

Submission to the Health Committee on the Improving Arrangements for Surrogacy Bill

INTRODUCTION

1. This short submission is made on behalf of the Nurses Society of New Zealand and Te Uniana o NSNZ Incorporated. The Nurses Society of New Zealand is a well-established body representing and providing services to a significant number of nurses across all parts of the health service nationwide. We are the second-largest professional nursing body and union in Aotearoa New Zealand.

DEDICATED LEGAL FRAMEWORK

2. The Nurses Society of New Zealand sees merit in establishing a dedicated legal framework for surrogacy arrangements and for addressing the rights and responsibilities of all parties, prior to the child being born. There are advantages in having a unified regulatory framework for surrogacy arrangements.
3. Additionally, it would allow for a structured, regulated and monitored approach to such arrangements.
4. Aside from legal considerations, it is desirable to have arrangements determined prior to birth, to avoid unnecessary stress to all parties.
5. Clearly, there are many differences between surrogacy and adoption. Hence, dedicated legislation and regulation reflecting these differences would be welcome.
6. One example of a difference is the fact that, often, one or both of the intending parents in a surrogacy arrangement is a genetic parent of the resulting child. It is therefore generally not appropriate for an intending parent in a surrogacy arrangement to have to go through a formal adoption process in order to take custody of the child. Therefore, the affirmation through this bill of intending parents' automatic legal status at the point when custody is transferred better recognises the nature of the agreement.

SURROGACY REGISTER

7. With an increasing number of people struggling with fertility issues, a legal framework for surrogacy as well as a register of potential surrogates will make the process easier. It will also better meet needs of same-sex couples intending to be parents.

8. The proposed surrogacy register would also allow parties to choose compatible matches.

ETHICS COMMITTEE

9. Ethics committee involvement is welcome, for similar considerations. The proposed criteria for the ethics committee approval for a surrogacy arrangement appear to be sound and comprehensive. The key elements are protection of the wellbeing of the surrogate, ensuring that all parties are adequately psychologically prepared and that there is a low risk of a party changing their mind, as well as ensuring that all parties completely understand the legal consequences of the surrogacy order.

DONOR INFORMATION AND RIGHTS OF CHILDREN

10. The proposed requirements for the details of donors of cells and embryos to be registered will be beneficial for the children of such arrangements, as it recognises their right to know their genetic background. In particular, recording details of the surrogate or the donor, whether they are descendants of New Zealand Māori and/or their ethnicity, citizenship and related details, will have wide benefits. The inclusion of the requirement for donors to state whether or not they are of Māori descent is welcome, as it recognises the value and importance of whakapapa and connection to Māori identity.
11. The requirement for donor and surrogate information to be on birth certificates is consistent with the principle that it is advantageous for all individuals to know their genetic background.

ACTUAL AND REASONABLE EXPENSES

12. The provision for payment for additional actual and reasonable expenses, over and above the current provisions specified in section 14, subsection 4(a) in the Human Assisted Reproductive Technology Act 2004, is appropriate. This recognises a broader range of direct costs associated with the processes and life changes arising from a surrogacy arrangement. Additionally, it will ensure that intending parents are not committing an offence by paying or reimbursing payments for costs which are clearly associated with the surrogacy arrangement.
13. We would suggest consideration could be given to other approved expenses associated with pregnancy, for instance, pregnancy clothing.

QUESTIONS AND OUTSTANDING ISSUES?

14. Several questions or possible issues that may need to be addressed:

- i. What appeal provisions are available if, at any stage of the process, a party fails to comply with a surrogacy order? How would such a scenario be managed or resolved?
- ii. Should there be an obligation for parents to inform the child who is born as a result of a surrogacy arrangement that they were donor conceived? In absence of this obligation, the registration of surrogates' details on a surrogacy register may not be sufficient in protecting the rights of children to know their genetic background, even if it is technically available.
- iii. While the bill requires the registrar to record details of donors of embryos or cells in surrogacy, it is silent on possible consequences for those not willing or unable to provide the required identifying information. That would appear to be anomalous.

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