

Care of Children Law Reform Bill

Member's Bill

Explanatory note

General policy statement

Parliament has an obligation to ensure that the law is kept up to date. This obligation is of even greater importance for legislation relating to the care of children. In 2000, the Law Commission produced a report entitled "Adoption and Its Alternatives: A Different Approach and a New Framework" (NZLC R65) ("the 2000 Report"). Parliament enacted some, but not all, of the 2000 Report's recommendations when it enacted the Care of Children Act 2004 ("the 2004 Act"), which replaced the Guardianship Act and firmly centred all decision-making around the care of children on what is called the 'paramountcy principle'. The 2004 Act states that the "welfare and best interests of the child must be the first and paramount consideration" and it applies in equal respects to all couples regardless of whether they are married, in a civil union or in a de facto relationship. It is a child-centred approach that ensures that their interests lie at the heart of any decisions that are made.

Leaving adoption out of the 2004 Act has had the advantage of allowing the foundation legislation to become established. Additional time has also allowed unresolved issues to be addressed, including the important role of whangai adoption and the need for this practice to be acknowledged in law (the concept of enduring guardianship was the alternative proposed by the Law Commission in its report, but

work on this was not complete at the time the Care of Children Bill was introduced.)

Updating our legislation in this area is an important piece of work. One of the features of adoption provided for under the Adoption Act 1951 is that the legal relationships between birth parents and the wider family/whanau are severed by the adoption. This out-dated feature is not centred on the paramountcy principle but on the legal interests of the adopting parent or parents in a closed adoption environment. This no longer reflects current approaches to adoption where less than a quarter of adoptions today are stranger adoptions, meaning that adoption is now much more often about providing a legal framework around an existing set of relationships.

Since the introduction of the 2004 Act, new legislation has also been passed relating to children born to parents who have used human assisted reproduction technologies and/or surrogacy arrangements, which often involve adoption as well. As a result we now have legislation and case law, relating the care of children, that is inconsistent and does not in all cases include the welfare and best interests of the child as its paramount consideration. Given that the Law Commission was responsible for the original report, it is appropriate that it is charged with the task of bringing the Adoption Act, and laws relating to human assisted reproduction technologies and/or surrogacy arrangements, within the framework of the 2004 Act. This would also enable the Law Commission to assess how the 2004 Act has worked in practice and recommend any changes to its framework as well.

This Bill requires the Law Commission to update the 2000 Report and the 2004 Act on the basis of subsequent relevant developments, including case law (such as the High Court ruling on *AMM & KJO* [2010] NZFLR 629) and to report to the Minister of Justice and the House of Representatives, with recommendations and a draft bill for the House to consider. This Bill requires that when the Law Commission reports to the Minister of Justice, the draft bill which is to be attached to its report must be introduced to the House and set down for its first reading, making it immediately available for wider public debate and consultation.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 is the purpose clause.

Clause 4 is an interpretation provision.

Clause 5 provides that the Act binds the Crown.

Clause 6 requires the responsible Minister to request that the Law Commission undertake a review of the law relating to the care of children in New Zealand.

Clause 7 sets out some of the factors to be taken into consideration by the Law Commission when reviewing the law relating to the care of children in New Zealand.

Clause 8 requires the Law Commission to report to the responsible Minister once the review has been completed.

Clause 9 provides that the responsible Minister must introduce the bill drafted by the Law Commission to the House of Representatives.

Jacinda Ardern

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Care of Children Law Reform Act **2011**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to facilitate an evidence-based modernisation of the law relating to the care of children in New Zealand.

4 Interpretation

In this Act, unless the context otherwise requires,—

Commission means the Law Commission as established by the Law Commission Act 1985

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the Law Commission.

5 Act binds the Crown

This Act binds the Crown.

6 Minister to request review of law on care of children

The Minister must request the Commission to review the law relating to the care of children in New Zealand.

7 Review of law on care of children

- (1) In undertaking such a review, the Minister must ask the Commission to consider the following:
 - (a) a review of the law relating to the care of children in New Zealand; and
 - (b) updating its report NZLC R65; and
 - (c) recent legislative changes; and
 - (d) relevant case law; and
 - (e) any other matters the Commission regards as relevant.
- (2) In making this request, the Minister must ensure that the Commission has the resources that it requires to undertake the review required by **section 6**, and may do so without further appropriation.
- (3) The Minister must make available to the Commission legislative drafting assistance from the Parliamentary Counsel Office.

8 Report

- (1) Within 12 months of receiving the Minister's request, the Commission must—
 - (a) submit to the Minister a report that covers the areas described in **section 7(1)**; and
 - (b) make recommendations for further reform of the law; and
 - (c) provide draft legislation (**the bill**) that incorporates the recommendations for further reform of the law; and
 - (d) publish the report and the bill.
- (2) When the report and the bill are submitted to the Minister under **paragraph (a)**, the Minister must present a copy of that report and bill to the House of Representatives within 7 days of its receipt by the Minister.

9 Introduction of legislation

- On receipt of the Commission's report and bill, the Minister must—
- (a) ensure that copies are made available to every member of Parliament; and
 - (b) print and publish the bill without further amendment; and
 - (c) arrange for the introduction of the bill in the name of the Minister of Justice so that it is set down for first reading and subsequent legislative stages.