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To Ministry of Justice

Please find below DPA’s submission on the Adoption in NZ Aotearoa discussion Paper.

## Disabled Persons Assembly NZ

Contact:

## **Prudence Walker**

## **Chief Executive**

## **021 546 006**

## [**policy@dpa.org.nz**](mailto:policy@dpa.org.nz)

# Introducing Disabled Persons Assembly NZ

The Disabled Persons Assembly NZ (DPA) is a pan-impairment disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people be recognised as valued members of society. DPA and its members work with the wider disability community, other disabled people’s organisations (DPOs), government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

# Acknowledgements

DPA would like to thank the Donald Beasley Institute for their help and knowledge with this submission.

# United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

* **Government obligations:**

The UNCRPD[[1]](#endnote-2) places an obligation on Government to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people without discrimination of any kind on the basis of disability.

* **UNCRPD is the minimum standard:**

DPA upholds the UNCRPD as the minimum standard for our participation in society.

* **Partnership with DPOs (Article 4.3):**

The implementation of the UNCRPD depends on a partnership between DPOs and the Government. This is highlighted in Article 4.3 which says governments shall consult closely with and actively involve disabled people, including disabled children, through their representative organisations. This partnership goes beyond just consulting with disabled people. It mandates governments to actively involve disabled people and our organisations in everything that affects us.

Other key Articles of the UNCRPD relevant to this submission are:

* **Article 3 – General Principles - in particular Article 3(8)**

*“Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”*

* **Article 5 – Equality and Non-Discrimination**
* **Article 7 – Children with Disabilities**
* **Article 12 – Equal Recognition Before the Law**
* **Article 13 – Access to Justice**
* **Article 23 – Respect for Home and the Family**

Clauses 2, 3 and 4 specifically deal with issues around adoption:

**2.** *“Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.”*

**3.** *“Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.”*

**4.** *“Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.”*

# Other Relevant Treaties and Policy

* **United Nations Convention on the Rights of the Child (UNCRC)**[[2]](#endnote-3)
* **The Hague Convention**[[3]](#endnote-4)
* **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**[[4]](#endnote-5)
* **New Zealand Disability Strategy (2016 – 2026)**

**Outcome 4 – Rights Protection and Justice**

**Outcome 7 –** **Choice and Control**[[5]](#endnote-6)

# The Submission

DPA believes that a complete overhaul of the adoption system and laws in NZ Aotearoa is long overdue. The current adoption laws in NZ Aotearoa discriminate against disabled people and are not aligned with NZ's obligations under the UNCRPD.

We welcome the wide-ranging scope of the discussion paper and look forward to being involved in future steps to make NZ Aotearoa’s adoption system and laws fair, equitable and non-discriminatory towards disabled people.

DPA absolutely agrees that NZ Aotearoa’s adoption laws were enacted for a different time, one in which disabled people were seen as unfit to be parents. It is essential that NZ Aotearoa’s adoption system and laws are updated to advance society’s evolving adoption arrangements and requirements.

This submission will answer many of the questions set out in the discussion paper, some dealing with issues specific to disabled people, and others more general.

# Disability Rights Framework and Key Principles

DPA is extremely concerned that the discussion paper has not given sufficient weight to the UNCRPD in regards to adoption. The Hague Convention, UNCRC and UNDRIP have been recognised rightly as international law with respect to adoption alongside the UNCRPD. However, reference to the UNCRPD is very general when compared to these other international treaties / declarations, which have been specifically outlined in regards to adoption legislation.

DPA strongly believes that the UNCRPD should be afforded the same status as these other treaties / declarations and that specific Articles of the UNCRPD should inform NZ adoption law, for example Article 23.

Any new legislation should include a definition of adoption, and provide clarity on when adoption should occur. This will reduce opportunities for discrimination to take place against disabled children and adults as has consistently been the case throughout the life of the current legislation.

Whatever definition is used, it should be value neutral so as to prevent the removal of children from disabled parents deemed not ‘good enough’ parents. We remind Government of its obligations outlined in Article 23(4) of the UNCRPD:

“*In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.”*

In line with both UNCRC and the UNCRPD, all adoptions should have the child at the centre of the process. Both conventions assert the child’s right to be involved in matters effecting them. Any new legislation must assert the rights, will and preference of disabled children and adults as well as their best interests.

DPA understands the thinking behind the consideration of the law providing for adult adoptions. However, when the adult being adopted is disabled we believe that the legislation must provide for supported decision making processes where the rights, will and preference (rather than the best interests) of the disabled person have primacy.

# Objectives

DPA broadly welcomes the six objectives set out in the section Adoption Law in Aotearoa. However, we strongly urge that Objective 6 specifically reference the UNCRPD. This is particularly important if these objectives are to be used in future discussion papers or legislation.

# Family and Whānau Role in the Adoption Process

While DPA agrees in principle that wider family / whānau involvement be supported within adoption processes; we are of the strong view that the primacy of the birth parents’ views and wishes should be upheld. This is critical for disabled parents, particularly those with learning disabilities or other cognitive impairments whose parenting aspirations are not always acknowledged or supported by those close to them. This is due to assumptions around disabled people's ability to be ‘fit’ parents. Often families can hugely underestimate the potential of disabled family members as parents.

# Eligibility to Adopt

DPA believes that the current eligibility criteria for eligibility to adopt do not meet current societal expectations, and all but an age criterion should be removed. We believe that as per NZ law, the age to be eligible to adopt should be 18.

# The Role of Accredited Bodies

With regard to the state’s role in the administration of adoption, we question the appropriateness of Oranga Tamariki as the key agency. Given the role of Oranga Tamariki in the removal of children of disabled parents and the traumatic relationship many disabled people have with Oranga Tamariki, we suggest that consideration is given to the setting up of a more independent ‘adoption agency’.

# Culture and Adoption

DPA believes that the law should be changed to better include children’s cultural and language needs in the adoption process.

DPA supports the law being changed to:

* Require birth parents to provide information about their culture and heritage when they place their child for adoption.
* Include objectives or principles relating to culture. It could do this by saying that a child’s culture and language is a key consideration in adoption cases.
* Say that the Court must take a child’s cultural and language needs into account when deciding if an adoption is in a child’s best interests. This could mean that adoptive applicants need to provide evidence on how they will meet a child’s cultural and language needs.
* Allow the Court to order a report about the child’s cultural and language needs. Cultural reports identify any cultural differences between the child and the adoptive parents, the child’s cultural needs, and explain how the adoptive applicants say they will foster the child’s culture.
* Better provide for family and whānau involvement in the adoption process, particularly after the adoption, to make sure a child is able to maintain cultural and whakapapa ties.

# Whāngai

DPA supports Government engaging with Māori to explore whether a law change is needed to change the legal status of whāngai arrangements and to better understand the tikanga around them.

From a disability perspective, we note that some formal acknowledgement of whāngai arrangements may help to ensure that tamariki whaikaha Māori (disabled Māori children) and their whānau are able to access disability funding and support.

# Customary Adoptions

DPA takes the same view on Customary Adoptions as that stated above in the section titled Whāngai.

# Overseas and Intercountry Adoption

In order to protect the rights of disabled children adopted internationally, DPA strongly supports a process that upholds the Hague Convention level of safeguarding. We further believe that tamariki adopted by NZ parents should receive NZ citizenship regardless of where their birth certificate is issued. This would provide certainty that disabled children adopted internationally would be accorded the full rights and entitlements of New Zealand citizens.

# Consent

DPA is strongly of the view that the current consent process needs to be changed, and that birth parents need to be heard by the Court before a final decision on adoption is made. As it stands, the existing law discriminates against disabled parents who lose custody of their children, or decide themselves that they are unable to manage the day-to-day demands of parenting. Under the current system, and despite not necessarily wanting to go down an adoption pathway, these parents have no way of formally expressing their feelings about their child, why the adoption has occurred, and what they wish for their child in an alternative family environment.

A change to the process that would enable their feelings and perspectives to be heard and recorded is necessary.

In the situation where a birth parent or parents want to withdraw their consent, this position must be acknowledged, and a mechanism for formally discussing and making decisions followed. This is particularly important for parents with learning disabilities to ensure that there was no coercion involved in their earlier decisions. DPA strongly supports a longer period of time being given before a birth parent or parents can agree to an adoption: the current ten days is far too short.

We also strongly support a certain period of time being given for birth parents to withdraw their consent to an adoption and that the birth parent or parents agreeing to an adoption should not do so before having access to councelling and support: such councelling and support would need to be accessible to enable disabled people to fully participate.

DPA believes that children should be supported to consent to their adoption: they should be given accessible, age appropriate material and human support to enable them to consent to an adoption. We do not have a fixed age for children’s consent to be required as this will differ from child to child, but it should be when they are mature enough to be able to understand, with appropriate support, the effects of their decision.

We further believe that the law should be clearer on who can and how to discharge an adoption order.

# Dispensing with Consent Rules

DPA disagrees with rules that allow any dispensing of consent. This rule discriminates against disabled parents and does not align with the UNCRPD. In order to ensure that disabled birth parents are able to give their informed consent to any adoption, supported decision making should be implemented with the person as per Article 12 of the UNCRPD.

# Suitability to Adopt

DPA believes that the law should provide general principles about what ‘fit and proper’ is, but this criteria should not be based on disability or perceived disability status. Contemporary human rights frameworks such as the UNCRPD reject mental and physical health (disability) as a reason for being excluded from or discriminated against within adoption proceedings.

Such exclusion and discrimination has consistently been experienced by both disabled birth parents and disabled people seeking to become adoptive parents and any new adoption legislation must not continue to discriminate on the grounds of disability.

# Knowing About Birth Family / Whānau

DPA believes that it is very important for people who have been adopted to have the opportunity to easily access information about their birth family should they choose to do so. Such information needs to be accessible to disabled people: it is important that disabled people can access this information independently – it is not acceptable for some disabled people to have to have this information read by someone else because it is inaccessible.

DPA believes that it is important for the names of both birth and adoptive parents to be on a person’s birth certificate. For disabled parents who may have become pushed into adoption as a result of failure to meet a necessary standard of parenting, but who desperately wanted to keep their children, this is an important connection to and acknowledgement of their relationship with their child / children.

# Types of Care Arrangements

For disabled parents who need significant support to parent, a greater range of care arrangements and relationships should be available in order that adoption is not used as a way of achieving permanency of care. DPA blieves that there should be a greater use of Guardianship Orders in these circumstances, so that a child can remain connected to their birth parents, family and whānau.

Family Courts should have a duty to determine the most suitable care arrangements for both the child and birth parents. Where adoption is demed the best option, the law should refer to open adoption and the Family Court should have the power to approve post-adoption contact arrangements in adoption agreements.

# Conclusion

DPA welcomes this discussion paper and the opportunity it affords for disabled people to express their views on any changes to adoption legislation.

DPA strongly believes that our adoption laws need to be changed to align with the UNCRPD and other international treaties / declarations, and to end the decades of discrimination and marginalisation in the adoption process for both disabled children and parents.

1. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html [↑](#endnote-ref-2)
2. https://www.ohchr.org/en/professionalinterest/pages/crc.aspx [↑](#endnote-ref-3)
3. http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention/ [↑](#endnote-ref-4)
4. https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html [↑](#endnote-ref-5)
5. https://www.odi.govt.nz/nz-disability-strategy/#main-content-lin [↑](#endnote-ref-6)