



Submission to Select Committee on *Improving Arrangements for Surrogacy Bill*

INTRODUCTION

1. Thank you for the opportunity to submit on the Improving Arrangements for Surrogacy Bill.
2. We support these changes which corrects outdated notions of the legitimacy of surrogacy within Aotearoa New Zealand law, separating it out from adoption and in doing so, recognising it as a valid pathway for forming or extending a whānau unit.
3. Social workers have long been involved in surrogacy processes via two means; the provision of counselling as required under ACART guidelines for ethics committee approvals, and during the subsequent adoption process. The duality of this process has been described as confusing and at times intimidating by intending parents, and ambiguous in relation to their role by social workers¹. By separating out surrogacy and adoption pathways as distinct from each other, this Bill works to reduce these tensions.
4. In saying this, we support the continuing need for robust ethics committee approval processes, particularly to ensure that the rights of children born via surrogacy are considered as paramount, especially in relation to their ongoing care and protection and right to identity².
5. We have a number of specific comments on the content of the Bill as outlined below.

DISCUSSION

REFLECTING DIVERSITY

6. We recommend that terminology throughout the Bill is altered to better reflect gender diversity in Aotearoa New Zealand. “Woman” is used throughout the Bill to refer to the surrogate, this implies that only those who identify as a woman can become pregnant contrary to the reality of many who are gender diverse who can and may wish to act as a surrogate.
7. All references to “woman” should be altered to “person”, especially the definition of surrogate (clause 4) within the amendments to the Human Assisted Reproductive Technology Act 2004 which we recommend reads:

¹ Walker, R. & van Zyl, L. (2020) Fear and Uncertainty: The Surrogacy Triad’s Experience of Social Workers’ Role Ambiguity. *The British Journal of Social Work* (2020) 0, 1-16 doi: 10.1093/bjsw/bcaa105

² Powell, R & Baird, N. (2020). Surrogacy and Human Rights in New Zealand. University of Canterbury. Retrieved from: <https://ir.canterbury.ac.nz/bitstream/handle/10092/100640/Surrogacy%20and%20Human%20Rights%20%28May%202020%29%20Final.pdf?sequence=2&isAllowed=y>

“**surrogate** means a person who becomes pregnant for the purpose of transferring custody under a surrogacy arrangement of a child born as a result of the pregnancy”.

RECOMMENDATION

We recommend that terminology throughout the Bill is altered from ‘women’ to ‘person’ when referring to a surrogate, to better reflect gender diversity in Aotearoa New Zealand.

PATHWAYS TO LEGAL PARENTHOOD

8. We strongly support the pathways for intending parents to be legally recognised as parents without having to go through current adoption processes. Requiring intending parents to undertake rigorous adoption processes following the birth of their child fails to adequately recognise surrogacy as a legitimate pathway for forming and growing a whānau. Requiring an additional statutory assessment after ethics committee approval by a social worker also places additional pressure on adoption team resources which is disproportionate to the presenting risk and stigmatises certain whānau types by requiring that their ‘fitness to parent’ is formally assessed when traditional family units who have their children without assistance are not subject to such scrutiny.

RECOMMENDATION

We strongly support the pathways for intending parents to be legally recognised as parents without having to go through current adoption processes.

9. We support naming intending parents on a birth certificate and transferring the rights and liabilities of a parent from the surrogate from birth as this provides more certainty and stability for the child and is aligned with the intention of the surrogacy arrangement which has already been agreed. The current 12 day wait period before intending parents can be transferred custody after birth has been described as nonsensical and not aligned with the best interests of the child when applied to a surrogacy arrangement, as it means the child is not placed with their intending parents, limiting and disrupting opportunities for early bonding and attachment formation in the first few days of life.

RECOMMENDATION

We support naming intending parents on a birth certificate and transferring the rights and liabilities of a parent from the surrogate from birth.

10. We commend the inclusion of amendments to the Births, Deaths, Marriages and Relationships Registration regulations which will ensure that a child maintains knowledge of their origins and whakapapa, and where possible, whanaungatanga. This child-centred approach to legal parenthood and identity better reflects UNCROC and intent of the Care of Children Act 2004.

RECOMMENDATION

We support including information during registration of birth that ensures a child maintains knowledge of their origins and whakapapa, and where possible, whanaungatanga.

11. The relationship between this Bill and reproductive rights and justice should be emphasised. Surrogacy is an increasingly common avenue for couples and individuals to achieve their goal of forming a family, given increasing infertility rates and improvements in human reproductive technology³. However, the conflict of competing rights of the surrogate and intending parents must

³ Gomez, V.R. & Unisa, S. (2014). Surrogacy from a reproductive rights perspective. *Autrepart*, vol. 70, no. 2, 2014, pp. 185-203.

be balanced carefully to ensure exploitation and coercion around issues such as privacy, informed consent and body autonomy are considered.

12. We support ECART retaining responsibility for approving and granting surrogacy arrangements as per criteria set out in clause 7 (new section 23A (2)). We note this criteria is primarily focused on the rights of the surrogate and intending parents, therefore we recommend that consideration of the best interests of the child is also considered as part of the ethics committee approval.

RECOMMENDATION

We support ECART retaining responsibility for approving and granting surrogacy arrangements.

APPEALS AND COMPLAINTS

13. We note the Law Commission's recommendation⁴ that an appeal and complaints process is included for ECART decisions has not been included in the Bill. We advocate for this recommendation to be included as this would ensure that both surrogates and intending parents have a pathway for decisions to be reviewed and complaints to be made which is an important part of ensuring a system is built upon a human-rights approach.

RECOMMENDATION

We recommend that an appeal and complaints process is included for ECART decisions.

IMPROVING ACCESS FOR SURROGATES AND INTENDING PARENTS

14. The Law Commission recommended improving access to surrogacy in Aotearoa New Zealand⁵, in the recognition that it is currently difficult for intending parents to source surrogates and vice versa outside of whānau and friends. However, we note this Bill aims to achieve this goal in a different way to what the Law Commission recommends.
15. Instead of relaxing prohibition of advertising surrogates as recommended, this Bill proposes the creation of a surrogacy register which would facilitate matches for those interested in becoming a surrogate with intending parents and vice versa. We support the intent of this register; however, we agree that prohibition of advertising lawful surrogacy is increasingly irrelevant within our digital world. There are online fertility support forums and communities, which although their intent is not to provide matching services, facilitate exactly that via their members. Allowing such activities alongside creation of a register would improve access for all, particularly for those who will find the application fee to join the register a further barrier for them in accessing surrogacy services.

RECOMMENDATION

We support a surrogacy register and recommend that advertising of lawful surrogacy to facilitate matches is allowed.

⁴ Te Aka Matua o te Ture Law Commission. (2022). Te Kōpū Whāngai: He Arotake. Review of Surrogacy. Retrieved from: <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf>

⁵ Te Aka Matua o te Ture Law Commission. (2022). Te Kōpū Whāngai: He Arotake. Review of Surrogacy. Retrieved from: <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf>

SUMMARY OF RECOMMENDATIONS

1. We recommend that terminology throughout the Bill is altered from 'women' to 'person' when referring to a surrogate, to better reflect gender diversity in Aotearoa New Zealand.
2. We strongly support the pathways for intending parents to be legally recognised as parents without having to go through current adoption processes
3. We support naming intending parents on a birth certificate and transferring the rights and liabilities of a parent from the surrogate from birth.
4. We support including information during registration of birth that ensures a child maintains knowledge of their origins and whakapapa, and where possible, whanaungatanga
5. We support ECART retaining responsibility for approving and granting surrogacy arrangements.
6. We recommend that an appeal and complaints process is included for ECART decisions.
7. We support a surrogacy register and recommend that advertising of lawful surrogacy to facilitate matches is allowed.

CONCLUSION

16. Thank you for providing the opportunity to submit on the Improving Arrangements for Surrogacy Bill. These are important changes which are likely to improve both the experience for those accessing surrogacy services and the public perception around surrogacy as a valid avenue to forming a whānau, regardless of circumstance.
17. We hope that this Bill results in a more accessible, whānau-centred process for surrogates, intending parents and children born as a result of surrogacy. Where links to genealogy are protected and maintained, identity is clear from birth, and reproductive justice is achieved for all parties.
18. We welcome any further questions from Select Committee in relation to our submission, however do not feel the need to be heard.

ABOUT ANZASW

The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional association for social work in Aotearoa New Zealand. We have over 3,600 members who work throughout the community in both statutory social work and community social work settings. We advocate on behalf of members for social change and justice.

Definition of social work

Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledges, social work engages people and structures to address life challenges and enhance wellbeing.⁶

Social work in Aotearoa New Zealand

Social workers in Aotearoa are required to be registered with the Social Workers Registration Board. Social workers are registered under the Social Workers Registration Act 2003 and are not included in the Health Practitioners Competence Assurance Act 2003.

Contact details

If you have any questions or require any clarification about this submission, please contact:

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⁶ Global Definition of Social Work - International Federation of Social Workers and International Association of Schools of Social Work