

Improving Arrangements for Surrogacy Bill progresses through Parliament

A bill intended to improve some aspects of the surrogacy process in New Zealand is expected to have its first reading in Parliament this month.

The [Improving Arrangements for Surrogacy Bill](#) is a private member's bill promoted by MP Tāmami Coffey. In 2019, Tamami and his husband welcomed a son who was carried by a surrogate.

The Bill, if passed, would make changes to a number of existing laws that regulate the surrogacy process. The purpose of those changes is to:

- make the surrogacy process simpler and more certain by giving surrogates and intending parents the option of applying for a surrogacy order from the court, which would make the intending parents the child's parents at birth without the need for adoption
- make it easier for intending parents to find a surrogate, by:
 - providing for the creation of a surrogacy register that could help match women willing to be surrogates with intending parents
 - providing that, while surrogates cannot be paid, intending parents can cover certain costs incurred by their surrogate
- ensure information about some surrogacies is registered at the time of the child's birth

A summary of the changes that the Bill will make if it is passed into law is set out below.

A new option to seek a surrogacy order so that the intending parents are automatically recognised as the child's parents from birth

Under the law at present, the intending parents of a child born through surrogacy have no legal rights in respect of that child at the child's birth. That means that the intending parents must go through the adoption process after the child is born, to be legally recognised as their child's parents. In addition, any agreement or arrangement between a surrogate and the intending parents cannot be legally enforced by either party.

Under the Bill, it is still the case that surrogacy agreements and arrangements are not legally enforceable. However, the Bill provides that, before the child is born, the intending parents and surrogates can seek a surrogacy order from the court that would give the parties enforceable rights. If a surrogacy order is granted, the intending parents would automatically become the parents of the child when the child is born, and would not need to adopt the child. The intending parents - and not the surrogate - would have all the rights and liabilities that parents have in respect of their children, including for example an obligation to pay child support if they refuse to take custody of the child.

ECART (the Ethics Committee on Assisted Reproductive Technology) currently has to approve all surrogacies arranged through a fertility clinic. The Bill provides that, in order for a surrogacy order to be given, ECART must also approve the surrogacy arrangement between the intending parents and surrogate.

The Bill lists the conditions that ECART must consider are met before it can approve a surrogacy arrangement. These include:

- the surrogate must not be the child's genetic parent (meaning an order can only be granted in respect of a gestational surrogacy, but not a traditional surrogacy in which the surrogate provides the egg)
- all parties have received:
 - medical advice, and any identified health risks are justified;
 - independent legal advice
 - counselling
- that the surrogate and intending parents have agreed various things relating to the surrogacy, including when and how custody will be transferred, and the pregnancy information the surrogate will share with the intending parents
- that the risk of either the surrogate or the intending parents wanting to change their minds about the custody of the child are small

The Bill also provides that, for surrogacies arranged overseas, an order can be given if a body equivalent to ECART has approved the arrangement.

A new surrogacy register to match intending parents and surrogates

A significant barrier for intending parents who require a surrogate to start or grow their family is often simply finding a surrogate. To address this, the Bill provides for the establishment of a surrogacy register, which would help match women willing to be surrogates and intending parents.

The Bill provides that potential surrogates and intending parents would have to apply to a Surrogacy Registrar - a newly created position - to be on the register. The intending parents may also be charged a fee, the amount of which is not specified. The Registrar would have some discretion about the information included in the register, but it could include:

- why the surrogate wants to be a surrogate, and the characteristics that they are seeking in intending parents;
- why the intending parents need a surrogate, and the characteristics that they are seeking in a surrogate.

Exactly how intending parents and surrogates might be matched isn't specified - that would be for the Registrar to decide. The Bill also specifies that the Registrar would have a role in facilitating a meeting between intending parents and a potential surrogate, but isn't specific as to what such a meeting might look like.

The Bill does not include a timeframe for setting up the register, so it is unknown how long it might take to set up even if this part of the Bill passes into law.

Payments for surrogates' costs

Commercial surrogacy arrangements are illegal in New Zealand, meaning that intending parents cannot pay surrogates. That remains the case under the Bill.

However, the Bill provides that a surrogate can be given payments to cover their actual and reasonable expenses from the surrogacy. These can include fertility provider costs (including counselling), legal costs, travel costs, and reimbursing lost income.

Information about certain surrogacies to be recorded by the Registrar of Births, Deaths, and Marriages

The Bill provides that, if a child is born through a surrogacy that involves a donated embryo or cells, information about both the surrogate and the donor must be included with the child's birth information by the Registrar of Births, Deaths, and Marriages.

This has been included to ensure that New Zealand meets its obligations under the United Nations Convention on the Rights of the Child (UNCROC), including a child's right from birth to know their parents and to be cared for by them (Article 7.1) and the right to seek and receive information of all kinds (Article 13(1)).

Next steps

After the Bill has its first reading in Parliament, it will be referred to a Select Committee and the public will be able to make submissions. Information on the Bill's progress is available on Parliament's website [here](#).

Separate to the Bill, the Law Commission is currently undertaking a comprehensive review of surrogacy laws in New Zealand. The Commission published an issues paper titled [Te Kōpū Whānqai: He Arotake - Review of Surrogacy](#) in July 2021, which asked for feedback on options for changing surrogacy laws in New Zealand. The Commission has stated it is reviewing feedback received and will make recommendations to the Government for reforming surrogacy laws in the first half of 2022.