to New Zealand adoption law, which means that adoptions concluded in their Courts are recognised under the provisions of s17 of the Adoption Act. This subsequently enables children adopted in those countries to receive New Zealand citizenship or Dependent Child Residence Visas.

The existence of section 17 of the Adoption Act, the increased growth of New Zealand's Pacific population and interest from Pacific island communities in accessing education and employment opportunities in New Zealand provides an explanation for the high numbers of overseas adoptions still being recorded, despite very few New Zealand-born children now being adopted. The highest number of adopted children now recognised under New Zealand's adoption legislation are Pacific-born children, who are the subject of interfamily adoptions concluded in their country of origin and recognised by section 17.

s6(a)

An adoption concluded in a Pacific country by New Zealand citizens or residents, which is then recognised under the provisions of section 17 of the Adoption Act, does not include any requirement for evidence of child safeguarding measures within the overseas adoption process. New Zealand currently relies on the other country to consider the child's rights, best interests and welfare when deciding to make the adoption. Some countries may not take some of the steps New Zealand considers necessary to safeguard children's rights. However, despite a potential absence of such safeguarding measures, the granting of the adoption order is likely to be recognised under the provisions of section 17 and will apply to New Zealand immigration and citizenship purposes.

s6(a)

[REDACTED]

s6(a)

This situation highlights that section 17 raises potential questions about whether the New Zealand government is able to fulfil its international obligations under UNCROC,⁵ within these challenging cross-jurisdictional legal settings.

Tongan Adoption Law and Section 17 New Zealand Adoption Act

The movement of children between their biological parents and extended family members through 'gifting' or customary adoption is not an uncommon practice in Tongan culture and is grounded in tradition and custom. 'Family' within Tongan culture, extends beyond the western-centric definition of family, and gives reference to the extended family which a child is born into. The child is viewed by their family and community as an estate (or 'tofi'a'), gifted to them by God, whereby the child will be cared for and provided for, with an expectation that the child will develop traits such as humility, loyalty, and respect, and give back to their family, community and church as they transition into adulthood.⁶ Within this belief framework, the 'best interest of the family' may create conflict with the principle of 'the best interest of the child'. For example, a child who has access to education and opportunities in New Zealand may have a greater return for the family in the long-term.⁷

Despite all children being viewed in Tongan culture as a 'gift from God', traditional Tongan culture makes a distinction between the caregiving of children born in wedlock and those born as illegitimate children. The former group are often treated with customary adoption practices, while the latter group are often subjected to formal legal proceedings in instances where birth parents are unable or unwilling to care for their illegitimate child, or where family members offer to care of the child. The adoption law in Tonga was enacted in 1926 and is referred to as the *Maintenance of Illegitimate Children Act*.

⁵ Article 3: All organisations concerned with children should work towards what is best for each child

Article 7: All children have the right to a legally registered name, and nationality. Also, the right to know and, as far as possible, to be cared for by their parents

Article 8: Governments should respect a child's right to a name and nationality and family ties.

Article 9: Children should not be separated from their parents unless it is for their own good. For example, if a child is mistreating or neglecting a child.

Article 12: Children have the right to say what they think should happen, when adults are making decisions that affect them and to have their opinions taken into account.

Article 19: Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

Article 20: Children who cannot be looked after by their own family, must be looked after properly by people who respect their religion, culture, and language.

Article 21: When children are adopted, the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born, or if they are taken to live in another country.

⁶ Corrin, J. Farran S. (Eds) (2019). *The Plural Practice of Adoption in Pacific Island States*: Chapter 7 Adoption in Tonga. Springer Nature. Switzerland

⁷ Corrin, J. Farran S. (Eds) (2019). *The Plural Practice of Adoption in Pacific Island States*: Chapter 7 Adoption in Tonga. Springer Nature. Switzerland

The Act allows for applications to be made for the adoption of an illegitimate child, subject to the mother consenting to the adoption. In compelling circumstances, the mother's consent may be dispensed with. The granting of Letters of Adoption by the Supreme Court of Tonga extinguishes the rights and obligations of the birth mother and recognises the adoptive parent as the legal guardian of the child. Letters of Adoption can be granted if the adoptive applicant is considered to be 'fit and proper'.⁸ Furthermore, before the of granting Letters of Adoption there is an expectation by the Court that consideration will be given to the paramountcy principle of the 'best interest of the child'.

Tongan adoption law is compatible with New Zealand Adoption law which means that the section 17 provisions apply. Therefore, for cases where Letters of Adoption have been granted by the Supreme Court of Tonga in favour of applicants who are New Zealand citizens or residents, the child can enter and reside permanently in New Zealand with their adoptive parents. However, despite section 17 not requiring overseas adoption processes to include child safeguarding measures, the judiciary in Tonga noted that there are additional complexities when domestic adoptions in Tonga occur within this cross-jurisdictional context. The Supreme Court is effectively ruling on an intercountry adoption. Given this, the Supreme Court recognises that extra caution is required before granting Letters of Adoption when the intention is for the child to leave Tonga to be raised in New Zealand by their extended family. The Supreme Court has noted that the driver for intercountry adoptions may be grounded in a perceived belief that the adoption will provide a permanent immigration status which could afford the child with better life opportunities in New Zealand. However, this may conflict with what is in the best interest of the child.⁹

A Practice Model to mitigate against s17 risks for Tongan children being adopted by relatives residing in New Zealand

Tonga and New Zealand both have adoption laws which were drafted many decades ago and reflect societal beliefs and attitudes of that time which are now significantly different in modern-day society.

s6(a)

Tonga has adopted a model of practice to address the risks recognised. This model demonstrates that child safeguarding measures can be successfully introduced within the existing challenging and outdated legal framework for intercountry adoptions between Tonga and New Zealand. This model is built on the key principles of UNCROC, to which both Tonga and New Zealand are contracting states, whereby intercountry adoptions should only occur when this care arrangement is in the best interest of the child and when all other means of caring for the child in Tonga have been exhausted (principle of subsidiarity).

With an increase in the number of adoption applications filed in the Supreme Court by family members residing in New Zealand, the primary challenge for the Tongan Court was to be able to be satisfied that applicants were 'fit and proper' to be granted orders. The applicants need to fulfil the parenting role and responsibility for a child not born to them.

In 2019, Lord Chief Justice Paulsen took steps to ensure that the Supreme Court in Tonga was fully informed on adoption applications from New Zealand-based applicants. As a result, a Practice Direction was drafted in collaboration with Oranga Tamariki and the Tongan Attorney General's Office. This Practice Direction involved negotiating an agreement with Oranga Tamariki to provide full assessments

⁸ S16(2) Maintenance of Illegitimate Children Act

⁹ Unreported, Supreme Court, Tonga, Paulsen CJ, 12 February 2015) available via www.pacii.org at (2015) TOSC 5. Unreported, Supreme Court, Tonga, Paulsen CJ, 11 March 2015) available via www.pacii.org at (2015) TOSC 10.

(often referred to as Home Study Reports) on the suitability of the adoptive applicants who reside in New Zealand.

On 5 June 2019, Lord Chief Justice Paulsen issued the Practice Direction.¹⁰ This Direction requires that applicants who are resident in New Zealand and who file for Letters for Adoption in the Supreme Court of Tonga must provide evidence that they are of good character and that they are suitable to adopt. These requirements include the adoptive applicants providing the Court with a New Zealand Police check and a full assessment by Oranga Tamariki of their circumstances in New Zealand. The applicants must also demonstrate how the adoption will promote the welfare and best interests of the child. The Court of Tonga will not progress an application to adopt without these requirements being met¹¹. Since the Practice Direction was issued in June 2019, Oranga Tamariki has provided 12 Home Study Reports to the Attorney General's Office in Tonga, involving 23 children.

Summary

The modern society that Tongan and New Zealand Adoption legislation is now operating within is vastly different to the eras when these laws were drafted and enacted. Since 1926 and 1955 respectively, there have been significant changes in societal attitudes and beliefs, and migration patterns. Additionally, and most notably, Tonga and New Zealand have ratified UNCROC which provides a common understanding between our two nations to enable dialogue to take place on matters affecting children crossing our respective borders.

Section 17 of the Adoption Act 1955 has placed New Zealand, inadvertently, in a position of being a 'receiving country' for the adoption of Pacific-born children by New Zealand citizens and residents. Other than Fiji, none of the Pacific countries, including Tonga, have ratified the Hague Convention. This allows for the adoption of children resident in these countries to be recognised by New Zealand domestic adoption legislation with immigration and citizenship implications.

Within a Pacific cultural context, the concept of children being separated from their birth family to live with extended family overseas and seek better opportunities is not unusual. However, when a key driver for adoption is solely to obtain immigration and citizenship status in New Zealand, there is a risk that a number of the rights of the children will not be met. An adoption under these circumstances, and where there is an absence of child safeguarding measures and child-centred decision-making, has the potential to have a significant and adverse impact on the child's safety, development, dignity and well-being.

The Practice Direction introduced by Lord Chief Justice Paulsen has afforded Tongan children greater protection and safeguards when they are adopted by relatives who live outside of Tonga (who are usually residing in New Zealand). The Practice Direction is an example of an operational measure which has been successfully introduced, in collaboration with Oranga Tamariki, within a challenging legal environment. The Practice Direction has introduced requirements within the Tongan adoption process, which are aimed at upholding the protection of the rights and best interests of Tongan children who are the subject of intercountry adoptions.

¹⁰ Attached as Appendix "A"

¹¹ Appendix "B" – Practice Direction – Operational Process

[REDACTED]

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Appendix “B” – Practice Direction – Operational Process

1. After an application for an adoption is received by the Registrar in the Tonga Court, and it is determined that the applicants reside in New Zealand, the file is referred to the Attorney General's Office
2. A Counsel in the Attorney General's Office is appointed to the file as the Guardian ad Litem (GAL).
3. The GAL's role includes making a request to Adoption Services, at Oranga Tamariki-Ministry for Children, for a Home Study Assessment to be completed on the suitability of the applicants.
4. The Home Study Assessment completed by an Adoption Social Worker involves the applicants providing their consent for Oranga Tamariki to complete Police checks and child protection database checks.
5. The applicants must also provide to the Adoption Social Worker medical reports from their doctor and two references.
6. Face-to-face interviews are then conducted by the social worker with the applicants, which contribute to the completion of a Home Study assessment.
7. The Home Study Report completed by Oranga Tamariki for the Supreme Court of Tonga, provides an assessment on the suitability of the applicants to adopt a child and whether the adoption will promote the welfare and best interests of the child.
8. On completion of the Home Study Report, Oranga Tamariki forwards the report directly to the GAL, who files it with the Supreme Court and the adoption application can then proceed.

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CHILDREN ACROSS BORDERS CROSS-AGENCY WORKING GROUP

Terms of Reference

Our Purpose & Roles

(Why we exist and who we are)

PURPOSE

The Children across Borders Cross-agency Working Group (CABWG) works to develop a cross-agency approach for:

- 1) responding to issues on adoptions involving non-contracting states (specifically on the quality and availability of information to support decision-making)
- 2) engage with governments of Samoa and Tonga to improve information sharing and provision of appropriate reports related to inter-country adoptions.

The ultimate deliverable for the CABWG will be an update and advice to Ministers in July 2019, in accordance with the agreed recommendations in the report dated (12 December 2018) seeking agreement to our proposed approach.

SCOPE

Members of the CABWG are expected to:

- Deliver the agreed work plan (understand risks, objectives and progress)
- Provide strategic and operational advice from respective business areas
- Act as a conduit for information-sharing between the working group and the relevant officials in the agency business area
- Escalate and take action to mitigate risks and issues as required
- Provide assistance to assess impacts in respective areas
- Ensure sufficient resource availability to input on required work
- Ensure the quality of work produced is of an appropriate standard.

MEMBERSHIP

Membership is agreed by the CABWG and will include officials from the following agencies:

- Oranga Tamariki –Ministry for Children (Chair)
- Ministry of Social Development
- Ministry of Justice
- Ministry of Education
- Department of Internal Affairs
- New Zealand Police
- Ministry of Business, Innovation and Employment (Immigration New Zealand)
- Ministry for Pacific Peoples
- Ministry of Foreign Affairs and Trade

Our Responsibilities

(What we need to do)

RESPONSIBILITIES

Members of the CABWG are expected to:

- bring expert understanding of the relevant agency/business area to augment the knowledge, understanding and thinking of work related to the policy agenda Children Across Borders
- drive momentum and ensure the CABWG cross-agency work plan is delivered within agreed parameters
- work in partnership to identify dependencies and leverage opportunities for collaboration on policy issues
- assist with effective identification, mitigation and management of risks and issues
- use the working group as a forum to raise concerns, emerging risks and operational responses to the relevant agencies immediately
- work together to report to Senior Leaders and Ministers as appropriate with updates and advice regarding issues covered by the CABWG.

Members of the CABWG are expected to act as a conduit for their agency on and for matters addressed by the CABWG.

In doing so, members of the CABWG have a responsibility to:

- apply their respective expertise
- constructively discuss matters
- collectively own the decisions made
- commit sufficient time to fulfil their outlined responsibilities.

AUTHORITY

- Make recommendations and endorse CABWG work plan activities
- Ensure completion of the programme components to an adequate standard
- Ensure availability of resources to the work streams and programme team as agreed

Our Operating Rhythm

(How and when we do it)

ADMINISTRATION

Oranga Tamariki–Ministry for Children officials will facilitate meetings and provide the Secretariat function for the CABWG.

FREQUENCY OF MEETINGS

- The group will initially meet bi-monthly with consideration given to the forward agenda. The frequency of meetings may increase if the forward agenda requires.

AGENDA AND PAPERS

- The forward agenda will be developed by the Chair with input from other working group members.
- The agenda and papers will be prepared and distributed to the CABWG members and attendees at least two working days before a meeting.

MINUTES

- The minutes will record key discussion points, decisions and actions. The minutes will be circulated with the preceding meeting pack and approved at the following meeting.

EVALUATING PERFORMANCE

- The Chair, in conjunction with the CABWG members, will continually review the purpose, scope and functions of the group and adjust accordingly as need arises.



**Promoting the safety and wellbeing of children involved in
intercountry adoptions**

Date: 31 July 2019

Report no.: REP-OT/19/7/194

Security level: MEDIUM

Priority: MEDIUM

Action Sought

Hon Tracey Martin

Approval

Week of Monday 5

Minister for Children

August 2019

Contact for telephone discussion

Name	Position	Telephone	1 st Contact
Trish Langridge	Deputy Chief Executive Care Services	09-9094501	✓
s9(2)(a)	General Manager Policy	s9(2)(a)	

Report prepared by: s9(2)(a) Policy Analyst

**Other departments
consulted:**

The Ministry of Business, Innovation and Employment (Immigration New Zealand), the Ministry of Foreign Affairs and Trade, the Department of Internal Affairs, the Ministry of Justice, the Ministry of Social Development, the Ministry for Pacific Peoples, the New Zealand Police, and the Ministry of Education.

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to (specify)

Comments

Date received from MC

Date returned to MC

Report

Date: 31 July 2019

Security Level: IN CONFIDENCE

To: Hon Tracey Martin, Minister for Children

Promoting the safety and wellbeing of children involved in intercountry adoptions

Purpose of the report

- 1 This report seeks your agreement for Oranga Tamariki–Ministry for Children (Oranga Tamariki) **s6(a)** and updates you on a proposed cross-agency approach to promote the safety and wellbeing of children involved in intercountry adoptions.

Executive summary

- 2 Currently, some intercountry adoptions of children and young people are leading to poor outcomes, including abuse (physical, emotional, and sexual) exploitation for child labour, or rejection post adoption. These adoptions only involve children from non-contracting States to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention).¹ The greatest numbers of children being adopted by New Zealand citizens or residents are from Samoa, which is a non-contracting State.
- 3 A lack of information sharing between New Zealand and non-contracting States to the Hague Convention is contributing to these poor outcomes. **s6(a)**
- 4 We seek your agreement to begin negotiations on a formal arrangement to agree high level principles and express non-binding commitments focused on promoting the safety and wellbeing of children. Under international law, an Arrangement is an agreement between the government departments of two different countries, with a lower status than a Treaty. This is the first step towards creating better formal channels of information sharing between Oranga Tamariki and the Samoan Family Court. If you agree, we will begin formal negotiations with officials from the Government of Samoa in August 2019.
- 5 This paper also updates you on a cross-agency approach that formalises how agencies are working together to respond to issues related to intercountry adoptions. The key components of this approach are information sharing between agencies, and improving referral pathways and case management for active child protection cases. The overall purpose is to ensure that intercountry adoptions from non-contracting States to the Hague Convention are made in the best interests of children.

¹ The Hague Convention is the international convention which establishes protections for children who are adopted across borders. This Convention has been implemented into the law of New Zealand through the Adoption (Intercountry) Act 1997. Non-contracting States have not ratified this agreement, and are not bound by the safeguarding processes it stipulates.

Recommended actions

It is recommended that you:

- 1 **note** that in some cases intercountry adoptions from non-contracting States to the Hague Convention continue to lead to poor outcomes for children when they arrive in New Zealand
- 2 **note** that one of the key issues that leads to poor outcomes in cases of intercountry adoptions is the absence of robust information sharing arrangements

3 s6(a)

4 s6(a)

Agree / Disagree

- 5 **note** that a cross-agency working group has been established to ensure key agencies are working closely together to promote the safety and wellbeing of children involved in intercountry adoptions
- 6 **agree** to forward this report to the Minister of Foreign Affairs, the Minister of Immigration, the Minister of Justice, the Minister of Internal Affairs, the Minister for Pacific Peoples, the Minister for Social Development, the Minister of Police, and the Minister of Education for their information.

Agree / Disagree

s9(2)(a)

Trish Langridge
Deputy Chief Executive, Care Services Group

31.7.19
Date

Hon Tracey Martin
Minister for Children

Date

Some intercountry adoptions are leading to poor outcomes for children

- 7 In December 2018, we advised you that in some cases intercountry adoptions are leading to poor outcomes for children from non-contracting States to the Hague Convention [REP-OT-18-11-401 refers]. This includes situations where children have been subjected to abuse (physically, emotionally and sexually) exploited for child labour, or rejected post adoption.
- 8 To respond to these issues and improve outcomes for the children who are impacted, you agreed for officials to undertake further work in three areas:
 - work with the Government of Samoa to provide feedback on the redrafted Samoan adoption legislation
 - s6(a)
 - work across relevant agencies on a formal cross-government approach to respond to the poor outcomes for some children as a result of intercountry adoptions, specifically focused on improving the quality and availability of information to improve decision making.
- 9 This report provides you with an update on developments in these three areas.

Barriers to information sharing are contributing to poor outcomes following intercountry adoptions

- 10 An 'intercountry adoption' is the process by which adoptive parents adopt a child from an overseas country to establish permanent legal rights and responsibilities for that child, usually with the intent to bring that child to their country to live with them permanently.
- 11 Intercountry adoptions in New Zealand are facilitated by certain provisions of the Adoption Act 1955 (the Adoption Act), coupled with either the Citizenship Act 1977, or New Zealand Immigration instructions. Applications for adoption can be made in either the New Zealand Family Court or offshore jurisdictions. The Adoption Act recognises adoptions finalised in some offshore jurisdictions as having the same effect as an adoption granted in New Zealand. Intercountry adoptions can provide a pathway to New Zealand citizenship or residency.
- 12 The greatest numbers of children being adopted by New Zealand citizens or residents are from Samoa, and to a lesser degree from Tonga.² Neither country is a contracting State to the Hague Convention. There are also small but increasing numbers of children being adopted from countries which are considered fragile states.³
- 13 s6(a)

² From 2015 – 2017, 1683 Samoan children under the age of 14 were granted citizenship following an intercountry adoption. During this time 24 children under the age of 14 from Tonga were granted citizenship. The number of Samoan children granted citizenship after an intercountry adoption has increased since 2010, when 222 Samoan children were granted citizenship, compared with 771 in 2017.

³ Fragile states are characterised by weak governance, limited administrative capacity, chronic humanitarian crises, persistent social tensions, and often, violence or the legacy of armed conflict and civil war.

14 As we identified last year, the following issues with intercountry adoptions for children from non-contracting States mean that adoptions may not be in the child's best interests.

14.1 There may be **limited or no formalised information sharing arrangements** between New Zealand and the child's country of origin. In these situations, it can be difficult to determine if the child is in need of an adoption and whether an adoption will promote the welfare and best interests of the child. This is a key issue that contributes to poor outcomes for children.

14.2 s6(c)

14.3 Courts in other countries may have **insufficient information about the suitability of adoptive applicants that are residents of New Zealand**. For example, New Zealand applicants with convictions for sex offending, or significant care and protection histories with Oranga Tamariki have been approved to adopt by overseas courts.

15 These issues occur both in adoption applications granted in the New Zealand Family Court, as well as in overseas courts. For adoptions granted in New Zealand, agencies and the Family Court may struggle to get information from other countries. For adoption applications granted overseas, agencies have no involvement unless asked for information. This lack of information sharing means that the suitability of adoptive applicants cannot be assessed and that the child's best interests are not always fully considered.

Over the last six months we have had positive engagement with Pacific Island countries

16 Since we last updated you, s6(a)

s6(a)

s6(a)



⁴ This would require judges in lower courts to request information from Oranga Tamariki on the suitability of applicants based in New Zealand when considering applications for intercountry adoptions.

We have developed a cross-agency approach to respond to intercountry adoptions that lead to poor outcomes for children

- 27 Alongside working with our Pacific neighbours, we have also been working to formalise a cross-agency approach to respond to issues related to intercountry adoptions.
- 28 This has included establishing a cross-agency working group, led by Oranga Tamariki, and with officials from the Ministries of Education, Foreign Affairs and Trade, Justice, Pacific Peoples, Social Development, the Department of Internal Affairs, and Immigration New Zealand.
- 29 The purpose of the group is to work across relevant agencies to respond to issues related to intercountry adoptions, with a particular focus on improving the quality and availability of information to support decision-making.
- 30 The approach formalises measures that the working group has introduced to promote the safety and wellbeing of children crossing borders. It includes two key components.
- **Information sharing between agencies and across borders** - this helps to identify when children could be unsafe and allows agencies to take proactive steps to prevent this. Agencies share and request information using Section 66⁵ of the Oranga Tamariki Act (1989) that came into effect on 1 July 2019, as well as the Privacy Act, specifically, principles relating to maintenance of the law.⁶ A joined up approach is needed because international child welfare cases may include complex criminal, immigration, and border security issues.
 - **Referral pathways and case management** - these enable agencies to identify vulnerable and at risk children and young people who have left their country of origin and crossed New Zealand borders. This involves a case by case exchange of information to enable relevant agencies to agree how cases will be progressed, as well as identifying a lead agency to ensure children and young people receive appropriate support and access to services.

This approach captures the overarching steps that agencies have taken and are implementing in order to achieve better outcomes for children. Appendix one sets out other work underway across government on adoption related issues.

⁵ Section 66 of the Oranga Tamariki Act (1989) enables proactive and voluntary sharing of information related to the safety and wellbeing of children between professionals and agencies.

⁶ Principle 11(e)(i) of the Privacy Act (1993) allows information to be shared if doing so avoids prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution and punishment of offences.

Next steps

31 s6(a)

32 We will also continue to update you on the cross-agency working group and approach as required.

Released Under Official Information Act 1982

Appendix one: work underway across government on adoption related issues

33 Over the last six months agencies have been involved in a range of issues related to intercountry adoptions and associated issues. This has included:

- **A meeting with the Principal Family Court Judge.** In May 2019, officials from the Ministry of Justice, Oranga Tamariki, Department of Internal Affairs, and Immigration New Zealand met with Principal Family Court Judge Moran to discuss adoptions involving children from fragile states. Judge Moran was concerned about the issues we raised, and indicated she would discuss these issues with her judicial colleagues.
- **Advice on reform of the Adoption Act.** The Ministry of Justice is intending to provide advice to the Minister of Justice in September 2019 on options for adoption reform. This follows previous advice to the Minister of Justice in December 2018. We have requested a copy of this report is forwarded to you.
- **A criminal prosecution that is likely to attract significant media attention.** Immigration New Zealand is leading a prosecution against Joseph Matamata, who is alleged to have committed a number of crimes over an extended period of time against young people. Mr Matamata is facing eight charges of human trafficking and ten charges of dealing in slaves. Further charges are currently being considered related to an additional s9(2)(a) young people who Mr Matamata brought to New Zealand from Samoa using the intercountry adoption pathway. The case has already attracted media coverage, and more is likely when the trial begins in February 2020.
- **Immigration New Zealand is being made party to proceedings in the New Zealand Family Court.** When applications are made for an intercountry adoption involving a fragile state, Oranga Tamariki now requests that Immigration New Zealand is made party to the proceedings, so that they can provide information about the adoptive applicant. In each case so far, the applicant has arrived in New Zealand through a refugee pathway.



Cross-agency approach to intercountry adoptions

Date: 12 December 2018

Report no.: OT/18/11/401

Security level: In Confidence

Priority: Medium

Action Sought

Hon Tracey Martin
Minister for Children

Approval

15 February 2018

Contact for telephone discussion

Name	Position	Telephone	1 st Contact
Trish Langridge	Deputy Chief Executive Care Services	9094501	1 st Contact
s9(2)(a)	Senior Advisor International Casework Team	s9(2)(a)	

Report prepared by: s9(2)(a) Senior Policy Analyst

Other departments consulted: The Ministry of Business, Innovation and Employment (Immigration New Zealand), Ministry of Foreign Affairs and Trade, the Department of Internal Affairs, the Ministry of Justice, the Ministry of Social Development, the Ministry for Pacific Peoples, the New Zealand Police, and the Ministry of Education.

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to (specify)

Comments

Rec 11 - Shared report with relevant offices (17/12/18)

Date received from MC

12 DEC 2018

Date returned to MC

17 DEC 2018



Report

Date: 12 December 2018

Security Level: In Confidence

To: Hon Tracey Martin, Minister for Children

Cross-agency approach to intercountry adoptions

Purpose of the report

- 1 This report seeks your agreement to cross-agency work to respond to issues that arise when New Zealand citizens or permanent residents adopt children from non-contracting States to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention).¹

Executive summary

- 2 Certain provisions of the Adoption Act 1955, coupled with trends in international migration, are leading to poor wellbeing outcomes for some adopted children and pose potential risks to our immigration and security systems.
- 3 Since the Adoption Act came into force in 1955, understanding about the rights of children has developed, and New Zealand has ratified important international human rights instruments. The Adoption Act may now be being used in ways not envisaged or intended at the time it was drafted, particularly the provisions which enable adoptions of children from non-contracting States to the Hague Convention to occur.
- 4 Over the past year, Oranga Tamariki has responded to a number of cases where intercountry adoptions involving non-contracting States have led to very poor outcomes for children adopted by New Zealand citizens or permanent residents. This includes cases where children have been abused (physically, emotionally, and sexually), used as child labour, or rejected post-adoption.
- 5 In all instances, risks and poor outcomes appear to relate to weak screening and information sharing between New Zealand and authorities in the child's country of origin. In particular:
 - there may be limited or no formalised information sharing arrangements between New Zealand and the child's country of origin
 - s6(a)
 - courts in other countries may have insufficient information about the suitability of adoptive applicants that are residents of New Zealand.
- 6 The issues and risks arising from intercountry adoptions span across government. While child welfare is a primary concern, other agencies have raised concerns about broader issues, including immigration and security.

¹ The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption is the international convention which establishes protections for children who are adopted across borders. This Convention has been implemented into the law of New Zealand through the Adoption (Intercountry) Act 1997.

7 The issues identified in this paper are complex and interconnected. There is a real need for agencies to work together to respond to these issues, with clear roles and responsibilities. We propose to provide you and other relevant Ministers with advice in July 2019 outlining how agencies intend to work together (including who will lead the working group and how and when we will report to Ministers), and recommended steps to improve information flows with Pacific Island countries and fragile states where practicable.

8 s6(a)

9 The Ministry of Justice has prepared separate advice to their Minister on opportunities for reform of adoption legislation. This report complements the Ministry of Justice's advice.

Recommended actions

It is recommended that you:

- 1 **Note** that Oranga Tamariki has identified a range of issues that arise when New Zealand citizens or permanent residents adopt children from non-contracting States to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which can create poor wellbeing outcomes for adopted children;
- 2 **Note** that, in addition to concerns about adopted children's wellbeing, these issues have broader implications across government, and involve other Ministerial portfolios;
- 3 **Note** that Oranga Tamariki is currently working across agencies to develop better processes for sharing information within the existing legislative settings;

4 s6(a)

5 **Agree** that Oranga Tamariki develop advice with other relevant agencies on a formal cross-government approach to respond to the issues that have been identified, with a particular focus on improving the quality and availability of information to improve decision-making in relation to adoptions involving non-contracting States;

Agree / Disagree

6 **Note** that, if you agree, Oranga Tamariki will report back to you by July 2019 with advice on the purpose and approach for a cross-government response;

7 s6(a)

8

Agree / Disagree

9 s6(a)

Agree / Disagree

10 **Note** that this report complements a paper prepared by the Ministry of Justice "*Adoption laws: Background information and opportunities for reform*", which examines the underlying framework of adoption by New Zealand citizens or permanent residents;

11 **Agree** to forward this paper to the Minister of Foreign Affairs and Trade, the Minister of Justice, the Minister of Immigration, the Minister of Internal Affairs, the Minister for Pacific Peoples, the Minister for Social Development, the Minister of Police and the Minister of Education for their information.

Agree / Disagree

s9(2)(a) [Redacted]

Trish Langridge
Deputy Chief Executive
Care Services



Hon Tracey Martin
Minister for Children

12.12.18
Date

17/12/18
Date

Released Under Official Information Act 1982

The Adoption Act 1955 is regularly used to facilitate intercountry adoptions

- 1 New Zealand's adoption legislation was enacted in 1955 in direct response to the post-war period. The Adoption Act 1955 (the Adoption Act), administered by the Ministry of Justice, provides for the transfer of legal rights and responsibilities in relation to a child from birth parents to adoptive parents.
- 2 There are two provisions in the Adoption Act which are regularly used to facilitate adoptions for children from non-contracting States to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention).² These adoptions can take place in the New Zealand Family Court, or in an overseas court, and take on the status of an 'intercountry adoption'.
- 3 An 'intercountry adoption' is the process by which adoptive parents adopt a child from an overseas country through permanent legal means, usually with the intent to bring that child to their country of residence to live with them permanently. Intercountry adoptions can provide a pathway to New Zealand citizenship or residency.

The Adoption Act no longer reflects how children are moved across borders

- 4 The Adoption Act no longer accurately represents how children are moved across borders, or modern adoption practices. Understanding about the rights of children has developed further since the Adoption Act came into force, and New Zealand has ratified important international human rights instruments.
- 5 The provisions relating to intercountry adoptions may now be being used in ways not envisaged or intended at the time they were drafted. Of particular interest and concern are the risks that have been identified when children are being adopted from Pacific Island countries and fragile states (characterised by weak governance, limited administrative capacity, chronic humanitarian crises, persistent social tensions, and often, violence or the legacy of armed conflict and civil war).³
- 6 The greatest numbers of overseas born children who are being adopted by New Zealand citizens or residents are from Samoa and Tonga. Neither country is a contracting State to the Hague Convention. There are also small but increasing numbers of children being adopted from countries which are fragile states.
- 7 Appendix One provides an overview of how the Adoption Act facilitates intercountry adoption, the immigration implications, and numbers of intercountry adoption by country based on available data.

Poor information flows with non-contracting States create risks for children's wellbeing

- 8 Wherever an adoption occurs for an overseas-born child, either through the New Zealand Court or an overseas court, decisions should be made in the best interests of the child. To support this, it is essential for information to be shared between agencies and countries.
- 9 Oranga Tamariki has established effective information-sharing processes with some non-contracting States. For example, Oranga Tamariki funds the Tongan Women and Children's Crisis Centre to provide Child Study Reports to support adoption applications for children from Tonga, which are being concluded in the New Zealand Family Court. Additionally, the Tongan

² Under the Hague Convention, any adoption that involves one or more parents from a Contracting State (e.g. New Zealand) and a child that is living in another Contracting State must be undertaken in accordance with the process set out in the Hague Convention. In short, this means that agencies of Contracting States are required to exchange information and be satisfied that the adoption is in the best interests of the child. Non-contracting States are not bound by these rules.

³ <http://www.imf.org/external/np/pp/eng/2012/042512.pdf>

Attorney General's Office recently engaged with Oranga Tamariki to request suitability assessments of adoptive applicants who are resident in New Zealand but who have applied to adopt in the Supreme Court of Tonga.

10 s6(a)

11

12 We have identified the following issues with intercountry adoptions for children from non-contracting States governed by the Adoption Act, which mean that adoptions may not be in the child's best interests:

12.1 there may be **limited or no formalised information sharing arrangements** between New Zealand and the child's country of origin. In such cases it is difficult to determine if the child is in need of an adoption, and whether an adoption will promote the welfare and the best interests of the child

12.2 s6(a)

12.3 courts in other countries may have **insufficient information about the suitability of adoptive applicants that are residents of New Zealand**. When considering an adoption application, courts in non-contracting States should ideally request information from New Zealand authorities about the suitability of the adoptive applicants. Approaches vary between countries.

13 These issues are evident both in adoptions concluded in the New Zealand Family Court, and overseas courts. For adoptions concluded here, we may struggle to get information from other countries. For adoptions concluded overseas, we have no involvement unless we are asked for information.

Oranga Tamariki has responded to cases where adoptions involving non-contracting States have led to poor outcomes for children

14 Over the past year, we have responded to a number of cases where intercountry adoptions involving non-contracting States have led to very poor outcomes for children adopted by New Zealand citizens or permanent residents. This includes cases where children have been abused (physically, emotionally, and sexually), used as child labour, or rejected post-adoption.

15 s6(a)

15.1 adoption orders granted in an overseas court to a New Zealand adoptive applicant who is a convicted sex offender

15.2 adoption orders granted in an overseas court to New Zealand adoptive applicants who have a significant care and protection history with Oranga Tamariki relating to care of their own children

15.3 children in their adolescent years adopted to provide housekeeping labour to family members in New Zealand

⁴ The case studies have been provided for the purpose of facilitating free and frank advice to Ministers. Before releasing any of the following case studies to the public, please consult with Oranga Tamariki, MBIE, NZ Police, DIA and MFAT given the sensitive details (for example, personal information) contained within the case studies and the basis on which these have been provided to Ministers.

- 15.4 children adopted by family members to provide labour to family-owned businesses operating in New Zealand
- 15.5 children removed from their intact biological or long-term carers (e.g. grandparents) and siblings in their country of birth, and adopted by extended family which the child/children have had no previous relationship with
- 15.6 children adopted but not residing with the individual/couple who adopted them. The care of these children is handed to others upon entry to New Zealand
- 15.7 children being adopted and gaining New Zealand citizenship, but not coming to live in New Zealand. In some of these cases, a New Zealand passport becomes a means of entering other countries (notably Australia). This is a particularly relevant issue where the children are older adolescents from fragile states who would, if formally migrating to either country, require a police or security clearance. This pathway being used to enter Australia has the potential to impact on the Trans- Tasman Travel Arrangement
- 15.8 multiple adoptions by the same applicant/s, often within a very short time-frame
- 15.9 Samoan adoptive parents resident in New Zealand who have discharged adoption orders they hold for a particular child, through the Samoan Family Court. This revoking of an adoption order potentially leaves Samoan children having a lawful immigration status in New Zealand obtained through the adoption pathway, but being left with no legal guardian or parent resident in New Zealand
- 15.10 suspected identity fraud of the children who are the subject of the adoption applications.

Risks with intercountry adoptions span across government

- 16 As the list of cases at paragraph 15 shows, the issues and risks arising from intercountry adoptions span across government.
- 17 Oranga Tamariki has been engaging with other government agencies to identify and mitigate risks relating to overseas-born children who enter New Zealand through an adoption pathway. While child welfare is a primary concern, [REDACTED]
- 18 We have been working with the Ministry of Business, Innovation and Employment (Immigration New Zealand), Ministry of Foreign Affairs and Trade, the Department of Internal Affairs, the Ministry of Justice, the Ministry of Social Development, the Ministry for Pacific Peoples, the New Zealand Police, and the Ministry of Education.
- 19 At an operational level, this engagement is on an as-needed case-by-case basis. We also meet to discuss and identify emerging trends and themes. Together, agencies have identified several issues that suggest further action is required.
- 20 This section of the paper outlines the issues that we have identified at a high level. The following section sets out our recommended response. Agencies have been consulted on this paper, and are able to provide more detailed advice on specific aspects if desired.

s6(c)

21 s6(a)

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23 s6(a)

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We recommend a cross-agency response to these risks

We recommend formalising a cross-government approach to improve information flows with other countries

- 26 The issues identified in this paper are complex and interconnected. There is a real need for agencies to work together, with clear roles and responsibilities for responding to the different issues.
- 27 We recommend that agencies work together to provide you and other relevant Ministers with advice on steps to improve the processes governing adoptions of children from non-contracting States to the Hague Convention which are recognised under the Adoption Act, to better protect the interests and welfare of children adopted by New Zealand citizens and residents.
- 28 Working across agencies will enable us to consider child welfare, s6(a) aspects in a coordinated way and provide comprehensive advice to Ministers. Given the child welfare concerns at the centre of most of these issues, we expect to continue to take a lead role in this work.
- 29 We propose to provide you and other relevant Ministers with advice by July 2019 outlining:
- how agencies intend to work together, including who will lead the working group and how and when we will report to Ministers
 - s6(a)
- 30 Agencies are already taking steps to improve information flows across government. We have also identified some opportunities to s6(a) and seek your agreement to progress this work at the same time as we formalise a cross-government approach.

We are already developing a stronger cross-agency approach to information sharing

- 31 Oranga Tamariki is currently working across agencies to develop better processes for sharing information within the existing legislative settings. This is an area of ongoing improvement.
- 32 Where no information or no reliable information can be obtained from the child or adoptive parent's country of residence, we endeavour to get additional information from other agencies. This ensures we can provide the Family Court with a fuller picture of the circumstances surrounding the adoption.
- 33 We also work with the Ministry of Justice to promote awareness of emerging risks connected to the Adoption Act. We intend to liaise with the New Zealand Family Court judiciary to inform them about risks associated with intercountry adoptions where we are unable to obtain independent or reliable information.

s6(a)

34 s6(a)

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s6(a)

39 s6(a)

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The issues raised in this paper should be considered in the context of wider conversations about adoption reform

41 The Ministry of Justice, that administers adoption legislation, is of the view that a full reform of adoption legislation would provide the best opportunity to comprehensively address the issues raised in this paper, alongside other issues with adoption legislation. To this end, the Ministry of Justice has prepared separate advice to their Minister on opportunities for reform. This report complements the Ministry of Justice's advice, which examines the underlying framework of adoption by New Zealand citizens or permanent residents. The Ministry of Justice has recommended that the Minister of Justice forward its advice to your office.

- 42 The Minister of Justice has indicated he may begin broader work on adoption reform in late 2019. Over the longer term, adoption reform would provide an opportunity to put children's welfare, rights, and best interests at the heart of adoption laws, and ensure compliance with international and domestic legislation. We are able to provide you with an update on these issues once this has been considered by the Minister of Justice.

Next steps

- 43 Officials are available to discuss this paper and our proposals with you.
- 44 If you agree with the proposals in this paper, we will begin work with other agencies to formalise a cross-government approach. We propose to provide you with further advice in July 2019 on how we will work together to improve information flows with Pacific Island countries and fragile states. Formalising our working arrangements will enable agencies to provide combined advice on wider adoption reform, should this progress in late 2019.
- 45 s6(a)
- 46 We recommend you forward this report to other Ministers who have an interest in the issues raised in this paper: the Minister of Foreign Affairs and Trade, the Minister of Justice, the Minister of Immigration, the Minister of Internal Affairs, the Minister for Pacific Peoples, the Minister for Social Development, the Minister of Police and the Minister for Education.

Released Under Official Information Act 1982

Appendix One: Overview of intercountry adoptions facilitated by the Adoption Act 1955

The Adoption Act 1955 is regularly used to facilitate intercountry adoptions

- 1 New Zealand's adoption legislation was enacted in 1955 in direct response to the post-war period. The Adoption Act 1955 (the Adoption Act), administered by the Ministry of Justice, provides for the transfer of legal rights and responsibilities in relation to a child from birth parents to adoptive parents.
- 2 The Adoption Act reflects the societal norms and attitudes of that era towards unmarried pregnant women and children born out of wedlock. The number of adoptions steadily rose from 1500 cases in 1955, to almost 4000 in 1971. The number of New Zealand-born children being adopted has significantly decreased since then. Between 2015 and April 2018, 312 adoption orders for New Zealand children were granted.
- 3 While the number of New Zealand children being adopted has significantly decreased over time, data from the Department of Internal Affairs, Immigration New Zealand, and the Ministry of Justice show that the Adoption Act is still regularly used to facilitate adoptions for children from non-contracting States to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention).⁵
- 4 These adoptions take on the status of an intercountry adoption. An 'intercountry adoption' is the process by which adoptive parents adopt a child from an overseas country through permanent legal means, usually with the intent to bring that child to their country of residence to live with them permanently.
- 5 The role of Oranga Tamariki in intercountry adoptions is operational. Our involvement depends on where the adoption takes place, and whether the other country is a contracting State to the Hague Convention.
- 6 Intercountry adoptions involving contracting States are governed by specific legislation and principles, which provides for a robust determination of the best interests of the child.⁶
- 7 The greatest numbers of overseas born children who are being adopted by New Zealand citizens or residents are from Samoa and Tonga. Neither country is a contracting State to the Hague Convention. There are also small but increasing numbers of children being adopted from countries which are fragile states (characterised by weak governance, limited administrative capacity, chronic humanitarian crises, persistent social tensions, and often, violence or the legacy of armed conflict and civil war).

Adoptions of overseas born children may be concluded in the New Zealand Family Court

- 8 Adoptions for overseas born children from non-contracting States can be granted to New Zealand citizens or permanent residents by the New Zealand Family Court (under section 3 of the Adoption Act).
- 9 From 2015 to April 2018, 68 adoption orders were granted in the New Zealand Family Court for children from non-contracting States. The breakdown by country is shown in Figure 1.

⁵ Under the Hague Convention, any adoption that involves one or more parents from a Contracting State (e.g. New Zealand) and a child that is living in another Contracting State must be undertaken in accordance with the process set out in the Hague Convention. In short, this means that agencies of Contracting States are required to exchange information and be satisfied that the adoption is in the best interests of the child.

⁶ Adoption (Intercountry) Act 1997.

- 10 For adoption applications lodged in the New Zealand Family Court for overseas born children, Oranga Tamariki attempts to apply the principles of the Hague Convention, regardless of whether or not the child is from a contracting State and whether the child is resident in New Zealand or overseas.
- 11 Under the Adoption Act, Oranga Tamariki is required to provide information to the Court on the suitability of the applicants who are resident in New Zealand.⁷ When the application involves an overseas born child, Oranga Tamariki will also attempt to seek a Child Study Report from the overseas country about the needs, wishes, and interests of the child/children who are the subject of the application.

Some adoptions concluded in an overseas Court are recognised as having the same effect as a New Zealand adoption

- 12 Some adoptions for children from non-contracting States granted in overseas courts are recognised as having the same effect as a New Zealand adoption (under section 17 of the Adoption Act). This means that the overseas adoption will enable the child to acquire either New Zealand citizenship or a New Zealand immigration status.
- 13 For adoptions being concluded in courts in non-contracting States, New Zealand authorities will make best efforts to establish that child safeguarding measures have been met, but may not always be able to achieve this.
- 14 For example, when an adoption takes place in an overseas Court by New Zealand citizens or permanent residents, and if Oranga Tamariki has not been asked for information as part of the adoption process, we are unlikely to be aware that the adoption has taken place. In most cases, we only find out about the adoption after the child has been brought to New Zealand if they come to our attention via a care and protection or youth justice pathway.

⁷ Sections 10 and 11 of the Adoption Act 1955.

- 15 Although we have limited visibility over the number of intercountry adoptions granted in overseas courts New Zealand citizenship and residency data suggests that the greatest number of overseas adoptions by New Zealand citizens and permanent residents, are taking place in the Family Court of Samoa.
- 16 When an overseas-born child under 14 years of age is adopted overseas, and where one of the adoptive parents is a New Zealand citizen or New Zealand permanent resident, the intersect between the Adoption Act and the Citizenship Act 1977 provides the adopted child the entitlement to be registered as a New Zealand citizen by descent. Figure 2 shows the breakdown of adoption orders leading to New Zealand citizenship by descent by country.

s9(2)(f)(ii)



- 17 Where children/young people are aged between 14 and 25, the intersect between the Adoption Act and New Zealand Immigration instructions allows for the adopted child/young person to obtain a Dependent Child Residence Visa, enabling them to reside permanently in New Zealand. Definitive information on the number of adopted children who have been granted Dependent Child Residence Visa is not collected; however, indications are that this is a pathway which is particularly common among Samoan youth.

s9(2)(a)

s9(2)(a)

s9(2)(a)

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