

# Submission to the Justice Committee on the Overseas Adoptions Legislation Bill

## Executive Summary

1. Mana Mokopuna – Children's Commissioner<sup>1</sup> agrees the Adoption Act 1955 needs to be amended to safeguard the rights and interests of children adopted overseas. Law change is needed to help ensure:
  - a) adoption serves the child's best interests and is consistent with the child's rights
  - b) adoptive parents are suitable to care for the child long term, and
  - c) there are safeguards against exploitation and trafficking of children.
2. In this submission we:
  - a) outline our reasons for supporting for the Bill
  - b) suggest amendments to the Bill to better protect children's rights to have their wishes considered and be cared for by family
  - c) raise some concerns about the proposed immigration changes, and
  - d) comment on the need to:
    - i) take care with the use of DNA
    - ii) establish a standalone regime for surrogacy (including overseas surrogacies)
    - iii) progress wider adoption reform, and
    - iv) do more to guard against exploitation, sale and trafficking of children.



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## Recommendations

3. We recommend the Bill is amended to:
  - a) be consistent with New Zealand's duties under United Nations Convention on the Rights of the Child (Children's Convention) and require consideration of children's views when assessing their welfare and best interests
  - b) include an explicit requirement that the best interests of the child must guide all actions and decisions about adoption
  - c) allow for adoptions to be recognised where neither the child nor either adopted parent are ordinarily resident in New Zealand, in limited circumstances
  - d) ensure all children adopted into New Zealand, regardless of their age at adoption, have the right to equal protection and the same clear pathways to secure citizenship or immigration status, and
  - e) ensure children's rights are upheld during the DNA testing, and that when a child is having their DNA tested the prescribed requirements are adapted to be child friendly.

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<sup>1</sup> To learn more about [Mana Mokopuna – Children's Commissioner](#), see Appendix 1.

## Aotearoa New Zealand needs stronger children’s rights protections in overseas adoption

4. There is clear evidence that New Zealand’s adoption system has been used in ways that have harmed mokopuna. It is deeply concerning that a 2023 analysis of international adoption case files in New Zealand found 40 percent of adopted children from 48 cases reported being treated like slaves or experienced child labour exploitation.<sup>2</sup>
5. Adoption makes a fundamental and lasting change in children’s lives, impacting many of their rights including their rights to identity,<sup>3</sup> their rights to family,<sup>4</sup> and their rights to be well cared for.<sup>5</sup>

## Children have the right to be cared for by family and to be safe

### New Zealand has a duty to uphold children’s rights

6. New Zealand has a duty to centre children and their rights in any reform to adoption law, as a State Party to both the Children’s Convention and the Hague Convention on Protection of Children and Co-operation in Respect of International Adoption (Hague Convention).<sup>6</sup>
7. Under the Children’s Convention, which New Zealand ratified in 1993:
  - a) the best interests of the child should be the paramount consideration in all adoptions<sup>7</sup>
  - b) a child who is subject to inter-country adoption is entitled to equivalent safeguards and standards to children who are adopted within New Zealand<sup>8</sup>
  - c) the purpose of adoption is to ensure children who cannot be cared by their birth parents are provided with alternative care in a family environment, ideally within their own family, but where this is not possible, with another family<sup>9</sup> (when it is best for the child, their adoptive family may be from another country), and
  - d) the unique circumstances of the individual child, their needs, their relationship with biological family, and their community must be considered so there is continuity in their upbringing and ethnic, religious, cultural and linguistic background.<sup>10</sup>
8. The Bill is an opportunity to put these rights into law.
9. We recommend the Bill be amended to include an explicit requirement that the best interests of the child must guide all actions and decisions about adoption. This will help to centre the welfare and interests of the child in their adoption, guiding the Courts, the exercise of Ministerial discretion and administration of the Act. By including such an explicit provision, it should ensure that the child’s rights and best interests are always given specific and holistic consideration to inform the decisions that affect their lives.

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<sup>2</sup> Ministry of Justice [Regulatory Impact Statement: Targeted reforms to international adoption system](#) November 2025.

<sup>3</sup> United Nations Convention on the Rights of the Child, Articles 7 and 8.

<sup>4</sup> United Nations Convention on the Rights of the Child, Articles 5, 7, 8, 9, and 10.

<sup>5</sup> United Nations Convention on the Rights of the Child, Article 3, 6, 18, 19, 20, and 21.

<sup>6</sup> [Hague Convention on Protection of Children and Co-operation in Respect of International Adoption](#) (1993).

<sup>7</sup> United Nations Convention on the Rights of the Child, Article 21.

<sup>8</sup> United Nations Convention on the Rights of the Child, Article 21.

<sup>9</sup> United Nations Convention on the rights of the Child, Article 21.

<sup>10</sup> United Nations Convention on the rights of the Child, article 20. For further information on the application of Article 20 please see [Implementation Handbook For The Convention On The Rights Of The Child](#) , page 277.

## New Zealand's adoption law must keep children safe from harm, while respecting our Pacific neighbours and whānau

10. Changes to adoption law need to recognise and support established, culturally appropriate and safe family arrangements for the care and long-term wellbeing of children, while tightening the legal loopholes that have enabled harm to children in some instances
11. A large number of Pacific mokopuna live in New Zealand, and Pacific countries make up most of the overseas adoptions recognised in New Zealand. The changes proposed in the Bill will mostly impact mokopuna from Samoa, their aiga (family), and their villages.<sup>11</sup>
12. We urge the Select Committee to listen carefully to the insights and views of the communities most directly affected by the Bill, and to recognise that Pacific Islands communities have longstanding practices of caring for their children collectively. Understanding the impact of the Bill on different population groups will be key to upholding both the child's rights to culturally appropriate care within their family and their rights to be protected from harm.

## We recommend amending the Bill to fully uphold children's rights

13. Amendments are required to provide stronger protections of children's rights in the Bill. We recommend the following changes are made.

### Children's views should be considered in all adoption decisions

14. We recommend clause 3AAA include a provision that requires age appropriate, due consideration be given to the views and wishes of the child, to bring the new law in line with New Zealand's obligations under the Children's Convention. This will help to ensure overseas adoptions meet similar standards to domestic adoptions as set out in section 11 of the Adoption Act 1955. It will also align the new law more closely with standards set out in the Hague Convention, which is important given New Zealand's status as a States Party.
15. We recommend this change because, as currently drafted, clause 3AAA requires a Family Court Associate or Judge to be satisfied the welfare and best interests of the child will be promoted by the making of the application.<sup>12</sup> There is no requirement for the Court to consider the views and wishes of the child when assessing their welfare and best interests, as is required for an adoption within New Zealand under section 11 of the Adoption Act 1955.
16. Seeking children's views is an important part of respecting and fulfilling their right to be an active participant in, and central to, their own adoption process. This is a duty on New Zealand under Article 12 of the Children's Convention.
17. There may be practical barriers to speaking with the child overseas, but these can be overcome through video call technology, partnered work with trusted organisations in the child's birth country, and through Court-to-Court processes. Practical barriers should be overcome to ensure the child's views and wishes about the adoption can be ascertained without undue influence or interference.

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<sup>11</sup> Ministry of Justice [Regulatory Impact Statement: Targeted reforms to international adoption system](#) November 2025, page 19.

<sup>12</sup> Clause 3AAA (1)(a)(ii)(B) Overseas Adoption Legislation Bill.

## **Allow for adoptions to be recognised where neither the child nor either adopted parent are ordinarily resident in NZ**

18. We agree with the New Zealand Law Society that it is important to retain a pathway for adoption to be recognised where neither the child nor either adoptive parent is ordinarily resident in New Zealand.<sup>13</sup>
19. We recommend the Bill be amended to allow the Court to make an exception and recognise overseas adoption orders in limited circumstances even if the 'ordinarily resident' criteria are not met. For example, where the only suitable carer for the child is an adult relative who is in New Zealand, but they do not have a permanent place of residence or intend to live here indefinitely.
20. Being 'ordinarily resident' in New Zealand should not be a pre-requisite or proxy for deciding whether family and care arrangements are in a child's best interests. As drafted, the Court cannot consider whether there are exceptional circumstances that justify an adoption order unless the child or one or both adoptive parents are ordinarily resident in New Zealand. This unnecessarily limits the Court's ability to make decisions based on the welfare and best interests of the child.
21. The adoption application would still need to pass the exceptional circumstances test, which would limit the potential for this pathway to undermine the intent of the reforms made by the Bill, which are focussed on preventing harm to mokopuna.

## **Stronger protections in adoption law will help protect the integrity of the immigration system**

22. We agree that safeguards are needed to avoid the adoption system being used as a way to gain citizenship or immigration status in New Zealand. That is not the purpose of adoption. The purpose of adoption is to ensure a child is cared for in a family environment.
23. Neither should the immigration system be used to guard against unsafe or inappropriate adoptions. Deciding whether an adoption arrangement is legitimate and in the best interest of the child is a role for the adoption system and the Courts. If concerns about trafficking, abuse or harm to a child are identified during the immigration process these should be reported to appropriate agencies, such as Police or Oranga Tamariki, under child protection protocols.
24. The safeguards being included in the adoption system under the Bill will protect the integrity of the immigration system by helping to ensure overseas adoptions are safe and for the legitimate purpose of providing long-term care to a child in a family environment. This will make it more difficult for adoption to be used for immigration or citizenship purposes.
25. All children under 18 adopted into New Zealand, regardless of their age at adoption, are entitled to have their rights respected and upheld. The proposed changes to tighten immigration law and avoid adoption being used as a means of obtaining residency or citizenship status may have some unintended negative consequences for children. These need to be considered before changes are made.

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<sup>13</sup> Ministry of Justice [Regulatory Impact Statement: Targeted reforms to international adoption system](#) November 2025.

## Immigration and citizenship proposals pose risks for children

26. We have the following concerns in relation to the proposed changes to immigration and citizenship under the Bill.
- a) There is potential for an adopted child to be left stateless under the proposed changes. There is a risk that an adoption granted overseas is not recognised in New Zealand leaving the child without citizenship here in New Zealand, or in their birth country. The right to nationality is one of the child's basic rights, protected under Article 7 of the Children's Convention, and recognised as an element of the child's right to identity under Article 8. New Zealand must not create law that raises the risk of child statelessness.
  - b) If an adopted child remains in New Zealand on a dependent child visa, rather than full citizenship, this could make it difficult for the child to access and enjoy all their wider rights under the Children's Convention, such as their rights to education, disability support, and healthcare, for example.
  - c) If a child has their adoption recognised in New Zealand for immigration purposes (under a dependent child visa, for example) but that immigration status does not then translate to citizenship or other recognised immigration status when they turn 18 years of age, it leaves them vulnerable to deportation to a country they have not grown up or lived in.
  - d) Any changes to a child's citizenship status must be legislatively mandated, not left to administrative discretion or practice.

## DNA is personal information and must be treated with utmost respect and care

27. DNA information is personal information, covered by children's rights to identity<sup>14</sup> and privacy<sup>15</sup>. It must be treated with utmost respect and care. We are therefore pleased the prescribed requirements for DNA testing will be set out in the Act.
28. However, under Clause 3AAB of the Bill as drafted, the prescribed requirements do not distinguish between DNA testing on a child and DNA testing on an adult. The process - around consent, for example - will need to be different for a child than for an adult.
29. We recommend the Bill be amended to ensure children's rights are upheld during all stages of DNA testing, and that when a child is having their DNA tested the prescribed requirements are adapted to be child friendly.

## Wider adoption law reform is required

30. While we support the adoption changes in the Bill, their impact will be limited because the legislation the Bill amends is so outdated. Wider reform of adoption law is needed.

## Surrogacy

31. A separate regime is needed to uphold the rights of children born overseas through surrogacy, rather than relying on the adoption system as a proxy.<sup>16</sup>

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<sup>14</sup> United Nations Convention on the Rights of the Child, Articles 7 and 8.

<sup>15</sup> United Nations Convention on the Rights of the Child, Article 16.

<sup>16</sup> Te Aka Matua o te Ture Law Commission [Review of surrogacy \(2022\)](#).

## The Adoption Act 1955 is 70 years old and needs to be updated

32. The Adoption Act 1955 is now 70 years old, and it reflects outdated concepts of childhood and the social mores of a different era. It is not consistent with children's rights or contemporary understanding of the best interests of the child.
33. The United Nations Committee on the Rights of the Child has repeatedly recommended adoption law reform is required by the State of New Zealand.<sup>17</sup> The New Zealand Law Commission has also, over a number of years, recommended comprehensive adoption law reform.<sup>18</sup> The outdated nature of New Zealand's adoption law was highlighted recently through the Royal Commission into Abuse in Care.<sup>19</sup> Successive Children's Commissioners, including current Children's Commissioner Dr Claire Achmad, have called for reform of adoption law.<sup>20</sup>

## More is needed to combat trafficking, sale, exploitation, and abuse of children

34. Law change, by itself, is not enough to combat trafficking, sale, exploitation, and abuse of children. For the Bill to be fully effective and enduring, other legislative and policy initiatives are needed, such as:
  - a) clarifying criminal liability
  - b) recognising that trafficking of children does not require coercion or deception,<sup>21</sup> and
  - c) resourced, active, and accountable enforcement mechanisms.
35. Procedures for child trafficking identification, reporting, and evidence preservation should be included within immigration checks and assessment processes.
36. Government agencies, particularly MBIE and Oranga Tamariki, need to co-ordinate to prevent trafficking and exploitation. Clear, documented, referral pathways and interagency procedures need to be in place and followed when concerns for a child's safety are identified during immigration processes.

## Conclusion: The rights, wellbeing and interests of children must be paramount in adoption decisions

37. The rights and best interests of children must always be the central and guiding factor in reform of Aotearoa New Zealand's adoption laws, and in all domestic and international adoption decision-making.
38. The Adoption Amendment Act 2025 was a necessary and appropriate response to the systemic vulnerabilities in New Zealand law that have led to adopted children being subjected to harm, neglect, abuse, and exploitation. The 2025 amendments were temporary, and it is important that the law is now changed permanently to ensure protections for children are enduring.

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<sup>17</sup> United Nations Committee on the Rights of the Child concluding observations on the periodic reports of New Zealand CRC/C/15/Add.216 paragraphs 33-34 (2003), CRC/C/NZL/CO/3-4 paragraphs 33-34 (2011), CRC/C/NZL/CO/5 paragraph 29 (2016), CRC/C/NZL/CO/6 paragraph 29 (2023).

<sup>18</sup> Ta Aka Matua o te Ture | Law Commission Adoption and Its Alternatives: A Different Approach and a New Framework (NZLC R65, 2000).

<sup>19</sup> Abuse in Care - Royal Commission of Inquiry Whanaketia – Through pain and trauma, from darkness to light Whakairihia ki te tihi o Maungārongo Part 4, page 208.

<sup>20</sup> See, for example [OCC-Adoption-Law-reform-submission-Sept-2021.pdf](#).

<sup>21</sup> Reform to recognise that trafficking of children does not require coercion or deception is in the [Crimes Amendment Bill](#) currently before Parliament. See [Submission on the Crimes Amendment Bill | Mana Mokopuna](#).

39. For Aotearoa New Zealand's law on overseas adoptions to achieve an appropriate balance and always ensures the safety of children, Pacific culture and Pacific ways of caring for children within family must be well understood and respected. The views of Pacific families, including of Samoan aiga, must be heard, understood, and used to inform this law, because it will impact them and their children.
40. Mana Mokopuna supports the enduring reforms to the adoption system in the Adoption Amendment Bill, with the following amendments:
- a) require consideration of children's views when assessing their welfare and best interests
  - b) include an explicit requirement that the best interests of the child must guide all actions and decisions about adoption
  - c) allow for adoptions to be recognised where neither the child nor either adopted parent are ordinarily resident in NZ
  - d) ensure all children adopted into New Zealand, regardless of their age at adoption, have the right to equal protection and to nationality, and the same clear pathways to secure citizenship or immigration status, and
  - e) ensure children's rights are upheld during the DNA testing, and that when a child is having their DNA tested the prescribed requirements are adapted to be child friendly.

## About Mana Mokopuna – Children’s Commissioner

### The Children’s Commissioner is the independent advocate for all children in Aotearoa New Zealand.

Mana Mokopuna – Children’s Commissioner is the independent Crown entity that advocates for the rights, interests, wellbeing and participation of all mokopuna (children and young people) in Aotearoa New Zealand. The Children’s Commissioner is Dr Claire Achmad.

We exist for all mokopuna in New Zealand. We advocate for and with mokopuna, within their whānau and community contexts. We base our work on evidence and research, including the perspectives of mokopuna.

We particularly advocate for mokopuna Māori, and for mokopuna who are experiencing disadvantage. Our work includes monitoring places mokopuna can’t leave, such as care and protection, youth justice, youth mental health, and intellectual disability facilities.

### Our vision is for all mokopuna to live their best lives

Our moemoeā (vision) is ‘Kia kuru pounamu te rongō – All mokopuna live their best lives’. This is a collective vision and challenge for Aotearoa New Zealand.

We focus our advocacy in four areas for all mokopuna:

- 1) a strong start in life
- 2) growing up safe and well
- 3) thriving families and whānau, and
- 4) participating in what matters to me.

### We have a mandate grounded in domestic and international law

Our purpose and functions are set out in the Children’s Commissioner Act 2022. We anchor our work in Te Tiriti o Waitangi, the UN Convention on the Rights of the Child (the Children’s Convention) and other international human rights instruments.

We’re responsible for:

- advocating for the rights of all mokopuna
- putting a strong focus on the rights of mokopuna Māori to support them to thrive within their whānau, hapū, iwi
- amplifying the voices of mokopuna
- promoting the Children’s Convention
- monitoring how the government gives effect to the Children’s Convention, and
- monitoring the rights of mokopuna when they live in places where they can’t leave.

### The term mokopuna recalls their connection to places and people

We use the term mokopuna to describe all children and young people in Aotearoa New Zealand.

Mokopuna combines moko (imprint or tattoo) and puna (spring of water), describing how young people are valued descendants and members of families. Referring to the people we advocate for as mokopuna draws them closer to us. It reminds us that who they are – and where they come from – matters for their sense of identity, belonging and wellbeing.