

# Improving Arrangements for Surrogacy

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New Zealand Council Of  
Christian Social Services

Contact Name:	Nikki Hurst Melanie Wilson
Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Organisation description:	<p>The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on <b>the Improving Arrangements for Surrogacy Bill</b>.</p> <p>NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches.</p> <p>Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website <a href="http://www.nzccss.org.nz">www.nzccss.org.nz</a>.</p>

### Tirohanga Whānui | Overview

We support the kaupapa to improve access to surrogacy and protect the rights of surrogate-born tamariki, through the legislative changes proposed in the Improving Arrangements for Surrogacy Bill. Our members provide support to whānau and tamariki across Aotearoa and advocate for system-change that recognises diverse expressions of family. We are supportive of bringing the current legislative system up to date, whilst ensuring that surrogacy is a safe, accessible, and inclusive process for all involved.

### Taunakitanga | Recommendations

Our main points are:

1. **Recognition of Crown responsibilities under Te Tiriti prioritised**
2. **Simplification of parentage process welcomed provided safety of pēpi is maintained**
3. **Clarification of how children's rights to information will be upheld**
4. **Voice of surrogate-born population must be prioritised**
5. **Greater consideration for the wellbeing of surrogate mothers needed**
6. **Clarification of rationale for, and practical application of, a Surrogacy Registrar required**

### 1. Recognition of Crown responsibilities under Te Tiriti prioritised

The Crown has a responsibility under Te Tiriti of Waitangi to ensure that Māori have tino rangatiratanga over their taonga, of which tamariki are among the most precious. We recognise that the government will, independent of this Bill and the current adoption law reform process, be engaging separately with Māori regarding current law relating to whangai. We query whether this engagement is likely to also explore surrogacy from a Te Ao Māori perspective and what impact the findings of such a review is likely to have on the proposed Bill? The Law Commission's findings go some way to understanding Te Ao Māori perspectives on surrogacy but suggest that further research, led by Māori, be commissioned to explore this further. This is a logical first step in ensuring that the Crown is upholding its Treaty responsibilities to whānau engaging in surrogacy arrangements.

**Recommendation One: That the government commission research to better enable legislation that is mana-enhancing for Māori involved in surrogacy.**

### 2. Simplification of parentage process welcomed provided safety of pēpi is maintained

We support the simplification this legislation proposes in recognising intending parents as the parents of a surrogate-born child. The Bill separates surrogacy from the traditional adoption process and enables legal parentage to be established prior to the birth of the child. The Bill also enables parties to a surrogacy to establish a surrogacy order which provides greater clarity and protection than currently exists with regards to the terms of the arrangement and custody of the child. Whilst this simplification is welcomed, and the current assessment of parental suitability undertaken as part of the adoption process is considered overly onerous, we recognise the role of the state in providing some level of oversight for ensuring the safety of surrogate-born children in respect to their intending parents. We currently fail to see where this would take place within the proposed Bill and seek clarity as to whether the remains a requirement for Oranga Tamariki, or another government agency, to continue to play a role in identifying any serious concerns relating to an intending parent.

**Recommendation Two: That the function of the state to assess the safety of surrogate-born pēpi is not lost in the simplification of surrogacy legislation proposed by this Bill.**

### 3. Clarification of how children's rights to information will be upheld

A coordinated surrogacy registration process is required to better uphold children's rights under Article 8 of the Convention on the Rights of the Child (United Nations, 1989). We support the provisions in this legislation that would ensure that more comprehensive information is recorded at birth relating to intending parents, the surrogate and any donor involved in the child's conception. We agree that this will ensure a more mana-enhancing experience by enabling surrogate-born children to access and identify their "*genetic and gestational origins and whakapapa*" (The Law Commission, 2022, wh. 9-10). It is however unclear in the legislation when and how this information could be accessed by a child and whether counselling would be made available to them at this point, as recommended by the Law Commission.

Despite the changes the Bill proposes, we anticipate that it will still be possible for a child to grow up unaware that they were born by surrogate (in the case of heterosexual intending parents who choose not to disclose the child's origins) and query whether there has been consideration for a mechanism which discloses surrogacy information to a surrogate-born person at a particular point in their lifespan in alignment with Article 8.2 of the Convention

on the Rights of the Child. The Law Commission's recommendation has been to extend counselling available to intending parties to enable them to plan how they will disclose the surrogacy to their child.

We seek clarity as to what extent surrogacy information might be evident on a child's birth certificate. Should surrogacy information be presented in a child's birth certificate, we suggest that a short-form birth certificate also be available enabling a person to disclose or protect their identity as a surrogate-born child or adult as they wish.

**Recommendation Three: That the process relating to the disclosure and availability of surrogacy information for a surrogate-born person be more explicit within this legislation, and that support be made available for all parties in this process.**

#### **4. Voice of surrogate-born population must be prioritised**

Greater effort is needed to recognise the experiences of people born via surrogacy in the shaping of this legislation. We note that due to population size and the current lack of a coordinated surrogacy registration system, the voices of surrogate-born tamariki or adults are not as prominent in the discussion surrounding this legislation as those of intending parents and surrogates. The focus of lived experience appears to rest heavily on that of adults, as opposed to the surrogate-born young people and adults that live in Aotearoa. We query to what extent government has consulted with surrogate-born people in the forming of this legislation and what plans are in place to ensure their voices are heard as this legislation is enacted in practice.

**Recommendation Four: That this legislation be accompanied by an ongoing strategy for engaging the voices of surrogate-born people so that their experiences are central in shaping changes to the surrogacy framework.**

#### **5. Greater consideration for the wellbeing of surrogate mothers needed**

Greater consideration must be given to the physical and emotional health of the surrogate mother following the birth, and transfer of custody, of the child. Whilst there is a provision for the surrogate to undergo counselling as part of the ECART approval process, there is little evidence of ongoing care for the surrogate mother beyond that provided by a midwife to both the mother and pēpi in the six weeks following a birth. There is potential for surrogate mothers to experience discrimination in accessing postpartum services when they no longer have custody of the pēpi. We urge government to consider how the rights of surrogate mothers to "*special care and assistance*" will be upheld through these legislative changes (United Nations, 1948).

We also note the amendments to Section (6) (4) of the Amendments to Human Assisted Reproductive Technology Act 2004 extending the provision for reimbursement to surrogates of lost income or wages that may be incurred because of participating in a surrogacy arrangement. We suggest that this be further extended to include other reasonable costs such as for the care of a surrogate's dependents in line with the Law Commission recommendations and in situations where there are health complications, any lost wages that may be incurred by the surrogate's partner during their pregnancy and postpartum recovery. Similarly, we support the recommendation to encourage that the reimbursement of expenses be agreed upfront as part of a Surrogacy Order to minimise the risk of coercion from either party throughout the pregnancy (The Law Commission, 2022, wh. 13).

**Recommendation Five: That greater attention is given to the health and care of surrogate mothers in the provisions and application of this legislation.**

**6. Clarification of rationale for, and practical application of, a Surrogacy Registrar required**

We seek further clarification of Sections 66A-E of the proposed legislation, which conflict with the Law Commission’s recommendation that a Surrogacy Registrar is not established. The Law Commission’s findings identified ethical and regulatory complexity and associated with the establishment of a Surrogacy Registrar, and the potential for such a ‘matching service’ to duplicate compliance and increase costs for intending parents. We seek greater clarity with regards to how such a system would be regulated and funded, and further analysis of which type of agency is better suited and most likely to perform such a role (government, not for profit, private). We note the Law Commission’s reflection that this appears to be far beyond the scope of government’s role to “*provide a safe and effective regulatory framework for surrogacy arrangements*” (The Law Commission, 2022, wh. 15-16). Should the legislation be passed as it is currently written, it is unlikely that a Registrar would not subsequently be established. For this reason, a robust rationale that rebuts the Law Commission’s recommendations is needed to provide confidence that such a service will be a safe and effective investment in improving arrangements for surrogacy.

**Recommendation Six: That further analysis of the rationale for, and options for delivery of a Surrogacy Registrar be undertaken.**

#### Tohutoro | References

The Law Commission. (2022). *Te Kōpū Whāngai: He Arotake | Review of Surrogacy*. Wellington: The Law Commission.

United Nations. (1948). *The Universal Declaration of Human Rights*. Paris: United Nations. Retrieved from <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

United Nations. (1989). *Convention on the Rights of the Child*. New York City: United Nations.