



Adoption

The law relating to the adoption of New Zealand children within New Zealand is set out in the Adoption Act 1955. While there have been some changes to the Act in the 56 years since it was first passed, the fundamental process and rules have remained largely unchanged since 1955. Adoption law in New Zealand is often criticised for being out of date and not reflecting New Zealand society's current attitudes towards adoption.

The 1955 Act does not provide for open adoptions or for contact between children and their birth families after an Adoption Order has been made. Nevertheless many birth and adopting parents make their own arrangements for ongoing contact. While these often work extremely well and are generally beneficial to everyone involved, especially the child, there are significant difficulties in trying to enforce any open adoption arrangement at law. These arrangements rely on the goodwill of the parties involved and their wish to provide the best outcome for the child.

The Adoption Act also specifies that joint applications for an Adoption Order can only be made by "two spouses jointly", however a recent decision of the High Court has confirmed the right of de facto couples to jointly apply for an Adoption Order. This decision is consistent with other legislation in New Zealand, such as the Bill of Rights Act, which prohibits unjustified discrimination.

Applications for a domestic Adoption Order are either private adoptions where the adoption has been arranged without the involvement of Child, Youth & Family Services, or an adoption arranged through Child, Youth & Family Services or an approved adoption agency. In both cases prospective adoptive parents require a social worker's approval before they are able to take the child into their home for adoption.

The consent of the birth mother to the child's adoption is almost always required and is not valid unless the child is at least ten days old at the date the consent document is signed. The Courts have interpreted this to mean that a valid consent cannot be given until the twelfth day after child's birth; the day of the birth and the day of signing the consent form being excluded from the calculation of the ten day period.

Great care is required in preparing and completing consent documents. If this is not done correctly it may mean that the consent document is invalid. The result may be that the person who signed the consent document will not be bound by it and will be free to change his or her mind.

When the formalities have been completed and an application for an Adoption Order filed in the Family Court (this must be done within one month of the placement approval being given), the Court will request a report from an adoption social worker at Child, Youth & Family Services. The Court will consider that report and in almost all cases, if an Adoption Order is made, it will be an Interim Order which remains in force for up to one year. If an application for a Final Order is not made within that period of time, there is a possibility that the Interim Order might expire and that parental consent to the adoption may be withdrawn. An application for a Final Adoption Order can be made to the Family Court after six months (or earlier if permitted by the Court) at which time the Court would decide whether or not to make a Final Order taking into consideration the recommendations of Child, Youth & Family Services.

Kaye McKenzie is a Consultant at Govett Quilliam. Kaye is a specialist in our Family Law team and has a special interest in adoptions. If you have any questions please feel free to contact Kaye.



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