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ARTICLE

Still Seen and Not Heard: Strengthening New Zealand's Commitment to Article 12 of the United Nations Convention on the Rights of the Child within an Adoption Framework

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Article 12 of the United Nations Convention on the Rights of the Child protects children's right to express their views in any judicial and administrative proceedings affecting them. Despite New Zealand's ratification of the Convention in 1993, Parliament has refrained from amending the Adoption Act 1955 to fulfil New Zealand's art 12 obligations more competently. The statutory regime provides minimal legislative mechanisms to empower children to participate in adoption proceedings. This article addresses the importance of placing the child's voice and agency at the forefront of New Zealand's adoption legislation. In theorising greater child participation, it compares two forms of consent-based models, statutory age limits and general competency tests, traversing the associated fields of medicine and research with respect to the latter. Recognising the deficiencies of these approaches, the article then examines the merits of drafting statutory provisions akin to those under s 11(b) of the Oranga Tamariki Act 1989, which, when taken together, effectively shifts the responsibility onto adult decision-makers to promote the child's participation. Ultimately, the article argues that Parliament should reform the current legislation to impose a statutory duties-of-care model on decision-makers and officers of the Family Court. This model would strike a finer balance between respecting children's participatory integrity and acknowledging the articulation of art 12 as a right of the child as opposed to a duty.

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I Introduction

The United Nations General Assembly adopted the United Nations Convention on the Rights of the Child (UNCRC) in November 1989.[1] New Zealand ratified the UNCRC in April 1993, obliging the state to uphold the rights enshrined within it.[2] The United Nations Committee on the Rights of the Child (the Committee) has observed that art 12 "establishes not only a right in itself" but "one of the four general principles of the Convention" that "should also be considered in the interpretation and implementation of all other rights".[3] Article 12 thus challenges the paternalistic and adult-centric framework representative of legal proceedings involving children. It empowers children to play a central role in these decision-making processes.

Oranga Tamariki defines adoption as the transfer of legal rights and responsibilities towards a child from biological parents to adoptive parents.[4] Yet, in emphasising the transaction which takes place between the adult parties, legalistic definitions of this kind fail to acknowledge that adoption is also a social, emotional and legal process for the child. Unfortunately, this adult-centric conception of adoption has dominated New Zealand's adoption legislation. Parliament passed the Adoption Act 1955 (the Act) at a time when the public generally believed a two-parent adoptive family should have raised a child instead of the child's single mother. [5] The Act thus sought to address situations where infants were born out of wedlock. Parliament did not consider the many other reasons children may require adoption when passing the Act and failed to envisage that many adoptees may be relatively old children. Consequently, the Act provides few mechanisms for children to engage in their adoption process, contrary to the spirit of art 12 of the UNCRC.

After decades of persistent advocacy for reform, the Ministry of Justice undertook two rounds of public engagement, concluding in June 2021 and August 2022, respectively. Within each round, the Ministry sought information on the current impact of New Zealand's adoption legislation to guide the development of its reform proposals.[6] One focus for the Ministry was how to support the meaningful participation of children throughout the adoption process.[7] The Ministry has published various discussion and summary documents post-consultation, suggesting proposals such as appointing a lawyer for the child and requiring that the child's views be obtained.[8] While this article welcomes the Ministry's preliminary consultations, it recognises that reform must be bolder to fulfil New Zealand's art 12 obligations more capably. Commitments to strengthen the participatory rights of the child in adoption proceedings through legislative reform remain

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1 Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) [UNCRC].

2 Ministry of Justice "UN Convention on the Rights of the Child" (19 August 2020) <www.justice.govt.nz>.

3 United Nations Committee on the Rights of the Child *General Comment No 12 (2009): The right of the child to be heard* UN Doc CRC/C/GC/12 (20 July 2009) at [2].

4 Oranga Tamariki "Adopting in NZ" (22 August 2023) <www.orangatamariki.govt.nz>.

5 Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework* (NZLC R65, 2000) at [22]–[23].

6 Oranga Tamariki "Public views sought on adoption reform" (18 June 2021) <www.orangatamariki.govt.nz>.

7 Ministry of Justice *Interim Regulatory Impact Statement: Consultation options for adoption law reform* (4 May 2021) at 3.

8 Ministry of Justice *Adoption in Aotearoa New Zealand: Discussion document* (June 2021) at 15–16.

ambiguous, not least with the transition to the sixth National Government and its accompanying legislative agenda.

This article examines the merits and shortcomings of various participatory models that, if enacted, may strengthen New Zealand's commitment to its art 12 obligations. Part II will discuss art 12's nature and scope. Part III will briefly examine arts 13 and 17, both necessary preconditions for children's participation in legal proceedings. Part IV will review New Zealand's current adoption framework under the Act. Part V will examine the policy justifications for legislative reform. Part VI will discuss various viable models of participation. It will first examine consent-based participation models marked by statutory ages and competence tests before discussing an alternative model that imposes positive duties on the Family Court akin to those found in the Oranga Tamariki Act 1989 (OTA). Part VII will conclude that New Zealand should refrain from implementing a consent-based participation model in order to respect the nuances enshrined in art 12. Instead, a more appropriate reform would be to impose a duties-of-care model for officers of the Family Court to abide by in order to support children in engaging in their adoption process.

II Article 12 of the UNCRC: Nature and Scope

This Part will break down art 12 into its components to analyse the scope of the participatory right it affords. It will discuss *General Comment No 12* of the Committee and interpretations of the UNCRC by other children's rights experts.[9]

Article 12 of the UNCRC reads:

> (1) States Parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
> (2) For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

To exercise their rights under art 12, a child must be "capable of forming his or her views". There is no reference to a minimum age at which the child is deemed "capable". This lack of prescription implicitly recognises that a child's development is a continually evolving process that discrete age-based categories cannot reflect. Furthermore, art 12 does not qualify the view as having to be mature or coherent. Given this constructive ambiguity, Laura Lundy argues that the emphasis ought to be on the child's ability to form *any* view—mature or otherwise.[10] When children form and articulate their views through non-verbal communication, such as movement or artwork, adults risk perceiving this as less mature than speech.[11] Lundy's interpretation of art 12 is principled as it recognises that young children not yet capable of speech can form their own views, thus encouraging decision-makers to broadly interpret the art 12 obligation.

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9 United Nations Committee on the Rights of the Child, above n 3.

10 Laura Lundy "'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child" (2007) 33 British Educational Research Journal 927 at 935.

11 Gerison Lansdown *Can you hear me?: The right of young children to participate in decisions affecting them* (Bernard van Leer Foundation, May 2005) at 1–4.

Under art 12(1), children have the "right to express [their] views freely in all matters affecting [them]". Importantly, art 12 does not obligate children to express their views. The Committee highlights that the child has the right *not* to express their views, which may be relevant when they do not feel comfortable or safe expressing their views during decision-making.[12] Others must not pressure or coerce a child to express their views.

Once a child has expressed their views, the decision-maker must give them "due weight in accordance with the age and maturity of the child".[13] Evidently, art 12 does not give children the right to complete self-determination or require decision-makers to give effect to children's wishes automatically. A discretionary exercise involving evaluative judgment is necessary. Although "and" suggests that age and maturity bear different definitions under art 12, decision-makers often conflate these concepts. For example, Gerison Lansdown argues that decision-makers undergo a "filtering process" and often underestimate a child's level of maturity given their young age.[14]

Under Article 12(2), there is a positive duty for the state to implement procedural mechanisms that provide children with the "opportunity to be heard in any judicial and administrative proceedings" that affect them. The Committee emphasises that art 12(2) applies to all proceedings that concern children, even when adults have initiated those proceedings, as is usually the case in proceedings like parental separation and adoption.[15]

Article 12(2) allows states to fulfil this duty by allowing children to be heard during relevant proceedings "either directly, or through a representative or appropriate body". Representatives may include family members, guardians or legal representatives, the latter of whom are particularly beneficial to children involved in family law proceedings. The representative or body must faithfully convey the child's views and refrain from imposing their view of what is best for the child.[16]

III Further Articles Supporting the Right to Participation: The Indivisibility of Articles 13 and 17

The Committee states that decision-makers must not read individual UNCRC articles in isolation but instead in the context of the whole Convention.[17]

Under art 13, the child's right to freedom of expression includes seeking, receiving and imparting information. Article 13 acknowledges that children can communicate through alternative mediums such as art, empowering children who have cognitive disabilities or are yet to develop the ability to speak or write. As such, it permits a broad freedom of expression not limited to spoken word, signifying the diversity in children's participation means.

Article 17 details the state's responsibility to "ensure that the child has access to information and material from diverse national and international sources". In particular, states must facilitate access to material aimed at promoting the child's social, spiritual, and moral well-being and physical and mental health.[18] Article 17 ensures that states

12 United Nations Committee on the Rights of the Child, above n 3, at [16].
13 UNCRC, art 12(1).
14 Lansdown, above n 11, at 5.
15 United Nations Committee on the Rights of the Child, above n 3, at [32]–[33].
16 At [37].
17 At [68].
18 UNCRC, art 17.

provide children with sufficient information of a depth and breadth appropriate for their level of comprehension to facilitate their informed participation.
These additional arts promote participatory inclusivity for children of all competencies. They provide pillars of support when ensuring that children can effectively exercise their participatory rights in judicial proceedings pursuant to art 12.

IV Adoption: New Zealand's Current Legal Framework

New Zealand legally recognises three forms of adoption. First, domestic adoptions occur when the child and adoptive parent(s) are citizens or permanent residents of New Zealand. The Adoption Act governs domestic adoptions, and the Family Court has jurisdiction over them.[19] Second, New Zealand law recognises overseas adoptions when the child or adoptive parent(s) are seeking to enforce certain rights in New Zealand.[20] Thirdly, intercountry adoptions enable a New Zealand citizen or permanent resident to adopt a child from overseas. The Adoption (Intercountry) Act 1997 governs the adoption process if the child is from one of the seven countries that New Zealand has an agreement with under the Hague Convention.[21]

For completeness, this article also recognises the Māori customary practice of whāngai. Whāngai typically involves wider whānau members caring for the tamariki when their birth parents are not in a position to do so and intends to preserve the tamariki's knowledge of their whakapapa.[22] As this article focuses on adoption proceedings under the Adoption Act 1995, whāngai will not be discussed. New Zealand legislation rarely recognises whāngai, a notable exception being the law on succession under the Te Ture Whenua Maori Act 1993.[23]

A *Adoption Act 1955*

The long title states that, in passing the Act, Parliament intended "to consolidate and amend certain enactments of the Parliament of New Zealand relating to the adoption of children".[24] The brevity of its purpose indicates the drafters' overall lack of rigour, which is exacerbated by the fact that its drafters omitted to define "adoption" within the Act.[25] Importantly, no later insertions have been made by Parliament to expressly recognise the pertinence of the UNCRC to this area of law. This is despite New Zealand having ratified the UNCRC in 1993. The absence of any legislative reference does not bode well for children involved in adoption proceedings, as it suggests that adult decision-makers need not labour over the UNCRC arts or, indeed, pay any mind to them at all during their determinations.

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19 Ministry of Justice, above n 8, at 4.
20 At 4.
21 At 4.
22 At 9.
23 Community Law "Whāngai Adoption" <https://communitylaw.org.nz>.
24 Adoption Act 1955 (NZ).
25 Section 2.

B *The child's participation rights*

Regrettably, s 11(b) of the Act is the only provision to expressly acknowledge the child's voice in the adoption process. Paragraph (b) requires the Family Court to be satisfied that:[26]

> … the welfare and interests of the child will be promoted by the adoption, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child.

Its reference to "the wishes of the child" partially resembles the child's right to participation under art 12 of the UNCRC. The Act requires decision-makers to give "due consideration" to the child's wishes in light of their "age and understanding". To compare, art 12 requires decision-makers to give "due weight" to the child's views in accordance with their "age and maturity".

Decision-makers have applied s 11(b) inconsistently since its enactment because of the lack of complementary provisions prescribing when and how decision-makers are to ascertain the child's views. As discussed below, some decision-makers have had access to the child's wishes but have determined adoption orders without giving "due consideration" to them as s 11(b) requires. In other proceedings, decision-makers have not invited the prospective adoptee to participate at all. Evidently, the lack of prescription leaves the possibility for inconsistent and wholly dissatisfactory decision-making perpetuating a paternalistic agenda.

Section 10 of the Act requires a social worker to prepare a report for the Family Court. However, the section does not prescribe specific matters that the social worker must report on, such as *if* and *to what extent* the prospective adoptee has been participating in the application process thus far. Nor does the section require the social worker to record the child's views. Again, current practice has been established through informal and non-legal means and is inconsistent, undermining the participatory rights of the child guaranteed under the UNCRC.

C *The absence of informed participation as a legislative requirement*

Article 21 of the UNCRC applies to states which legally recognise adoption. Article 21(a) states that decision-makers must obtain a child's informed consent for an adoption to be valid "if required" by "applicable law". As New Zealand does not require the child's consent under s 7(2) of the Act, no obligation arises under art 21(a) of the UNCRC to obtain the child's *informed* consent for an adoption. Thus, children are doubly at risk under the current legislation. Oranga Tamariki and select private services offer information sessions to discuss the adoption process with the expectant parent or parents contemplating putting up their unborn child for adoption and with applicants seeking to adopt.[27] New Zealand does not appear to offer equivalent information services that cater specifically to children, placing an onus on children to gather the information for themselves. The Committee has expressed that the right to information is essential to a child's art 12 right "because it is the precondition of the child's clarified decisions".[28]

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26 Section 11(b).

27 For example, Oranga Tamariki hosts "Prepare to Care" programmes which are devised to offer guidance for adult applicants who have already had their background checks completed.

28 United Nations Committee on the Rights of the Child, above n 3, at [25].

As discussed in the preceding section, respecting arts 13 and 17 of the UNCRC is vital. In failing to disseminate relevant information to the child through accessible adoption information sessions catered to their level of understanding, current practices limit the child's ability to express their views freely, as the UNCRC requires.

By contrast, other jurisdictions require decision-makers to obtain the informed consent of adoptees. For example, s 55(1)(c) of the Adoption Act 2000 (NSW) prohibits courts from making "an adoption order in relation to a child who is 12 or more but less than 18 years of age and who is capable of giving consent" unless, amongst other requirements, that child consents to their adoption. Thus, in accordance with art 21(a) of the UNCRC, s 9(1)(a) of the Adoption Act (NSW) imposes a duty on the decision-maker to provide the child with "adequate information, in a manner and language that the child can understand, concerning the decision". The child must undergo pre-adoption counselling.[29] The decision-maker must inform the child of certain information, including alternatives to the adoption, the possible emotional effects, the legal process, and the rights and responsibilities of the applicants and biological parents if the child consents to the order.[30] Ghana's Children's Act 1998 provides another example of what a consent requirement may look like. Under s 70(1)(c), the courts must be satisfied that a child who is at least 14 years of age has consented to their adoption unless the child cannot express an opinion.

The Act's failure to legislate for more robust participatory mechanisms for the child prior to the issuing adoption orders has detrimentally impacted child adoptees. In an *Application by C & K (Adoption),* three adopted siblings sought to discharge their adoption orders on the grounds of a mistake of fact and material misrepresentation to the Family Court.[31] Tangential to this issue was the lack of accurate information adults provided to them during the adoption process. The children were 17, 14 and eight at the time of the adoption order. Judge Aubin noted they were "of an age when the full situation could and should have been disclosed to and discussed with them, and it was not".[32] His Honour further highlighted that no one made the children aware of the significance of an adoption order:[33]

> Given their ages, it seems likely that R (17) and G (14) were at least in broad terms cognisant of what it was all about, but there is no reason to come to the view that they had any knowledge of the legal niceties … .

In 2021, Oranga Tamariki conducted a qualitative study of 33 young people, caregivers, adoptive parents and whāngai parents.[34] Although some interviewees had received information about the legal proceedings that led to their being in foster care, adoption or whāngai, other interviewees regretted that they had not been "provided with more realistic and honest explanations earlier in the process".[35] Furthermore, some respondents "felt patronised by too simplistic explanations or explanations being sugar-

29 Adoption Act 2000 (NSW), s 9(1)(e).
30 Sections 57 and 59(1).
31 *Application by C & K (Adoption)* [1984] 3 NZFLR 321 (FC) at 321.
32 At 325.
33 At 327.
34 Helen Potter and Míša Urbanová *Making sense of being in care, adopted or whāngai: Perspectives of rangatahi, young People, and those who are raising them* (Oranga Tamariki, October 2021).
35 At 79.

coated".[36] These children's experiences illustrate that the current framework does not appreciate children's varying levels of understanding, thereby insulting their dignity.

V Policy Justifications for Strengthening Child Participation

A *From passivity to agency: the evolving perception of the child*

Before the 19th century, the prevailing European view was that children were the personal property of their parents and had minimal legal rights which they could assert independently.[37] Kathleen Alaimo argues that European families strictly enforced a rigid internal hierarchy under which children could not possess rights, for "if they had, the very meaning of paternal rights would have been undermined".[38] Children's poor status within pre-industrial and early industrial society "created a situation, in which they were neglected, abused and sold as slaves".[39]

The onset of the Industrial Revolution in Europe during the 19th century brought the fear that children would be increasingly subject to hazardous working conditions and moral corruption. Alaimo suggests it was "a cause and an effect of the new status of childhood as an age of innocence and development".[40] European governments adopted a more interventionist role by restricting child labour and forbidding child abuse and neglect.[41] Notwithstanding these developments, Europeans still did not view children as social actors with views, insights and agency in their own right. [42]

In the 21st century, the law increasingly views children less as "victims and problems" and instead as "active participants in finding solutions".[43] This shift in perception predominantly results from contemporary international human rights discourse, which pushes for greater child engagement within decision-making processes and outcomes. Former Principal Family Court Judge Peter Boshier has commented on the increasing recognition that "children, as much as their parents, have rights".[44] During the last few decades, New Zealand has adopted practices that make space for children's voices, establishing family group conferences and child-centred strategies.[45] Although legislative reform to other areas of New Zealand's family law has reflected this contemporary view, the Adoption Act remains frozen in time with its emphasis on antiquated norms of child passivity.

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36 At 79.

37 Hanita Kosher, Asher Ben-Arieh and Yael Hendelsman "The History of Children's Rights" in *Children's Rights and Social Work* (Springer Cham, Denmark, 2017) 9 at 9.

38 Kathleen Alaimo "Historical roots of children's rights in Europe and the United States" in Kathleen Alaimo and Brian Klug (eds) *Children as Equals: Exploring the Rights of the Child* (University Press of America, Lanham (Maryland), 2002) 1 at 9.

39 Kosher, Ben-Arieh and Hendelsman, above n 37, at 10.

40 Alaimo, above n 38, at 14.

41 Kosher, Ben-Arieh and Hendelsman, above n 37, at 11.

42 Alaimo, above n 38, at 16.

43 Mónica Ruiz-Casares and others "Children's rights to participation and protection in international development and humanitarian interventions: nurturing a dialogue" (2016) International Journal of Human Rights 1 at 2.

44 *Re E* (1991) 7 FRNZ 530 (FC) at 534.

45 Mike Doolan "The Family Group Conference: Changing the face of Child Welfare" (2011) 56(4) OACAS 15 at 9.

B *Adoption reform on the legislative backburner*

Parliament passed the Family Court (Supporting Children in Court) Legislation Act 2021 in August of that year. It substantially reformed the Care of Children Act 2004 and the Family Dispute Resolution Act 2013. Both Acts now expressly recognise art 12 of the UNCRC and impose duties on the Family Court to provide participation opportunities and legal representation to children involved in legal proceedings.[46] Unfortunately, the Family Court (Supporting Children in Court) Legislation Act did not amend the Adoption Act. Thus, the weak legislative protection of children's participatory rights in their adoption process under s 11(b) of the Act contrasts with the extensive participation rights children enjoy under the Care of Children Act and the Family Dispute Resolution Act following Parliament's 2021 reforms.[47]

There have been attempts to reform adoption legislation in recent years. Jacinda Ardern MP presented her Member's Bill, the Care of Children Law Reform Bill, to the House of Representatives in 2013.[48] Recognising the antiquated nature of the Act, Ms Ardern advocated for a "complete overhaul" of New Zealand's adoption laws facilitated by evidence-based modernisation.[49] Ms Ardern's Bill would have required the Law Commission to update its 2004 report, present its findings to the House and the Ministry of Justice, and produce a draft Bill.[50] The National Party-led government of the day rejected the Bill on the basis that it was a "sloppy, lazy piece of legislation" and that there were "other pressing priorities" the government faced.[51] The Law Commission, the New Zealand Law Society, and Adoption Action Inc have continuously advocated for legislative reform to little avail.[52] The lack of reform indicates the insignificance of adoption law to New Zealand's political parties, perhaps because a large proportion of adoptees cannot promote their interests politically through voting until later in life.

C *The need for consistency in the application of s 11(b)*

The extent to which the Family Court has promoted children's participation in their adoption proceedings has varied over time, as s 11(b)'s ambiguity provides the Court with broad discretion.[53] Unfortunately, minimal case law addresses the application of s 11(b), so some of the cases this article discusses are dated. Judges must also deal with this lack of precedent when applying s 11(b).

On one end of the spectrum lie proceedings that give effect to children's participatory rights, as art 12 of the UNCRC requires. *Waverly v Walter* was concerned about an

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46 See ss 4 and 6–9 of the Family Court (Supporting Children in Court) Legislation Act 2021.

47 Adoption Act (NZ), s 11(b). Compare with the Care of Children Act 2004, s 5(g); and the Family Dispute Resolution Act 2013, s 11(2)(ba).

48 Care of Children Law Reform Bill 2012 (62-1).

49 (23 October 2013) 694 NZPD 14235.

50 Care of Children Law Reform Bill 2012 (62-1) (explanatory note), referring to Law Commission, above n 5.

51 (23 October 2013) 694 NZPD 14235.

52 See, for example, *Adoption Action Inc v Attorney-General* [2016] NZHRRT 9, [2016] NZFLR 113. Also refer to Adoption Action Incorporated *Chronology of inaction of successive governments in the reform of adoption laws over the last 46 Years* (June 2023).

53 Adoption Act 1955 (NZ), s 11(b).

application to adopt Thomas Walter, a thirteen-year-old boy.[54] Judge Russell opted to see Thomas in his chambers before the hearing to ask about his experiences and views on his relationship with the applicants.[55] Judge Russell created an environment where Thomas could freely and directly express his wishes to the decision-maker. His Honour referenced the child's views in his judgment and found that given the boy's age, "his views and wishes need to be respected".[56]

However, Judge Boshier's disapproval and subsequent correction of a decision the Family Court made in 1975 exposes how previous proceedings have sometimes failed to provide any opportunity for children to participate.[57] In *Re E*, a woman (M) sought to discharge an adoption order made in relation to her 16 years earlier.[58] M had only discovered that she was adopted upon applying to a registrar for a copy of her birth certificate 13 years after a magistrate made the adoption order. She stated in her affidavit that: [59]

> At no time was I aware of the application for an adoption order, nor was I ever asked to consent to such an order, nor was I even asked how I felt about such an order, although I was then seventeen years old and married.

Judge Boshier decided in favour of M, holding that "children, as much as their parents, have rights" and that the adoptive parents failed in their "clear duty to convey to [M] what they were seeking".[60] *Re E*, therefore, elucidates a previous instance of the Family Court failing to recognise an adoptee's participatory rights during their adoption process before making an adoption order.

The Act leaves it to the independent mind of the decision-maker to determine to what degree the child's participation is appropriate. Tighter legislative provisions are required to ensure that art 12 is realised consistently within each adoption proceeding.

VI Pathways for Strengthening the Child's Voice

The weak protection of children's participatory rights in their adoption proceedings necessitates an analysis of how a new reformed participatory model may better accord to art 12 of the UNCRC. The following section will examine the merits of consent-based participation models, offering four different options for procuring consent. Recognising the deficiencies that all four models pose, it will then offer an alternative duty-of-care-based model of participation that imposes statutory responsibilities on adult officers of the Family Court.

54 *Waverly v Walter* [2019] NZFC 8819.
55 At [20]–[23].
56 At [26].
57 *Re E*, above n 44.
58 At 531.
59 At 532.
60 At 534.

A *Requiring the child to consent to the adoption order*

In 2013*,* New Zealand's Children's Commissioner highlighted that:[61]

> … the lack of any requirement to obtain consent from a prospective adopted child, regardless of their age – [is] out of step with contemporary children's rights principles, legal frameworks and social values.

Submissions to the Ministry of Justice during its public engagement rounds have echoed the Commissioner's criticism, asserting that Parliament should expand s 7(2) so that children who are capable of consenting are also listed as persons whose consent to an adoption order is required. For example, the New Zealand Law Society argues that "[c]hildren's participation is vital in an Act that is child-centred."[62] Although the Law Society acknowledges that in some circumstances, "safety concerns will make obtaining consent inappropriate", the threshold for such an exception to a consent requirement "needs to be high".[63] The Law Commission has earlier argued that there is a "real need" for the Family Court to obtain a child's consent to adoption in cases involving "slightly older children".[64] The Commission released a discussion paper asking whether:[65]

> … the consent of a child old enough to give consent to the adoption should be required. Forty-one submitters said yes, three said no. Twenty-eight submitters were in favour of the application of a general competency test to determine whether consent should be required, and seven were in favour of a specific age limit.

However, implementing a consent-based participation model necessitates determining how consent is to be procured and, thus, whether a child can give valid consent. The most common solution amongst overseas jurisdictions is the imposition of a minimum statutory age at which courts presume a child has capacity. Few overseas frameworks impose the alternative: a general test of competency. A comparative analysis of these methods is offered below, and the appropriateness of their implementation in New Zealand is discussed in turn.

(1) Statutory age of consent

Using statutory minimum ages to prescribe the parameters of consent is highly efficient as it does not require any financial or human resources to undertake an individualised capacity assessment of a child.[66] Such efficiency is a compelling reason as to why the use of statutory ages is a predominant feature in overseas adoption legislation. For example, art 5(1)(b) of the European Convention on the Adoption of Children (Revised) requires its signatories to prescribe in national law an age, not more than 14 years, at which they deem

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61 Russell Wills *Report of the Children's Commissioner Prepared (Section 12(1)g) of the Children's Commissioner Act 2003)* (Office of the Children's Commissioner, November 2013) at [5].

62 New Zealand Law Society *Adoption in Aotearoa New Zealand: Submission on the Ministry of Justice's Discussion Document* (31 August 2021) at [6.10].

63 At [6.13].

64 Law Commission, above n 5, at [445].

65 At [446].

66 Claire Fenton-Glynn "The child's voice in adoption proceedings: A European perspective" (2014) 22 International Journal of Children's Rights 135 at 142–143.

a child is capable of consenting to their adoption.[67] At the time of her research in 2013, Claire Fenton-Glynn found that 30 European countries use age as the sole factor to determine whether a child can consent to adoption, with the statutory threshold varying between 10 and 15 years old.[68]

Closer to New Zealand's borders, s 11 of Fiji's Adoption Act 2020 states that a decision-maker cannot make an adoption order if a child over 12 years old refuses to consent.[69] Samoa has the same statutory requirement under s 8(c) of its Infants Ordinance 1961.[70]

Despite its widespread application overseas, statutory age limits can be an arbitrary and inflexible means of assessing a child's capacity to consent. Although expressed in the context of consenting to medical advice, the comments from Lord Scarman in the famous case of *Gillick v West Norfolk and Wisbech Area Health Authority* are salient:[71]

> If the law should impose on the process of "growing up" fixed limits where nature knows only a continuous process, the price would be artificiality and a lack of realism in an area where the law must be sensitive to human development and social change.

With age as its sole criterion, this consent model fails to account for the differences in the maturity and understanding between children of the same age. In the adoption context, this model may force some children older than the minimum age to decide whether they consent to an adoption order without truly understanding the implications of their decision. Putting a child in this position would not only be contrary to their best interests but also risks inflicting both emotional and psychological harm on the child.[72] Conversely, this participation model also presumes that a child below the minimum statutory age is incompetent without undertaking any individualised competence assessment. Legislating for the ability of the child to displace this age-based presumption may seem like an ideal solution at first glance, but the child would have the burden of proving that they have the capacity. This would contradict the Committee's observation that "any analysis of the state must refrain from the base assumption that the child does not have the capacity".[73] As such, the risk of harm that this standardisation would produce strongly outweighs any procedural efficiency that the state may gain and does not present itself as the appropriate avenue for legal reform.

(2) A general test of capacity to consent

In light of the analysis above, an individualised determination of a child's capacity to consent poses as a more viable option. Surprisingly, no jurisdictions provide for a general capacity test to determine whether a child is able to give consent and, therefore, participate in their own adoption proceedings. Yet, while this practice is unknown to adoption law, general capacity to consent models operate in the fields of medicine and research. The following paragraphs will examine how these models function in their

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67 European Convention on the Adoption of Children (Revised) CETS 202 (opened for signature 27 November 2008, entered into force 1 September 2011), art 5(1)(b).

68 Fenton-Glynn, above n 66, at 140.

69 Adoption Act 2020 (Fiji), s 11.

70 Infants Ordinance 1961 (Samoa), s 8(c).

71 *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112 (HL) at 186.

72 Fenton-Glynn, above n 66, at 142.

73 United Nations Committee on the Rights of the Child, above n 3, at [20].

respective fields, and evaluate whether they are feasible for New Zealand's adoption regime.

(a) Child's consent to medical treatment

Gillick concerned a child under the United Kingdom's statutory age of consent, 16 years, who sought contraception advice from her general practitioner without her parent's knowledge.[74] Lord Scarman held that a child can consent to medical treatment "if and when the child achieves a sufficient understanding and intelligence to enable him or her to understand what is proposed fully".[75] The New Zealand courts have since endorsed the proposition in *Gillick*, albeit in contexts outside of children consenting to medical treatment.[76] Rights 7(2) and 7(3) of the Code of Health and Disability Services Consumers' Rights also reflect *Gillick*'s competency.[77]

As aforementioned, the child patient must prove to their practitioner that they have a sufficient understanding and intelligence before their consent can be procured. "Sufficient" is to be determined by the circumstances, particularly the kind of treatment that the child patient is seeking.[78] Founding the capacity to consent test upon this variable is logical within the medical sphere, given that different types of medical treatment will produce dramatically different degrees of physiological change for that child. However, a strict application of *Gillick* to adoption law poses difficulties, as analogous degrees of adoption do not exist. One may turn to the distinction between interim and full adoption orders to argue, through parallel reasoning, that a child must satisfy the Family Court that they possess a deeper level of maturity when consenting to a full order given the permanence of their decision. This distinction, however, is unsatisfactory as both interim and full orders endeavour to transfer parental responsibilities in respect of the child between adults.

Additionally, the Family Court grants interim orders in the first instance with a view to treating this as a trial period for the applicants before potentially granting a full order at least six months later.[79] Interim and full adoption orders are thus not competing or alternative processes but sequential stages within the same process. These differences demonstrate that the medical context in which *Gillick*'s competency operates is not sufficiently analogous to the adoption context, and any attempt to integrate the consent model would be an artificial exercise.

Furthermore, some have argued that the *Gillick* threshold is unreasonably high for a child to meet, particularly when its policy implications may restrict a minor's access to contraceptive advice and treatment. For example, Freeman argues that it imposes a severe

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74 *Gillick*, above n 71.

75 At 189.

76 *Tao v Woodridge* [2015] NZFC 6212 and *Moore v Moore* [2014] NZHC 3213, [2015] 2 NZLR 787 as cited in Fiona Miller "Children's Competence to Consent to Medical, Surgical and Dental Treatment: Partners in Healthcare?" (PhD Thesis, University of Otago, 2019) at 32.

77 Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996, sch 1 cl 2.

78 *Gillick*, above n 71, at 189. Lord Scarman makes a clear distinction between a child seeking medical treatment and a child seeking contraceptive advice and treatment. While the former is required to have a sufficient understanding and intelligence to enable them to understand fully what is proposed, the latter is required to further possess sufficient maturity enabling them to appraise certain considerations including moral and family questions and the long-term emotional impact of pregnancy and its termination.

79 Adoption Act 1955 (NZ), ss 5 and 13.

burden on a child that even many adults would be unable to discharge.[80] Although the model avoids the arbitrary character associated with age-based consent, it continues to place the onus on the child to prove their capacity. This is contrary to the view articulated by the Committee that this article describes above. Again, these criticisms strongly suggest that a consent test founded on the presumptions of *Gillick* competency should not be imported into New Zealand's adoption law, as it is deficient from a child's rights-based perspective.

(b) Child's consent to research studies

Generally, for a person to participate in a research study, a researcher must gain the person's informed consent.[81] Research involving children raises ethical concerns and requires approval from an ethics committee such as the Health and Disability Ethics Committee or the Institutional Ethics Committee.[82] New Zealand has no specific legislation governing how a child can consent to participating in research studies.[83] Instead, researchers must follow various evolving ethical codes and guidelines.[84]

For example, Nicola Peart and David Holdaway's "Ethical Guidelines: Health Research With Children" state that children will have the capacity to consent to participate in a study if they are of or over the age of 16.[85] If the child is below 16 but "has the competence to understand the nature, risks and consequences of the research", their "consent will have the same effect as if the child were of full age."[86] Suppose the child is below 16 and "lacks the necessary competence to give legally effective consent". In that case, the "child's parent or legal guardian must give permission for the child's participation" and, even then, the child's refusal to participate "must be respected" except in very limited circumstances.[87] By contrast, the Health Research Council classifies children as "unable to give their own consent," thereby requiring the researcher to obtain their "proxy consent" from the child's parent or legal guardian.[88] Mary Ann Powell and Anne Smith highlight that there is further variation in the consent requirements universities oblige their staff to meet when researching children.[89] While some universities require the researcher to obtain the child's consent "as far as possible", others only require written permission from "a legal representative, parents, or those acting in *loco parentis*".[90]

80 Michael Freeman "Rethinking *Gillick*" (2005) 13 International Journal of Children's Rights 201 at 209.

81 Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996, rights 7 and 9, as provided for in the Health and Disability Commissioner Act 1994, s 74(1).

82 Judith Loveridge (ed) *Involving Children and Young People in Research in Educational Settings: Report to the Ministry of Education* (Ministry of Education, RMR-957, July 2010) at 141.

83 At 7.

84 At 6.

85 Nicola Peart and David Holdaway "Ethical Guidelines: Health Research with Children" (2000) 1(2) New Zealand Bioethics Journal 3 at cl 6(i).

86 Clause 6(ii).

87 Clause 6(iii).

88 Health Research Council of New Zealand *HRC Research Ethics Guidelines* (March 2021), cl 2.1.1(e).

89 Mary Ann Powell and Anne B Smith "Ethical guidelines for research with children: A review of current research ethics documentation in New Zealand" (2006) Kōtuitui: New Zealand Journal of Social Sciences Online 125.

90 At 130.

Thus, no single consolidated national guideline determines when a child has sufficient capacity to consent to their participation in research. While some guidelines recognise that children are social actors who have the capacity to understand the research process and the implications of their involvement, others continue to frame children as incompetent objects. The lack of consensus regarding ethical modes of conduct within the community of researchers suggests that it will be difficult for Parliament to draw upon any specific set of guidelines, such as that of Peart and Holdaway or the Health Research Council, and implement this into New Zealand's adoption context without attracting empirically-based criticism. Thus, the imperative to find an alternative and more harmonious solution remains.

(3) Incorporation of both assessments

A capacity-based approach to consent may better uphold children's participation rights than a minimum statutory age. Yet the legal reality is that policymakers prefer the certainty and efficiency of statutory age limits. Thus, the question arises as to whether a hybrid approach to consent is suitable.

New South Wales has taken a hybrid approach that considers both age and capacity when determining if a child can consent to their adoption order. Section 55(1) of its Adoption Act (NSW) reads:

> **55 Consent of child**
>
> (1) The Court must not make an adoption order in relation to a child who is 12 or more but less than 18 years of age and who is capable of giving consent unless -
>
> (a) the child has been counselled as required by section 63,and
>
> (b) the counsellor has certified that the child understands the effect of signing the instrument of consent (as required by section 61) and
>
> (c) the child consents to his or her adoption by the prospective adoptive parent or parents or the Court dispenses with the requirement for consent.

Additionally, s 69(1) reads:

> **69 When can the Court dispense with the child's consent?**
>
> (1) Child 12 or more but less than 18 years of age The Court may make a consent dispense order dispensing with the requirement for consent to his or her adoption … if the Court is satisfied that the child is in such a physical or mental condition as to not be capable of properly considering the question of whether he or she should give consent.

The minimum statutory age is thus 12 years. The accompanying general capacity test turns on whether the child is in such a physical or mental condition that permits them to properly consider whether they should consent to the proposed adoption order. This hybrid approach acknowledges that age is one indicator of a child's capacity to consent, but it should not be the sole criterion. The physical and mental attributes of the child should be evaluated by the decision-maker on an individualised basis before the capacity to consent is satisfied.

In 2012, Kevin Hague MP proposed a Member's Bill to enact a hybrid framework in New Zealand similar to New South Wales'.[91] Although his Bill was never drawn from the ballot, examining its clauses provides insight into a hybrid approach to a child's right to consent to adoption in New Zealand. Clause 171(2)(a) would have required that a decision-maker obtain the consent of a child subject to an adoption proceeding if the child is at least eight years old. However, under cl 173(2), a child would have lacked the capacity to consent if they were under the age of eight, lacked the maturity to understand the meaning and consequences of an adoption order, and was unwilling or unable to express a view. Consequently, it would not only be whether the child was eight or older that would determine the legal effect of a child's consent to or rejection of a proposed adoption order but also the child's maturity and willingness or ability to express a view on the adoption.

B *Inspiration from the Oranga Tamariki Act 1989*

The OTA offers an alternative model of child participation in legal proceedings, legislation designed to promote the well-being of children, young persons, and their families, whānau, hapū and iwi.[92] Amongst its stated purposes is the provision of support and protection to children and young persons to prevent them from suffering maltreatment and to provide them with a safe, stable and loving home at the earliest opportunity should they require care.[93]

Section 11 of the OTA provides a robust description of how the child can participate in the decision-making process and how they can expect decision-makers to treat their views. In particular, s 11 imposes a series of positive duties onto the decision-makers listed in s 11(3).[94] Their responsibility is primarily to encourage and assist the child to participate in legal, planning, or other relevant processes to the degree appropriate for their age and level of maturity unless they believe the child's participation is not appropriate in light of the matters the process will consider.[95] Under s 11(2)(aa), an adult must usually give the child reasonable assistance to understand the reasons for the process, the options available to the decision-maker, and how these options could affect the child. If the child has any difficulties expressing themselves, they must be provided with access to support that assists them in making their views understood.[96] The decision-maker must take into account any views the child expresses, and if the decision-maker does not follow the child's views in their decision, then they must explain in writing why they did not follow the child's views.[97]

The OTA's extensive promotion of children's participatory rights sharply contrasts with the Adoption Act's lack thereof. The positive statutory duties the OTA imposes ensure judges and decision-makers maintain a proactive approach to children's participation in proceedings that impact them. Thus, the OTA is a powerful demonstration of how carefully drafted legislation can effectively promote arts 12, 13 and 17 of the UNCRC.

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91 Kevin Hague *Draft for Consultation: Care of Children (Adoptive and Surrogacy Law Reform) Amendment Bill – Member's Bill* (Adoption Action, 2012).

92 Oranga Tamariki Act 1989 [OTA], s 4.

93 Section 4.

94 This includes the Judge and the child's legal representative in proceeding before a court, and the person responsible for convening a family group conference.

95 OTA, s 11(2)(a).

96 Section 11(2)(c).

97 Section 11(2)(d)–(e).

Although the OTA provides comparatively stronger mechanisms to uphold children's art 12 rights, its provisions are not immune to criticism. For example, the wording "to the degree appropriate for their age and maturity" perpetuates the misconception that the child's right to participation *depends* on their age and maturity.[98] The same paragraph grants the decision-maker broad discretion to decide if the child's participation is inappropriate. As the OTA provides little elaboration on what may justify such exclusion of the child, it opens the OTA to criticism that it remains adult-centric, like the Adoption Act. The imposition of a reasonableness standard on the child's right to "freely express their views on matters affecting them" under s 11(2)(b) of the OTA is also not conducive to promoting art 12 of the UNCRC. It may result in adults preventing a child from expressing their views on grounds that are reasonable only from an adult-centric perspective, such as because the nature of the adoption process is urgent or because no legal representative is available for the child. Notwithstanding these limitations, the participatory provisions within the OTA provide a promising start for a new model of child participation within New Zealand's adoption framework.

VII Evaluation

This article argues that promoting a child's participation in their adoption proceedings in accordance with their art 12 rights can be more adequately achieved by implementing a duty-of-care-based model, as opposed to a consent-based model.

A *Consent: a pandora's box*

On an operative level, the introduction of a consent-based participation model presents attendant challenges as to determining if and when the child can give their consent and whether there should be circumstances where the decision-maker may dispense with the consent requirement. The dominant approach amongst overseas jurisdictions has been to impose a minimum statutory age at which a child will have the capacity to consent and, by extension, the capacity to participate in the adoption proceedings. If a child falls below this minimum age, they are excluded from consenting and participating altogether, and a court can make an adoption order without reference to the child's views.[99]This kind of consent model is deficient from a rights-based perspective, as it fails to recognise that the evolving capacity of each child is not quantifiable through age alone. While a general capacity to consent test is more rights-friendly, the task of articulating its determinants is onerous. The two options that this article has examined both have inherent deficiencies. First, the *Gillick* competency test of consent bases itself upon the presumption that a child is incompetent, which is heavily inconsistent with the ethos of art 12 and the UNCRC as a whole. Second, competency tests of consent to participation in research lack uniformity in the way that they are articulated amongst members of the researchers' community, suggesting that any variation of the current practice is likely to engage criticism for either being overly prescriptive or not prescriptive enough.

A hybrid model of consent that incorporates both a minimum statutory age and a general capacity evaluation appears to strike a stable middle ground at first. Yet even this

98 Section 11(2)(a).

99 See art 5(1)(b) of the European Convention on the Adoption of Children (Revised), which is applicable to European jurisdictions, as well as the Adoption Act (Fiji), s 11; and the Infants Ordinance (Samoa), s 8(c), all of which are discussed in Part VI.

is not wholly consistent with a child's art 12 right. The Committee has highlighted that, under art 12, children have the right not to express their views, which may be relevant when they do not feel comfortable or safe expressing their views during a decision-making process.[100] In other words, art 12 only creates a right for the child to participate in legal proceedings; it does not impose a compulsory duty on them.[101]

Consent-based participation models increase the likelihood that a child may be pressured into expressing their views against their will solely to move the adoption proceedings along. Furthermore, the legislative model guarantees that the decision-maker hears their voice and ensures that the child's voice has a determinative effect on the outcome of the proceedings. The consequences of this are twofold. First, while many children may wish to make their opinions heard, they may not want to be ultimately responsible for the final decision about more complex issues such as their family structure and place of residence.[102] Second, the child's consent requirement effectively abrogates the art 12 requirement that the decision-maker gives the child's views "due weight".

A more suitable approach is to impose specific statutory duties on pivotal adult figures in the adoption process. These duties must support curating an environment where opportunities for child participation in the adoption process are vast. This article argues that a duty-of-care model will address current perfunctory engagement and inconsistent practice by threatening legal sanctions against those who fail to uphold their statutory responsibilities. Parliament should word these statutory duties of care cautiously to prevent the decision-maker from conflating the child's right with an obligation.

B *Duty 1: to inform and counsel the child*

As discussed in Part III, there is an indivisibility between the child's right to participation and their right to receive information at all stages of the decision-making process. In the context of adoption proceedings, adults must create space to empower children to participate *meaningfully*.

The Law Commission emphasised the importance of pre-adoptive counselling for birth parents and adoptive parents but only recommended that child adoptees undergo *post-adoption* counselling.[103] This recommendation is insufficient as it falls short of what informed participation seeks to promote. It is essential that the adoption process not leave a child in the dark by relegating them to the position of a passive recipient of the outcome. Per arts 13 and 17 of the UNCRC, children must receive the benefit of being counselled and informed both before and during the legal proceedings as they take place. Parliament must include these requirements in a reformed Adoption Act.

A reformed Adoption Act should oblige specified adults to advise the child on information similar to that included in the "mandatory written information" concept, defined under s 57 of the Adoption Act (NSW).[104] This information includes why the applicants filed the application and the legal consequences of the order should the Court grant it. The reformed Act should require that specified adults inform the child of other long-term care arrangements that may be available, such as guardianship arrangements, parenting orders or whāngai. The adults should also communicate to the child the short

100 United Nations Committee on the Rights of the Child, above n 3, at [16].
101 At [16].
102 Fenton-Glynn, above n 66, at 142.
103 Law Commission, above n 5, at [137]–[138].
104 Adoption Act (NSW), s 57.

and long-term emotional effects of adoption and the support services available to the child regardless of whether the Court makes an order. Adults must not determine the complexity of the information according to the child's age alone. Instead, adults should also take account of the child's particular level of maturity and sensitivity when they determine the complexity of the information they provide the child.

It is logical for this duty to counsel and inform the child to fall on that child's legal representative in the Family Court. However, when insufficient legal representatives are available, there is a risk that no one will be able to fulfil these duties in respect of the child. Therefore, it may be necessary to extend the scope of social workers' role beyond preparing a s 10 report on the adult applicants to informing and counselling the proposed adoptee.[105] Allowing the social worker to fulfil this duty will prevent it from going unperformed, as a social worker will already be involved in the proceeding to produce an s 10 report. It is also essential to impose this duty onto the Family Court judge to facilitate dialogue between the child and the decision-maker. Imposing an obligation on the judge to inform and advise the child may mitigate the child's perception of the adoption proceedings as daunting and adversarial and thus provide them with an environment where they are comfortable participating.[106]

C *Duty 2: to provide opportunities for participation*

Reformed adoption legislation must also impose a duty on specified adults to provide children with sufficient platforms to articulate their views. Such a duty must also oblige the adults to emphasise to the child that they will not be disadvantaged or perceived differently if they elect not to participate.

Maintaining this distinction between a right and a duty can be achieved by employing language similar to s 11 of the OTA, which incorporates verbs such as "encouraged", "support", and "assist".[107] This article suggests that wording such as "the Court must *encourage* the child to participate in the adoption proceedings" or "the Court must give the child the *opportunity* to express their views on the adoption application" would be effective. It would be sufficient for the reformed Act to expressly indicate that although the Court must undertake its best efforts to promote the child's participation, the child retains the right not to participate.

If the child chooses to exercise their right under art 12 and share their views, then further duties should fall on the decision-maker, creating a two-tiered duty-based model. Article 12 states that, upon the child expressing their views, the decision-maker must give them "due weight". Hence, the decision-maker must consider the child's views before making a decision. If the decision-maker elects not to follow the child's views, the decision-maker must explain the reasons for this in their written decision. This two-tiered approach will ensure greater transparency around the weight the decision-maker gives to the child's views and create helpful precedents that future decision-makers can refer to.

The decision-maker ought to retain the discretion to determine that a child's participation in the legal proceedings is inappropriate, thereby excusing the adult figures from having to perform their statutory duties. However, the exercise of such discretion should be heavily circumscribed. Most obviously, if a child has expressed their unequivocal

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105 Adoption Act (NZ), s 10.

106 Nicholas Bala and others "Childrens' Voices in Family Court: Guidelines for Judges Meeting Children" (2013) 47 Family Law Quarterly 379 at 382.

107 OTA, ss 11(2)(a) and (c), for example.

desire to abstain from participating at all stages of the adoption proceedings, the decision-maker's discretion to dispense with the child's participation will be necessary. Their use of discretion may also be justified if, for example, it is manifest to the decision-maker that harm to the child will ensue should they participate in the proceedings.

VIII Conclusion

New Zealand's current adoption framework does not promote children's exercise of their participatory rights under art 12 of the UNCRC. The failure of multiple Parliaments to create a more robust framework perpetuates the notion that children lack the capacity to contribute to the adoption process and must remain passive recipients of the outcome.

There must be greater recognition that a child is more likely to respect an adoption application's outcome if adults provide them with sufficient opportunities to learn and engage in its process.[108] Participation in such legal proceedings will positively reinforce the child's confidence, self-efficacy, and self-worth.[109] Contrary to dominant overseas practice, implementing a consent-based participation model will fail to observe the nuances contained in art 12 and the spirit of the UNCRC more generally. Instead, a duty-of-care-based model of participation is more capable of respecting children's art 12 rights by ensuring that children are adequately propped up by their adult counterparts to be informed, assisted and encouraged to participate at all stages of their adoption proceedings.

108 Fenton-Glynn, above n 66, at 138.

109 Tina Gerdts-Andresen "A Scoping Review of When and How a Child's View is Weighted in Decision-Making Processes in Law Proceedings" (2021) 129 Children and Youth Services Review 1 at 1 and 10.