

MEDIA RELEASE

27 May 2022

Amokura Kawharu
Tumu Whakarae | President

Nichola Lambie
Kaitohutohu Taumata | Principal Adviser

LAW COMMISSION RECOMMENDS NEW SURROGACY LAW

Surrogacy law is out of date and requires reform, concludes Te Aka Matua o te Ture | Law Commission in its report, *Te Kōpū Whāngai: He Arotake | Review of Surrogacy*, presented to Parliament today.

The report acknowledges a pressing need to change the law in order to meet the needs and reasonable expectations of New Zealanders.

Nichola Lambie, Principal Adviser at the Law Commission, said:

“Surrogacy has become an established method of family building for people who are unable to carry a child themselves. Their experience with the current framework shows improvements are needed.

“A key problem is that the law does not recognise surrogacy as a process that creates a parent-child relationship between the intended parents and the surrogate-born child. Intended parents must instead rely on adoption law which was developed over 65 years ago and did not contemplate the modern practice of surrogacy.

“The Law Commission is recommending a new framework for determining legal parenthood in surrogacy arrangements. Surrogacy is a legitimate form of family building that requires a specific legal framework to promote and protect the rights and interests of surrogate-born children, surrogates and intended parents.”

The report affirms the existing prohibition on commercial surrogacy in Aotearoa New Zealand and makes recommendations to improve surrogacy law and practice, including amendments to the Human Assisted Reproductive Technology Act 2004 and the Status of Children Act 1969.

Key recommendations include:

- Introducing a simple administrative pathway for recognising intended parents as the legal parents of a surrogate-born child without the need for a court process, where the surrogacy arrangement was approved by the Ethics Committee on Assisted Reproductive Technology (ECART) and the surrogate gives her consent.

- Providing a separate court pathway for recognising intended parents as the legal parents of a surrogate-born child in situations when the administrative pathway does not apply.
- Giving effect to children's rights to identity by establishing a national surrogacy birth register to preserve access to information by surrogate-born people about their genetic and gestational origins and whakapapa.
- Clarifying the law to allow payments to surrogates for reasonable costs incurred in relation to a surrogacy arrangement, including compensation for loss of income.
- Changes to the ECART approval process to improve its operation and to enable ECART to approve traditional surrogacy arrangements.
- Commissioning Māori-led research to provide a better understanding of tikanga Māori and surrogacy and Māori perspectives on surrogacy.
- Accommodating international surrogacy arrangements (where intended parents live in New Zealand and the surrogate lives overseas) within the court pathway of the new legal framework in order to promote the best interests of the child.

In developing its recommendations, the Commission has been informed by its consultation with the community of those with experience of surrogacy, members of the public, experts and interested organisations. It has examined recent developments in surrogacy law and regulation overseas and incorporates international best practice into its recommendations.

The Government will now consider the Commission's recommendations and decide whether to reform the law.

ENDS

Background:

Te Aka Matua o te Ture | Law Commission is an Independent Crown Entity operating under its own statute, the Law Commission Act 1985. It reports to the Minister responsible for the Law Commission. The Commission's statutory purpose is to "promote the systematic review, reform and development of the law of New Zealand". The Law Commission receives its work programme for reform and development work as references from the responsible Minister under section 7 of the Law Commission Act and from Parliament. Visit lawcom.govt.nz for more information.

For further information and comment, contact:

- Nichola Lambie, Principal Adviser, nlambie@lawcom.govt.nz, 0800 832 526 or 04 914 4829
- Samuel Mellor, Legal and Policy Adviser, smellor@lawcom.govt.nz, 0800 832 526 or 04 914 4826

This media release, a frequently asked questions document and the full report are available from our website at

<https://www.lawcom.govt.nz/our-projects/review-of-surrogacy>

