

## ADOPTIONS

- 1.0 An application for an adoption order can involve a child who is not a citizen or resident of New Zealand and applicants who are not citizens, or residents or the legal guardians of the child. As a result, both the child and adoptive parents are placed in a vulnerable position of 'legal limbo' where their ability to pursue support from New Zealand agencies is affected due to their lack of legal status within New Zealand. Consequently, it is important that these adoption applications are processed promptly to ensure timely disposition. The appropriateness of timeliness should be balanced against the need to have full information and a careful awareness of the interests of the child. This can be difficult when the child or the parties are resident or were born overseas. Care to verify the supplied information is encouraged.
- 1.1 Part A of this Practice Note applies to proceedings under the Adoption Act 1955, including where;
- (a) The applicants and the child the subject of the application are New Zealand residents;
  - (b) The child is born as a result of a surrogacy arrangement;
  - (c) International adoptions – adoptions to which the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) – (“International Adoption”) – does not apply.
- 1.2 Part B refers to adoptions where the Convention applies, i.e. the circumstances outlined in para 1.17 below.
- 1.3 Neither Part A nor Part B apply where a child has been adopted outside of New Zealand and s17 Adoption Act 1955 applies.<sup>1</sup>

### **PART A: ADOPTION ACT 1955 - Procedural requirements and timeframes**

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**Note:** All section references under Part A are to the Adoption Act 1955. All references to rules are to the Family Courts Rules 2002.

#### **Timeframes for disposition**

- 1.4 International Surrogacy proceedings should be concluded within 13 weeks from the date of filing. All other proceedings under the Adoption Act 1955 should be concluded within 15 weeks from the date of filing.
- 1.5 Exceptions to the above timeframes are as follows:
- (a) An application to dispense with consent is filed and is subsequently defended.
  - (b) The Social Worker advises the Court of difficulties furnishing an adequate report for the adoption proceedings.

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<sup>1</sup> *Tjong v District Court at North Shore (No 1)* [2004] NZFLR 769, High Court, Auckland, 21<sup>st</sup> April 2004 per Harrison J

## Procedural requirements

1.6 The applicant shall file:

- (a) Form A3 Application for adoption;
- (b) Form A4 or A5 Consent to adoption (from birth mother and father where relevant);
  - Where the consents of the birth mother and father have not been obtained, an application to dispense with the consent of the birth parents must be filed together with an affidavit in support. The affidavit should address the grounds for dispensing with consent (s8) and include information where necessary on the efforts that have been made to ascertain the whereabouts and obtain the consent of the birth parents.
- (c) The Applicant's affidavit in support as required by r 244;
  - Which should include, where applicable evidence as to;
    - Whether the applicants have given consideration to the impact of this child leaving the country of birth;
    - why the child cannot remain living in their own country.
- (d) Unless otherwise directed by the Court, the documents required by r 245(1);
  - A certified copy of the child's birth certificate that is either annexed to;
    - the written consent of the child's birth parents (if any) or;
    - a verified affidavit of a person who has knowledge of the facts to which the certificate relates; and
  - if there are two applicants, a certified copy of their marriage or civil union certificate where appropriate.
- (e) An information sheet in form G7;
- (f) The affidavit of the birth mother. The affidavit should address where possible:
  - Evidence of the 'birth' father, including the identity of the father and the nature of her relationship with the father at the time of the child's birth.
  - All relevant matters relating to the giving of consent as required by s 7.
- (g) Where the applicants are represented by counsel, a memorandum that outlines the issues to be considered and addressed by the Court, for instance:
  - Whether the necessary consents have been obtained;
  - Whether the child's views have been ascertained;
  - Whether the applicants have had any involvement with the Ministry of Children, Oranga Tamariki (MVCOT);
  - Where is the child habitually resident? What evidence exists to support that view? (where applicable);
  - Where are the applicants habitually resident? What evidence exists to support that view? (where applicable);

- 1.7 Upon receipt of the application, the Registry is to process and enter the application into CMS within three days from the date of filing. When processing, the Registrar shall request without delay, a Social Worker report. For International Surrogacy proceedings, the Social Worker report should be filed within 10 weeks from the date of referral. For all other Adoption proceedings, the Social Worker reports should be filed within 12 weeks from the date of referral.
- 1.8 Depending on the proceeding filed, the Registrar will also do the following when processing:
- (a) For international surrogacy proceedings; the matter should be set down for a hearing to determine the application for an interim adoption order within 13 weeks from the date of filing. The hearing date is to be scheduled at the time of processing an application. Parties to the proceedings shall be notified of this hearing date once the social worker report has been received.
  - (b) For all other adoption proceedings under the Act, the matter should be allocated a Registrar's List within 12 weeks to monitor receipt of the Social Worker report. Upon receipt of the report, the Registrar will set the matter down for a hearing in three weeks' time to determine the application for an interim adoption order.
  - (c) Where the proceeding filed includes an application to dispense with the consent of a parent or guardian pursuant to s 8:
    - i. The application to dispense must accompany the application for adoption, together with an affidavit in support and an application for directions as to service (if required), unless an application to dispense with consent has been granted in the preceding 6 months prior to the filing of the application for an adoption order (s8(3));
    - ii. The application will be set down for a Registrar's List in four weeks' time to monitor proof of service and whether a notice of defence has been filed.
    - iii. If no defence is filed, the application to dispense with consent shall be determined at the hearing for an interim adoption order.
    - iv. If a defence is filed, the application shall be set down before a Judge for a judicial conference within three weeks for any directions that may be necessary to enable the application to dispense with consent to be determined.
- 1.9 Upon receipt of the Social Worker's report, the proceedings should be referred to a Judge to consider whether any further directions are necessary prior to the hearing (e.g. whether the social worker report should be released, etc). If no Social Worker report has been filed, the matter should be referred to a Judge in box work for direction.
- 1.10 At the hearing of the application for an adoption order, unless the Court directs otherwise, the parties and the child proposed to be adopted shall attend the hearing in person.
- 1.11 Applicants should be aware that the making of an adoption order may not automatically discharge certain orders made under the Care of Children Act 2004, the Oranga Tamariki Act 1989 or the Domestic Violence Act 1995, and that it may be appropriate to seek an order discharging any orders affecting the child at the same time the final adoption order is made. Applicants who may not be aware of what orders may exist in respect of a child should ask the Registrar for that information.

## **PART B: ADOPTION (INTERCOUNTRY) ACT 1997 - Application and Jurisdiction**

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**Note:** All section references under Part B are to the Adoption (Intercountry) Act 1997 ("AIA"). All Article references under Part B are to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

- 1.12 The Adoption (Intercountry) Act 1997 ("AIA"), implements the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, (the Convention) in New Zealand. The Convention creates a legal framework to govern intercountry adoptions between contracting states. New Zealand citizens and residents wanting to adopt a child from a contracting state must comply with this legal framework.
- 1.13 The purpose of Part B is to clarify the role and jurisdiction of the New Zealand Central Authority (NZCA) and the Family Court of New Zealand when a party applies for an adoption under the Convention.

### **The requirements for an Intercountry Adoption**

- 1.14 An intercountry adoption is where:
- (a) A child is 'habitually resident' in a contracting state, (the state of origin) and;
  - (b) Has been or is about to be moved to another contracting state, (the receiving state), for the purposes of adoption by a party or parties habitually resident in the receiving state.
- 1.15 A person or persons habitually resident in New Zealand who want to adopt a child that is habitually resident in another contracting state must apply to the NZCA for the adoption. The NZCA will then follow the protocol set down in the Convention by liaising with the Central Authority in the child's state of origin. Compliance with Articles 4 and 5 of the Convention is achieved by the NZCA and the Central Authority of the state of origin following the protocol established by Chapter IV of the Convention.

### **The Jurisdiction of the NZCA and the Family Court of New Zealand**

- 1.16 The consideration and confirmation of an adoption under the Convention is an administrative function by the NZCA. Once the necessary procedural requirements have been fulfilled, the NZCA and Central Authority of the state of origin will agree to proceed with the adoption under Article 17 (c) of the Convention. The NZCA or relevant Central Authority will then issue a "Certificate of Conformity" pursuant to Article 23, to the applicant. (Sample of certificate attached).
- 1.17 The effect of Article 23 is to recognise that both Central Authorities have certified the adoption in accordance with the Convention. The Family Court of New Zealand does not have jurisdiction to consider making an adoption order under the Act as, s 11 (b) of the Act provides that adoptions made pursuant to the Convention have the same effect as an adoption order made under the Adoption Act 1955. As a result, a party cannot make an application for an adoption order pursuant to s 3 of the Adoption Act 1955.<sup>2</sup>

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<sup>2</sup> *Mitchell v Ketut* [2016] NZFC 6175, Family Court, Dunedin, 22 July 2016 per Judge Turner

1.18 The Family Court's role in proceedings under AIA are limited to the following two scenarios:

(a) **Applications to terminate pre-existing legal parent-child relationships:**

Article 26 (1) (c) states that an adoption under the Convention will recognise the termination of a pre-existing legal relationship between the child and parent if the adoption has that effect in the Contracting State where it was made. If the adoption does not have that effect, the parent can file an application in the Family Court for an order to terminate this pre-existing legal parent-child relationship. The Family Court will make the order if satisfied the requirements of s 12 (2) of the Act have been met.

(b) **Applications pursuant to Article 24 of the Convention (s 11(3) of the AIA):**

Subject to prior approval being sought and obtained from the Attorney General, a person can ask the Family Court to refuse to recognise an adoption made under the Convention pursuant to s 11(3) of the AIA. The Family Court can refuse to recognise an adoption under the Convention if that adoption is 'manifestly contrary to its public policy'. The Family Court will take into account the best interests of the child. These applications should be heard as soon as practicable.

1.19 This practice note replaces the Adoption practice note dated (24 March 2011).

**COMMENCEMENT DATE**

This practice note comes into operation on 27 November 2017



Laurence Ryan  
Principal Family Court Judge

Dated 27/11/17