

Bill Summary

Adoption Bill - Bill No. 21 of 2016

Introduction

The Adoption Bill 2016 ('Bill') is the result of the review of the Adoption of Infants Act 1944 (Cap. 58)¹ ('Act') by the Ministry of Women, Social Welfare and Poverty Alleviation with the assistance of the United Nations Children's Emergency Fund, commonly known as UNICEF.

The Consultations were held with the Ministry of Women, Children and Poverty Alleviation, the Department of Social Welfare, including a National Coordination Committee on Children which, apart from Government representatives also consider representatives from Fiji Human Rights, Anti-Discrimination Commission, Save the Children Fund, the Fiji Law Society and various other stakeholders that have inputs and those who were interested. Consultations were also held with the Office Director of Public Prosecutions and the Solicitor- General's Office.

The Adoption Bill was tabled in parliament and had its first reading on 25th April 2016. It had a second reading on 28th April 2016 and was referred to the Standing Committee on Justice, Law and Human Rights.

The Act regulates all matters pertaining to adoption, including its procedures and processes.

An important feature of this Bill is that it domesticates the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption which has been ratified by Fiji and is attached as a schedule to the Bill.

The Act focuses primarily on the court process for approving an adoption application, and does not address the adoption process as a whole, such as screening of prospective adoptive parents and the matching and placement of adoptive children.

Therefore, in line with common trends in other common law countries, the Bill includes much more detail about the pre-court aspects of the adoption process and ultimately repeals and replaces the previous Act.

¹ http://www.pacii.org/fj/legis/consol_act_OK/aoia202/

Scope, purpose and intent of the Bill

As outlined in clause 3 of the Bill, the objective are to:

- emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice;
- ensure that adoption is to be regarded as a service for the child concerned;
- protect and nurture children by providing safe, supportive family relationships intended to last a lifetime;
- recognise the changing nature of the practice of adoption;
- promote efficient and accountable practice in the delivery of adoption services;
- ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage; and
- ensure that adoption law and practice complies with Fiji's obligations under international conventions and other international agreements on adoption.

Discussion of the Bill in Parliament

According to the Hansard 28th April 2016, Attorney General states that

“This Bill is a review of the existing Adoption of Infants Act Cap 58 which is about 72 years old. To review is the result of the work carried out by the Ministry of Women, Social Welfare and Poverty Alleviation, with the assistance of the United Nations Children’s Emergency Fund (UNICEF).

Such an old law will not cater for the changing nature of adoption, with the change in demographics and the Inter-Country Adoption issues.

The Act focus primarily on the court processers for approving an adoption application, and does not address the adoption processes as a whole, such as screening of prospective adoptive parents and the matching and replacement of adoption children.

Is an essential step towards ensuring that Fiji adoption laws up to date, relevant and stringent enough to ensure:

- i. that the child, involved in the process of adoption will not be exposed in any form of abuse later on;
- ii. deter against the illegal sale and trafficking of children under the pretext of adoption, as we have seen in some other countries;
- iii. ensure that each and every adoption facilitated by the state is in the best interest of the child involved.

An important feature of this Bill is that it domesticates the Convention on the Protection of children and cooperation in respect of Inter-Country Adoption, which has been ratified by Fiji.

The Convention provides a guideline and how the Inter-Country Adoption process should be managed and includes checks and balances designed to reduce to reduce abuses and illegal practices which children may become vulnerable to in the process.

The Bill establishes the National Adoption Panel to overlook the adoption process. The Bill also highlights the process of Inter-Country Adoption.

According to the article from Fiji live

In 2011, Fiji's Adoption and Infants Act Cap 58, 1978 is set to undergo review following a cabinet approval.

The decision was made after a submission by the Minister for Social Welfare, Women and Poverty Alleviation Dr Jiko Luveni. [.....] she said significant changes had also been made worldwide change regarding the rights of children which made a review of Fiji's laws relevant.[...] this is aligned to the compliance to the Conventions on the Rights of the Child (CRC) and the need to sign the Hague Convention on Inter-Country Adoption.²

Summary of provisions

The Bill caters for the following. It —

- (a) disallows private adoption arrangements which cater for the removal of a child for the purpose of adoption outside of Fiji;
- (b) **prohibits faith based organizations**, children's homes, hospitals and other like organisations **from facilitating adoption without the approval of the Department** of Social Welfare ('Department');
- (c) the Department will maintain an "**Approved Adoptive Parents Register**" of people who have been screened and approved as prospective adoptive parents;
- (d) matching of potential foster parents and a child will be done on the advice of the **National Adoption Panel**;
- (e) a child would have to be living with the prospective adoptive parents for at least 3 months before an application can be made to the court for an adoption order;
- (f) the **requirements for intercountry adoption** are as follows, the applicant(s)—
 - (i) must be resident in Fiji for at least 3 consecutive months;

² <http://www.pina.com.fj/print.php?print=news&o=10249158364e49e78241d89b92d50f#>

- (ii) must be 25 years of age or more;
- (iii) in the case of a couple, must have been married for at least 2 consecutive years;
- (iv) must be of good character and fit and proper to be entrusted with full parental responsibilities;
- (v) must be willing and able to undertake, exercise and maintain those responsibilities; and
- (vi) if a step-parent, has to have been living with the child and birth parent for at least 3 consecutive months;

(g) in addition to the relevant requirements in paragraph (f), **other general requirements** for adoption (both intercountry and local adoption) are as follows—

- (i) **consent of the child** will now be required **if the child is 12 years or older**;
- (ii) both child and birth parents must be given counselling before they consent to be sure they understand the consequences of the decision they are making;
- (iii) **consent to the adoption of a newborn baby** will not be valid until the **child is 30 days old**;
- (iv) the **birth parent(s)** will also be allowed to **revoke their consent within 30 days** of signing the consent;
- (v) the court must request and consider a **report from a welfare officer before approving an adoption**;
- (vi) the **court can grant the adoption request**, or make an **interim order** of up to **6 months to allow for further monitoring** by the welfare officer;
- (vii) any decision on an adoption matter should always be based on the **best interest of the child** in question;
- (viii) **non-residents have to apply to their own social welfare department for screening and approval**;
- (ix) once a **child turns 18 years** of age, he or she will be **allowed to have access to his or her original birth certificate** so that they can know the identity of their birth parents;
- (x) the **birth parent(s)** will also be able to **access information about their child after the child has turned 18 years** of age; and

(xi) the birth parent(s) or the relevant child may also ask that a disclosure veto be put in their file preventing the disclosure of their identity.

Summary of the Convention

The full title of this multilateral treaty is the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. It was approved by 66 nations on May 29, 1993 at The Hague. It built directly on the *UN Convention on the Rights of the Child*, seeking to protect all parties to international adoptions and to prevent an international traffic in children. The United States signed the Convention in 1994, and it was passed by Congress in 2000.

The objects of the Convention are as follows:

- to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children; and
- to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

The Convention requires that countries who are party to it establish a Central Authority to be the authoritative source of information and point of contact in that country. The Department of State is the *U.S. Central Authority* for the Convention. In Fiji, the Central Authority for the implementation of the convention is Ministry of Social Welfare.

The Convention aims to prevent the abduction, sale of, or trafficking in children, and it works to ensure that intercountry adoptions are in the best interests of children.

The Convention recognizes intercountry adoption as a means of offering the advantage of a permanent home to a child when a suitable family has not been found in the child's country of origin. It enables intercountry adoption to take place when, among other steps:

1. The child has been deemed eligible for adoption by the child's country of origin; and
2. Due consideration has been given to finding an adoption placement for the child in its country of origin.

The Convention provides for recognition by other party countries of adoptions made in accordance with the Convention.³

³ <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/understanding-the-hague-convention.html>

International legislation comparisons

- **New South Wales Adoption Act 2000**

The object of this Act are as follows:

- i. to emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice,
- ii. to make it clear that adoption is to be regarded as a service for the child concerned,
- iii. to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,
- iv. to recognise the changing nature of practices of adoption,
- v. to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,
- vi. to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements,
- vii. to encourage openness in adoption,
- viii. to allow access to certain information relating to adoptions,
- ix. to provide for the giving in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents.

- **New Zealand Adoption Act 1997**

The **aims and objectives** of the Adoption Action are to propose and promote changes to adoption laws, policies and practices that will:

- enhance the rights and wellbeing of children affected by adoption
- eliminate the discriminatory provisions in current New Zealand adoption laws
- introduce new laws which will reflect current social attitudes and values and will accord with national and international human rights standards
- reduce the risk of sale, trafficking and inhumane treatment of children in intercountry adoption
- collect statistics and undertake research which will increase community knowledge and understanding of the effects of adoption on those involved and will cast light on past adoption practices
- disseminate information in relation to adoption laws, policies and practices to members, to the media and to the public generally
- organise seminars and conferences on adoption and related topics.⁴

⁴ http://adoptionaction.co.nz/?page_id=2

This **Act consists** of the following:

- i. to implement in the law of New Zealand the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; and
- ii. to provide for the approval of organisations as accredited bodies to whom functions may be delegated under the Convention; and
- iii. to make other provision for intercountry adoption and other matters related to adoption

Further information

- Information on Adoption Act of New South Wales, can be seen here: <http://www.legislation.nsw.gov.au/#/view/act/2000/75/whole>
- Information on New Zealand Adoption Act 1997, can be seen here: <http://www.legislation.govt.nz/act/public/1997/0109/latest/DLM422494.html>

Disclaimer

This briefing was prepared to assist the Standing Committee Justice, Law and Human Rights in its deliberations on the *Adoption Bill* (No. 21) 2016. It is designed purely to guide and assist the Committee. It has no official status, although every effort has been made to ensure its accuracy.