

Pūrongo | Report 146

# **Te Kōpū Whāngai: He Arotake**

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## **Review of Surrogacy**

### **Executive summary**



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# Executive summary

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## INTRODUCTION (CHAPTER 1)

1. Surrogacy is a unique method of building a family that provides intended parents with an opportunity to have a child when they are otherwise unable to do so. It can, however, involve complex legal, ethical, cultural and medical issues because it relies on the participation of a surrogate, who agrees to become pregnant, carry and give birth to a child for the intended parents.
2. This review has examined surrogacy law, regulation and practice in Aotearoa New Zealand. We have looked at the regulatory framework established under the Human Assisted Reproductive Technology Act 2004 (HART Act), the rules that determine a surrogate-born child's legal parents under the Status of Children Act 1969 and the adoption process that must be followed under the Adoption Act 1955 to transfer legal parenthood from the surrogate to the intended parents.
3. We have identified a pressing need for reform. The law fails to meet the needs and reasonable expectations of New Zealanders in many respects. This Report makes 63 recommendations for reform that seek to amend existing legislation, including the HART Act and the Status of Children Act, and drive changes to regulatory practice to better provide for surrogacy in Aotearoa New Zealand. These recommendations, taken as a whole, affirm the prohibition on commercial surrogacy in Aotearoa New Zealand and make improvements to safeguard the rights and interests of surrogate-born children, surrogates and intended parents.

## SURROGACY IN PRACTICE (CHAPTER 2)

4. More New Zealanders are using surrogacy to build their family, although exact numbers are difficult to establish. A very broad estimate is that up to 50 children may be born as a result of surrogacy arrangements each year. This includes children born as a result of gestational and traditional surrogacy arrangements and domestic and international surrogacy arrangements where the intended parents live in Aotearoa New Zealand and the surrogate lives in another country.
5. The increasing use of surrogacy in Aotearoa New Zealand is likely due to several factors, including changing social attitudes to diverse families and increasing acceptance of surrogacy as a legitimate form of family building, especially for male couples, trans people and single men who are unable to carry a child themselves. Other factors likely include declining rates of adoption, growing rates of infertility, advances in assisted reproductive technology and increasing focus on fertility preservation. These factors will continue to drive the use of surrogacy in future. The use of international surrogacy is also increasing. This appears to be driven factors including difficulties finding a surrogate in Aotearoa New Zealand, increased availability of donated gametes overseas, the availability of commercial

surrogacy, higher success rates and greater reproductive choices overseas and increasing cultural diversity in Aotearoa New Zealand, which means many New Zealanders have links to two or more countries.

6. A growing body of empirical research demonstrates largely positive outcomes for surrogates, surrogate-born children and their families. Most of this research is based in the United Kingdom, although several small studies have examined the experiences of surrogates and intended parents in Aotearoa New Zealand. There is, however, limited research about Māori participation in surrogacy, which is low, and Māori perspectives of surrogacy. There is also limited information about the long-term impacts of surrogacy on surrogate-born people. These and other limitations suggest a cautious approach to regulation is required to protect and promote the rights and interests of surrogate-born children, surrogates and intended parents.
7. In te ao Māori, the modern practice of surrogacy requires tikanga Māori to respond to new circumstances. We suggest that the core tikanga principles of whakapapa and whanaungatanga are of central importance to considering surrogacy from an ao Māori perspective. The tikanga principles of tapu, mana, manaakitanga, kaitiakitanga and aroha are also likely to be relevant. Further consideration is needed to explore how tikanga responds to surrogacy. We recommend the Government commission Māori-led research to provide a better understanding of tikanga Māori and surrogacy and Māori perspectives on surrogacy.

### DEVELOPING GOOD SURROGACY LAW (CHAPTER 3)

8. Surrogacy engages important rights and interests that must be considered and, at times, carefully balanced in order to develop good surrogacy law. We have examined rights and interests that arise from tikanga Māori, te Tiriti o Waitangi | Treaty of Waitangi and human rights law and have developed a set of guiding principles for surrogacy law reform.
9. Our guiding principles are:
  - Principle 1: Surrogacy law should reflect the Crown's obligations under te Tiriti o Waitangi to exercise kāwanatanga in a responsible manner, including facilitating the exercise of tino rangatiratanga by Māori in the context of surrogacy. This principle requires ensuring that Māori can act in accordance with tikanga in the surrogacy context, should they wish to do so. It also means weaving new law that reflects tikanga Māori and other values shared by New Zealanders, such as the importance of children's best interests and the significance of whakapapa for tamariki Māori. Inequities in access to surrogacy must also be addressed, and promoting tino rangatiratanga requires better representation of Māori in decision-making.
  - Principle 2: The best interests of the surrogate-born child should be paramount. Children have rights under the United Nations Convention on the Rights of the Child (UNCROC) that must be protected in the surrogacy context. Under UNCROC, the best interests of the child must be a primary consideration in all actions concerning children. Given surrogacy is concerned with the creation of a child, we consider that their best interests should be paramount. This is consistent with international best practice and requires protecting and promoting children's rights to identity, nationality, family life, health, freedom from discrimination and protection from abuse, exploitation and sale.

- Principle 3: Surrogacy law should support surrogates and intended parents to enter surrogacy arrangements that protect and promote their health, safety, dignity and human rights. People who enter surrogacy arrangements have human rights and interests that need to be protected and promoted, including rights related to personal autonomy, equality and non-discrimination, rights to respect cultural identity, and health and disability rights.
  - Principle 4: Parties to a surrogacy arrangement should have early clarity and certainty about their rights and obligations. This will reduce uncertainty and the risk of disagreements arising between the parties.
  - Principle 5: New Zealand intended parents should be supported to enter surrogacy arrangements in Aotearoa New Zealand rather than offshore. We have sought to improve the conditions for domestic surrogacy arrangements where appropriate to reduce the need for intended parents to rely on international surrogacy, which can present complex issues and greater risks.
10. These guiding principles underpin the recommendations we make in this Report. We think that applying these principles will result in good surrogacy law, namely, law that meets the needs and reasonable expectations of New Zealanders and protects and promotes the rights and interests of people involved in surrogacy arrangements.

## REGULATING SURROGACY ARRANGEMENTS (CHAPTER 4)

11. Surrogacy arrangements are regulated by the HART Act, which establishes a regulatory framework for assisted reproductive procedures and human reproductive research. Certain procedures that fall under the HART Act require prior approval by the Ethics Committee on Assisted Reproductive Technology (ECART) in accordance with guidelines issued by the Advisory Committee on Assisted Reproductive Technology (ACART).
12. Currently, gestational surrogacy arrangements require prior approval from ECART, but traditional surrogacy arrangements do not.
13. We conclude that the ECART approval process is appropriate for surrogacy arrangements. It is an effective and robust safeguard that protects the rights and interests of the surrogate, the intended parents and the resulting child and reduces the risk of problems arising during the arrangement. It received broad support from submitters on the Issues Paper, is consistent with international best practice and provides confidence in the integrity of a surrogacy arrangement, reducing the need for a prescriptive process to establish legal parenthood.
14. For these reasons, we recommend that all clinic-assisted surrogacy arrangements should be required to obtain ECART approval, including traditional surrogacy arrangements that seek clinic assistance (which currently do not require ECART approval). All surrogacy arrangements can be ethically complex and present their own risks. Participants in a traditional surrogacy arrangement should be able to access the benefits of the ECART process on the same basis as parties to gestational surrogacy arrangements, regardless of the surrogate's genetic connection to the surrogate-born child. For this reason, we also recommend that the Government should consider ways to encourage parties to traditional surrogacy arrangements to participate in the ECART approval process.
15. We also conclude that the Government should review the resourcing and operation of ECART and its associated processes. There was a widespread view among submitters that

the current process is too slow and inadequately resourced. As more people seek to use surrogacy to build their families in future, changes will be needed to ensure applications can be considered in a timely manner, consistent with the principles of the HART Act.

## **IMPROVING THE APPROVAL PROCESS (CHAPTER 5)**

16. We make several recommendations to improve the operation of the ECART approval process.

### **Redefining Oranga Tamariki's role in the approval process**

17. Currently, an Oranga Tamariki | Ministry for Children social worker must assess whether intended parents are “fit and proper” to care for and raise the child as part of the adoption process. As a consequence of this requirement, ECART requires in-principle approval from Oranga Tamariki to the intended parents adopting any resulting child before approving a surrogacy arrangement. Oranga Tamariki's role includes making documentary checks (police background checks, medical record checks, character references and child protection checks) and conducting home visits and assessment interviews.
18. We conclude that a different approach is needed for surrogacy arrangements. The state should not assess intended parents' general suitability to be parents. It is, however, important to retain some form of minimum pre-conception checks, to safeguard the wellbeing of any resulting child and ensure the state meets its international human rights obligations under UNCROC. Oranga Tamariki's role in the approval process should therefore be redefined to focus on advising ECART on whether it has any serious concerns in relation to the risk of harm to any resulting child. Its process should include basic background checks (such as criminal record and child protection checks) and further investigation only if those basic checks identify a concern that should be investigated further. These changes would simplify Oranga Tamariki's role for the vast majority of applications that will not require further investigation and would enable the state to meet its obligations under UNCROC in a minimally invasive manner.

### **Recording surrogacy arrangements in writing**

19. Currently, there is no requirement to record surrogacy arrangements in writing. This is a common requirement in other jurisdictions. We think that there are clear benefits to requiring the parties to record their intentions prior to conception in a single document that they can refer to throughout the arrangement. We therefore recommend that parties to surrogacy arrangement prepare and sign a “surrogacy plan”. While not an enforceable contract (except in relation to payment of costs, discussed below), it would provide a greater degree of certainty for the parties and assist them to resolve any problems that occur later in the arrangement. A surrogacy plan would also provide clear evidence of the parties' original intentions in the event of any dispute that must be resolved by the court.

### **Improving counselling requirements**

20. The parties' participation in individual and joint counselling is an integral part of the ECART approval process. We found a high level of satisfaction with the current counselling requirements. However, we recommend improving counselling requirements in one respect to expressly require counselling to address the identity rights of surrogate-born people, including the parties' plans for sharing identity information with the child, and the child's

rights to access information about their genetic and gestational origins and whakapapa that is preserved on the surrogacy birth register (see below). Ensuring the parties are supported and encouraged to think about how they will share identity information with the child will help promote the rights and future wellbeing of surrogate-born people.

### Supporting Māori to act in accordance with tikanga

21. A principle of the HART Act is that the needs, values and beliefs of Māori should be considered and treated with respect. While there is a requirement for counselling to be “culturally appropriate”, we have identified a gap between these requirements and what it means in practice to ensure that counselling meets the needs of Māori. We therefore recommend that ACART provide further guidance on providing counselling that is culturally appropriate from an ao Māori perspective.

### Duration of ECART approvals

22. ECART’s practice is to impose a three-year time limit on surrogacy approvals with the possibility to extend this if there have been no significant changes to the arrangement. However, in some situations, it may take a long time for a surrogate to become pregnant. The current time limit can create further cost, administrative burden and delay in some circumstances. We recommend that ACART consider issuing guidance or advice in relation to duration of approvals of surrogacy arrangements, when an application for an extension of approval will be considered and the process for making and granting extensions.

### Reviewing ECART decisions

23. A decision made by ECART to decline a surrogacy application can have a significant impact on the lives of the applicants. Despite this, the HART Act does not provide for a right of independent review of ECART decisions, although ECART may reconsider an application previously declined if new information becomes available. When legislation authorises decisions that significantly affect individual interests, there generally ought to be an opportunity for challenge by way of independent appeal or review. This serves to correct error, to supervise and improve decision-making at first instance and to help maintain public confidence in the regulatory system. We therefore recommend establishing a right to independent review of any decision made in relation to a surrogacy arrangement by ECART and the creation of an expert panel to review ECART decisions as and when required.

### Composition of ECART and ACART

24. The HART Act was enacted 18 years ago, and the existing membership requirements for both ACART and ECART are out of date. We recommend the Government review the membership requirements for ACART and ECART in order to strengthen their knowledge and expertise. We recommend giving particular consideration to improving Māori representation and representation of the interests of children and increasing expertise in assisted reproductive procedures.

### Monitoring and reporting on outcomes

25. ACART and ECART have statutory roles in monitoring the outcomes of surrogacy arrangements and other assisted reproductive procedures. Given the importance of these roles to the integrity of the regulatory framework, we make several recommendations to

support the performance of these roles in practice. We recommend that ECART establish clear procedures for applicants and other affected parties to provide feedback on, and make complaints in relation to, the operation of the ECART approval process. We also recommend that ECART be required under legislation to prepare an annual report on its operations and for both ACART and ECART annual reports to be published as soon as practicable.

## LEGAL PARENTHOOD (CHAPTER 6)

26. Currently, there are no specific legal parenthood laws that deal with the unique relationships that exist in surrogacy arrangements. Instead, parties must rely on the adoption process to transfer legal parenthood from the surrogate (and any partner) to the intended parents. This fails to reflect the reality of surrogacy arrangements. Adoption and surrogacy are two legitimate but conceptually different forms of family building that require different policy responses and legal frameworks. The adoption process is inappropriate for establishing legal parenthood in surrogacy arrangements and results in problems, as illustrated by the introduction and enactment of the Paige Harris Birth Registration Act 2022.
27. A new framework is required for determining legal parenthood in surrogacy arrangements. We recommend amending the Status of Children Act to introduce two pathways for intended parents to establish legal parenthood, an administrative pathway and a court pathway. Under both pathways, the child would become the legal child of the intended parents and cease to be the legal child of the surrogate. Providing for two pathways to determine legal parenthood in surrogacy arrangements would accommodate the diversity of surrogacy arrangements that are possible.
28. We recommend introducing an administrative pathway for determining legal parenthood under which the intended parents are recognised as the surrogate-born child's legal parents by operation of law without the need for a court order. The administrative pathway would apply in situations where the surrogacy arrangement was approved by ECART and, after the child is born, the intended parents have taken the child into their care and the surrogate has consented to relinquish any claim to legal parenthood. The intended parents should, from the time of the child's birth until the surrogate gives consent, be deemed to be additional legal guardians of the child which would give them legal rights and responsibilities to care for the child and make decisions about their care from birth. We expect this administrative pathway will be the primary means of establishing the intended parents' legal parenthood in domestic surrogacy arrangements.
29. We also recommend introducing a court pathway to enable te Kōti Whānau | Family Court to make a parentage order determining the intended parents are the child's legal parents after the child is born in situations when the administrative pathway does not apply. The court pathway would be available in respect of a traditional surrogacy arrangement that was not required to obtain ECART approval. It would also provide a pathway for resolving a dispute over legal parenthood, although we note that such disputes are rare in practice. The Family Court must be satisfied that making the parentage order is in the best interests of the child, having regard to a list of relevant considerations. When an application for a parentage order is made, the Family Court will be required to appoint a parentage order reporter, who will be a specialist Oranga Tamariki social worker, to independently advise the Court on matters relevant to the child's best interests. In situations where the parties

did not go through the ECART process or there is a dispute over legal parenthood, we think it is important that the Court hears an independent voice on the matters relevant to the parentage order application.

30. We make specific recommendations to accommodate the different situations that might arise in the surrogacy context that are not currently accommodated within the adoption process. In addition to providing the Family Court with jurisdiction to resolve disputes over legal parenthood, we clarify that the surrogate's partner should not be presumed to be the parent of any surrogate-born child and that, if a surrogate dies or is unable to give consent under the administrative pathway, the Family Court should be able to make a parentage order. Both pathways should continue to be available if the surrogate-born child was still-born or died shortly after birth or if an intended parent or both intended parents die. We also accommodate historical surrogacy arrangements that have not been formalised by adoption. We think that a parentage order should be available in respect of any child born as a result of a surrogacy arrangement, regardless of when that child was born.

## **PRESERVING ACCESS TO IDENTITY INFORMATION (CHAPTER 7)**

31. Information about genetic and gestational origins and whakapapa is fundamental to a surrogate-born person's identity and wellbeing. While many intended parents are, or intend to be, open with their child about their origins, we think that the state also has a duty to preserve access to identity information for surrogate-born people.
32. There is no single, centralised system to collect, record and provide access to information about a surrogate-born person's genetic and gestational origins and whakapapa. Rather, different information is collected and accessed under the Births, Deaths, Marriages, and Relationships Registration Act 1995, the HART Act and the Adult Adoption Information Act 1985.
33. We recommend establishing a national register of surrogate-born people (the surrogacy birth register) to preserve access to certain information for surrogate-born people about their genetic and gestational origins and whakapapa. The surrogacy birth register would be administered by Te Tari Taiwhenua | Department of Internal Affairs and would require the Registrar-General to record information about a surrogacy arrangement at the time a child's birth is registered or when notified of a parentage order issued by the Family Court. Information about the surrogate, including name, date and place of birth, ethnicity, any relevant cultural affiliation and hapū and iwi affiliations (if known), should be captured. In traditional surrogacy arrangements, additional genetic information should be recorded about the surrogate, consistent with the current requirements for gamete donors under the HART Act.
34. A surrogate-born person should be able to access information about their origins subject only to the limitations under the Privacy Act 2020. We do not recommend a blanket age restriction as currently exists in respect of access to adoption information and information about gamete donors. We also acknowledge that people receiving their information may require support such as counselling. We therefore recommend that the Government consider ways to support people accessing information on the surrogacy birth register.
35. We do not recommend changes to the information that is recorded on a surrogate-born child's birth certificate. Instead, we conclude that the Government should conduct a thorough, first-principles review of the birth registration system to consider whether it



meets the needs and reasonable expectations of people in contemporary Aotearoa New Zealand. Consultation revealed strong support for changes to the birth registration system and what information is recorded on a birth certificate, but we are conscious that similar issues arise for people born through donor conception, adopted people, people raised under whāngai and other cultural arrangements and people in diverse family arrangements, such as three or more parent models. Our view is that any changes to birth certificates and the birth registration system need to consider the range of different circumstances of conception, birth and legal parenthood.

## FINANCIAL SUPPORT FOR SURROGATES (CHAPTER 8)

36. The HART Act prohibits the exchange of “valuable consideration” in surrogacy arrangements. While this is directed towards prohibition of commercial surrogacy, it creates uncertainty about what financial support, if any, intended parents can provide to surrogates. This uncertainty is undesirable because it may leave surrogates financially worse off as a result of participating in a surrogacy arrangement, place unnecessary stress on the relationship between intended parents and surrogates and create barriers for women considering becoming a surrogate in Aotearoa New Zealand.
37. We recommend that the law be clarified to allow payments to the surrogate for reasonable surrogacy costs actually incurred in relation to a surrogacy arrangement. The HART Act should be amended to provide guidance on what constitutes reasonable surrogacy costs. This should include reasonable medical, travel and accommodation costs, costs relating to care of the surrogate’s dependants, insurance costs, compensation for a surrogate’s loss of earnings and reasonable out-of-pocket expenses. Payment of any of these costs would be by agreement between the parties. Any agreement to pay surrogacy costs made prior to conception should be enforceable. This will encourage the parties to plan in advance for the payment of surrogacy costs and reduces the risk of undue pressure being exerted by any party throughout the arrangement to alter the agreement.
38. We do not recommend permitting the payment of a fee to surrogates for their participation in a surrogacy arrangement in addition to paying a surrogate’s reasonable surrogacy costs actually incurred. We have concluded that, while potential benefits exist in allowing the payment of fees, these do not outweigh the strong arguments against such an approach. Payment of fees to surrogates would constitute a radical change in public policy and would represent a significant step towards the commercialisation of surrogacy. We are not satisfied that this reflects the reasonable expectations of New Zealanders, and it would be inconsistent with the approach to other donative practices in Aotearoa New Zealand, such as embryo and gamete donation, organ donation and blood donation. Furthermore, permitting the payment of fees may contravene New Zealand’s international human rights obligations to take appropriate measures to prevent the sale of children, would run counter to calls from those with lived experience of surrogacy to avoid commercialisation and may increase the risk of exploitation of women who offer to be surrogates. Additional factors that weigh against allowing the payment of fees to surrogates are that it would be inconsistent with the approach in comparable jurisdictions, thereby making cross-border recognition of surrogacy arrangements more difficult, and it would increase the cost of surrogacy, thereby reducing its accessibility for some intended parents.
39. We have also considered what government support should be available to surrogates. We recommend that the Government publish guidance clarifying that surrogates are entitled

to paid parental leave on the same basis as other pregnant people under the Parental Leave and Employment Protection Act 1987. We also conclude that the effect of entering a surrogacy arrangement on benefits a surrogate receives under the Social Security Act 2018 should be clarified to ensure that surrogates who receive a benefit under that Act are not financially disadvantaged by their decision to enter a surrogacy arrangement.

## INTERNATIONAL SURROGACY (CHAPTER 9)

40. International surrogacy, where the intended parents and the surrogate do not live in the same country, has become a global phenomenon over the past two decades. Most international surrogacy arrangements are commercial in nature. There is no internationally agreed framework or agreement to regulate international surrogacy arrangements, although the Hague Conference on Private International Law (Hague Conference) is continuing to work towards an international instrument.
41. International surrogacy presents complex issues. Countries regulate surrogacy and legal parenthood in different ways, which can cause problems when intended parents seek to return to Aotearoa New Zealand with a surrogate-born child. Some international surrogacy arrangements lack the same protections for the child, the surrogate and the intended parents as domestic surrogacy arrangements.
42. Throughout this Report, we make recommendations designed to support intended parents to enter surrogacy arrangements in Aotearoa New Zealand rather than overseas. However, some intended parents will still choose to engage in international surrogacy. We conclude that international surrogacy arrangements must be accommodated within the new framework we recommend for determining legal parenthood in domestic surrogacy arrangements.
43. We acknowledge that this issue attracts competing views. Some people think that New Zealanders should be prohibited from engaging in international surrogacy arrangements given the risks such arrangements pose to surrogate-born children, surrogates and intended parents, while others consider that legal parenthood established as a result of an international surrogacy arrangement should be automatically recognised in Aotearoa New Zealand. Our view is that neither of these approaches promote the child's best interests. Prohibiting international surrogacy precludes an examination of whether recognising the intended parents as the child's legal parents is in the child's best interests. On the other hand, in the absence of an internationally agreed framework that sets minimum requirements for the regulation of surrogacy and the recognition of legal parenthood, Aotearoa New Zealand cannot be confident that automatically recognising legal parenthood established in an international surrogacy arrangement is in the child's best interests. The Government must exercise oversight to promote and protect the rights and interests of the surrogate-born child and fulfil its obligations under international human rights law.
44. We therefore recommend that the Family Court should have jurisdiction to make a parentage order under the court pathway when a child is born as a result of a surrogacy arrangement, whether or not the child was born in Aotearoa New Zealand. We also recommend that the Family Court adopt a special process for applications that concern a child born outside Aotearoa New Zealand, implementing on a permanent basis the approach introduced by the Family Court in response to the Covid-19 pandemic. The consequence of these recommendations is that intended parents will be able to start the

process to secure legal parenthood of a surrogate-born child under New Zealand law at an early opportunity and have legal parenthood determined shortly after the child is born and before returning with the child to Aotearoa New Zealand. As with domestic surrogacy arrangements, the Family Court would need to be satisfied that granting a parentage order is in the child's best interests.

45. We also recommend that the Government consider further a regime for the recognition of legal parenthood established in respect of surrogacy in other jurisdictions following the completion of the ongoing work of the Hague Conference on parentage and surrogacy. Should this work result in an international instrument that outlines minimum safeguards for international surrogacy or a clear process for recognition of legal parenthood, this would provide confidence that recognising the legal relationship between the intended parents and a surrogate-born child established in a member state is in the child's best interests.

## **IMPROVING ACCESS TO SURROGACY (CHAPTER 10)**

### **Availability of information**

46. There is no single, public source of official information on surrogacy in Aotearoa New Zealand. Instead, information is fragmented across different government departments, lacks detail and is not easy to find. We conclude that the Government should produce comprehensive and clear information on surrogacy law and practice. This information should be made available on a website that acts as a centralised, official and up-to-date source of information for New Zealanders considering having a child by surrogacy or becoming a surrogate. We recommend that the information and website should be administered by Manatū Hauora | Ministry of Health.

### **Reducing barriers to connecting intended parents and potential surrogates**

47. It can be difficult for intended parents to find someone who is willing to act as a surrogate in Aotearoa New Zealand. In practice, many women who act as surrogates are family members or close friends of the intended parents, although increasing numbers of intended parents and surrogates are meeting online through private surrogacy forums.
48. Several recommendations in this Report seek to reduce barriers for women considering becoming a surrogate, including clarifying the financial support available for surrogates. Improving the availability of information, discussed above, could also encourage some women to consider acting as surrogates. We considered other options to reduce barriers to connecting intended parents and potential surrogates, including permitting advertisers to be paid for advertising lawful surrogacy arrangements, establishing a surrogacy register to enable women who are interested in becoming a surrogate to register their interest and be matched with intended parents and permitting private intermediaries to operate in Aotearoa New Zealand on a non-profit and regulated basis.
49. We conclude that the HART Act should be amended to allow paid advertising in respect of lawful surrogacy arrangements. The current prohibition is problematic and is becoming increasingly irrelevant in the age of social media. Allowing paid advertising would broaden the ways that intended parents and potential surrogates can reach out to each other.
50. We do not recommend a surrogacy register and matching service or permitting private intermediaries to operate on a non-profit and regulated basis. Neither option received strong support in consultation. We think that the state's role should be to provide a safe

and effective regulatory framework for surrogacy arrangements – actively facilitating individual surrogacy arrangements through a surrogacy register and matching service would extend significantly beyond this. We are also concerned that a surrogacy register may not be workable in practice and may duplicate existing safeguards. We are not persuaded that the law should permit private intermediaries to operate in Aotearoa New Zealand given that online communities already operate and that enabling intended parents to pay for advertisements for a surrogate will provide a new avenue through which surrogates and intended parents may connect. There would be a cost associated with regulating intermediaries and even non-profit intermediaries would charge fees to intended parents which would increase the cost of surrogacy in Aotearoa New Zealand.

### Availability of experienced lawyers

51. There are a limited number of lawyers with experience advising on surrogacy arrangements. We recommend that Te Kāhui Ture o Aotearoa | New Zealand Law Society and other professional lawyer bodies consider providing ongoing professional development in relation to surrogacy, including following the enactment of any new surrogacy law. In addition, lawyers specialising in surrogacy law should be able to be identified by practice area and have appropriate mentoring opportunities.

### Public funding for surrogacy

52. The availability of public funding for surrogacy is a common concern. There is no specific allocation of public funding for surrogacy-related fertility treatment. Instead, public funding is determined using the Clinical Priority Assessment Criteria (CPAC). People who use surrogacy because they lack the sex characteristics to become pregnant, such as male couples and single men, do not qualify for funding under this model. There are also concerns regarding equity of access and cost for Māori and Pacific peoples.
53. We recommend that the Government should review how it funds surrogacy, including surrogacy-related fertility treatment as well as the costs associated with the ECART process. We also think that the Government should consider conducting a broader review of funding for fertility treatment generally. Any broader review should include reconsideration of CPAC and whether it disadvantages Māori and Pacific peoples.

### Availability of donor gametes in Aotearoa New Zealand

54. The availability of donor gametes (ova and sperm) directly impacts on access to surrogacy in Aotearoa New Zealand. Limited availability of donor gametes is a key driver for New Zealanders to seek fertility treatment overseas. However, as with public funding, this is a matter that cannot be addressed in the context of surrogacy alone. We recommend therefore that the Government review the supply of donor gametes in Aotearoa New Zealand. It should consider whether donors should be compensated for reasonable expenses incurred and whether restrictions on importing gametes and embryos into Aotearoa New Zealand should be relaxed in certain limited circumstances.
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