

Whose Child?

Our Outdated Adoption Laws

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Adoption Act 1955:

Oldest statute in regular use in our courts

Fundamentally unaltered

**Few families in New Zealand
do not have at least one adoption story**

Stigma: central to understanding the history of adoption

Pakeha men: heterosexual desire and activity rarely stigmatised

Pregnant single women: stigmatised for failing to stop men having sex with them

Stigmatised again for giving up their baby (although they did it for the child's sake)

Stigma of infertility – unable to “have children” (but adoption later seen as admirable)

**Sexual behaviour: despite moral panics,
hardly changed over 60 years, 1920s to 1970s**

Since then:

Profound changes in:

- attitudes to sexual behaviour**
- economics**
- age of “settling down”**
- importance of marriage**
- efficient contraception:
births (including teenage) and
abortions both declining**

Rise in numbers having fertility issues or needing assistance (e.g. gay couples)

= More use of reproductive technology – up to 10% needing to involve other people

2018:

349 caregivers approved to adopt

155 New Zealand children adopted

(including in-family)

2016: 745 children adopted from overseas

(including Pacific)

MAJOR PROBLEMS WITH ADOPTION LAW

Adoption Act 1955

Adult Adoption Information Act 1985

Adoption (Intercountry) Act 1997

Aspects of:

Status of Children Act 1969

**Human Assisted Reproductive Technology Act
2004**

- **Outdated**
- **Unco-ordinated**
- **Contradictory**
- **Conflict with human rights commitments
and international conventions**

Children:

Law does not have:

**overarching principle that
the welfare and best interests of the child
should be the paramount consideration**

clear recognition of children's rights

truthful, accessible birth records

**Birth parents
(including “surrogate” mothers):**

Clear lack of informed consent and other rights

**Differences in Acts mean unequal rights –
e.g. with donors**

Major cultural concerns

Existing legislation:

- **ignores tikanga Māori
and whakapapa**
- **runs counter to Treaty of Waitangi**

Human Rights Tribunal findings:

**Parts of legislation contradict
Human Rights Act, Bill of Rights Act**

**They discriminate on grounds of
sex, age, marital status, disability**

Main options for law reform:

Either:

**One Act covering
all forms of alternative care**

Or:

New Adoption Act replacing existing legislation

**Both need to cover related issues
to do with reproductive technology**