

ISLA MIRREN DOIDGE

**LAW REFORM AND THE ADOPTION ACT 1955: A
HISTORY OF MISFORTUNE**

Research Paper for LAWS 526: Law Reform and Policy

Submitted for the LLB (Honours) Degree

Faculty of Law

Victoria University of Wellington

2016

Law Reform and the Adoption Act 1955: A History of Misfortune

The Adoption Act 1955 is now 61 years old and has been passed over for reform on multiple occasions. This paper analyses the failed history of law reform beginning in the year 2000 when a Law Commission Report was issued. This paper identifies why successive attempts by both Labour and National governments failed in reforming adoption over a sixteen year period. Despite multiple attempts at reform, this paper argues that law reform has failed due to a combination of other important governmental priorities, the controversial issues involved in adoption, the ability of the courts to reinterpret the legislation, and the small impact of reform. This paper concludes by using adoption reform as a case study to draw out three main general principles about law reform. The first is the necessity of reform; this paper argues when law reform involves a controversial human rights problem it becomes simultaneously difficult to progress due to political risk, but once that controversy is resolved the reform is no longer considered as necessary. The second is the opportunity to reform; when law reform is seen as less necessary because other agencies are able fix problems within the legislation, other more critical projects will displace a reform project on the hierarchy of political priorities. The third is political interest; the ability to place the responsibility of ‘updating’ the application of legislation onto the courts or another agency results in reduced political interest in reforming that legislation.

Key words: Adoption Act 1955, Law Commission, Human Rights Tribunal, policy, law reform,

Word Count: *The text of this paper comprises 14,973 words. This includes the title and main text. This excludes the cover page, acknowledgements, abstract, key words, table of contents, bibliographic footnotes, and bibliography.*

ACKNOWLEDGEMENTS

This paper has not simply been a product of my own blood, sweat and tears. Numerous others have helped me throughout this project to make my paper what it is today. First and foremost I want to thank my supervisor, Geoff McLay, for his feedback, support and patience with me throughout the year. His comments on my paper have always been honest, but immeasurably useful. The lesson of “why me, why now, why this” in regards to law reform is one that I will take with me for the rest of my legal career. I also want to thank Robert Ludbrook and Fiona Donoghue for their advice, kindness and generosity in regards to my research. Their help in pointing me in the right direction, and supporting me in talking to the Human Rights Tribunal was invaluable. On this note, the Human Rights Tribunal were also greatly helpful in finding several primary resources on very short notice. They have my deep thanks for allowing me to come in and view the common bundle of evidence. I also want to extend my thanks to the Parliamentary Library, and in particular Rebecca Styles, for assisting me in locating very valuable resources that I had not been able to find anywhere else. Last (but not least) thank you to my family and my partner, Arden, for their tireless support, endless cups of tea, and limitless ability to love me (even when all I talk about is adoption).

Contents

I	INTRODUCTION.....	6
II	THE ADOPTION ACT 1955; HISTORY AND MODERN APPLICATION.....	7
A	Early History of the Adoption Act 1955.....	7
B	Modern Application; the Changing Face of Adoption Law.....	7
III	1999 TO 2008: LABOUR AND INITIAL CALLS FOR REFORM.....	9
A	2000: The Law Commission’s Report on the Adoption Regime.....	9
B	1999 to 2008: Labour’s Political Reaction to The Report and Attempted Reform	11
	1	1999 to 2000: Initial Law Commission referral and reaction..... 11
	2	2000 to 2001: Select Committee process and reception..... 11
	3	2002 to 2003: Moving forward with an interdepartmental approach ... 12
	4	2003: Attempted adoption reform and competing priorities..... 13
	5	2005: Green party member’s bill on same-sex adoption; introduction and withdrawal 13
	6	2006 to 2007: A draft bill, a slot on the work programme, and a lack of progress..... 14
	7	2007 to 2008: Adoption as a less important issue and a change of Government..... 15
C	Why did Law Reform Never Occur?	16
	1	Other priorities for Justice:
	2	Split between Ministries:..... 20
	3	Other Relevant Legislative Change:
	4	Courts creating law to fill in the gaps:..... 23
	5	Failure of the Select Committee Process:
	6	Perceived number of people impacted:..... 25
	7	Controversial issues related to adoption:
	8	Intentions for the Law Commission Report and Nature of the Recommendations 30
IV	2009 TO 2016; HUMAN RIGHTS, DISCRIMINATION, AND FUTURE REFORM.....	32
A	2008 to 2016: National’s Political Stance and Other Relevant Legal Changes	32
	1	2008: A silent beginning
	2	2011: Simon Power’s final comment on adoption..... 32
	3	2009 to 2012: Nikki Kaye and Kevin Hague v Jacinda Ardern in attempted adoption reforms..... 33
	4	2012 to 2013: Marriage and (some) adoption equality..... 34
	5	2011 to 2016: Adoption Action Inc., the Crown, and the Human Rights Tribunal decision 35
B	Why did Law Reform Never Occur?	37
	1	Other priorities for Justice:
	2	Other Relevant Legislative Change:
	3	Courts creating law to fill in the gaps:..... 40
	4	Split between ministries:
	5	Controversial issues related to adoption:
	6	Perceived number of people impacted:..... 43

	7	Nature of the Human Rights Tribunal and its Recommendations.....	43
V		WHAT LAW REFORM LESSONS CAN BE LEARNED FROM THE STORY OF THE ADOPTION ACT?	44
	A	Why this Reform? A Story of Need and Risk.....	44
	B	Why now? A Story of Opportunity	47
	C	Why me? A Story of Politicians	48
VI		CONCLUSION.....	49
VII		BIBLIOGRAPHY	51

I Introduction

Adoption law in New Zealand poses an interesting law reform problem. The principle piece of legislation, the Adoption Act 1955 (“the Adoption Act”), has remained in place for 61 years. However, during all this time the Adoption Act has escaped any kind of substantive legislative reform. This pattern has held to the modern day, with a Law Commission Report issued in 2000 recommending change but resulting in inaction.¹ More recently still, in 2016 the Human Rights Tribunal declared sections of the Adoption Act to be discriminatory, prompting a Government response stating other reform was more important.² However, the lack of adoption law reform is not quite as simple as it might first appear to be.

Entire books have been written about the history of adoption law and the problems it has posed over time to those who adopt, those who are adopted, and those who adopt out their children.³ My focus differs in that, rather than asking what problems the Adoption Act has created in family law due to its age, I will concentrate on why adoption reform failed during the period 2000 - 2016. From there I will extract what general lessons can be learned about law reform from adoptions unfortunate story. I have chosen to start my analysis in 2000 because this was when the Law Commission released their recommendations on adoption law which resulted in a large amount of political activity surrounding adoption reform. The scope of my paper does not extend to considering whether law reform in the area of adoption is right or wrong, or even how the process of adoption reform should occur. For this reason, other related areas of reform such as the Adoption (Intercountry) Act 1997, the practice of whāngai, the Adult Adoption Information Act 1985, and surrogacy will only be considered in so far as they interact with the reform of the Adoption Act 1955 (“the Adoption Act”).

I will first give a brief introduction to the history of the Adoption Act, and how the Act is interpreted in the present day to fit modern values.

Secondly, I will discuss the history of adoption law reform during the fifth Labour Government’s term of 1999 to 2008. This will include a description of the Law Commission’s Report on adoption law, governmental attempts to reform adoption, and public response to these reform attempts. I will identify and discuss the key problems facing adoption law reform during Labour’s term.

¹ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, (NZLC R65, Wellington, 2000).

² *Adoption Action Incorporated v Attorney General* [2016] NZHRRT 9.

³ An example; Anne Else *A Question of Adoption* (Bridget Williams Books, Wellington, 1991).

Thirdly, I will explore the lack of governmental attempts to reform adoption during the fifth National Government's term between 2008 and the present day. This will include an analysis of the government's response to the Human Right's Tribunal, MPs attempts at adoption reform and public opinion regarding each of these matters. I will identify key factors impacting the lack of progression in adoption law reform during this period.

Finally, from these specific factors, I will draw general themes to help illustrate more broadly the changing landscape of adoption reform between these two Governments and outline what lessons future law reform projects can take from the difficult history of adoption law reform.

II The Adoption Act 1955; History and Modern Application

A Early History of the Adoption Act 1955

The Adoption Act was passed in 1955, shortly after the Second World War.⁴ The need for clear adoption legislation was important at this time because following the war there was a 'baby-boom' that resulted in a large number of children being born to unmarried mothers.⁵ During this period the traditional nuclear family of 'one mother and one father' was truly considered to be the best and preferred option for every child.⁶ Under s 3 of the Adoption Act only 'spouses' could jointly adopt children. During this period single mothers were often encouraged to give up their child for adoption, lest they be seen as selfish.⁷ The Adoption Act was also a legislative regime based on the concept that a closed adoption was the most humane option for all involved, as at this time stigmas still existed around babies born out of wedlock, infertility, and illegitimacy.⁸

B Modern Application; the Changing Face of Adoption Law

For the purposes of this paper I will not be delving into the details of how the Adoption Act is applied in New Zealand in the modern day. Instead, I intend to give a broad overview

⁴ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [18].

⁵ A Gibbs and R Scherman "Pathways to parenting in New Zealand: issues in law, policy and practice" (2013) 8 *Kotuitui: New Zealand Journal of Social Sciences Online* 13 at 13.

⁶ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [22].

⁷ At [22].

⁸ At [26]

of how the process formulated from the Adoption Act has changed over the years, even if the legislation has not.

Through its history, adoption has gone through many twists and turns. Although adoption in New Zealand is still currently regulated by the Adoption Act 1955, in the modern day the application of the Act is vastly different to how it was originally applied. Stranger adoptions, which are the ‘traditional’ conceptions of adoption, are no longer what the Adoption Act is primarily used to do. Instead, the legislation is primarily applied in adoptions within a family or step family.⁹

Child, Youth, and Family Services (CYFS) under the umbrella of the Ministry of Social Development have the responsibility for applying the Adoption Act in the real world.¹⁰ Both CYFS and the courts have created a number of ‘rights-consistent’ changes to the application of the Adoption Act that has brought practice in line with modern values. For example, although couples in a civil union cannot adopt jointly they are still placed into the pool of potential adoptive parents by CYFS.¹¹ CYFS also have a policy that favours placing children into an open rather than closed adoption, moving away from the ‘clean break’ legislated by the Act.¹² The courts have also been relatively active in updating some of the outdated aspects of the Adoption Act in the modern day.¹³ The two primary examples I discuss in my paper are *Re Application by AMM and KJO to adopt a child* and *Re Pierney and Hsieh*.¹⁴ In conjunction, these two cases granted the ability for de facto couples (both same and opposite sex) to jointly adopt a child.¹⁵ These examples show a ‘rights-consistent’ application of the legislation; with the courts and CFYS attempting to fill in gaps where the legislation was patently conflicting with modern rights.

⁹ Bill Atkin “Adoption law: the courts outflanking parliament” (2012) 7 NZFLJ 119 at 119; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [82].

¹⁰ Child, Youth and Family Services “Adoptions pathway guidelines” Child, Youth, and Family Services <<http://www.practicecentre.cyf.govt.nz/service-pathways/adoptions/adoptions-pathway-guidelines.html>>.

¹¹ Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General* (Ministry of Justice, August 2016) at [7].

¹² Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 15.

¹³ Atkin “Adoption law: the courts outflanking parliament”, above n 9.

¹⁴ *Re Application by AMM and KJO to adopt a child* [2010] NZFLR 629; *Re Pierney and Hsieh* [2015] NZFC 9404, [2016] NZFLR 53.

¹⁵ *Re Application by AMM and KJO to adopt a child*, above n 14, at [72] – [73]; *Re Pierney and Hsieh*, above n 14, at [14].

The actual legislation has a number of problems. As mentioned above, partners in a civil union are still unable to legally jointly adopt a child,¹⁶ the names of the adoptive parents still replace those of the birth parents on birth certificates following an adoption,¹⁷ the legislation has no “adequate mechanism through which to funnel surrogacy arrangements”,¹⁸ and it still contains sections which could potentially be used in a discriminatory way.¹⁹ Many of the modern calls for reform have been based upon the remaining discriminatory sections of the Act, the interpretation problems associated with the application of the Adoption Act to surrogacy cases and the patchwork reform that the courts and CYFS have implemented in an attempt to keep the problems caused by the age of the legislation at bay.²⁰

III 1999 to 2008: Labour and Initial Calls for Reform

A 2000: The Law Commission’s Report on the Adoption Regime

In 2000 the Law Commission released a Report that focused on the current adoption regime called *Adoption and Its Alternatives* (“The Report”).²¹ For the purposes of this paper I will be focusing on a more general analysis of the Law Commission’s Report. It is not my goal to analyse the content of the Report, but the rather the Report’s impact on law reform.

The terms of reference the Law Commission used were that they were “to review the legal framework for adoption in New Zealand as set out in the Adoption Act and the Adult Adoption Information Act 1985 and to recommend whether and how the framework should be modified to better address contemporary social needs.”²² In line with their terms of reference, and with the age of the Act (45 years old at that time), the Law Commission’s

¹⁶ Atkin “Adoption law: the courts outflanking parliament”, above n 9, at 120.

¹⁷ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [468].

¹⁸ Kate Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement” (LLM Research Paper, Victoria University of Wellington, 2013) at 21.

¹⁹ See *Adoption Action Incorporated v Attorney-General*, above n 2, at [277] for examples.

²⁰ Examples include Atkin “Adoption law: the courts outflanking parliament”, above n 9; Paul von Dadelszen “The Adoption Act 1955 – the pressing need for reform” (2009) 6 NZFLJ 117; Anne Else “Adoption at a Standstill” (28 April 2016) Werewolf <<http://werewolf.co.nz/2016/04/adoption-at-a-standstill/>>; Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement”, above n 18.

²¹ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1.

²² At [234].

recommendations focused on a complete overhaul of the adoption regime within New Zealand.²³

The key proposal set forward by the Law Commission was their recommendation that a new ‘Care of Children’ Act should be enacted.²⁴ The Act would be designed to encompass the broad spectrum of law that dealt with the placement of children in New Zealand: including the Adoption Act 1955, the Guardianship Act 1968, and The Children, Young Persons, and Their Families Act 1989.²⁵ The proposed legislation was intended to be more ‘child-centred’, attempting to move the focus from the eligibility of applicants to adopt (like same-sex or de facto couples) to which applicant would be best for the child.²⁶ The Act was to reflect New Zealand’s international obligations, the responsibilities and rights related to parenthood, and an understanding of a child’s culture when decisions are made.²⁷

Submissions on the initial discussion paper give a fascinating insight into what issues were most salient in the minds of the public and those invested in the issue of reforming adoption. The most submissions were received on whether adoption should continue to exist in its current form. Considering that one of the main questions posed by the discussion paper was what system should be either introduced or kept in the place of adoption, it is unsurprising that this was the issue that received the most submissions.²⁸ The second-highest number of submissions was received on the issue of whether same-sex couples should be able to adopt (46 submissions supported same-sex adoption, and 28 objected to it).²⁹ This is an indication of the lively societal interest, both positive and negative, in same-sex couple’s ability to adopt a child jointly, and by extension raise that child in a same-sex parent household.

Media commentary on The Report tended to be either positive and balanced, or more focused on the most controversial recommendations made by the Law Commission.³⁰

²³ At [86] – [88].

²⁴ Bill Atkin “A Year of Reports.” (2002) *International Survey of Family Law* at 312.

²⁵ At 312.

²⁶ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [75] and [87].

²⁷ At [130] – [131].

²⁸ At [83] – [85].

²⁹ At [357].

³⁰ Anne Else “Anne Else: the Future of Adoption” (4 October 2000) Scoop <<http://www.scoop.co.nz/stories/HL0010/S00015.htm>>; Garth George “Garth George: Political Correctness makes adoption too hard” *The New Zealand Herald* (online ed, 30 June 2000); Katherine Hoby

Articles with headlines like “gay men get rights in adoption overhaul plan” can be contrasted against headlines like “shakeup for adoption law viewed as well overdue”.³¹ However, even the more biased articles discussed the recommendations made by the Law Commission in relation to adoption in a fairly neutral way. Letters to the Editor following these articles, however, seemed to centre in on the ‘experimental’ and ‘irregular’ nature of adoptive parents that were not in a heterosexual marriage (this included same-sex and de facto couples, as well as single adoptive parents).³² This indicates that even if the media were not, at this time, reporting on the same-sex elements of The Report (which made up a tiny portion of the recommendations made), the general public were zeroing in on same-sex adoption as an issue.

B 1999 to 2008: Labour’s Political Reaction to The Report and Attempted Reform

1 1999 to 2000: Initial Law Commission referral and reaction

The political reaction from the then Labour Government was initially positive and supportive, as typified by the address given by Steve Maharey, the Social Development and Employment Minister at the time for Labour, to the Social Policy forum in October 2000. In his speech, Maharey makes it clear that “the time has come to look at the current functions of the Adoption Act...”.³³ He later went on to state that there was a lot to gain from the recommendations made by the Law Commission and that the Government were reviewing The Report.³⁴ This was a particularly positive outlook, considering that it was National’s Minister of Justice, Tony Ryall, who had previously given the initial terms of reference to the Law Commission.³⁵

2 2000 to 2001: Select Committee process and reception

In September 2000 public submissions on The Report began being accepted, and The Report was to be sent to the Government Administration Select Committee to be

“Shakeup for adoption law viewed as well overdue” *The New Zealand Herald* (online ed, 30 January 2001); “Adoption secrets out in the open” *The New Zealand Herald* (30 September 2000); Mary Longmore “Gay men get rights in adoption overhaul plan” *The Evening Post* (29 September 2000).

³¹ Hoby “Shakeup for adoption law viewed as well overdue”, above n 30; Longmore “Gay men get rights in adoption overhaul plan”, above n 30.

³² Peter Wood “Bad timing for adoption proposals” *The Evening Post* (10 October 2000).

³³ Steve Maharey, Minister of Social Services and Employment “Fit for Purpose – Getting Family Law Right” (Speech to Social Policy Forum 2000, Victoria University of Wellington, Wellington, 26 October 2000).

³⁴ Maharey, above n 43.

³⁵ Tony Ryall “Law Commission to review 1955 Adoption Laws” (press release, 19 May 1999).

evaluated.³⁶ The Select Committee's Chairwoman, Dianne Yates, seemed positive about the outlook for future reform. She stated in January 2000 that she believed legislation should be introduced to the House before the year was out.³⁷

However, these predictions were not to be; it was at this stage that adoption reform started to get complicated. The Select Committee released their report in August 2001 which stated that although the Select Committee had analysed the submissions and the issues raised by them at length, no substantive report was able to be given to Parliament.³⁸ Nevertheless, this was not the end of the story as the Government members of the Select Committee released an interim report that detailed their own analysis of submissions and recommendations to Parliament on how to proceed.³⁹

The interim report made 93 recommendations in total.⁴⁰ They covered the same wide range of topics that the Law Commission had covered in The Report, but were also able to discuss how the past practices of adoption should impact future law reform. The recommendations made were broadly similar to those of the Law Commission. However, this interim report failed to gain any political traction.

3 2002 to 2003: *Moving forward with an interdepartmental approach*

In April 2002, Margaret Wilson, the Associate Minister of Justice at the time of the Select Committee, commented on the lack of recommendations made by the full Select Committee. However, she went on to state that the submissions to the Select Committee and Government members' interim report released by the Select Committee created an important source of information for the Government in forming a future plan for adoption reform.⁴¹ Importantly Wilson also made it clear that she thought the reform of adoption should continue.⁴² She felt the Adoption Act was discriminatory, open to abuse, beneath international standards, and fragmented. She also indicated the continued review of

³⁶ Hoby "Shakeup for adoption law viewed as well overdue", above n 30.

³⁷ Hoby, above n 30.

³⁸ Government Administration Committee *Inquiry into New Zealand's Adoption Laws: Report of the Government Administration Committee* (August 2001) at 2.

³⁹ Government Administration Committee *Inquiry into New Zealand's Adoption Laws: Interim Report of the Government Administration Committee* (August 2001) at 5.

⁴⁰ At 5 – 11.

⁴¹ Lianne Dalziel, Associate Minister of Justice "Changes to Family Law Legislation in the 21st Century" (17 July 2003); Margaret Wilson, Associate Minister of Justice "A Vision for the future: New Zealand's Child Legislation in the 21st Century" (Speech to Child Law Conference, 18 April 2002).

⁴² Wilson "A Vision for the future: New Zealand's Child Legislation in the 21st Century", above n 41.

adoption reform by the three main agencies involved in the Adoption Act and its application (the Ministry of Justice, the Ministry of Social Development and Employment, and Child, Youth, and Family). They were to push forward with the review, keeping in mind both the Select Committee and Law Commission Reports.⁴³

4 2003: Attempted adoption reform and competing priorities

A full year passed before anything else was heard of adoption. It was not until July 2003 that the new Associate Minister of Justice, Lianne Dalziel, discussed the continuing fight for adoption reform. She commented that she anticipated that by the end of 2003 or early 2004, an Adoption Bill would be introduced.⁴⁴ It seems that in an attempt to progress reform, Lianne Dalziel presented a paper to the Cabinet Policy Committee on the 10th of November 2003 which gave a detailed list of considerations and proposals about the reform of adoption.⁴⁵ Cabinet Policy Committee minutes from the 12th of November 2003, indicate that Lianne Dalziel had withdrawn her previous paper, and was asked to review the proposals she had put forward in light of the discussions within the Cabinet Policy Committee.⁴⁶ A later Cabinet minute from July 2006 shed light on this withdrawal, stating that adoption reform was discontinued in 2003 due to other legislative priorities.⁴⁷

5 2005: Green party member's bill on same-sex adoption; introduction and withdrawal

The 2005 election was held during September, which meant that adoption disappeared from the scene (yet again) for almost a year while the Government were either vying for election or getting settled into Parliament. The next mention of adoption was during July 2006 when Green Party MP, Metiria Turei, entered her member's bill, the Adoption (Equity) Amendment Bill, into the Ballot.⁴⁸ This Bill was not a complete overhaul of adoption, but rather an amendment attempting to allow same-sex couples to have the same ability to adopt jointly as opposite-sex couples.⁴⁹ In response to being asked about the Bill, Labour Minister Chris Carter stated that the Government were discussing whether they should

⁴³ Wilson "A Vision for the future: New Zealand's Child Legislation in the 21st Century", above n 41.

⁴⁴ Dalziel "Changes to Family Law Legislation in the 21st Century", above n 41.

⁴⁵ Cabinet Policy Committee Paper "Reform of Adoption Laws" (10 November 2003) POL (03) 348.

⁴⁶ Cabinet Policy Committee Minute "Reform of Adoption Laws" (12 November 2003) POL Min (03) 29/9.

⁴⁷ Cabinet Minute Decision "Additional Item: Reform of Adoption Laws" (3 July 2006) CAB Min (06) 24/15.

⁴⁸ Patrick Crewdson "MP Seeks to allow gay couples right to adopt" *The New Zealand Herald* (online ed, 2 July 2006).

⁴⁹ "Gay Adoption Bill is "off the ballot" (2 July 2008) GayNZ <http://www.gaynz.com/articles/publish/2/printer_6163.php>; "Government Plays Down Gay Adoption" *The New Zealand Herald* (online ed, 12 July 2006).

introduce their own legislation reforming adoption and where they stood on this Bill.⁵⁰ He also made it very clear that same-sex adoption was not the only issue the Government were looking at in relation to adoption.⁵¹ Later in 2008 Helen Clark commented on the Bill, stating that same-sex joint adoption was a difficult issue that would eventually have to be reformed.⁵²

6 2006 to 2007: A draft bill, a slot on the work programme, and a lack of progress

On the 14th of July 2006 a paper was presented to the Cabinet Policy Committee that stated adoption reform could continue relatively quickly if picked up in 2006.⁵³ The Paper further suggested that a bill could be drafted in December 2006, and introduced by March or April in 2007.⁵⁴ However, the Cabinet Policy Committee minutes from the 26th of July 2006 indicate that the Committee had not agreed with the conclusions and recommendations of the 14th of July paper, instead inviting the Minister of Justice to bring an updated proposal for the reform of adoption law by the 30th of November 2006.⁵⁵

During this period of renewed discussion about adoption reform, a new draft Adoption Act was created at an unknown date in 2006. It would have reformed the Adoption Act (and other related legislation).⁵⁶ This draft was never released to the public or introduced to Parliament. No information was released by the Crown as to why this Bill never got off the ground or who requested parliamentary counsel draft it, and very limited information is available on what it contained. However, it seems that the Bill addressed many of the areas of concern under the current regime and at least some sections reflected recommendations made by the Law Commission.⁵⁷

The creation of this draft Bill makes sense when connected to letters exchanged between the Minister of Justice (Mark Burton) and parties lobbying for adoption reform that indicate in mid-October 2006 the Ministry of Justice were reviewing adoption laws, and that reform

⁵⁰ “Government plays down gay adoption”, above n 49.

⁵¹ “Government plays down gay adoption”, above n 49.

⁵² “Gay Adoption Bill is “off the ballot”, above n 49.

⁵³ Cabinet Policy Committee Paper “Reform of Adoption Laws” (14 July 2006) POL (06) 165 at 2.

⁵⁴ At 2.

⁵⁵ Cabinet Policy Committee Minute “Update of Adoption laws” (26 July 2006) POL Min (06) 15/13.

⁵⁶ Adoption Action Inc. “Adoption News and Views April 2014” (April 2014) Adoption Action <<http://adoptionaction.co.nz/wp-content/uploads/2014/08/ANV14-1.pdf>> at 2; Robert Ludbrook (ed) *Child Law* (online looseleaf ed, Brookers) at [PA1.10A.01].

⁵⁷ Adoption Action Inc. “Adoption News and Views April 2014”, above n 56, at 5.

was on the work programme for 2006 - 2007.⁵⁸ A later letter from Mark Burton in January 2007 supports that adoption was indeed on the work programme, but no decisions on scope of reform had been decided.⁵⁹ Mark Burton sent a final letter of relevance in early September 2007 that stated adoption reform had begun again in 2006, the aim was to update the law in a comprehensive manner by combining the Adoption Act, the Adult Adoption Information Act 1985, and the Adoption (Intercountry) Act 1997.⁶⁰

The above letters are supported by the Ministry of Justice's Statement of Intent 2007-2008 released in June 2007.⁶¹ Adoption reform was one of the advances listed, with the focus being on creating a clear, single piece of legislation that was consistent with international obligations.⁶² The Ministry of Justice also advanced a paper for the Cabinet Policy Committee calling for a change to the adoption laws, and explaining why new legislation was necessary.⁶³ The paper contained a number of proposals for future reform that identified several areas where adoption law functioned in a discriminatory way. This paper, however, appears to have been withdrawn by the Minister before presentation to Cabinet.⁶⁴

7 2007 to 2008: Adoption as a less important issue and a change of Government

Finally, in November 2007 the briefing by the Ministry of Justice to incoming Ministers was given to Annette King, the new Minister of Justice. This briefing included adoption under the heading of 'Ensuring the Relevance of Laws and Regulations'.⁶⁵ Later Annette King confirmed that adoption was on the Ministry of Justice work schedule during the pre-election period.⁶⁶ This, however, is contradicted by a letter she sent before the election in August 2008 where she states that domestic violence, victim support, and sexual violence

⁵⁸ Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding existence of adoption reform and the Ministry of Justice work programme (13 October 2006).

⁵⁹ Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding scope of adoption reform and Ministry of Justice work programme (January 2007).

⁶⁰ Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding the progress and scope of adoption reform (4 September 2007).

⁶¹ Ministry of Justice *Statement of Intent 1 July 2007 – 30 June 2008* (Ministry of Justice, E.64SOI(07), May 2007).

⁶² At 48.

⁶³ Cabinet Policy Committee Paper "Reform of Adoption Laws" (2 July 2007).

⁶⁴ Adoption Action Inc. "Chronology of moves to reform adoption laws over the last 36 years" Adoption Action Inc. <<http://adoptionaction.co.nz/wp-content/uploads/2016/04/Chronology.pdf>> at 5; Cabinet Policy Committee Paper "Reform of Adoption Laws" (2 July 2007).

⁶⁵ Ministry of Justice *Briefing for the Incoming Minister Vote Justice* (Ministry of Justice, October 2007) at 21.

⁶⁶ Simon Collins "Judge: Time to let gay couples adopt" *The New Zealand Herald* (online ed, 20 August 2009).

were the Ministry of Justice's focus, and that adoption reform would have to wait until 2009.⁶⁷ In any case, it turned out to be an empty promise as Labour went on to lose the election in late 2008.

C Why did Law Reform Never Occur?

1 Other priorities for Justice:

The process of legislative reform involves the juggling of priorities by the relevant Minister and their Ministerial colleagues. Relative priorities change over time as new items are added to the list, sometimes what are seen as less important projects simply get pushed to the side. In essence, some projects are simply seen as more important, more in need of reform, or more popular with the electorate. Certainly, this seems to have been an issue for Labour's Ministry of Justice in their battle over ongoing adoption reform attempts during their nine-year term.

In terms of the Ministry of Justice, one of the first projects we see competing with adoption for attention is consistency 2000. This began in 1993 with the passing of new human rights legislation.⁶⁸ Although the Human Rights Commission had existed before 1993, a new requirement was added to their repertoire of responsibilities. Under the new legislation, the Human Rights Commission were tasked with conducting an examination of the laws, policies and practices of the Government in order to identify where there were conflicts between these items and the provisions of the Human Rights Act.⁶⁹ Following this examination, the Commission were to report the results to the Minister of Justice by the 31st of December 1998.⁷⁰ The important implication from this massive task was that the Human Rights Act appeared partly 'superior' over other legislation as it was the standard that other legislation, practices and policies were to be judged against and potentially fixed if found to be in conflict.⁷¹ The Act did contain temporary 'safeguards' to protect parliamentary sovereignty. The first of these safeguards was that when conflicts arose

⁶⁷ Letter from Annette King (Minister of Justice) to Robert Ludbrook regarding the lack of progress of adoption reform (11 August 2008).

⁶⁸ Human Rights Act 1993; Phil Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?* (Routledge, 2014) at 87.

⁶⁹ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 87.

⁷⁰ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 87; Ministry of Justice *Re-evaluation of the Human Rights protections in New Zealand* (Ministry of Justice, Discussion Paper, October 2000) at [67].

⁷¹ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 87; Margaret Wilson "An account of the making of the Human Rights Amendment Act 2001" (2001) 19(2) *Wai L Rev* 1 at 5 – 6.

between the Human Rights Act and other legislation, the conflict would be read in favour of the other legislation.⁷² An exemption was also created that ensured the executive branches of the Government were not subject to newly created grounds of discrimination (like sexual orientation).⁷³ However, these two provisions were set to expire in January 2000, placing a timeframe on when the Government would need to respond to the Human Right Commission's 1998 report to ensure legislative and policy consistency with the Human Rights Act 1993.⁷⁴

By 1997 recognition of the possible constitutional implications raised by consistency 2000 were becoming clear. Post January 2000 it was possible that the Human Rights Act 1993 would be able to override other inconsistent legislation.⁷⁵ This seemed to shake the Government of the day who wanted to curtail the impact of the review, feeling that it was too detailed of an approach and that the Government should not be held to the standard of the Human Rights Act when passing legislation or implementing policy.⁷⁶ When this failed, negotiations were undertaken and a new Human Rights Amendment Act was passed in 1999 that would extend the expiry date to December 2001.⁷⁷

The baton of how to deal with the problem of the extent to which the Government would have to comply with the Human Rights Act 1993, and in the case of unjustified discrimination what the result would be, was passed to Labour in 1999. Labour now had two years to decide how to deal with the problem of consistency 2000, and the rightful place of the Human Rights Act 1993 within our law. In 2001 the Human Rights Act was amended to bring about a solution to this problem. Rather than the Human Rights Act being the standard that all legislation was judged against, the New Zealand Bill of Rights Act 1990 was to be the benchmark that that government legislation, policies and practices would be compared to.⁷⁸ Under these changes, complaints against government legislation, policies or practices were to be tried under the anti-discrimination section of the New Zealand Bill of Rights 1990, with an exception that would allow justifiable

⁷² Human Rights Act 1993, s 151(1); Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 87.

⁷³ Human Rights Act 1993, s 151(2); Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 87.

⁷⁴ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 88.

⁷⁵ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 88.

⁷⁶ Ministry of Justice "Government Reviews Consistency 2000" (press release, 27 June 1997).

⁷⁷ Ministry of Justice "New Human Rights Amendment Bill Minister Proposes Compromise" (press release, 14 July 1999).

⁷⁸ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 90.

discrimination.⁷⁹ The Human Rights Tribunal would also be empowered to make formal declarations of inconsistency if legislation was unjustifiably in conflict with the anti-discrimination section of the Bill of Rights.⁸⁰

All in all, this was a hugely ambitious, far reaching, and time-pressured project that must have occupied a significant proportion of the resources available to the Ministry of Justice. Compared to this massive undertaking, the review of possible reform options for adoption would have paled into insignificance during Labour's first term. This meant that adoption reform in its infancy came at a bad time, and is likely part of the reason that adoption reform was put off until 2003 (when it failed again).

The report that came out of consistency 2000 in 1998 also went on to have ramifications for social legislation in the fifth Labour Government, beyond simply raising concerns about the structure and application of the Human Rights Act 1993. Although the report suffered from problems of struggling to systematise their research, it did provide recognition of a number of areas where legislation was falling short of either protecting vulnerable groups or actively discriminating against them.⁸¹ This would result in the Government progressing reform in a number of legislative areas where the human rights of individuals had been infringed upon. Of relevance to adoption, one of the areas highlighted by the report as being inadequately addressed was the position of same-sex couples and de facto relationships.⁸²

Later, legislation like the Civil Union Act 2004 and the Relationships (Statutory References) Act 2005 were advanced following the consistency 2000 report in an attempt to equalise and recognise the position of same-sex, civil union and de facto relationships with marriage in law.⁸³ Later statements made by Helen Clark in 2006 indicated that she considered that passing the Civil Union Act 2004 had been a challenge, and that in light of that struggle it was not the right time to pursue other same-sex relationship reforms.⁸⁴ Considering that both the Law Commission report and Select Committee interim report

⁷⁹ New Zealand Bill of Rights Act 1990, s 19; Ministry of Justice "Completion of Consistency 2000 2/2" (press release, 7 August 2001).

⁸⁰ Human Rights Act 1993, s 92J; Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 90.

⁸¹ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 90 - 91; Wilson "An account of the making of the Human Rights Amendment Act 2001", above n 71, at 6.

⁸² Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 90 - 91; Wilson "An account of the making of the Human Rights Amendment Act 2001", above n 71, at 6.

⁸³ Relationships (Statutory References) Bill 2004 (151-1) (explanatory note).

⁸⁴ "Gay Adoption Bill is "off the ballot", above n 49.

suggested a comprehensive adoption reform would have to cover joint same-sex adoption, it appears that any adoption reform would have to be put off until the dust settled following the Civil Union Act 2004.⁸⁵ These statements by Helen Clark were made in 2008, it is clear that even at that time, four years later, reform still appeared to be too difficult to achieve and may be part of the reason no reform occurred. Furthermore, consistency 2000 had specifically highlighted the inequality that same-sex relationships face, and it is clear from Helen Clark's statements that this issue was the primary focus of the Government.⁸⁶ In all this indicated that an adoption reform that included same-sex joint adoption reform would have to be tackled at a time after relationship consistency had been achieved. The hierarchy of same-sex reform issues explains why following the rejuvenation of same-sex adoption reform efforts in 2003 the Government backed off yet again, and why finally in 2006 there was another failure.

The Ministry of Justice as a whole also had a large number of projects on their plate during this time too that left little space for adoption reform. During Labour's nine-year term the Ministry of Justice focused on passing other important legislation such as the Property (Relationships) Amendment Act in 2001, the Sentencing Act in 2002, the Clean Slate Act in 2004 and the Evidence Act in 2005. These are only a few examples of the other hugely important projects that Labour was attempting to progress. Large projects like these are expensive and time consuming, and the Ministry of Justice can only tackle so much. In light of other larger pieces of legislation that were going to have more of an impact, it seems likely that the Ministry was forced to put adoption on the back burner.

Overall the pattern of the Ministry of Justice concentrating on other bigger, supported reforms and the focus of social legislation on other same-sex problems indicates that it was not the difficult social nature of the adoption reform that was putting Labour off. Rather it seems to be the lack of political and public support for the reform, and the perceived primacy of other same-sex relationship reforms. During Labour's term, it seems that although adoption remained on the minds of the Government, it was always an issue that could be dealt with at a later time.

⁸⁵ Government Administration Committee *Inquiry into New Zealand's Adoption Laws: Interim Report of the Government Administration Committee*, above n 39, at 55 – 56; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [360].

⁸⁶ Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?*, above n 68, at 90 - 91; Wilson "An account of the making of the Human Rights Amendment Act 2001", above n 71, at 6.

2 *Split between Ministries:*

The Ministry of Justice is tasked with reforming the Adoption Act, because the status of the adopted child changes during the process, but the Ministry of Social Development is tasked with actually applying the legislation in an everyday context.⁸⁷ This essentially means that the legislation is split between two Ministries, with the Ministry less invested in reform being tasked to undertake that reform. In the context of law reform this can prove problematic, because the Minister's personal interest in an area can certainly help speed law reform along.⁸⁸ Ministerial understanding and possibly interaction with how the current laws of adoption are flawed makes the possibility of an ambivalent Minister all the more likely.

This is a structural problem built right into the very fabric of adoption law reform in its current state, but Labour dealt with this issue very well. Sequential Associate Ministers of Justice, Margaret Wilson and Lianne Dalziel, seemed to have taken a high level of interest in progressing adoption law reform during the period 2000 - 2004.⁸⁹ Combined with their interest, Steve Maharey, the Minister of Social Development and Employment from 1999 to 2007, expressed awareness of the issue of adoption reform and was clearly very interested in continuing its progress.⁹⁰ Finally, the combined review by the Ministry of Justice, the Ministry of Social Development and Employment, and Child, Youth and Family meant all departments with some form of interest in adoption reform were involved in what the best outcomes of reform could be.⁹¹ In essence, although this factor is not ideal in the context of law reform, it is not one that Labour could have done anything more about during their term.

⁸⁷ Child, Youth and Family Services "Adoptions pathway guidelines", above n 10; Department of the Prime Minister and Cabinet "Directory of Ministerial Portfolios Justice" <<https://www.dPMC.govt.nz/cabinet/portfolios/justice>>; Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [7].

⁸⁸ Geoffrey Palmer *Reform* (Victoria University Press, Wellington, 2013) at 641.

⁸⁹ Cabinet Policy Committee Paper "Reform of Adoption Laws" (10 November 2003) POL (03) 348; Dalziel "Changes to Family Law Legislation in the 21st Century", above n 41; Wilson "A Vision for the future: New Zealand's Child Legislation in the 21st Century", above n 41.

⁹⁰ Steve Maharey, Minister of Social Services and Employment "Fit for Purpose – Getting Family Law Right", above n 33.

⁹¹ Wilson "A Vision for the future: New Zealand's Child Legislation in the 21st Century", above n 41.

3 *Other Relevant Legislative Change:*

Labour undertook other legislative change during their nine-year term that either interacted heavily with adoption, made piecemeal changes to the way adoption law functioned, or completely ignored adoption where it should have been mentioned.

The first of the legislative changes I will touch on is the Care of Children Bill.⁹² This Bill was introduced to Parliament on the 10th of June 2003 and progressed through parliament in just over a year, being given royal assent on the 21st of November 2004. It was in this reform that the Guardianship Act 1968 was modernised, as well as changes made to the Family Proceedings Act 1980, and Status of Children Act 1969.⁹³ In the Bill's explanatory note it was emphasized that New Zealand had a greater diversity of family models now (in 2004) than what was considered normative in 1968.⁹⁴ Importantly, like in The Report, the welfare of the child in question was considered to be of primary importance.⁹⁵ However, the Bill itself was silent on adoption.

The exclusion of adoption seems strange considering that one of the primary recommendations of the Law Commission was to create a Care of Children Act that encompassed both guardianship and adoption to ensure a consistent, child-focused regime.⁹⁶ The silence, in this case, seems to reflect the difficulty that Steve Maharey may have faced in either gaining support for or creating a Care of Children Act that covered both guardianship and adoption. This speculation is supported by comments made by Lianne Dalziel in 2002 in her capacity as the Minister of Senior Citizens. She stated that Steve Maharey was considering a Care of Children Act, but had decided to focus on amending the guardianship and adoption legislation separately.⁹⁷ These comments indicate that Steve Maharey likely decided to only take on a single battle at a time, in the hopes that he would be able to pass at least one piece of much needed reform in the area of care of children. This tactic seemed to work, with only one mention of adoption during the Care of Children Act being passed. This was by the ACT party commenting that this Bill opened the doors to same-sex marriage and adoption.⁹⁸ However, this reform approach would have

⁹² Care of Children Bill 2003 (54-1).

⁹³ At 1.

⁹⁴ At 1.

⁹⁵ At 1 – 2.

⁹⁶ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [86] – [89].

⁹⁷ Lianne Dalziel, Minister for Senior Citizens “Christchurch Methodist Mission Open House” (23 January 2002).

⁹⁸ (26 June 2003) 609 NZPD 6668.

unintended consequences. Fostering and guardianship are a more popular care of children arrangement in New Zealand than adoption.⁹⁹ I argue that by divorcing the problems of adoption and guardianship in this legislative change, a huge driver behind the potential reform of adoption was lost.

My discussion on the Civil Union Act 2004 will be brief, as I have already referred to this legislation. In essence, the Civil Union Act did not alter adoption when it had the chance.¹⁰⁰ In fact, the Act was never intended to cover adoption, with the reason given for this being that adoption was under review elsewhere at this time.¹⁰¹ The Relationships (Statutory References) Act 2005 becomes important here as it amended a huge number of laws to standardise the rights and responsibilities of married, de facto and civil union couples, but omitted amending the Adoption Act.¹⁰² Still, a huge number of concerns were raised among both politicians and the public that same-sex couples would have an easier time adopting children.¹⁰³

The final piece of relevant legislation was the Human Assisted Reproductive Technology Act 2004 (“HART”). Although HART did not directly change adoption laws, it regulated varying forms of reproductive technologies that offered alternatives to adoption, making other alternative ways of having children safer.¹⁰⁴ I argue that this would have reduced the pressure on the Government to reform adoption by ensuring that other alternatives to adoption were now considered a more viable option.

Combined, the legislative changes listed above show a pattern of both avoidance and piecemeal change during Labour’s term. Legislation like HART made adoption reform seem less urgent or necessary, whereas legislation like the Care of Children Act 2004 or the Civil Union Act 2004 indicated that adoption was still too difficult to reform or gain support for. This left the adoption reform in the position of being avoided as the poisoned chalice.

⁹⁹ Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 14.

¹⁰⁰ Civil Union Bill 2004 149-2.

¹⁰¹ At 10.

¹⁰² Adoption Act 1955, s 3; Relationships (Statutory References) Bill 2004 (151-1) (explanatory note).

¹⁰³ (24 June 2003) 618 NZPD 13927; Justice and Electoral Committee *Civil Union Bill and Relationships (Statutory References) Bill Departmental Report* (Justice and Electoral Committee, October 2004) at 10 – 11.

¹⁰⁴ Human Assisted Reproductive Technology Act 2004, s 3.

4 Courts creating law to fill in the gaps:

When dealing with a piece of legislation that was created during the 1950s, it is inevitable that conflicts with modern values, language, and culture will arise. Although the courts are unable to undertake comprehensive law reform (a job left to Parliament), they are able to interpret the language of a statute in such a way that it is in line with modern, common social attitudes, despite the original intention of the language. This is despite the fact that under s 5(1) of the Interpretation Act 1999 the courts are meant to interpret the legislation in light of its purpose.

Simply, the ability the courts have to create small and not-so-small interpretation changes to outdated laws creates a safety net for the Government. This essentially enables the Government of the day to prioritise other more important or ‘broken’ laws ahead of what is seen to be a functioning piece of legislation. I argue that this was indeed the case with adoption, and it reduced some of the urgency associated with the reform process.¹⁰⁵ The courts stepping in to ‘fix up’ the more problematic areas of adoption legislation creates an interesting paradox – the more the courts do to fix adoption law without the need for Parliamentary intervention, the less Parliament is motivated to fix the law because the courts are able to do it on their own.

I do not argue that it is wrong for the courts to wield this power, rather I question if the changes courts can make are large enough to fix the complexities of interpretation and the mismatch of parliamentary purpose to modern values. Concerns have been raised that the age of the Act has created an uncertain legal environment for both birth and adoptive parents.¹⁰⁶ There is always the risk that the legislation will be pushed to the breaking point of its language and a Judge will not be able to apply the best ‘modern values’ result.

5 Failure of the Select Committee Process:

When the Select Committee first began, the Chairwoman Dianne Yates seemed very optimistic about its outcome, believing there would be a report out relatively quickly and that law reform would follow.¹⁰⁷ The Select Committee, in reality, went on to give no

¹⁰⁵ Atkin “Adoption law: the courts outflanking parliament”, above n 9, at 119.

¹⁰⁶ Examples include Atkin “Adoption law: the courts outflanking parliament”, above n 9; Paul von Dadelszen “The Adoption Act 1955 – the pressing need for reform”, above n 20; Else “Adoption at a Standstill”, above n 20; Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement”, above n 18.

¹⁰⁷ Hoby “Shakeup for adoption law viewed as well overdue”, above n 30.

recommendations at all.¹⁰⁸ This left the Labour party members of the Select Committee to create and release their own recommendations.¹⁰⁹ Following the submissions period, the Select Committee members must have begun to disagree on what an adoption reform should entail, and maybe even if it should go ahead. Dianne Yates indicated that the major disputes in the Select Committee were over who organised adoptions, overseas adoptions, and parenting abilities.¹¹⁰ It appears that Labour were initially unaware of the difficulty that the Select Committee process might run into, considering they were originally so positive about the prospects of introducing new legislation. This suggests that the Select Committee process was initially not believed to be ‘politicised’, but during the process seems to have become a personal and/or ideological battleground.

I read all of the submissions to the Select Committee, and a number of them remarked that the call for public submissions was not widely advertised. Furthermore, there were a number of late submissions that said they were not aware that submissions were being accepted, or when they closed. As part of my research I reviewed the daily newspaper, the *Evening Post*, for the period from 29th of September 2000 to 1st of February 2001. During this period I found only a single call for submissions on the 21st of October 2001.¹¹¹ It is also of concern that the submission period began in late October and continued over the Christmas Holiday period.¹¹² Finally, I note that the Law Commission had also only just received a large number of submissions on the issue of adoption reform in 1999 and 2000, so for a number of submitters, sending in a new submission to a Select Committee in 2001 could feel like it was a double up or a waste of time. These factors in combination could have resulted in a smaller pool of submissions, reducing the effectiveness of what a Select Committee is meant to achieve by canvassing public opinion.

The failure to give recommendations to the Government as a full Select Committee is further evidence that this reform was in trouble from very early on. The lack of a report essentially left the Government with a shaky foundation of recommendations that were not

¹⁰⁸ Government Administration Committee *Inquiry into New Zealand’s Adoption Laws: Report of the Government Administration Committee*, above n 38, at 2.

¹⁰⁹ Government Administration Committee *Inquiry into New Zealand’s Adoption Laws: Interim Report of the Government Administration Committee*, above n 39.

¹¹⁰ “Stalemate over adoption overhaul” TVNZ (31 August 2001)
<<http://tvnz.co.nz/content/55112/2556418/article.html>>.

¹¹¹ “Submissions on adoption invited” *The Evening Post* (21 October 2000).

¹¹² Hoby “Shakeup for adoption law viewed as well overdue”, above n 30; “Submissions on adoption invited” *The Evening Post*, above n 111.

fully supported by a Select Committee, a controversial Law Commission Report, and a divided Parliament that would eventually have to consider any completed Bill.

6 Perceived number of people impacted:

The shrinking number of domestically adopted children within New Zealand is another issue that has plagued the reform of adoption. The number of children adopted in New Zealand by people not related to them has dropped 98% in the last 30 years, with only 60 stranger adoptions, 69 surrogacy adoptions, and 70 in-family adoptions occurring in 2007.¹¹³ In 2008 it was estimated by CYFS that around 300 couples were waiting to adopt – outweighing the number of children available for adoption.¹¹⁴ In a country the size of New Zealand, the number of people actually impacted by the law change would appear small to the Government (less than 1000 people annually) and the law change required would be a large and expensive project.

It has been rightly pointed out by the Law Commission that the impact of adoption is broader than just the birth parents, adoptive parents, and child. The extended family and community that a child is adopted from or into are also impacted by the adoption of that child.¹¹⁵ Furthermore, a law change would have impacted individuals that were discriminated against under the Act at this time (like those in same-sex or de facto relationships), which would have added a small amount of urgency to reform in this area. These voices, however, did not seem to be enough. The silence of the general public on adoption reform outside of same-sex adoption pushed reform into obscurity as an issue. Without strong widely held public opinion, adoption was drowned out in a pool of reform issues with louder voices during Labour's term.

7 Controversial issues related to adoption:

(a) Same-sex joint adoption

Same-sex joint adoption is a question that has been consistently emphasized throughout the failed history of reforming adoption. Prior to 2013 same-sex couples could not be 'spouses' for the purposes of the Adoption Act, and therefore could not jointly adopt a child.¹¹⁶ Submissions to both the Law Commission and the Select Committee reflect the

¹¹³ "Number of babies available for adoption falls sharply" (14 May 2008) Stuff.co.nz <<http://www.stuff.co.nz/national/420491/Number-of-babies-available-for-adoption-falls-sharply>>; Ludbrook (ed) *Child Law*, above n 56, at [PA14].

¹¹⁴ "Number of babies available for adoption falls sharply", above n 113.

¹¹⁵ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [10].

¹¹⁶ Paul von Dadelszen "The Adoption Act 1955 – the pressing need for reform", above n 20, at 117 – 118.

level of concern and controversy that surrounded same-sex joint adoption in New Zealand at the time.¹¹⁷ In spite of this, the recommendations of the Law Commission and Government members of the Select Committee were that same-sex joint adoption should be made legal.¹¹⁸ Any reform following the Law Commission Report and the Select Committee interim report was going to have to address the issue of same-sex adoption, whether or not they decided to extend the practice. Academics have repeatedly pointed out that same-sex adoption under these circumstances becomes a contentious issue to the New Zealand public.¹¹⁹

Considering the ‘gay adoption’ focus that both the media and public had formed in response to adoption, it was likely sensible to wait for the fear around to die down before any reform was attempted.¹²⁰ The problem here seems to have been that the controversy did not die down. The focus remained on equalising same-sex and opposite-sex adoption rights, rather than the need for a more child-centred overhaul of New Zealand’s adoption laws. It is clear that at this time the inequality of same-sex adoption rights was not only considered a big part of the problem with adoption law, but possibly even the only problem.

(b) International adoption, Lobbying and Adoption as a ‘last resort’

Although my paper is not explicitly covering reform of the Adoption (Intercountry) Act 1997, it would be false to ignore the impact that issues surrounding international adoption had on reform of the Adoption Act. International adoption was a topic heavily discussed in both the Law Commission’s Report, and the Select Committee’s interim report.¹²¹ The contentious nature of the issues raised by international adoption was made clear by the

¹¹⁷ Government Administration Committee *Inquiry into New Zealand’s Adoption Laws: Interim Report of the Government Administration Committee*, above n 39, at 55 – 56; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [360].

¹¹⁸ Government Administration Committee *Inquiry into New Zealand’s Adoption Laws: Interim Report of the Government Administration Committee*, above n 39, at 55 – 56; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [360].

¹¹⁹ Atkin “A Year of Reports”, above n 24, at 314; Atkin “Adoption law: the courts outflanking parliament”, above n 9; von Dadelszen, above n 20, at 117.

¹²⁰ George “Garth George: Political Correctness makes adoption too hard”, above n 30; Hoby “Shakeup for adoption law viewed as well overdue”, above n 30; “Adoption secrets out in the open”, above n 30; Longmore “Gay men get rights in adoption overhaul plan”, above n 30; Wood “Bad timing for adoption proposals”, above n 32.

¹²¹ Government Administration Committee *Inquiry into New Zealand’s Adoption Laws: Interim Report of the Government Administration Committee*, above n 39, at 39, 43 and 45 – 48; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [293] – [319].

large number of submissions the Select Committee received on issues related to intercountry adoption. I read all 168 submissions and found that at least 54 of the submissions focused on international adoption as either the whole of their submission, or the majority of it. At least 35 of these submitters expressed significant concerns that the Government was planning to amend s 17 of the Adoption Act to stop adoptions from non-Hague countries coming through by the backdoor. Submitters focusing on these issues (by my analysis) did not want s 17 to be altered at all, instead they called for the current law around international adoption to remain unchanged. These arguments mirrored similar pleas from 25 submitters fearful that if the Adoption Act was changed, domestic adoptions would become even more difficult than they currently were. These submitters were upset that adoption was seen as a ‘last resort’ in New Zealand, and felt that more children should be adopted out.

I group the issues of adoption being a ‘last resort’ in New Zealand, and concerns about international adoption, because they are interlinked. Domestic adoptions have been declining for a long time.¹²² Statistics from 2000 show 364 domestic adoptions (only 87 of which were by strangers), and by 2007 the total number of domestic adoptions had fallen to 213 (with only 60 adoptions by strangers).¹²³ Comparatively, there were 380 intercountry adoptions in 2000, and by 2007 the total number of intercountry adoptions was 406.¹²⁴ The lower level of domestic adoptions within New Zealand led to intercountry adoptions becoming an important form of adoption in New Zealand.¹²⁵ In the case of adoption reform (especially in light of some of the submissions), this means that both those who want to adopt internationally and those who want to adopt domestically may have a vested interest in retaining the current system to ensure that adoption was not ‘tightened up’.

The submission and adoption statistics above are indicative of the concern that the public had about the possible changes to international and domestic adoption that may make the process yet more difficult. The fear surrounding these threatened changes would have made adoption reform more difficult and politically unappealing.

¹²² Else *A Question of Adoption*, above n 3, at 159 – 161; Ludbrook (ed) *Child Law*, above n 56, at [PA1.7]; “Number of babies available for adoption falls sharply”, above n 113.

¹²³ Ludbrook (ed) *Child Law*, above n 56, at [PA14].

¹²⁴ At PA14.

¹²⁵ Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 15.

(c) The practice of Whāngai

Whāngai is a Māori customary practice through which a child or multiple children are raised by a kin or whānau member that is not their birth parent.¹²⁶ The practice of whāngai differs greatly from the western concept of adoption in both the consequences of its practice, and how the practice is engaged in. In particular, whāngai is a more open practice that is not always permanent.¹²⁷ It is also of note that because traditionally whāngai occurs within a single kin group their whakapapa (genealogy) remains both legally intact and acknowledged by the wider hapu or iwi.¹²⁸ Furthermore, within whāngai children are viewed as valuable treasures and the responsibility of raising children is spread throughout a kin group.¹²⁹

Under s 19 of the Adoption Act, whāngai cannot be legally recognised (with the exception of provisions under Te Ture Whenua Māori Act 1993).¹³⁰ This section was enacted as an intentional expression of the assimilationist policies and westernised cultural norms that were dominant in New Zealand during the 1950s.¹³¹ Although the intention of s 19 was likely to put an end to the practice of whāngai, this has not been the result. Rather, whāngai is still practiced in the modern day, just outside of the remit of the legal system.¹³²

The terms of reference given to the Law Commission required that they contemplate how and whether recognition would be given to the practice of whāngai within new adoption legislation.¹³³ The Law Commission concluded that there was only limited support for any specific legal recognition of whāngai, rather they suggested “a more general approach which specifically incorporated Māori values in legislation to be applied according to the tikanga supporting each circumstance”.¹³⁴ The Government members of the 2001 Select Committee agreed, recommending that whāngai should be recognised as an alternative

¹²⁶ Karyn Okeroa McRae and Linda Waimarie Nikora “Whangai: remembering, understanding and experiencing” (2006) 1(7) MAI Review 1 at 1.

¹²⁷ At 3.

¹²⁸ At 1.

¹²⁹ At 3.

¹³⁰ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [190].

¹³¹ Caren Wickliffe “Te Timatanga - Māori Women’s Access to Justice” (2005) 8(2) Yearbook of New Zealand Jurisprudence 217 at 254.

¹³² New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [208].

¹³³ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at 234.

¹³⁴ At [248].

form of care for children alongside, but separate from, adoption in the proposed Care of Children Act.¹³⁵ These combined conclusions suggest that both the Select Committee and the Law Commission felt that it was better to do nothing about the practice of whāngai in the context of adoption. This results in a loss of yet another possible reason that the Government may want adoption reform to occur, making the possibility of reform all the more unlikely.

(d) Surrogacy

The uses of the Adoption Act have changed significantly in the 61 years following its original passing. In particular, surrogacy and IVF were not concepts foreseen in 1955, a time even before the pill had been invented.¹³⁶ The Adoption Act in the modern day is the governing legislation for surrogacies, because the intended parents must adopt the child from the surrogate who is considered the birth mother of the child, even when she is not genetically related to the child.¹³⁷ Numerous problems exist with surrogacy being forced under the umbrella of the Adoption Act, but this is not the topic of my paper.¹³⁸

Surrogacy was, however, important in the context of adoption law reform. It supported the need for law reform through the problems highlighted above, while simultaneously existing as a deterrent to reform because it was yet another difficult area of law that would likely have to be legislated for in any new Adoption Act. Surrogacy also raised a number of related problems like international surrogacy,¹³⁹ compensation for surrogacy,¹⁴⁰ and same-sex surrogacy that simply added the icing to the controversial cake.¹⁴¹ For these reasons

¹³⁵ Government Administration Committee *Inquiry into New Zealand's Adoption Laws: Interim Report of the Government Administration Committee*, above n 39, at 28 – 29.

¹³⁶ Family Planning “The Pill” (1 August 2013) <<http://www.familyplanning.org.nz/news/2013/the-pill>>.

¹³⁷ Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement”, above n 18, at 20; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [546]; New Zealand Law Commission *New Issues in Legal Parenthood: A discussion paper* (NZLC PP54, Wellington, 2004) at [1.3].

¹³⁸ See Kate Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement” (LLM Research Paper, Victoria University of Wellington, 2013) for a review of the problems surrounding surrogacy law in New Zealand.

¹³⁹ Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement”, above n 18, at 25 – 26.

¹⁴⁰ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [531] – [535].

¹⁴¹ Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement”, above n 18, at 14; New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at [593] – [595].

surrogacy was likely yet another factor that landed adoption squarely in the ‘too hard’ basket.

(e) The emotional nature of adoption

The dark history and strong emotions associated with adoption makes any suggested law reform difficult and contentious. My personal research on the submissions to the Select Committee on adoption law reform in 2001 reflected this, suggesting that these emotions ran both ways. Those that had been historically wronged by adoption and the agencies that control it overwhelming wanted change, whereas a number of people who wanted to or had adopted children wanted it to remain the same because they felt adoption would only become more difficult with reform.

Along with strong opinions came compelling stories. While reading through the submissions to the Select Committee I noted down every time I came across a personal, emotional story in a submission. Out of 168 submission over 48 were emotional, often detailing stories of their own adoption experience, or the experience of adopting children. The content of these submissions demonstrates the difficult, passionate debates going on in small pockets of society about adoption, and how emotive this topic truly was.

However, this still remains a small group whose interests are drowned by other ‘more important’ reform projects. Adding an emotional element to this already ‘niche’ reform make it less politically appetising. Not only are a small number of people likely to be impacted, making the political payoff small, but due to its emotional nature, if the law reform fails it risks adverse public opinion or media attention. In other words, the courts were already engaged in making the legislation more functional, the risks of legislative change were high due to the danger of getting it wrong, and the political pay-off uncertain (at best) because of the lack of clarity around how many people a law change would actually impact.

8 Intentions for the Law Commission Report and Nature of the Recommendations

The first thing to note about the Law Commission Report was that the terms of reference were given to the Law Commission by National’s Minister of Justice, Tony Ryall in 1998/1999.¹⁴² Although the Law Commission themselves are an independent body that are not meant to engage in party politics, this does not mean that politicians are above using

¹⁴² Tony Ryall “Law Commission to review 1955 Adoption Laws”, above n 35.

the Law Commission as a way to pass a ‘hot potato’ for their own political ends.¹⁴³ Tony Ryall had not previously shown a consistent interest in the issue of adoption, only mentioning the problems with the aged legislation following his referral of the issue to the Law Commission.¹⁴⁴ Combined with the timing of Tony Ryall’s referral, this appears to be a way to ‘set up’ the opposition with a controversial issue at the start of their new term.

The adoption law reform suggested by the Law Commission was ambitious, encompassing a spectrum of care of children options in a single piece of legislation. This would mean combining a number of separate pieces of legislation (like the Guardianship Act 1968, the Adult Adoption Information Act 1985, the Adoption (Intercountry) Act 1997 and others) with varying purposes, definitions and legal consequences into a single piece of legislation.¹⁴⁵ Ambition, in itself, is not a killing blow to recommendations made by the Law Commission. An example of another very ambitious set of Law Commission recommendations that were largely adhered to was the Law Commission’s 1999 review of New Zealand’s Evidence Law.¹⁴⁶ On the whole, this was a more ambitious project than adoption reform because it had to create a cohesive, clear singular piece of legislation from incredibly old common law rules in conjunction with confused legislative reforms.¹⁴⁷ The aim was to (almost) completely codify the entirety of Evidence law, which as one can imagine is no small job.¹⁴⁸ Despite the enormity of this task, six years later in 2005 the Evidence Bill was introduced and passed into law in 2006.¹⁴⁹

It appears that the big difference between the evidence and adoption reports was that the recommendations on evidence law presented as a more pressing, important and politically sound reform. Adoption, on the other hand, was being (mostly) patched by courts and other legislation when big problems arose, supported by the Ministry of Social Development though a ‘rights-friendly’ interpretation of the Adoption Act, and was creating a smaller number of problems that impacted a smaller number of people than other big legislative changes also on the government’s plate at the same time (e.g. consistency 2000). In that

¹⁴³ John Burrows “A New Zealand perspective on law reform” (2010) 16 *Canterbury Law Review* 117 at 117.

¹⁴⁴ Timothy Molteno “Statutes Amendment Bill (No. 7): Second Reading” <<http://www.vdig.net/hansard/archive.jsp?y=1999&m=10&d=05&o=239&p=240>>.

¹⁴⁵ Atkin “A Year of Reports”, above n 24, at 312.

¹⁴⁶ New Zealand Law Commission *Evidence: Reform of the Law* (NZLC R55, Wellington, 1999).

¹⁴⁷ New Zealand Law Commission *Evidence: Reform of the Law*, above n 146, at xvii; Elisabeth McDonald *Principles of Evidence in Criminal Cases* (Brookers Ltd, Wellington, 2012) at ix.

¹⁴⁸ McDonald *Principles of Evidence in Criminal*, above n 147, at 14 – 16.

¹⁴⁹ Evidence Act 2006.

kind of climate, recommendations (like those made by the Law Commission) are pushed to the side to make room for more ‘important’ legislative change. There are multiple examples of adoption law being put on legislative standby during Labours term – in 2003 when other Governmental projects became more important, in 2004 when the Care of Children Bill was passed without adoption, and in 2006/2007 when a bill was drafted but never made it to Parliament. This was not simply a case of no political will to follow the recommendations of the Law Commission, but a case of ‘Why me? Why now? Why this?’.

IV 2009 to 2016; Human Rights, Discrimination, and Future Reform

A 2008 to 2016: National’s Political Stance and Other Relevant Legal Changes

1 2008: A silent beginning

Unlike Labour, National did not have the equivalent of The Report to deal with at the beginning of their term in late 2008. This meant they did not have to publically discuss adoption reform as soon as they entered office. Adoption also did not appear in any form in the Ministry of Justice Statements of Intent for 2008/2009 and 2010/2011.¹⁵⁰ Adoption was, however, mentioned in New Zealand’s combined third and fourth report to the United Nations Committee on the Rights of the Child (UNROC) in December 2008, which covered the period of 2001 to 2008.¹⁵¹ The UNROC report stated that the Government had started the process of a comprehensive adoption reform in around 2003, but this work had to be put on hold in 2006 due to other competing priorities and that a “...considered and comprehensive approach is being taken to reviewing these complex issues.”¹⁵²

2 2011: Simon Power’s final comment on adoption

Simon Power had announced that he was to retire from politics after the 2011 election.¹⁵³ True to his word, he left Parliament in December 2011, leaving Judith Collins to take over as Justice Minister. In his valedictory speech in October 2011, Simon Power mentioned briefly that adoption was a “tough issue” that he wished had been debated more publically in Parliament.¹⁵⁴ This does not seem to be a view shared by Judith Collins, who stated that

¹⁵⁰ Adoption Action Inc. “Chronology of moves to reform adoption laws over the last 36 years”, above n 64, at 5.

¹⁵¹ *Third and fourth periodic report of States parties due in 2008 New Zealand CRC/C/NZL/3-4* (2008).

¹⁵² At 48

¹⁵³ Martian Kay “Justice Minister Simon Power to Retire” (2 March 2011) Stuff.co.nz <<http://www.stuff.co.nz/national/politics/4721936/Justice-Minister-Simon-Power-to-retire>>.

¹⁵⁴ Simon Power, Minister of Justice “Valedictory statement: Hon Simon Power” (5 October 2011).

the Government had chosen not to implement the findings of the Law Commission and that the current adoption laws were adequate for their purpose.¹⁵⁵

3 2009 to 2012: Nikki Kaye and Kevin Hague v Jacinda Ardern in attempted adoption reforms

In August 2009 Kevin Hague of the Green Party introduced a Bill into the ballot that would legalise same-sex joint adoption.¹⁵⁶ However, this Bill did not find favour with the Government. Simon Power, the then Minister of Justice, made it clear that adoption reform was not an issue currently on the Government's work schedule.¹⁵⁷ The Bill was subsequently withdrawn by Kevin Hague in 2009 when he realised that a more comprehensive reform of adoption was needed.¹⁵⁸ On this basis, Kevin Hague became involved in a cross-party approach to creating a new draft bill encapsulating both adoption and surrogacy in 2009.¹⁵⁹ Nikki Kaye of the National party worked closely with Kevin Hague in the drafting of this Bill, and it seems that initially Labour was also involved.¹⁶⁰ At some point during 2010 Labour pulled out of the cross-party collaboration creating a bill for adoption and surrogacy, to create their own Bill looking only at adoption.¹⁶¹ Although this Bill was announced in August 2011, it disappeared until after the election.¹⁶²

In May 2012, adoption roared suddenly back into the spotlight when Kevin Hague and Nikki Kaye revealed that they were drafting a Bill that dealt with adoption, international adoption, and surrogacy all at once.¹⁶³ The cross-party approach to this Bill was unique in the history of adoption law reform in New Zealand, and the fact that both a member of the National Party (traditionally centre-right) and the Green Party (traditionally left-wing) had

¹⁵⁵ New Zealand Law Society "No immediate plans for adoption law reform" (2012) <<http://www.lawsociety.org.nz/news-and-communications/latest-news/2012/no-immediate-plans-for-adoption-law-reform>>.

¹⁵⁶ Kevin Hague "Modernisation of adoption law" (15 October 2012) The Green party <<https://blog.greens.org.nz/2012/10/15/modernisation-of-adoption-law/>>.

¹⁵⁷ Collins "Judge: Time to let gay couples adopt", above n 66.

¹⁵⁸ Hague "Modernisation of adoption law", above n 156.

¹⁵⁹ Hague "Modernisation of adoption law", above n 156.

¹⁶⁰ Hague "Modernisation of adoption law", above n 156.

¹⁶¹ (23 October 2013) 694 NZPD 14235; Jacinda Ardern "Time for Adoption Laws Need Shake up" (media statement, 29 July 2011); Hague "Modernisation of adoption law", above n 176.

¹⁶² "Labour joins adoption reform calls" (29 July 2011) Stuff.co.nz <<http://www.stuff.co.nz/dominion-post/news/politics/5361434/Labour-joins-adoption-reform-calls>>.

¹⁶³ Audrey Young "Political rivals unite on gay adoptions" *The New Zealand Herald* (online ed, 28 May 2012).

collaborated was an important boost for this initiative.¹⁶⁴ This Bill was eventually sponsored by Kevin Hague in the ballot in October of 2012, from where it was never drawn and was eventually withdrawn. Labour was noticeably absent from this cross-party project because in 2010 they had decided to back Jacinda Ardern in producing her own member's bill focused on adoption.¹⁶⁵

Jacinda Ardern's Bill was introduced to parliament on the 30th of August 2012. Ardern's Bill was very different to Hague and Kaye's. Where the cross-party bill was created as a substantive reform that could be passed by Parliament as is and do the job of changing adoption law on a large scale, Ardern's was focused on requiring the Government to request a new report from the Law Commission and take steps to draft legislation based on those recommendations and introduce it to Parliament.¹⁶⁶ It was not until the 23rd of October 2013 that the Bill received its first reading, and was not agreed, with a vote of 42 ayes (Labour, New Zealand First, Mana, and an independent) to 78 noes (National, the Green Party, the Māori Party, ACT, and United Future).¹⁶⁷

4 2012 to 2013: Marriage and (some) adoption equality

In July 2012 Louisa Wall's Marriage (Definition of Marriage) Amendment Bill was drawn from the ballot and passed its third reading on the 17th of April 2013. This Bill's primary purpose was to bring about marriage equality, which would also result in the legalisation of same-sex joint adoption.¹⁶⁸ The Bill amended references within the Adoption Act to be changed from 'husband or a wife' to 'spouse'.¹⁶⁹ Married same-sex couples would therefore fall under the definition of 'spouse' and be able to jointly adopt.¹⁷⁰ However, inequality would still exist between opposite and same sex de facto couples (at this stage), with only opposite-sex de facto couples being considered 'spouses' for the purposes of the Adoption Act.¹⁷¹

¹⁶⁴ Young "Political rivals unite on gay adoptions", above n 163.

¹⁶⁵ (23 October 2013) 694 NZPD 14235.

¹⁶⁶ Care of Children Law Reform Bill 2013 (61-2) (explanatory note).

¹⁶⁷ (23 October 2013) 694 NZPD 14235.

¹⁶⁸ Marriage (Definition of Marriage) Amendment Bill 2012 (39-2) at 1.

¹⁶⁹ Marriage (Definition of Marriage) Amendment Act 2013, sch 2.

¹⁷⁰ Marriage (Definition of Marriage) Amendment Act 2013, sch 2.

¹⁷¹ *Re Application by AMM and KJO to adopt a child*, above n 14, at [72] – [73].

5 2011 to 2016: *Adoption Action Inc., the Crown, and the Human Rights Tribunal decision*

In July 2011 Adoption Action Inc. filed a claim with the Human Rights Review Tribunal against the Crown claiming that “New Zealand's adoption law [was] out of date and discriminatory”.¹⁷² At this point, the claim was referred to mediation through the Human Rights Commission, which is where the matter would stay for a few years.¹⁷³

In 2013 Adoption Action Inc. re-lodged their claim against the Crown in the Human Rights Tribunal.¹⁷⁴ They sought a declaration that sections of the Adoption Act and the Adult Adoption Information Act 1985 were inconsistent the right to be free from discrimination under s 19 of the New Zealand Bill of Rights Act 1990.¹⁷⁵ Adoption Action Inc. claimed that these acts discriminated on the basis of six prohibited grounds including sex, marital status, sexual orientation, age, race and disability.¹⁷⁶

Although Adoption Action Inc. lodged their claim with the Human Rights Tribunal in 2013, it was not until March 2016 that the Human Rights Tribunal would give their decision. When they did come back, the Human Rights Tribunal declared that six separate sections of the Adoption Act 1955, and one section of the Adult Adoption Information Act 1985, were inconsistent with the right to be free from discrimination under section 19 of the New Zealand Bill of Rights Act 1990.¹⁷⁷ This ruling was based on the fact that the Adoption Act discriminated on five prohibited grounds, namely sex, marital status, sexual orientation, age, and disability.¹⁷⁸

Very few articles seem to have been written about the Human Rights Tribunal decision by the mass media. Those I could find appeared to give a balanced analysis of the results, as well as positive comments from those involved in Adoption Action, Labour, and the Human Rights Commission.¹⁷⁹ The lack of media attention, however, is not necessarily a

¹⁷² Michelle Cooke “56-year-old adoption law queried” (28 July 2011) Stuff.co.nz <<http://www.stuff.co.nz/national/health/5357997/56-year-old-adoption-laws-queried>>.

¹⁷³ *Adoption Action Incorporated v Attorney-General*, above n 2, at [18].

¹⁷⁴ At [18].

¹⁷⁵ Cooke “56-year-old adoption law queried”, above n 172.

¹⁷⁶ *Adoption Action Incorporated v Attorney-General*, above n 2, at [20] – [33].

¹⁷⁷ At [277] – [279].

¹⁷⁸ At [21] – [32] and [277] – [279].

¹⁷⁹ Grace Cabell “NZ adoption laws ‘discriminatory’, tribunal rules” (9 March 2016) NewsHub <<http://www.newshub.co.nz/politics/nz-adoption-laws-discriminatory-tribunal-rules-2016030911#axzz4Fmfvokct>>; Max Towle “Adoption law ‘outdated, discriminatory’” (9 March 2016) Radio NZ <<http://www.radionz.co.nz/news/political/298480/adoption-law-'outdated,-discriminatory'>>;

good thing. The silence seems to be more indicative of a lack of caring by the public and media rather than a groundswell of support for the decision.

Media reporting also had a tendency to focus on the same-sex elements of the Tribunal's decision, rather than concentrating on the four other grounds on which the legislation was discriminatory.¹⁸⁰ This lopsided focus was also reflected in the comment sections on the articles I could find, indicating that same-sex adoption remained a salient issue in the minds of the public discussing adoption, rather than the four other prohibited grounds of discrimination the Human Rights Tribunal had highlighted as being contravened.¹⁸¹ These views were also repeated by more conservative lobby groups like Family First, who rejected calls for reform on the basis that same-sex or single parent adoption led to "fatherless and motherless families".¹⁸²

The political reaction to the decision in March 2016 was decidedly muted at first. Comments about the decision were made by Labour, stating that the Adoption Act was out of date and that reform needed to be prioritised.¹⁸³ In particular, Jacinda Ardern emphasised that both she and Kevin Hague had sponsored legislation in the ballot that would have reformed adoption and each time they had been shot down.¹⁸⁴

Under s 92K of the Human Rights Act 1993 the relevant Minister is required to bring the declarations of inconsistency to the attention of the House of Representatives within 120 days of the declaration being made. Amy Adams fulfilled this requirement in August 2016. Her statement was dismissive of the decision given by the Human Rights Tribunal, even going so far as to disagree with some of the findings of the Tribunal.¹⁸⁵ In justifying the Government's position to do nothing, she stated that the Ministry of Social Development and the Courts continued to apply the Adoption Act in a way that was in line with "modern

Laura Walters "Human Rights Tribunal calls for changes to outdated adoption laws" (8 March 2016) Stuff.co.nz <<http://www.stuff.co.nz/national/politics/77673787/Human-Rights-Tribunal-calls-for-change-to-outdated-adoption-laws>>; Isaac Davison "Government urged to reform adoption laws" *The New Zealand Herald* (online ed, 9 March 2016).

¹⁸⁰ Cabell "NZ adoption laws 'discriminatory', tribunal rules", above n 179.

¹⁸¹ Walters "Human Rights Tribunal calls for changes to outdated adoption laws", above n 179.

¹⁸² Davison "Government urged to reform adoption laws", above n 179.

¹⁸³ Labour "Tribunal adds to calls for adoption reform" (Media statement, 9 March 2016).

¹⁸⁴ Towle "Adoption law 'outdated, discriminatory'", above n 179.

¹⁸⁵ Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [5].

legal and social contexts” which “in practice, results in rights-consistent application”.¹⁸⁶ Further, she stated that the Ministry of Justice had no space for adoption reform in their current schedule, affirming that the resource allocation required to advance adoption reform was not an option.¹⁸⁷ She also highlighted the current reform of Child, Youth and Family as a reason for not advancing adoption reform as it is the body that applied adoption law.¹⁸⁸ In concluding, she emphasised that in time adoption reform might be important, but that in the modern day changing our adoption legislation would simply be a large, unnecessary reform.¹⁸⁹

B Why did Law Reform Never Occur?

1 Other priorities for Justice:

When National were elected in late 2008 it quickly became clear that adoption reform was simply not a priority. Adoption reform was infrequently discussed by Government members, and when mentioned the response typically referred to other more important priorities that the Ministry of Justice had chosen to focus on.

National’s story of ‘other priorities’ begins with the first MP to take on the Justice portfolio, Simon Power. Simon Power’s ambitious legislative workload for justice has later been described later as a “blitzkrieg”,¹⁹⁰ and he has been commended for “[doing] in three years what other ministers would take three terms to achieve”.¹⁹¹ His focus from the very beginning was a reduction in crime rates and a revamp of criminal procedure.¹⁹² Just to name a few projects that progressed during his term, Simon Power helped repeal the partial defence of provocation,¹⁹³ progress search and surveillance reform,¹⁹⁴ amend the Crimes Act to target perpetrators of violence against children,¹⁹⁵ and begin the reform of our liquor

¹⁸⁶ At [7].

¹⁸⁷ At [8].

¹⁸⁸ At [9].

¹⁸⁹ At [10].

¹⁹⁰ Guyon Espiner “Interview: Simon Power” *New Zealand Listener* (online ed, 4 February 2013).

¹⁹¹ “Simon Power on The Nation” (31 July 2011) Scoop.co.nz

<<http://www.scoop.co.nz/stories/PO1107/S00359/simon-power-on-the-nation.htm>>.

¹⁹² Ministry of Justice *Statement of Intent 2009/10 – 2011/12* (Ministry of Justice, E.64SOI, 2009) at 10 and 13.

¹⁹³ “Provocation defence abolished” *The New Zealand Herald* (online ed, 27 November 2009).

¹⁹⁴ Simon Power “Bill boosts law enforcement tools” (press release, 2 July 2009).

¹⁹⁵ Crime Amendment Bill (No 2) 2011 (248-2) at 1 – 3; (3 May 2011) 672 NZPD 18316.

laws.¹⁹⁶ These projects are only a few of the massive number he undertook under multiple portfolios, but by far one of the biggest projects he completed was the reform of criminal procedure in the Criminal Procedure (Reform and Modernisation) Bill in 2011.¹⁹⁷ This was a project 50 years in the making that was greatly needed to help modernise and streamline criminal procedure.¹⁹⁸ This reform included an overhaul of legal aid, victims' rights, the threshold for jury trials, and a swathe of other changes greatly improving the speed of the criminal justice system.¹⁹⁹ Considering this jam-packed schedule, it is unsurprising that adoption did not make its way on to Simon Power's radar until after he had retired from Parliament.

Judith Collins became the new Justice Minister following the 2011 election. Like Simon Power she continued to champion victims' rights and began the "largest overhaul of law underpinning New Zealand's courts" in 2013.²⁰⁰ To name a few of her achievements, as the Minister of Justice she passed the Search and Surveillance Act in 2012,²⁰¹ advanced the Judicature Modernisation Bill in 2013,²⁰² and passed the Victims of Crime Reform Bill in 2014.²⁰³ By the time she resigned her post as Minister of Justice in mid-2014, Judith Collins had made it clear she did not think adoption needed to be reformed and that other priorities (like those mentioned) were more important.²⁰⁴

Following Judith Collins resignation, Amy Adams became the Justice Minister. Through her term to the modern day Amy Adams has stated that issues like "[r]eviewing family violence legislation, work progressing on a new Trusts Act and privacy law reform, as well as modernising Courts and Tribunals" were the focus for her in this role.²⁰⁵ In her statement following the Human Rights Tribunal decision, Amy Adams has explicitly said the Government will not be progressing adoption reform in the current day.

¹⁹⁶ "Q+A: Simon Power Interview" (22 August 2010) One News <<http://tvnz.co.nz/q-and-a-news/q-simon-power-interview-3725415>>.

¹⁹⁷ Criminal Procedure (Reform and Modernisation) Bill 2011 (243-3A).

¹⁹⁸ Simon Power "Biggest reform of criminal procedure in 50 years passes" (press release, 4 October 2011).

¹⁹⁹ Simon Power "Biggest reform of criminal procedure in 50 years passes", above n 198.

²⁰⁰ "Hon Judith Collins" Beehive.co.nz <<https://www.beehive.govt.nz/minister/biography/judith-collins>>.

²⁰¹ Judith Collins "Search and Surveillance Bill becomes law" (press release, 22 March 2012).

²⁰² (5 December 2013) 695 NZPD 15299.

²⁰³ Judith Collins "Bill to strengthen victims' rights passes into law" (press release, 27 May 2014).

²⁰⁴ New Zealand Law Society "No immediate plans for adoption law reform", above 155; "Collins resigns after 'smear campaign'" (30 August 2014) Radio New Zealand <<http://www.radionz.co.nz/news/political/253386/collins-resigns-after-'smear-campaign'>>.

²⁰⁵ Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [8].

Through each of these successive Ministers it is made very clear that adoption law is perceived to be fine the way it is. The need for adoption reform appears to be thought of as cosmetic and unimportant as long as CYFS and the Courts ‘continue to do their jobs’.²⁰⁶

2 Other Relevant Legislative Change:

Rather than adoption reform being tackled or supported by National during their term, both Labour and the Greens attempted reform in their place. The differing treatment of the three reform attempts by the Government shows an interesting narrative of ambivalence rather than dislike of adoption reform.

Both Ardern and Hague/Kaye’s Bills were meant to (eventually) comprehensively reform adoption. However, only Ardern’s Care of Children Reform Bill reached its first reading, at which time it was made clear that the Government preferred the substantive approach to adoption reform that Kaye and Hague had taken, but refused to champion this Bill themselves.²⁰⁷ In fact there was recognition across the board by National that adoption reform was an important matter, but the constantly heard excuse of ‘not now’ rang clear yet again.²⁰⁸ It is this paradox, clearly seen again and again, of the recognition of need without the desire to resolve that is most prominent in the first reading of Ardern’s Bill, and an indicative hallmark of adoption reforms history.

Not every reform that impacts adoption law fails, as is made clear by the Marriage (Definition of Marriage) Amendment Act in 2013. Although marriage equality also created the ability for same-sex married couples to adopt, this was not a point widely discussed within the parliamentary debate. In fact, adoption was only discussed on nine occasions throughout the entire Parliamentary process.²⁰⁹ By my count, none of these were negative comments and on two occasions they were completely unrelated to joint same-sex adoptions. There was even confusion over the effect that marriage equality would have on adoption. An example of this was Paul Hutchinson stating that it would allow single men to adopt girls without ‘special circumstances’.²¹⁰ This was not true. The silence and

²⁰⁶ At [7].

²⁰⁷ Care of Children Reform Bill 2012 (61-2); (23 October 2013) 694 NZPD 14235.

²⁰⁸ (23 October 2013) 694 NZPD 14235.

²⁰⁹ (29 August 2012) 683 NZPD 4913; (13 March 2013) 688 NZPD 8523; (27 March 2013) 688 NZPD 9020; (17 April 2013) 689 NZPD 9482.

²¹⁰ (29 August 2012) 683 NZPD 4913.

confusion over the impact that marriage equality was going to have on adoption suggests that any impact on the functioning of adoption was seen as a ‘happy accident’.

Comparing the debates about marriage equality and Ardern’s Bill highlights that where a comprehensive adoption reform is not considered, reform is considered more permissible. The Bills dedicated to the reform of adoption were unable to find favour with the Government, and through this we see the primacy of other social issues (like the recognition of same-sex marriage) over and above adoption reform.

3 *Courts creating law to fill in the gaps:*

The courts continued to fill in the gaps left in the aging legislation, with the primary examples from National’s term being *Re Application by AMM and KJO to adopt a child* and *Re Pierney and Hsieh* which in conjunction allowed both opposite and same-sex de facto couples the ability to jointly adopt.²¹¹ The actions of the courts reduced some of the inequalities contained within the Adoption Act, and in combination with marriage equality reduced the prominence of same-sex joint adoption as an issue for reform by the Government. This does not, however, seem to have impacted how willing the National Government was to reform adoption. Rather, it seems that the courts stepping into to reinterpret the old legislation in ways that reduce the controversy of adoption law is reinforcing the validity of the Government’s inaction. The more problems that can be fixed outside of a legislative change, the less Government intervention is perceived to be needed.

4 *Split between ministries:*

The split between the Ministry of Justice and the Ministry of Social Development in the application and reform of the Adoption Act seems enlarged during National’s term. In her response to the Human Rights Tribunal’s declarations, Amy Adams discusses how CYFS is applying the Adoption Act in a “rights-consistent” manner.²¹² She gave examples such as the CFYS placing civil union couples into the pool of possible adoptive parents.²¹³ She explicitly states that it is up to the courts and the Ministry of Social Development to continue to apply the Adoption Act according to modern values.²¹⁴ Although these statements are made by the Ministry of Justice, nothing was heard from the Minister of Social Development, Anne Tolley, except that this was in issue “the government were

²¹¹ *Re Application by AMM and KJO to adopt a child*, above n 14, at [72] – [73]; *Re Pierney and Hsieh*, above n 14, at [14].

²¹² Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [7].

²¹³ At [7].

²¹⁴ At [7].

always looking at”.²¹⁵ This is a far cry from the inter-departmental approach taken in Labour’s term, and the active involvement of Steve Maharey (the Minister of Social development from 1999 to 2007) in discussing possible adoption reform.²¹⁶ The ability to place the responsibility of what is essentially an ‘informal adoption reform’ onto the Ministry of Social Development seems to have allowed to Government to take a step back from adoption reform.

5 *Controversial issues related to adoption:*

(a) Introduction

Although some controversial issues remain between Labour and National’s terms (like surrogacy, the emotional nature of adoption and Whāngai), a number of problems were resolved by the Courts or Parliament by modifying the way that the Adoption Act was applied.

(b) Same-sex joint adoption

The composite effect of marriage equality, *Re Pierney and Hsieh* and *Re Application by AMM and KJO to adopt a child* removed same-sex adoption entirely as an issue facing adoption reform.²¹⁷ This does not, however, seem to have had a positive impact for adoption. By both Parliament and the courts acting to fix problematic human rights issues that were a thorn in the side of adoption, the necessity for reform was reduced. This result may seem counterintuitive, but it makes sense if you consider how huge decisive issues like same-sex adoption and marriage appear and how much attention they bring to an issue. A great example is in the reporting of the Human Rights Tribunal’s decision – even though same-sex adoption was no longer an issue, this was one of the only problems with the Adoption Act that the mass media reported on.²¹⁸ This confused understanding of how the adoption laws function in the modern day add

²¹⁵ Stacey Kirk “Call to review New Zealand adoption laws” (30 March 2016) Stuff.co.nz

<<http://www.stuff.co.nz/national/politics/78377564/Call-to-review-New-Zealand-adoption-laws>>.

²¹⁶ Steve Maharey, Minister of Social Services and Employment “Fit for Purpose – Getting Family Law Right”, above n 33; Wilson “A Vision for the future: New Zealand’s Child Legislation in the 21st Century”, above n 41.

²¹⁷ *Re Application by AMM and KJO to adopt a child*, above n 14, at [72] – [73]; *Re Pierney and Hsieh*, above n 14, at [14].

²¹⁸ Cabell “NZ adoption laws ‘discriminatory’, tribunal rules”, above n 179; Walters “Human Rights Tribunal calls for changes to outdated adoption laws”, above n 179; “Bob McCoskrie and Jacinda Ardern debate same-sex adoption” (10 March 2016) *Paul Henry*
<<http://www.newshub.co.nz/tvshows/paulhenry/bob-mccoskrie-and-jacinda-ardern-debate-same-sex-adoption-2016031011>>.

a level of push back against adoption reform (with people convinced that same-sex couples cannot adopt) that amounts to nothing because the result they fear is already a reality. In essence, the same-sex focus gives adoption reform ‘bark’ without ‘bite’.

The problem, it seems, is that the matter of same-sex joint adoption has actually been solved, but the media and public don’t seem convinced of this fact. This has the dual effect of both distracting debate away from other important discriminatory aspects of the Adoption Act, and making reform less desirable because this ‘big problem’ that engages the public at large has now been resolved.

(c) Adoption seen as a ‘last resort’

In New Zealand in 2010, 5000 children required alternative parenting arrangements, 40% of those children were in kin-care (being placed with family members), 1500 children were fostered by people not related to them, and around 1000 children in the care system lived in family-group homes or group-based residential care.²¹⁹ In 2009 – 2010, 339 children in the foster system were given a ‘home for life’.²²⁰ This is a system that allows children to become part of the families they are fostered within without formal adoption, which is partly indicative of the fact that Child, Youth and Family don’t “actively encourage foster parents to adopt the children placed in their care”.²²¹ These numbers are a far cry from the 199 domestic adoptions recorded in New Zealand in 2010, which clearly illustrates that in New Zealand adoption in the modern day is viewed as more of a ‘last resort.’²²² My intent in illustrating this is not to suggest there should be a change in the rate of or preference for adoption, but to show the mind-set that the Government has in regards to modern adoption reform. Because adoption is a less-preferred option compared to other available care of children alternatives (like kin care, guardianship or fostering) it means that these other constructs are more likely to be reformed ahead of adoption. A good example of this during Labour’s term was the Care of Children Act 2004, and in National’s term we see a similar pattern with the primacy of the modernisation of Child, Youth and Family. Part of the problem with this ‘last resort’ mentality in adoption reform is it ignores that one of the primary uses of the Adoption Act is surrogacy cases, in which other solutions to care of

²¹⁹ Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 14.

²²⁰ At 14.

²²¹ Ludbrook (ed) *Child Law*, above n 56, at [PA14].

²²² Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 14.

children like guardianship are likely to be less applicable.²²³ In all, the less viable adoption seems as a solution to the problem of alternative parenting arrangements, the less important any reform appears.

6 *Perceived number of people impacted:*

Although the number of people being adopted and adopting has remained low over the entire 16-year period I have covered, there has been a change in who has been restricted from adopting.²²⁴ By removing same-sex relationships status as a problem that stops joint adoption, new legislation may actually be seen to impact fewer people. In a similar way, the policies that CYFS has adopted to ensure that the legislation is applied in a socially consistent manner may also reduce the perceived size of the impact that the legislation may have if passed. In all, fixing problems like the exclusion of some categories of adopters, may make reform seem less necessary as there is a smaller impact on a smaller group of people.

7 *Nature of the Human Rights Tribunal and its Recommendations*

Unlike the Law Commission, private lobby groups (like Adoption Action Inc.) are able to take cases to the Human Rights Tribunal with the express intent of causing some form of legal reform in their relevant area. This was most certainly the case with *Adoption Action Incorporated v Attorney General*, where the Chairman of the Tribunal expressly states this was Adoption Action's intent.²²⁵ Succeeding in gaining a declaration from the Human Rights Tribunal also enables a lobby group to force the relevant Minister to bring the declaration to the attention of the House of Representatives.²²⁶ This will also require a Minister to comment on the matter at hand, and their plans to address (or not address, as is the current case) the issues raised by the Tribunal.²²⁷ The reverse of this is that the Human Rights Tribunal can in no way force the Government to act in this kind of case, and Ministerial interest in reforming the problem is never guaranteed. In the case of adoption, it appears that despite the declarations given by the Tribunal, the Government remain uninterested (at least for this term) in reforming adoption.

The really interesting question in the government's dismissal of adoption reform is why the government were able to dismiss calls for adoption reform from the Human Rights

²²³ Henderson "Who's bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement", above n 18, at 24 – 25.

²²⁴ Ludbrook (ed) *Child Law*, above n 56, at [PA14] and [PA1.7.03(1)].

²²⁵ *Adoption Action Incorporated v Attorney-General*, above n 2, at [13].

²²⁶ Human Rights Act 1993, s 92k.

²²⁷ Human Rights Act 1993, s 92k.

Tribunal. The nature of adoption means that it is quite a socially reactive topic so when law changes or public popular opinion moves, the Ministry of Social Development are able to respond through policy. They can change the way that CYFS applies the Adoption Act, even if it is not entirely in line with the original spirit of the legislation. Similarly, the ability of the courts to create change in the application of adoption law further allows the legislation to be interpreted in a modern way. Combined, these factors enable the Government to put adoption reform to the side, as there is no controversy looming that would render the Act unable to function. It is this very functionality that impacts the desire of Ministers to attempt to reform adoption law, especially when there are other areas in need of reform that are seen to be at greater risk of dysfunction.

V What Law Reform Lessons Can Be Learned From the Story of the Adoption Act?

In New Zealand we have a tendency to pass big statutes, find we do not like the results and engage in a constant pattern of amendments whereby the statute risks losing both its principles and its coherence.²²⁸

The essence of this quote rings true in the tale of the Adoption Act, however the mode through which amendments have been made are slightly different than tacked-on legislative changes. Rather than the responsibility of ‘righting the wrongs’ of adoption law in the modern day being left to parliament to patch over, it has instead been left to the courts and CYFS. During this last section of my paper I will explore this pattern, the impact it has had on adoption reform, and what lessons can be taken for future law reform projects.

A Why this Reform? A Story of Need and Risk

“The first question to ask about any proposed Bill should be: why is this law necessary?”²²⁹ It may seem obvious, in order for a reform to catch the eye of the party in power, they must be convinced of why this law reform is needed. I think it important to point out that ‘necessity’ in this context is about “political priority”.²³⁰ A required but uncontroversial law reform may well not be viewed by government as a ‘necessity’.²³¹ However, it takes more than just a contentious topic to impact the ‘political priority’ of a reform. In fact, where there is controversy, quite often there is political risk. Although a controversial,

²²⁸ Geoffrey Palmer “Law- Making in New Zealand: Is There A Better Way?” (2014) 22 Wai L Rev 1 at 3.

²²⁹ At 5.

²³⁰ At 6.

²³¹ At 6.

broadly impactful reform may engage Parliament, it can equally raise concerns about popularity with the public, and the potential risk of a negative result at the ballot box.²³² This causes an interesting dual effect in that the very thing that makes the law reform so necessary may make it highly problematic to progress. Adoption reform is an excellent demonstration of how changes in the perceived necessity of a reform can result in a continual cycle of stalling.

Under the original reform recommendations put forward by the Law Commission, adoption was initially paired with a reform of guardianship.²³³ Considering that guardianship is a more common care of children arrangement, this pairing bolstered the need for reform.²³⁴ However, there was risk associated with this arrangement. When guardianship was reformed in 2004 without adoption, the impact adoption reform was originally planned to have was reduced.²³⁵ This, in turn, made adoption reform ‘less needed’ because the annual number of domestically adopted children in New Zealand remained low.²³⁶ Later, marriage equality paired with decisions by the courts would also bring same-sex adoption equality.²³⁷ This resolution further decreased the number of people who would be impacted by a future law reform, because the queer community was no longer directly discriminated against. The lesser the impact, and the fewer human rights problems involved in reform, the less desire the Government seems to have in reforming functioning legislation. In this way, adoption law was met with an ‘out of sight, out of mind’ mentality that has resulted in adoption reform being shelved.

The courts and other legislation resolving the ‘sexier’ elements of adoption reform left the project with a much smaller ‘selling point’. This is clearly demonstrated in a debate about the need for adoption reform between Jacinda Ardern and Bob McCoskrie in March 2016 where both parties focus on the ‘inability’ of same-sex de facto couples to adopt.²³⁸ This,

²³² Geoffrey Palmer “The law reform enterprise: evaluating the past and charting the future” (2015) 131 LQR 402 at 420.

²³³ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 2, at [86].

²³⁴ Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 14.

²³⁵ Care of Children Act 2004.

²³⁶ Gibbs and Scherman “Pathways to parenting in New Zealand: issues in law, policy and practice”, above n 5, at 14.

²³⁷ Marriage (Definition of Marriage) Amendment Act 2013; *Re Application by AMM and KJO to adopt a child*, above n 14, at [72] – [73]; *Re Pierney and Hsieh*, above n 14, at [14].

²³⁸ “Bob McCoskrie and Jacinda Ardern debate same-sex adoption”, above n 218.

of course, is false, but is a good demonstration that the largest discussion point for adoption reform in the public-eye has and continues to be same-sex adoption. The courts and other legislation resolving these controversies in an attempt to achieve the best result for either other reform projects, or for the child in an adoption case, has left adoption reform looking largely like a maintenance or cosmetic project rather than the substantive reform it is actually intended to be. Over time this pattern of ‘fixing up’ adoption has resulted in fewer governmental attempts at reform, and in the current day it appears there is next to no government interest in reforming adoption.²³⁹

However, this is only half the problem. During Labour’s term controversial issues like same-sex and de facto joint adoptions were still a live issue adding heat to the fire, but still no reform resulted. What contributed to this lack of general support for adoption reform were the very same controversial, politicized problems that made reform so important. Adoption, international adoption, surrogacy, de facto adoption, and same-sex adoption were all issues that Labour were going to have to solve in any new legislation and, simply put, it looked too hard. In particular, the same-sex element of any adoption law reform during this period was going to be difficult in the wake of civil unions, and comments by Helen Clark suggest this is why adoption reform was not progressed during Labours term.²⁴⁰

Adoption reform demonstrates a paradox that exists within law reform. Some of the more controversial issues and human rights problems surrounding a project are what makes it an important issue to reform, but these are the same problems that make it far more difficult to progress. Where policy, the Courts, and other legislation are perceived to fill ‘problem areas’ in the target legislation, the ‘potency’ of reform is deadened, so is political interest. The unfortunate narrative of adoption reform serves as a demonstration of the tension between advancing a comprehensive law reform in the face of passionate public opinion on smaller divisive issues, and the desire of the courts to gain the best ‘rights-consistent’ outcome for litigants from an old, outdated statute. The more the Judiciary alters the law to better fit the modern day, the greater reliance Parliament places on the courts to pick up the slack, and the greater chance that the much needed law reform that courts desire will fade into obscurity.

²³⁹ Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [10].

²⁴⁰ “Gay Adoption Bill is “off the ballot”, above n 49.

B Why now? A Story of Opportunity

Necessity is not the only factor that impacts whether a law reform project will subsequently be introduced to Parliament and passed into law. Like necessity, opportunity to progress reform is all about politics, and “politics is the language of priorities”.²⁴¹ As demonstrated above, when there is no catalyst the worth of a reform must be validated to the government or they simply won’t advance it. The pattern of adoption’s opportunity to be reformed clearly demonstrates the problem of never being the ‘favourite child’.

Adoption reform seems to never have reached the high level of importance that other reform projects, like the Civil Union Act 2004 or consistency 2000, had during its history.²⁴² Adoption also never had a critical breaking point, unlike the Search and Surveillance Bill in 2011 when the Supreme Court’s decision *R v Hamed* threatened evidence in a number of criminal cases.²⁴³ Although the Law Commission Report did bring about an initial period of fruitful discussion, the ability to push aside adoption reform in the face of other more important reform would prevail. Even when reform appeared the most likely in 2006 to 2007, it became clear in letters from the Justice Minister that this reform attempt failed too because other items on the legislative agenda overtook adoption.²⁴⁴ Later during National’s term, the heightened ability of the courts to solve issues facing adoption law looks to have decreased opportunities for reform even more significantly. The Government, likely relying on the courts, made no moves to reform adoption during this period. Finally, when the Human Rights Tribunal gave their declaration, this presented another opportunity for the beginning of the law reform process, however, due to the perceived greater importance of other law reform projects and the lesser need to reform adoption this opportunity was never realised.²⁴⁵

Adoption serves to highlight a pattern of missed opportunities that builds on the problem of ‘why this reform’. When an area of law is perceived as ‘functioning’ because of changes implemented through the courts or other agencies like CYFS, the reform is simply seen as

²⁴¹ Palmer “The law reform enterprise: evaluating the past and charting the future”, above n 232, at 404.

²⁴² Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [7].

²⁴³ *R v Hamed* [2011] NZSC 101, [2012] 2 NZLR 305; Search and Surveillance Bill 2009 (45-3); Isla Doidge “The Search and Surveillance Act: A Troubled History” (LLB (Hons) Research Paper, Victoria University of Wellington, 2016) at 11.

²⁴⁴ Letter from Annette King (Minister of Justice) to Robert Ludbrook regarding the lack of progress of adoption reform (11 August 2008).

²⁴⁵ Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [7] - [10].

less necessary and other bigger, more critical projects will displace in on the hierarchy of political priorities.

C Why me? A Story of Politicians

As illustrated recently in the government's response to the declaration of inconsistency from the Human Rights Tribunal, a passionate, interested lobby group is not enough to progress a reform.²⁴⁶ MPs, and preferably Ministers, are an important driving force in both whether legislation will ever be introduced, and if it will pass into law. The question of 'why me?' is one that Ministers and MPs must ask themselves when deciding whether an issue is one that they will adopt and if it is the right time to do so.

Adoption in Labour's term was lucky with the politicians that strove to progress reform. In particular Steve Maharey, Margaret Wilson, Lianne Dalziel, and Mark Burton all worked really hard at some point during Labour's term to bring about adoption reform.²⁴⁷ What was particularly important about these politicians was that they were all Ministers or Associate Ministers of key departments, so were in a better position to raise and discuss adoption with Cabinet. The collaboration between the Ministry of Justice and the Ministry of Social Development on this issue was also important, because it appears to have created a bridge between the Ministries that was vital to the small steps toward reform made in 2006.²⁴⁸ Importantly, however, law reform cannot be pushed forward by a one-person army. Wider support from the Cabinet and Parliament is necessary in order for any progress to be made. The absence of adoption from the Care of Children Act 2004, and the later avoidance of introducing a drafted adoption bill in 2006 suggest that there simply was not enough general support to progress adoption during Labour's term. It seems likely this was due to the controversial nature of the topics involved and the low political mileage that could be gained from progressing reform. National's term was pervaded by a different issue, with successive Justice Ministers entirely disinterested in the prospect of adoption reform. Instead, non-government members filled this gap. Unlike Labour no relevant Ministers were involved in the member's bills introduced. This resulted in the failure of one bill, and the disappearance of another.²⁴⁹

²⁴⁶ At [10].

²⁴⁷ Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding existence of adoption reform and the Ministry of Justice work programme (13 October 2006); Dalziel "Changes to Family Law Legislation in the 21st Century", above n 41; Maharey, Minister of Social Services and Employment "Fit for Purpose – Getting Family Law Right", above n 33; Wilson "A Vision for the future: New Zealand's Child Legislation in the 21st Century", above n 41.

²⁴⁸ Cabinet Policy Committee Paper "Reform of Adoption Laws" (14 July 2006) POL (06) 165 at 1 - 2.

²⁴⁹ Care of Children Reform Bill 2013 (61-2); (23 October 2013) 694 NZPD 14235.

Adoption is a good demonstration of why continuity is an issue in reform. With Ministers, Associate Ministers and MPs changing all the time, and the short three-year period of our electoral cycles, champions of specific reforms are lost. This was exacerbated in the case of adoption reform because it was split between two Ministries – one tasked with reforming and the other with implementing the legislation. In all, the ability to pass the ‘obligation’ of interpreting legislation in a rights consistent way between two ministries, the courts, and CYFS enabled the evasion of who should actually be responsible for this reform project. In the end it appears the ability to ‘pass the buck’ back to the courts has become the popular option, and highlights the lack of desire to own a law reform project seen as less necessary.²⁵⁰

VI Conclusion

The Adoption Act 1955, as a case study of law reform, has raised interesting questions about how policy, law reform, and the courts interact. I began my paper by looking more closely at Labour’s continued attempts at reforming the Adoption Act during the period of 1999 to 2008, and why each successive attempt was unsuccessful. I demonstrated that a combination of factors were at play, including other prominent priorities, the highly controversial issues involved, the ‘patching’ of adoption undertaken by the courts and other legislation, the small impact of reform. During this period adoption reform had a true case of ‘always the bridesmaid, never the bride’.

I continued this exercise by examining the lack of adoption reform during National’s term during the period of 2008 to the current day. The problems facing adoption reform during this period were similar to those that impacted Labour, but in many ways had been intensified. In particular, I discussed the primacy of other reform, the courts continued ‘fixing’ of the Adoption Act, the chipping away of key problems in the legislation, and the Human Rights Tribunal’s position as a body that can only ‘recommend’.

In all, the fact that none of these attempts got off the ground is a combination of ambitious recommendations paired with the large number of controversial issues involved, topped off with an adoption system that was ‘functioning’ and did not appear to be in need of urgent reform. This was not a case of ‘no will’ to reform by politicians, but a structural problem

²⁵⁰ Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General*, above n 11, at [10].

built into adoption reform exacerbated by a long line of ever more important law reform projects.

The lessons that can be taken from adoption reform is the demonstration of the paradox created when the need to reform an area of law is intrinsically linked to the controversial human rights problems it raises. Without these controversies, the importance of reform is lowered and unlikely to register on the Government's radar. However, it is these same controversial issues that continue to force the progress of the reform back, as there is neither enough public nor political support to push forward. The knock on impact of this lessened political will is that the reform is never given an opportunity to reach Parliament, and there are fewer politicians willing to champion the reform. Adoption is truly the "Cinderella" of family law that never managed to escape the confines of her stepmother's basement.²⁵¹

²⁵¹ New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, above n 1, at xx.

VII Bibliography

A Cases

Adoption Action Inc. v Attorney-General [2016] NZHRRT 9.

R v Hamed [2011] NZSC 101, [2012] 2 NZLR 305.

Re Application by AMM and KJO to adopt a child [2010] NZFLR 629.

Re Pierney and Hsieh [2015] NZFC 9404, [2016] NZFLR 53.

B Legislation

1 Statutes

Adoption Act 1955.

Adoption (Intercountry) Act 1997.

Adult Adoption Information Act 1985.

New Zealand Bill of Rights Act 1990.

Human Rights Act 1993.

Te Ture Whenua Māori Act 1993.

Property (Relationships) Amendment Act 2001.

Clean Slate Act 2004.

Sentencing Act 2002.

Care of Children Act 2004.

Civil Union Act 2004.

Human Assisted Reproductive Technology Act 2004.

Evidence Act 2005.

Relationships (Statutory References) Act 2005.

Marriage (Definition of Marriage) Amendment Act 2013.

2 Bills

Care of Children Bill 2003 (54-1).

Relationships (Statutory References) Bill 2004 (151-1).

Civil Union Bill 2004 (149-2).

Crime Amendment Bill (No 2) 2011 (248-2).

Criminal Procedure (Reform and Modernisation Bill 2011 (243-3A).

Search and Surveillance Bill 2009 (45-3)

Care of Children Law Reform Bill 2013 (61-2).

Marriage (Definition of Marriage) Amendment Bill 2013 (39-2).

C Texts and Chapters in Texts

1 Books

Phil Chan *Equality in Asia-Pacific: Reality or a Contradiction in Terms?* (Routledge, 2014).

Anne Else *A Question of Adoption* (Bridget Williams Books, Wellington, 1991).

Elisabeth McDonald *Principles of Evidence in Criminal Cases* (Brookers Ltd, Wellington, 2012).

Geoffrey Palmer *Reform* (Victoria University Press, Wellington, 2013) at 641.

2 Looseleaf texts

Robert Ludbrook (ed) *Child Law* (online looseleaf ed, Brookers)

D Journal Articles

Bill Atkin "Whose Responsibility Are Our Children." (1997) *International Survey of Family Law* 309.

Bill Atkin "A Year of Reports." (2002) *International Survey of Family Law* 305.

Bill Atkin "Adoption law: the courts outflanking parliament" (2012) 7 *NZFLJ* 119.

John Burrows "A New Zealand perspective on law reform" (2010) 16 *Canterbury Law Review* 117.

Nathen Crombie and Bill Atkin "New Meaning for historic term "de factos" as "spouses" in new High Court ruling" (2010) 6 *NZFLJ* 313.

Paul von Dadelszen "The Adoption Act 1955 – the pressing need for reform" (2009) 6 *NZFLJ* 117.

A Gibbs and R Scherman "Pathways to parenting in New Zealand: issues in law, policy and practice" (2013) 8 *Kotuitui: New Zealand Journal of Social Sciences Online* 13.

Mark Henaghan and Ruth Ballantyne "2013: A Time of Change in New Zealand Family Law - Marriage Equality, International Surrogacy and Ongoing Changes to the Family Court." (2013) *International Survey of Family Law* 291.

Karyn Okeroa McRae and Linda Waimarie Nikora "Whangai: remembering, understanding and experiencing" (2006) 1(7) *MAI Review* 1.

Geoffrey Palmer "Law- Making in New Zealand: Is There A Better Way?" (2014) 22 *Wai L Rev* 1.

Geoffrey Palmer "The law reform enterprise: evaluating the past and charting the future" (2015) 131 *LQR* 402.

Caren Wickliffe “Te Timatanga - Māori Women’s Access to Justice” (2005) 8(2) Yearbook of New Zealand Jurisprudence 217.

Margaret Wilson “An account of the making of the Human Rights Amendment Act 2001” (2001) 19(2) Wai L Rev 1.

E Theses

Isla Doidge “The Search and Surveillance Act: A Troubled History” (LLB (Hons) Research Paper, Victoria University of Wellington, 2016) at 11.

Kate Henderson “Who’s bringing up baby: developing a framework for the transfer of legal parenthood in surrogacy arrangement” (LLM Research Paper, Victoria University of Wellington, 2013).

F Parliamentary and Government Materials

1 Cabinet Committee Minutes

Cabinet Policy Committee Paper “Reform of Adoption Laws” (10 November 2003) POL (03) 348.

Cabinet Policy Committee Minute “Reform of Adoption Laws” (12 November 2003) POL Min (03) 29/9.

Cabinet Minute Decision “Additional Item: Reform of Adoption Laws” (3 July 2006) CAB Min (06) 24/15.

Cabinet Policy Committee Paper “Reform of Adoption Laws” (14 July 2006) POL (06) 165.

Cabinet Policy Committee Minute “Update of Adoption laws” (26 July 2006) POL Min (06) 15/13.

Cabinet Policy Committee Paper “Reform of Adoption Laws” (2 July 2007).

2 Hansard

(24 June 2003) 618 NZPD 13927.

(26 June 2003) 609 NZPD 6668.

(3 May 2011) 672 NZPD 18316.

(29 August 2012) 683 NZPD 4913.

(13 March 2013) 688 NZPD 8523.

(27 March 2013) 688 NZPD 9020.

(17 April 2013) 689 NZPD 9482.

(23 October 2013) 694 NZPD 14235.

(5 December 2013) 695 NZPD 15299.

3 *Select Committee Reports*

Justice and Electoral Committee *Civil Union Bill and Relationships (Statutory References) Bill Departmental Report* (Justice and Electoral Committee, October 2004).

Government Administration Committee *Inquiry into New Zealand's Adoption Laws: Report of the Government Administration Committee* (August 2001).

Government Administration Committee *Inquiry into New Zealand's Adoption Laws: Interim Report of the Government Administration Committee* (August 2001).

E *Reports*

Amy Adams *Government Response to declarations of inconsistency by the Human Rights Review Tribunal in Adoption Action Incorporated v Attorney General* (Ministry of Justice, August 2016).

Ministry of Justice *Re-evaluation of the Human Rights protections in New Zealand* (Ministry of Justice, Discussion Paper, October 2000).

Ministry of Justice *Statement of Intent 1 July 2007 – 30 June 2008* (Ministry of Justice, E.64SOI(07), May 2007).

Ministry of Justice *Statement of Intent 2009/10 – 2011/12* (Ministry of Justice, E.64SOI, 2009).

Ministry of Justice *Briefing for the Incoming Minister Vote Justice* (Ministry of Justice, October 2007).

New Zealand Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework*, (NZLC R65, Wellington, 2000).

New Zealand Law Commission *Adoption: Options for Reform* (NZLC PP38, Wellington, 1999).

New Zealand Law Commission *New Issues in Legal Parenthood: A discussion paper* (NZLC PP54, Wellington, 2004).

New Zealand Law Commission *Evidence: Reform of the Law* (NZLC R55, Wellington, 1999).

F *Other Sources*

1 *United Nations Materials*

Third and fourth periodic report of States parties due in 2008 New Zealand CRC/C/NZL/3-4 (2008).

2 *Newspaper or Magazine Articles*

Patrick Crewdson “MP seeks to allow gay couples right to adopt” *The New Zealand Herald* (online ed, 2 July 2006).

Simon Collins “Judge: Time to let gay couples adopt” *The New Zealand Herald* (online ed, 20 August 2009).

Isaac Davison “Government urged to reform adoption laws” *The New Zealand Herald* (online ed, 9 March 2016).

Guyon Espiner “Interview: Simon Power” *New Zealand Listener* (online ed, 4 February 2013).

Garth George “Garth George: Political Correctness makes adoption too hard” *The New Zealand Herald* (online ed, 30 June 2000).

Katherine Hoby “Shakeup for adoption law viewed as well overdue” *The New Zealand Herald* (online ed, 30 January 2001).

Mary Longmore “Gay men get rights in adoption overhaul plan” *The Evening Post* (29 September 2000).

Claire Trevett “MP Seeks big adoption changes” *The New Zealand Herald* (online ed, 15 October 2012).

Peter Wood “Bad timing for adoption proposals” *The Evening Post* (10 October 2000).

Audrey Young “Political rivals unite on gay adoptions” *The New Zealand Herald* (online ed, 28 May 2012).

“Adoption secrets out in the open” *The New Zealand Herald* (30 September 2000).

“Submissions on adoption invited” *The Evening Post* (21 October 2000).

“Government Plays Down Gay Adoption” *The New Zealand Herald* (online ed, 12 July 2006).

“Provocation defence abolished” *The New Zealand Herald* (online ed, 27 November 2009).

3 Letters

Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding existence of adoption reform and the Ministry of Justice work programme (13 October 2006).

Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding scope of adoption reform and Ministry of Justice work programme (January 2007).

Letter from Mark Burton (Minister of Justice) to Robert Ludbrook regarding the progress and scope of adoption reform (4 September 2007).

Letter from Anette King (Minister of Justice) to Robert Ludbrook regarding the lack of progress of adoption reform (11 August 2008).

4 *Speeches*

Lianne Dalziel, Associate Minister of Justice “Changes to Family Law Legislation in the 21st Century” (17 July 2003).

Lianne Dalziel, Minister for Senior Citizens “Christchurch Methodist Mission Open House” (Christchurch, 23 January 2002).

Lianne Dalziel, Associate Minister of Justice “Child/Youth Law & Policy Conference” (26 November 2003)

Steve Maharey, Minister of Social Services and Employment “Fit for Purpose – Getting Family Law Right” (Speech to Social Policy Forum 2000, Victoria University of Wellington, Wellington, 26 October 2000).

Steve Maharey, Minister of Social Services and Employment “Putting Children First” (Speech to the to the New Zealand Association of Children’s Supervised Access Services Conference, Parliament Buildings, Wellington, 30 October 2000).

Steve Maharey, Minister of Social Services and Employment “Securing the Future” (Speech to the Children’s Rights, Needs, and Welfare Symposium, School of law in University of Waikato, Waikato, 30 November 2000).

Simon Power, Minister of Justice “Valedictory statement: Hon Simon Power” (5 October 2011).

Margret Wilson, Attorney General “Trends in New Zealand Family Law” (4 September 2000).

Margret Wilson, Associate Minister of Justice “A Vision for the future: New Zealand’s Child Legislation in the 21st Century” (Speech to Child Law Conference, 18 April 2002).

5 *Internet Sources*

Adoption Action Inc. “Chronology of moves to reform adoption laws over the last 36 years” Adoption Action Inc. <<http://adoptionaction.co.nz/wp-content/uploads/2016/04/Chronology.pdf>>.

Adoption Action Inc. “Adoption News and Views April 2014” (April 2014) Adoption Action <<http://adoptionaction.co.nz/wp-content/uploads/2014/08/ANV14-1.pdf>>.

Grace Cabell “NZ adoption laws ‘discriminatory’, tribunal rules” (9 March 2016) NewsHub <<http://www.newshub.co.nz/politics/nz-adoption-laws-discriminatory-tribunal-rules-2016030911#axzz4Fmvfokct>>.

Katie Chapman “Adoption ruling ‘a beacon of hope’” (26 June 2010) Stuff.co.nz <<http://www.stuff.co.nz/national/politics/3856986/Adoption-ruling-a-beacon-of-hope>>.

Child, Youth and Family Services “Adoptions pathway guidelines” Child, Youth, and Family Services <<http://www.practicecentre.cyf.govt.nz/service-pathways/adoptions/adoptions-pathway-guidelines.html>>.

Michelle Cooke “56-year-old adoption law queried” (28 July 2011) Stuff.co.nz <<http://www.stuff.co.nz/dominion-post/news/politics/5355503/56-year-old-adoption-laws-queried>>.

Stewart Dalley “Adoption law change for same-sex de facto couples” (25 February 2016) Law Society <<https://www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-882/adoption-law-change-for-same-sex-de-facto-couples>>.

Department of the Prime Minister and Cabinet “Directory of Ministerial Portfolios Justice” <<https://www.dpmc.govt.nz/cabinet/portfolios/justice>>.

Anne Else “Anne Else: the Future of Adoption” (4 October 2000) Scoop <<http://www.scoop.co.nz/stories/HL0010/S00015.htm>>.

Anne Else “Adoption at a Standstill” (28 April 2016) Werewolf <<http://werewolf.co.nz/2016/04/adoption-at-a-standstill/>>.

Family Planning “The Pill” (1 August 2013) <<http://www.familyplanning.org.nz/news/2013/the-pill>>.

Keith Griffith “History of Adoption in NZ” Adoption NZ <http://adoptionnz.com/?page_id=118>.

Kevin Hague “Modernisation of adoption law” (15 October 2012) The Green party <<https://blog.greens.org.nz/2012/10/15/modernisation-of-adoption-law/>>.

Craig Hoyle “Mothers who gave up children for adoption call for Govt apology” (20 March 2016) NewsHub <<http://www.newshub.co.nz/nznews/mothers-who-gave-up-children-for-adoption-call-for-govt-apology-2016032018#axzz4Fmvfokct>>.

Human Rights Commission “Human Rights Commission Calls for Urgent Reform of New Zealand Adoption Laws” (9 March 2016) Human Rights Commission <<https://www.hrc.co.nz/news/human-rights-commission-calls-urgent-reform-new-zealand-adoption-laws/>>.

Martian Kay “Justice Minister Simon Power to Retire” (2 March 2011) Stuff.co.nz <<http://www.stuff.co.nz/national/politics/4721936/Justice-Minister-Simon-Power-to-retire>>.

Stacey Kirk “Call to review New Zealand adoption laws” (30 March 2016) Stuff.co.nz <<http://www.stuff.co.nz/national/politics/78377564/Call-to-review-New-Zealand-adoption-laws>>.

Timothy Molteno “Statutes Amendment Bill (No. 7): Second Reading” <<http://www.vdig.net/hansard/archive.jsp?y=1999&m=10&d=05&o=239&p=240>>.

Max Towle “Adoption law ‘outdated, discriminatory’” (9 March 2016) Radio NZ <<http://www.radionz.co.nz/news/political/298480/adoption-law-'outdated,-discriminatory'>>.

New Zealand Law Society “No immediate plans for adoption law reform” (2012) <<http://www.lawsociety.org.nz/news-and-communications/latest-news/2012/no-immediate-plans-for-adoption-law-reform>>.

Laura Walters “Human Rights Tribunal calls for changes to outdated adoption laws” (8 March 2016) Stuff.co.nz <<http://www.stuff.co.nz/national/politics/77673787/Human-Rights-Tribunal-calls-for-change-to-outdated-adoption-laws>>.

“Stalemate over adoption overhaul” TVNZ (31 August 2001) <<http://tvnz.co.nz/content/55112/2556418/article.html>>.

“Number of babies available for adoption falls sharply” (14 May 2008) Stuff.co.nz <<http://www.stuff.co.nz/national/420491/Number-of-babies-available-for-adoption-falls-sharply>>.

“Gay Adoption Bill is “off the ballot” – Clark” (2 July 2008) Gaynz <http://www.gaynz.com/articles/publish/2/article_6163.php>.

“Q+A: Simon Power Interview” (22 August 2010) One News <<http://tvnz.co.nz/q-and-a-news/q-simon-power-interview-3725415>>.

“Labour joins adoption reform calls” (29 July 2011) Stuff.co.nz <<http://www.stuff.co.nz/dominion-post/news/politics/5361434/Labour-joins-adoption-reform-calls>>.

“Simon Power on The Nation” (31 July 2011) Scoop.co.nz <<http://www.scoop.co.nz/stories/PO1107/S00359/simon-power-on-the-nation.htm>>.

“Collins resigns after ‘smear campaign’” (30 August 2014) Radio New Zealand <<http://www.radionz.co.nz/news/political/253386/collins-resigns-after-'smear-campaign'>>.

“NZ adoption laws breach human rights” (16 November 2015) Radio NZ <<http://www.radionz.co.nz/news/national/289764/nz-adoption-laws-'breach-human-rights'>>.

“Same-Sex de facto couples secure the right to adopt” (21 December 2015) Gaynz <http://www.gaynz.com/articles/publish/2/article_17710.php>.

“Bob McCoskrie and Jacinda Ardern debate same-sex adoption” (10 March 2016) *Paul Henry* <<http://www.newshub.co.nz/tvshows/paulhenry/bob-mccoskrie-and-jacinda-ardern-debate-same-sex-adoption-2016031011>>.

“Hon Judith Collins” Beehive.co.nz <<https://www.beehive.govt.nz/minister/biography/judith-collins>>.

G Press Releases

ACT New Zealand “Adoption Law Review “Politically Correct Agenda” (Media Statement, 29 September 2000).

Adoption Action Inc. “Getting adoption back on political agendas” (Media statement, 11 September 2014).

Adoption Action Inc. “Major victory for those seeking adoption reform” (Media statement, 8 March 2016).

Jacinda Ardern “Time for Adoption Laws Need Shake up” (media statement, 29 July 2011).

Judith Collins “Search and Surveillance Bill becomes law” (press release, 22 March 2012).

Judith Collins “Bill to strengthen victims’ rights passes into law” (press release, 27 May 2014).

Commissioner for Children “Adoption and its alternatives” (Media statement, 2 October 2000).

Labour “Law Commission to Review 1955 Adoption Laws” (MOJ, Press release, 19 May 1999).

Labour “Tribunal adds to calls for adoption reform” (Media statement, 9 March 2016).

Ministry of Justice “Government Reviews Consistency 2000” (press release, 27 June 1997).

Ministry of Justice “New Human Rights Amendment Bill Minister Proposes Compromise” (press release, 14 July 1999).

Ministry of Justice “Completion of Consistency 2000 2/2” (press release, 7 August 2001).

Tony Ryall “Law Commission to review 1955 Adoption Laws” (press release, 19 May 1999).

Simon Power “Bill boosts law enforcement tools” (press release, 2 July 2009).

Simon Power “Biggest reform of criminal procedure in 50 years passes” (press release, 4 October 2011).