

# **Pregnancy Rights**

Your legal options during  
and after pregnancy

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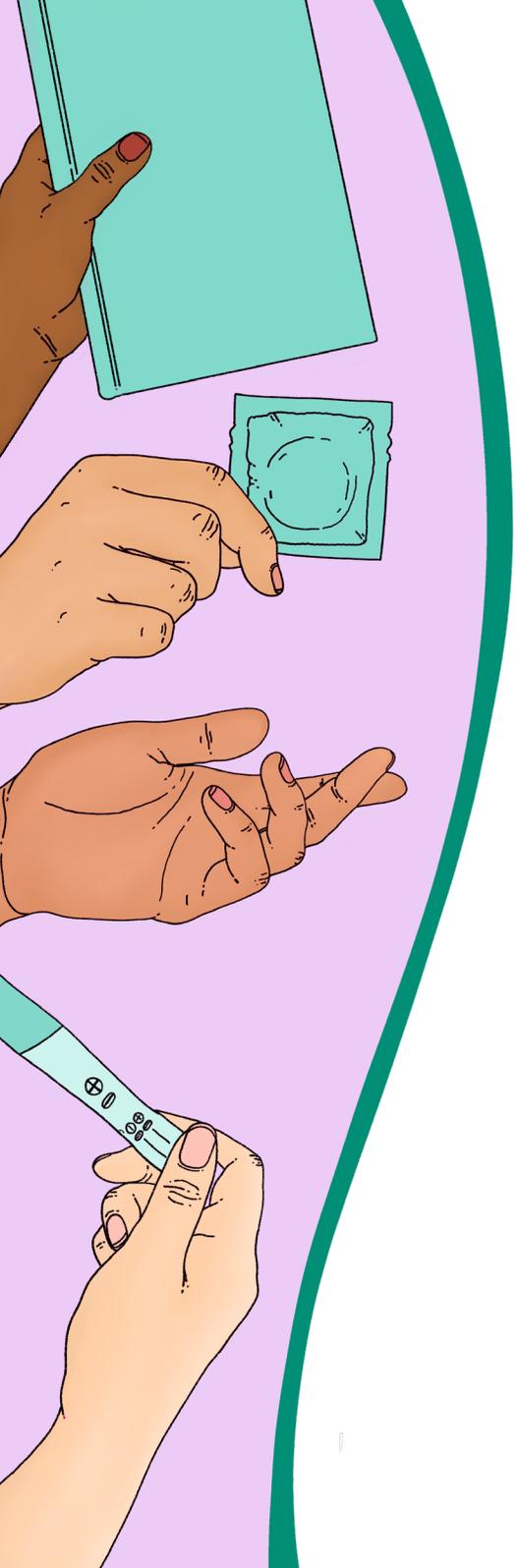
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# Introduction

## Welcome to the sixth edition of *Pregnancy Rights*

### *What is this guide about?*

*Pregnancy Rights: Your legal options during and after pregnancy* is a basic, plain English guide that contains practical answers to questions about pregnancy and the law.

It covers questions like *what are some of my options after a positive pregnancy test?, what healthcare can I get while I'm pregnant?, can I get time off work while I'm pregnant?, can I keep going to school if I am pregnant or have a baby?* and much more.

The guide has been written with young pregnant people in mind, but information that you'll find in here will be just as helpful for all whānau (including the other parent), advocates and the wider community.

### *Where do I go for legal advice?*

There's a lot of helpful information in this guide that should be able to support most readers through tricky times! But for some, even more tricky situations, you may need advice from a lawyer. A good place to start is your nearest Community Law Centre [www.communitylaw.org.nz](http://www.communitylaw.org.nz)

### *Where do I go for more help?*

Not all of the questions you might have about pregnancy will be legal.

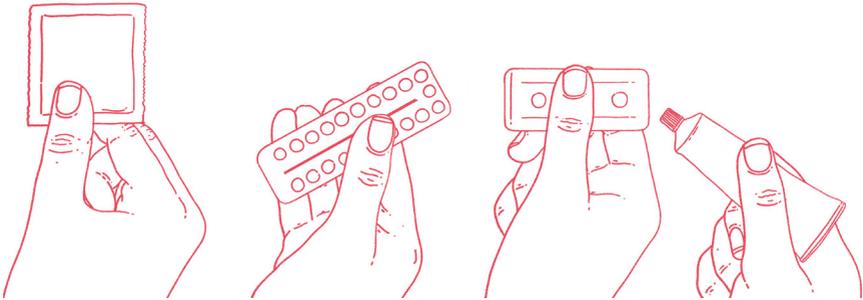
There are a lot of people and services in the community that can help like your nearest Family Planning Clinic, a school counsellor, a doctor or midwife, the social work department of your hospital, or family and friends. As a start, we've listed some useful resources at the back of this guide. Talk to a range of people so that you can explore your options, and reach a decision that feels right for you.

## *Acknowledgements*

This guide has been carefully written by Sally Ward and Omar Shahin. Ngā mihi nui ki a kōrua, thank you both for your ongoing dedication and care!

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# Sexual health

## Sexual consent

### *What is consent?*

Consent is when you give permission for something to happen. Before having sex, all people involved must show or say that they give consent.

For example, if you consent to having sex if contraception is used (like a condom) but your sexual partner does not use the contraception, you did not consent to this act of sex.

The legal age of consent in New Zealand is 16 which means you can't legally consent to sex unless you're 16 or older. You also can't legally consent to having sex while you're impaired (like if you're drunk or high, for example).

Sex without consent is rape. This is a serious crime. If this has happened to you, you should seek help. There are some free and trusted services you can call at the end of this section.

## *Will the police get involved if I had sex and got pregnant before I was 16?*

Crimes Act 1961, s 134

This depends on what happened exactly and the age of the other person involved. If the other person was under 17 years of age, and you consented to having sex, the police might not think it's in the best interests of either of you to charge them with an offence.

But, if they were 17 or older, they could be charged because it is a criminal offence to have sex with someone under 16 years of age, even if you said you consented. The police are more likely to get involved if there is a large age gap and they think you may have been pressured into having sex.

If you didn't consent to having sex, the other person has committed a crime. If this has just happened to you, you should talk to someone you trust, or contact any of the following free support services:

- Victim Support 0800 842 846
- Rape Crisis 0800 88 33 00
- Youthline 0800 37 66 33

and your nearest Community Law Centre for legal advice.

## **Contraception and the emergency contraceptive pill**

### *What is contraception?*

Contraception is a way to prevent pregnancy. There are different types of contraception and some are more effective than others (for example, condoms, the pill, the jab, the rod etc.)

## *Can other people make me use contraception?*

Code of Health and Disability Services Consumers' Rights, right 7(2), Bill of Rights ss 10 and 11, Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112 (HL); Hawthorne v Cox [2008] 1 NZLR 409 (HC)

No. It is 100% your choice whether you want to use contraception, like going on the pill, for example. While other people may help you reach your decision they cannot make the decision for you.

If you have been pressured by someone to use contraception (for example, a parent, a partner or health professional) you can seek help from your nearest Community Law Centre.

## *What type of contraception should I use?*

Each type of contraception option has pros and cons. You should speak to a nurse or other health professional about the different options to work out what's best for you.

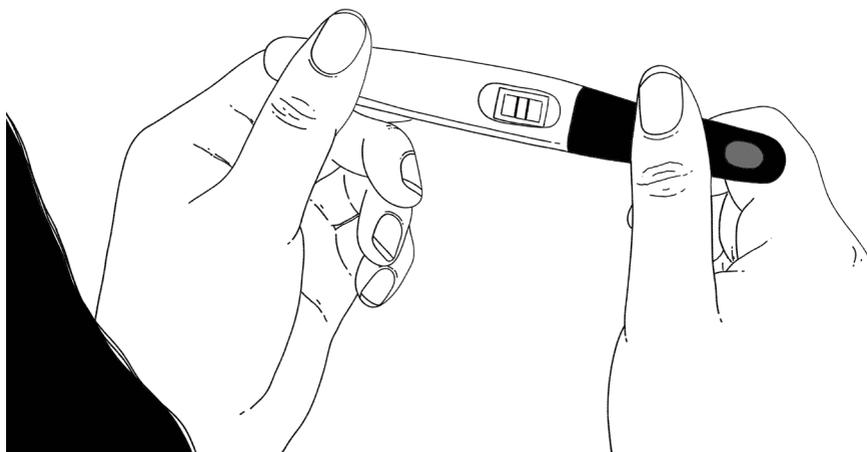
If you're 22 or under, you can see a nurse at a Family Planning Clinic for free.

## *Can I get the Emergency Contraceptive Pill (ECP)?*

Yes, people of any age who have had unprotected sex can get the emergency contraceptive pill (also called the "morning after pill") to stop pregnancy. It works best if it's taken up to 72 hours after sex.

You don't need your parents' or guardians' permission to get the ECP.

You can get it at low cost, and possibly free, from your doctor, your local Family Planning Clinic or Hospital Emergency Department. It is also available over the counter (for a cost) at some pharmacies.



## Some options after a positive test

This section talks about some of your options and the laws about them. Parenting is covered later in this guide.

### Seeking support

#### *Who can I talk to about my options while pregnant?*

You can talk to a counsellor about your pregnancy options to help you decide what to do (this is called “pre-decision counselling”). There are a number of services that provide free counselling and support.

Your doctor or local Family Planning Clinic can refer you to a trusted counselling service. An experienced counsellor will explain your options and help you explore your feelings with each option.

## *Can my parents, or someone else, pressure me into an option?*

No, the decision must be made by you. No one else has the right to pressure you into any of the options (not even your parents, partner, or ex). Contact your nearest Community Law Centre if someone is pressuring you into a decision.

Health professionals are also there to help. They can explain the options and the pros and cons associated with each option in relation to your medical history, but cannot make the decision for you.

## **Abortion (“Termination”)**

### *What is an abortion?*

An abortion is a surgical or medical procedure to end (“terminate”) a pregnancy by removing the embryo or fetus from a person’s womb. It is provided by a “qualified health practitioner”. Abortion is also known as termination.

### *Who is a qualified health practitioner?*

Contraception, Sterilisation, and Abortion 1977 Act, section 10

A “qualified health practitioner” is a registered health professional like a midwife, doctor, or registered nurse.

### *When can I have an abortion?*

Contraception, Sterilisation, and Abortion 1977 Act, section 10

A qualified health practitioner may provide you with an abortion up until you are 20 weeks pregnant. This means you can receive an abortion if you are 19 weeks and 6 days pregnant but once you are 19 weeks and 7 days pregnant, you can only receive an abortion in certain situations (see below).

*You can find an abortion provider near you at [www.health.govt.nz](http://www.health.govt.nz) and search ‘abortion provider locations’ or get a referral from your GP or Family Planning Clinic.*

## *What if I am more than 20 weeks pregnant?*

Contraception, Sterilisation, and Abortion 1977 Act, section 11

A health practitioner will only authorise an abortion when you're more than 20 weeks pregnant if they believe the abortion is "clinically appropriate".

To decide if an abortion is clinically appropriate, the health practitioner will:

- talk to at least one other qualified health practitioner, and
- consider legal, professional, and ethical standards that the health practitioner has to abide by, AND
- your physical and mental health as well as overall wellbeing, AND
- how long you've been pregnant.

## *Can a qualified health practitioner refuse to provide me with an abortion?*

Contraception, Sterilisation, and Abortion 1977 Act, section 14

Yes, a health practitioner can refuse to provide you with an abortion (or contraception) based on their personal beliefs. This is known as "conscientious objection".

In these circumstances, they must tell you ASAP and provide you with the contact details of the closest health practitioner who will provide an abortion (or contraception).

## *Where can I go to get an abortion?*

Contraception, Sterilisation, and Abortion 1977 Act, s 16

Abortion services are available to people anywhere in New Zealand.

Some places may only provide abortions in the earlier stages of pregnancy. If this is the case, you will be referred to the nearest provider that will perform the abortions, so you may have to travel nearby for your operation. You might be able to get help with the costs of travel if you have to go outside of your area.

*The Ministry of Health website contains a list of service providers near you [www.health.govt.nz](http://www.health.govt.nz) and search 'abortion provider locations'.*

### ***Do I need my parents' or guardians' permission to have an abortion?***

Care of Children Act 2004, s 38

No, you can consent to have an abortion at any age. If you have made an informed decision, health professionals must respect your privacy and not tell your parents.

If you are 17 years old or younger, your health professional will strongly encourage you to have a support person who is over 18 years old.

### ***Can my parent or guardian force me to have an abortion?***

Care of Children Act 2004, s 38

No, it's your decision. You're legally entitled to have and to refuse an abortion, no matter your age. No one has the right to force you to have an abortion or stop you from having one.

### ***Do I have to listen to the other parent's opinion about abortion?***

No, it's your decision. The other parent can't force you towards any option – whether that's to terminate or to continue the pregnancy.

Even if the other parent disagrees with your decision to continue with the pregnancy, they still have legal responsibilities relating to the care and financial support of the child after birth.

### ***Who can I talk to about having an abortion?***

You can talk to a qualified health practitioner (such as a nurse or doctor) to discuss your options and to access counselling that is unbiased and non-judgemental. Most clinics and hospitals include counselling for pregnant people using their termination services.

## *Do I have to go to counselling?*

Contraception, Sterilisation, and Abortion 1977 Act, s 12

No, you don't have to go. A health practitioner must let you know what counselling is available. Though talking to a counsellor might help you decide what's best for you in a safe, private and unbiased environment.

## *Does it cost to get an abortion?*

Abortions and any counselling related to abortions, are free for most people (anyone eligible for public healthcare).

You're usually eligible for publicly funded health care if you are a New Zealand citizen, a residence visa holder, a long-term work visa, or an Australian resident or citizen.

## *Do I have to go on contraception after the abortion?*

It is your right to choose to go on contraception or not. You don't have to make a decision about whether or not you want to go on contraception immediately after the abortion even if a nurse or doctor recommends that you do.

*For information see the "Contraception" section.*

# Adoption

## *What is adoption?*

Adoption Act 1955, s 16

Adoption is a legal process where a person or couple (the "adoptive parents") become the parents of another person's birth child (the "birth parent"). The adoptive parents will raise the child as their own.

## ***Do birth parents have the right and responsibility to parent a child they've adopted out?***

Adoption Act 1955, s 16

Adoption makes the adoptive parents the legal parents of the child. The birth parents lose the right and responsibility to parent the child.

That means birth parents won't be able to see or know the child and can't receive information about the child. The adoptive parents can rename the child.

## ***Can you receive money for an adoption?***

Adoption Act 1955, s 25

No. It is illegal to give or receive money for an adoption, unless the court consents to it.

## ***Will the child know if they have been adopted?***

Births, Deaths, Marriages, and Relationships Registration Act 1995 s 23

It depends. If a child is adopted, their original birth certificate is closed and a new birth certificate is made. The new birth certificate records the adoptive parents as the parents as if the child was born to them.

The adoptive parents can request to include the words "adoptive parents" after their names in the new birth certificate. Adoptive parents are encouraged to tell the child, however it will be up to them to decide what they tell the child.

In some situations, birth parents and adoptive parents agree to an open adoption. For more information, see 'What does "open adoption" mean?' below.

## ***Can the child find out they are adopted when they grow up?***

Adult Adoption Information Act 1985, s 4

Yes. When they are 20 years old, a person can apply to the Department of Internal Affairs (Births, Deaths and Marriages office) for a copy of their original birth certificate and take steps to find out about their birth parents.

## ***If the child is adopted, can I have any say in how the child will be raised?***

Adoption Act 1955, s 7

Only in certain situations. You have the right to say that you want the child to be brought up within a particular religion. This might be very difficult to enforce. Otherwise, you will no longer have the right to decide how the child is brought up. This becomes the legal right of the adoptive parents.

In rare situations it may be possible for you to be appointed as an additional guardian for the child. This would mean that you would still have some say in the child's upbringing. This would only happen in exceptional circumstances, for example to maintain a child's cultural identity. *See the section on 'Guardianship' for more information.*

## ***What are the steps for an adoption?***

Adoption Act 1955, ss 7, 15 and 16; and Family Court Rules 2002, r 245

An adoption usually can't go ahead unless the birth parent consents to the adoption. This happens by signing a particular form provided by a lawyer. For consent to be legal, you have to wait until your baby is at least 10 days old before consenting.

The birth parent's consent must be witnessed by a lawyer who must also sign that they have fully explained the legal consequences of the adoption before the form is signed.

After the consent form is filed with the court, Oranga Tamariki, or another social worker, will interview the adoptive parents and produce a report. If everything goes ok, the court will issue an "interim order" making the adoptive parents the parents for six months, with some conditions. Then the court makes a final "adoption order" after those 6 months.

## ***What does "open adoption" mean?***

Re Adoption Application 009/6/98 (1999) 18 FRNZ 647; [2000] NZFLR 247

Open adoption means that the birth parents continue to know the child, or are kept updated about the child's life and, in some

circumstances, the birth contacts can continue to see the child. It will be up to the birth and adoptive parents to decide how this will work, including how often the birth parents can see the child.

### *What are the steps for an “open adoption”?*

The legal process for an open adoption is similar to a closed adoption and so are the legal consequences (losing the right and responsibility to parent the child).

### *Can you enforce an open adoption agreement?*

Yes, but it can be difficult. You would need to start proceedings in the court to enforce an open adoption. If the adoptive parents decide to stop passing information to you, or move somewhere where it's not possible for you to have regular contact with the child, there may not be a lot you can do.

Open adoption agreements rely on both of you wanting to make it work and the adoptive parents allowing you to keep in contact.

### *Who can I talk to about adoption?*

There are a number of people and services you can talk to. You could talk to your doctor or midwife and to family, whānau and friends that you trust.

You can call Oranga Tamariki's adoption support number (0508 326 459) who will get you in touch with a social worker. A social worker will discuss the adoption process with you and what you might expect following the adoption.

They can also refer you to other support options, such as a counsellor.

### *Who decides who will adopt the baby?*

You have the right to choose the adoptive family for the child. Oranga Tamariki will be able to provide profiles for a range of different families.

It's also possible to arrange an adoption privately. This is where you and a family would like to arrange an adoption between yourselves. The law requires that the possible adoptive parents must first be assessed by Oranga Tamariki social workers.

Before making an adoption order the court would also have to be satisfied that the adoptive parents will be able to look after the child and that the adoption will be what's best for the child.

### ***Can my parents or guardians force me to give the baby up for adoption?***

No, it's 100% your decision. You should take your time, and talk to whoever you want to, in exploring all options.

If you are pressured to consent, it is possible to say that your consent is not legal. However, it is very rare for the court to overturn consent once it has been given.

### ***If I decide to adopt out the baby, can I change my mind?***

Adoption Act 1955, s 7

Once you have signed the consent form (which happens at least 10 days after you've given birth), and a lawyer has witnessed it, you can change your mind only if the consent has not yet been filed in the court or handed to the adoptive parents or their lawyer.

You need to be really sure of your decision before signing the consent form.

### ***Does the baby's other parent have to give consent for adoption?***

Adoption Act 1955, s 7

The other parent's consent is only required if:

- they were married to you from any time when you became pregnant until when the baby is born, OR
- they have been appointed as a guardian of the child. This

may happen if the child's parent is identified on the birth certificate (see the section on "Guardianship" for more information), OR

- the court thinks their consent should be required.

The other parent does not have to wait until the baby is 10 days old to give their consent. They can give consent immediately after the baby is born.

If there is any doubt about whether the other parent's consent is needed, the court will decide.

### *Can people be forced to give up their baby?*

Adoption Act 1955, s 8 and Oranga Tamariki Act 1989, s 5

In very rare and serious circumstances.

The circumstances outlined in the law are if you abandon, neglect or continually ill-treat your child, or are proved to be unfit to care for your child because of a physical or mental disability. If any of these are relevant, the court could make an order saying that your consent to the adoption is not needed.

The court would only do this if you have been offered support from agencies such as Oranga Tamariki and you were still not able to care for your child, with the additional support.

The aim of the Oranga Tamariki Act is to keep a child within the family whenever possible. Oranga Tamariki should first try to help you keep your baby or to keep you in contact with your baby – perhaps by placing your baby in a long-term fostering arrangement, preferably with another family member. *For more information, see the sections on 'Oranga Tamariki' and 'Foster Care'.*

### *Can my parents adopt the baby?*

Yes, if you consent to this. Legally the baby would then become your sibling. You may like to explore your feelings about this with a counsellor (your doctor or midwife can help you find a counsellor).

### ***What about the other parent's family? Could they try and adopt the baby?***

Yes, but you would still have to give your consent the same way that you would for any other adoptive parents.

### ***If I want to adopt out the child, do I need a lawyer?***

Yes, adoption is a legal process so there are some steps where you will need a lawyer, like when you provide consent to the adoption.

As a place to start for legal advice on adoption, visit your nearest Community Law Centre.

### ***Will I have to pay for a lawyer?***

Generally, lawyer's fees for the consent process, and any other necessary legal fees will be paid by the adoptive parents. However, this is not always the case.

If you get your own lawyer for further advice, you may need to pay these fees – it's always best to ask the lawyer at the start. You may also be able to get legal aid. *See the section called 'Legal Aid' for more information.*

### ***Legal options when you can't care for a baby and don't want the baby to be adopted***

There are other care arrangements you can consider, which Oranga Tamariki can help you explore.

The main option is for the court to appoint additional guardians for the child for the day-to-day care of the child. Additional guardians will be responsible for the care of your child and can legally make decisions about your child's upbringing.

In this situation, you would still be a legal guardian of your child. This means you can continue to be involved in decisions about your child's upbringing.

*For more information, see sections on "Day-to-day care and contact with a child" and "Guardianship".*

# Foster care

## *What is foster care?*

Foster care is when a child's day-to-day care is provided by someone other than the child's birth parents. This could be for a short time or a long time. Foster care could be needed for a lot of different reasons, including to give the parents a break at a stressful time in their lives.

Foster care describes a care arrangement, and the particular legal arrangement will depend on the circumstances.

## *How is foster care arranged?*

Foster care can be organised through Oranga Tamariki or other service providers and the preference is for a child to be cared for by the child's wider family, whānau or community.

A quick google search for "foster care providers" will show you a range of potential service providers.

You can also contact a Citizens' Advice Bureau near you for more information.

## *What legal rights do foster parents have over my child?*

Foster parents will be responsible for caring for your child, but they don't have any legal rights over your child. You remain the child's legal guardian in most situations.

When foster care is arranged through Oranga Tamariki, the court will make Oranga Tamariki an additional guardian so they can provide day-to-day care of the child. This gives Oranga Tamariki the right to place your child in a foster care arrangement.

If a foster family has had your child in their care for a long period of time they could apply to the court for additional guardianship and for day-to-day care, in place of Oranga Tamariki (this is called "Home for Life"). You would still be a guardian unless the court decided you were no longer fit to be

a guardian. The situation has to be very serious for the court to decide to remove someone as a guardian, so this does not happen very often.

### *Do I have to pay for my child to get foster care?*

No. Foster parents appointed by Oranga Tamariki or arranged through a foster care agency are usually paid a government-funded allowance for giving foster care.

If your child is placed in an informal foster care (with family or friends, for example), you will have to work out with the people providing the care whether they expect any payment from you for the care of your child.

## Whāngai

### *What is Whāngai?*

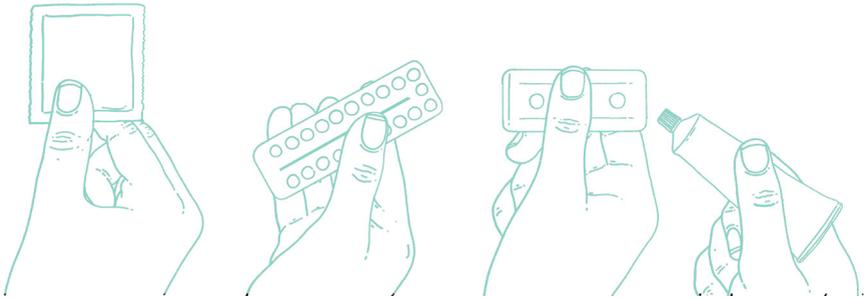
Te Ture Whenua Māori Act 1993 ss 108 and 115

Whāngai is a care arrangement according to tikanga Māori (Māori custom) where a child is cared for by someone other than their parents (often by whānau). Usually the relationship with the child's birth parents is still maintained.

Whāngai arrangements are not formally recognised by the law, so like foster care, whāngai is a care arrangement not a 'legal status'. This means that unless there is an adoption order by the court, the birth mother remains the legal guardian of the child.

A child who is raised in a whāngai arrangement may have rights to Māori Land. This will depend on the tikanga of the iwi or hapu of the child and either: the birth parents, or the new parents.

*See the Māori land chapter in the Community Law Manual for more information (available free online)*



# Healthcare

## Maternity care and privacy

### *What healthcare can I get while I'm pregnant?*

You can access healthcare and support from a midwife or doctor from early in your pregnancy up until four to six weeks after your baby is born – this is called “maternity care”.

Throughout the process, you'll choose a Lead Maternity Carer (LMC) who organises your maternity care. Your LMC could be a midwife, a doctor or specialist obstetrician.

Your LMC will make a plan with you for your care including your labour and birth, talk to you about how to stay healthy during pregnancy and be with you during your labour and birth. They will also offer screening and tests to make sure you and your baby are healthy.

*For more information you can visit the Ministry of Health website [www.health.govt.nz](http://www.health.govt.nz) and search 'maternity care'.*

## *Do I have to pay for visits to a doctor or midwife?*

Most maternity care from your doctor or midwife is free. You may have to pay for an ultrasound scan or for prenatal (during pregnancy) or childbirth education classes (there are usually free options available). If you choose to go to a private obstetrician you will have to pay, but if you are referred by your doctors then that will be free as well.

## *What if I am from overseas?*

You are eligible for free maternity care if you are a New Zealand citizen or a permanent resident, or your partner is a New Zealand citizen or permanent resident.

If you are not any of these you may be charged for medical help during your pregnancy, labour, birth and care after your baby arrives.

## *Can a doctor or midwife pass on information to my parents (or to the other parent)?*

Health Information Privacy Code 2020, rule 11

Not usually. The information you share with your doctors is private and your doctor can't discuss information about you or your treatment to anyone else without your consent, except in specific circumstances.

Your doctor or midwife is under a professional obligation to keep any information about you confidential. If you have any concerns about information being passed to your parents, guardian or to your partner, you can discuss this with your doctor or midwife.

## *When can a doctor or midwife pass on information about my health?*

Oranga Tamariki Act 1989, s 16

If a doctor or midwife believes that there is a serious risk of harm to you (whether self-harm or harm caused by another person)

they may be able to inform your parents or an appropriate agency if this would help to keep you safe.

The doctor or midwife may also be able to pass on information if you are under 18 and they think you have been physically or sexually abused. If this is the case a doctor or midwife could report it to the Police or to Oranga Tamariki.

### *Can I see my medical records?*

Health Information Privacy Code 2020, rule 6

Yes, and you can ask for your own copy. There may be a charge to cover the copying costs.

### *Can anyone else see my medical records?*

Only the staff who are involved with your medical care or with the administration of the medical clinic. They are not allowed to share your information with anyone else unless it is part of your treatment or you give consent.

### *What if I'm not happy with my doctor or midwife?*

You can change your doctor or midwife without giving a reason. You can give permission to your new doctor to get your medical records from your previous doctor or midwife.

You should always feel free to talk to your doctor or midwife about anything that is bothering you or that you are uncomfortable about. You can take a friend or support person along with you when you visit your doctor or midwife.

### *What are my rights when I use a health service?*

Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996

When you are using a health service, like going to see your doctor or midwife, you have the right to:

**Be treated with respect:** you should be treated well and listened to.

**Freedom from discrimination, coercion, harassment, and exploitation:** you should be treated the same as others and you should not be made to feel that you have to do things you don't want to.

**Dignity and independence:** you should be supported to do as much as you can for yourself.

**Services of an appropriate standard:** you should be provided with good care and support.

**Effective communication:** you should be spoken to in a way you understand and people should check that you've understood.

**Be fully informed:** you should be told what is happening to you, what your choices are, the results of any tests or treatment and how much it will cost you.

**Make an informed choice and give informed consent:** you should be supported to make your own choices - you can always say no to receiving care.

**Support:** you can have someone with you when you use a health service.

**Complain:** you can complain if you aren't happy with the service and people will listen to your concerns.

### *How do I make a complaint if I am not happy with my medical treatment?*

If you're unhappy with your visit, for any reason, you can raise your concerns with the person who provided you with that treatment (if you feel comfortable doing so), or you can make a complaint. This could be because you feel that your doctor or midwife didn't treat you with respect, was talking down to you, or not explaining decisions that affect you.

You can complain directly to the Health and Disability Commissioner, the Medical Council of New Zealand, the New Zealand College of Midwives (about a midwife). A Health and Disability Consumer Advocate could help you make a complaint.

# Drug and alcohol use during pregnancy

Smoking and using drugs or alcohol during pregnancy can cause problems for you and your baby. There is no safe level of drug or alcohol use during pregnancy.

*For more information, visit the New Zealand Health website [www.health.govt.nz](http://www.health.govt.nz) and search 'drinking and drugs during pregnancy'.*

## **Can a midwife or doctor tell the police if I've been using an illegal drug?**

Before telling a midwife or a doctor, you should call an alcohol and drug helpline. The helpline can help you make a decision about whether you should tell your midwife or doctor that you've been using an illegal drug. You can also call the helpline anonymously, meaning that you don't need to tell them your name.

*To contact the helpline, call 0800 787 797, or free text 8681. They are open 24/7. There are also:*

Youth services (0800 787 984, or text 8681)

Kaupapa Māori services (call 0800 787 798, or text 8681)

Pasifika services (call 0800 787 799, or text 8681)

# Safety

## **What if I am in a violent situation?**

Family Violence Act 2018, s 26

If you are in immediate danger call the police on 111 and report family violence. The police can issue a temporary police safety order. This is for immediate, short-term protection.

If you have experienced family violence or someone has been

violent toward you, you should contact any of the following free support services:

Women's Refuge 0800 733 843

Shine 0508 744 633

You can also contact your nearest Community Law centre for legal support.

### *When can I leave a violent relationship?*

You can leave or end a relationship whenever you want to. A relationship ends whenever you decide you don't want to be in it anymore.

*See "Family Violence and Elder Abuse" chapter in the Community Law Manual for more information. Free online at [www.communitylaw.org.nz/legal-information/](http://www.communitylaw.org.nz/legal-information/)*



# Education when you're under 18

## *Can I keep going to school if I am pregnant or have a baby?*

Having a baby doesn't mean you should have to stop learning. If you're still at school you may be able to transfer to a teen parent unit, which supports you to complete your studies.

*You can find out more at [www.teenparentschools.org.nz](http://www.teenparentschools.org.nz)*

## *Do I have to keep going to school?*

Education and Training Act 2020, s 36

You have to go to a registered school until you are 16 years old, even if you are pregnant or have a baby.

## *Can the school ask me to leave because I am pregnant?*

Human Rights Act 1993, ss 21 and 57; New Zealand Bill of Rights Act, ss 5 and 19

No. It is against the law for your school to ask you to leave because you are pregnant or parenting a child. You have a right to your education.

### *What help can I be given to continue my education?*

You can ask for a meeting between you and your family, the school principal and counsellor to discuss the best options for you.

### *Can I take my baby to school?*

Some schools have childcare places at the school or nearby. If there are no places nearby, you will need to organise care for your child. You can discuss childcare options with your school counsellor.

### *The school I am at isn't quite right for me while I am pregnant. What options do I have?*

You can consider changing school or look at other options for continuing your education, such as:

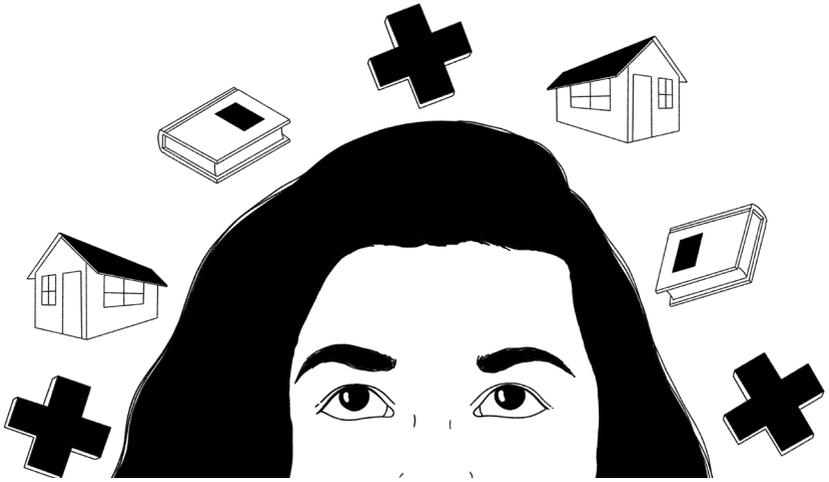
- teenage/mother education units – these are special education units for teenage mums where you are supported as a student and as a parent. There is usually childcare on-site and sometimes you can take your baby to class too. *You can find out more at [www.teenparentschools.org.nz](http://www.teenparentschools.org.nz)*
- correspondence school – this means you study at home using books and digital learning tools. You can organise your study around caring for your child.

### *What kind of financial support can I get if I'm still at school?*

Work and Income has payments for young parents. For example, Work and Income can provide financial assistance for childcare while you attend school.

There is also the Youth Payment and Young Parent Payment. You need to be in suitable training or education to receive this payment.

*For further information see the section on "Financial support".*



# Housing

## If you're under 18

*I'm pregnant and I want to move into a flat with my partner. Can my parents stop me?*

Care of Children Act 2004, ss 28 and 50

If you are under 16, you can only leave home if your parents agree and they organise things to make sure you are cared for - for example, housing, clothing, food and medical care.

Once you have turned 16 you don't need your parents' permission to leave home (although your parents will still be your legal guardians until you are 18).

If they are worried about how you are living, they could apply to the court for an order saying that you must move home or live somewhere else. This would only be in a serious situation and the court does not normally make orders for someone who is 16 or older.

## *Can I get any financial support if I don't live with my parents?*

You might be able to get some financial help from Work and Income. There are payments called the Youth Payment or the Young Parent Payment. To be able to get those payments you need to be married, in a civil union, or a de facto relationship. *See the section on 'Guardianship' for definitions.*

You can also prove to Work and Income that exceptional circumstances mean your parents can't support you.

## *What can I take with me when I leave home?*

- personal clothing and toiletries
- anything you have bought with your own money
- anything that has been given to you as a gift
- personal documents like schools reports, your birth certificate and your IRD documents
- anything your parents have agreed you can take.

## *Can I sign a tenancy agreement if I'm under 18?*

Yes, but it might be difficult to find a landlord who will rent a flat to you without the support of your parents or another adult. Your parents can sign tenancy agreements as "guarantors" which means they will have to pay if you can't pay rent or if there is any damage to the property.

# If you're renting

## *If I'm planning to stay in the same house when the baby arrives, do I need to tell my landlord?*

Rawstone v Quinovic Property Management (NZ) Ltd [2020] NZTT Auckland 4212519

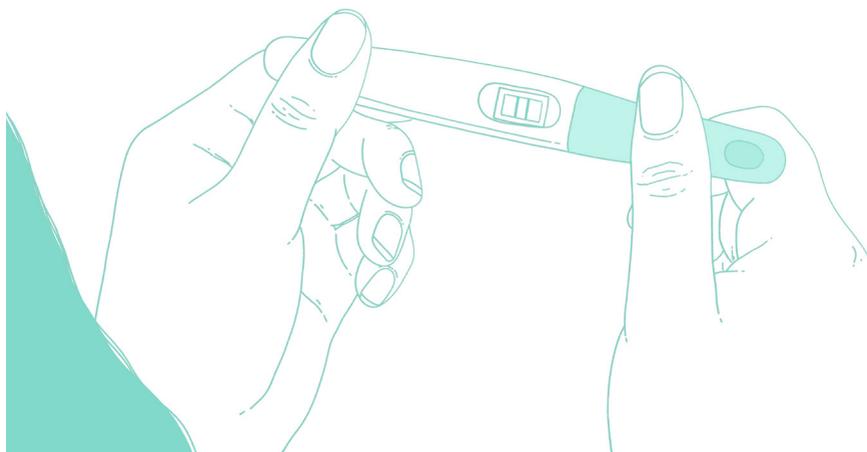
You don't have to tell your landlord. However, you should see a lawyer at Community Law for advice.

Some tenancy agreements might say how many people are

allowed to live in the house. If your landlord brings this up, you should see a lawyer as soon as you can.

*Can my landlord ask me to leave because I am pregnant?*

No, this would be discrimination. If your landlord asks you to leave, or you feel that you're being discriminated against, you should see a lawyer at Community Law as soon as you can.



# Work

## Employment protections

### *If I have a job, can I get fired because I'm pregnant?*

Human Rights Act 1993, ss 21 and 22; Parental Leave and Employment Protection Act 1987, s 49

No, this is a form of discrimination. Your boss ("employer") can't discriminate against you because you are pregnant or on parental leave. This means they can't fire you or treat you less favourably than another person because of your pregnancy.

See "Employment conditions and protections" chapter in the *Community Law Manual for more information. Free online at [www.communitylaw.org.nz/legal-information/](http://www.communitylaw.org.nz/legal-information/)*

### *If I'm finding work difficult while I'm pregnant, can I ask my employer to give me different duties?*

Parental Leave and Employment Protection Act 1987, s 16

Yes, you should discuss this with your employer. If being pregnant means you can't do your job safely or properly, your employer may give you other tasks temporarily.

If your employer can't find other work for you, you may be asked to go on parental leave early. This will not affect your leave entitlements.

## Parental leave

### *Can I get time off work while I'm pregnant, or to care for my baby when they are born?*

Parental leave and employment protection act 1987, ss 7 – 15, 17 - 29, 30A - 30J, 71CA, 71E, 71J - 71N

Yes. There are different types of leave available to workers who are pregnant or who are caring for a baby.

Depending on how long you've been working at your current job and the hours that you work, your employer must give you time off to go to appointments related to your pregnancy and to care for the baby. Some of this time off could be paid. Because parental leave depends on a few things, what you can get may be different to what someone else might get.

A way to find out what you're eligible for is to visit the Employment New Zealand website [www.employment.govt.nz](http://www.employment.govt.nz) and search 'parental leave eligibility'.

You can also contact your local Community Law Centre if you have any more questions about your rights or would like help making an application for parental leave.

### *The different types of parental leave*

#### **Special leave**

You can take up to 10 days unpaid leave for reasons related to your pregnancy like midwife or doctor's appointments.

#### **Primary carer's leave (previously known as "maternity leave")**

Up to 26 weeks paid leave if you are the "primary carer" of the baby or will have the main responsibility for taking care of the baby.

You can start your leave from 6 weeks before your due date. In some cases, your employer, or health professional, may require you to take your leave earlier. If this happens, your leave will be extended so that you have 20 weeks of leave after the baby is born (this 'extra' leave might not be paid).

### **Partner's leave**

Partners can take up to two weeks unpaid leave (depending on how long they've been at work). Your partner does not have to be the father or other parent of the child to be eligible to take leave.

This leave can be started up to three weeks before the baby's expected due date and must finish by three weeks after the baby's actual date of birth.

### **Extended leave (unpaid parental leave)**

You or your partner can take up to 52 weeks of unpaid leave. You and your partner can share this leave however you want to (taking it at the same time, or one after the other). If you or your partner have taken primary carer leave, then your extended leave is reduced by the amount of leave taken.

It's also a good idea to read your employment contract (if you have one), or talk to your boss, to see if you have any additional options at your workplace. If you don't have a copy of your employment contract you should ask your boss for a copy. They must provide you with one.

Although the above types of leave are your minimum rights, you and your employer can always agree on something else, so long as it's more than the minimum.

*See the "Employment conditions and protections" chapter in the Community Law Manual at [www.communitylaw.org.nz/community-law-manual/](http://www.communitylaw.org.nz/community-law-manual/)*

### *Can I take parental leave if I'm on a casual contract, or other non-standard work contract?*

Yes. You are eligible for parental leave even if you are on a non-standard work contract like casual, seasonal, or fixed-term contract. You will need to meet the normal requirement for parental leave.

### *Can I give ("transfer") my payment rights to my partner?*

Yes, in some situations. If you're entitled to primary carer payments, but don't end up taking primary carer leave, you could give some of your payments to your partner while they are on leave. This could also happen the other way around (if they have a right to payment but don't take it). You can transfer all or part of your payments.

### *What if I don't meet the requirements for parental leave?*

If you don't meet the requirements for any of the types of leave listed above, you might still be able to get parental payments. If this is the case, you can ask your employer to give you leave so that you can get parental payments during this time. Your employer can only refuse this request on certain grounds.

### *When do I have to tell my employer I am planning to take parental leave?*

You need to tell your employer that you are planning on going on leave at least three months before your baby's expected due date.

### *How do I apply for parental leave?*

To apply for parental leave, you need to send a letter to your employer. It's best not to rely just on a conversation, make sure you make a request in writing.

*To make sure you get paid for your leave, you apply through the IRD website at [www.ird.govt.nz](http://www.ird.govt.nz), search "apply for paid"*

*parental leave*". This is because the government is responsible for parental leave payments.

### ***What do I need to say in the letter to my employer?***

In the letter, you need to say what type of leave you want to take, the date you want the leave to start and how long you want to be on leave for. If you are sharing your leave entitlements with your partner, you also need to explain this in the letter.

*For more information and examples of letters you can send to your employer, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "how to apply for parental leave".*

### ***What if my employer has handled my parental leave request poorly?***

Parental Leave and Employment Protection Act 1987, ss 56 - 57

You should try and sort it out as quickly as you can. If you wait too long, you might not be able to hold your employer to account.

If you have a complaint, you should let your employer know as soon as you can so that they can try and make things better. This can be through meeting with your employer or writing to them. If you do meet with your employer, you can take a support person with you. You should also write your complaint down in writing after the meeting so that you have a record of it.

If you don't feel comfortable telling your employer, you should ask your union (if you have one) to help you with the complaint.

You can also see a lawyer at Community Law for free legal support.

### ***When do paid parental leave payments end?***

Parental leave and employment protection act 1987, ss 71G, 71L

Paid parental leave payments will continue for 26 weeks. However, you can end them earlier if:

- you transfer your entitlement, or part of your entitlement, to your partner
- you or your partner receive a parental tax credit payment
- you return to work before the end of the paid parental leave period.

### *What other financial help is there to help me raise my child?*

If you are taking care of your child, you might be eligible to get payments through IRD's "Working for Families" program. Working for Families has payments to help you with raising a family. You could get these payments even if you don't get parental leave. One of these payments is called the "Best Start payment" where you'll get \$60 a week every week until your baby turns 1 (or in some cases, until your baby turns 3).

*To see what payments you could get visit the IRD website [www.ird.govt.nz/working-for-families/eligibility](http://www.ird.govt.nz/working-for-families/eligibility)*

## Returning to work

### *Can I go back to my job after my baby is born?*

Parental leave and employment protection act 1987, ss 31, 40, 41

Usually, yes. When you are on leave, your employer generally has to keep your job open for you until you come back to work. Your workplace can hire a temporary replacement but this person must be told their position is only temporary.

In some situations your employer may be able to permanently replace you, for example, if your position is the key job in the organisation.

If your job can't be kept open during the time you're on parental leave, your employer must give you preference for re-employment after your parental leave ends. This means you get the first chance at a similar job if it comes up.

## *I agreed with my employer to return to my job after nine months. Can I go back earlier if I want to?*

Parental leave and employment protection act 1987, s 45

You can go back to work earlier than the date you agreed on with your employer for the following reasons:

- you are no longer the primary carer for the child,
- the pregnancy does not happen (for example if you have a miscarriage), OR
- your employer agrees to you returning earlier.

## *Can I go back to work later?*

Yes, if your employer agrees. Although paid parental leave is limited, so you may not be able to be paid for further time off.

## *Can I work while I'm on parental leave?*

Parental Leave and Employment Protection Act 1987, s 71CE

If you work while you're on parental leave, you may lose the right to your parental leave payments (and have to pay them back).

However, you and your employer can agree for you to work from time to time (such as to attend meetings). These days are called "Keeping-in-touch" days and are there to make sure you don't feel like you're behind when you do go back to work.

You'll have to repay your parental leave if:

- you take a keeping in touch day in the first 28 days after your child is born, OR
- you work more than 64 hours throughout your whole parental leave payment period (which could be up to 26 weeks).

If your child is born early, you may be able to work more than 64 hours throughout the whole parental leave payment period.

## *Can I return with reduced hours?*

Parental leave and employment protection act 1987, s 69AAC

You can ask your employer to reduce your hours of work and your employer must consider your request. You should make the request in writing and be specific about how you like to reduce your hours (for example, by saying that you want to work 9 am to 4 pm).

If your employer refuses your request, they have to tell you why they cannot give you reduced hours.

## *Can I breastfeed/pump at work?*

Employment Relations (Breaks, Infant Feeding and Other Matters) Amendment Act 2008, Employment Relations Act 2000, Ss 69X – 69ZB

Yes. Employers must provide you with an appropriate space to breastfeed/pump as well as regular breaks. However breaks that are extra to your usual work breaks may not be paid.

## *My employer went back on their word and didn't keep my job open, what should I do?*

Parental leave and employment protection act 1987, s 57

If you have any complaint relating to parental leave, you should tell your immediate supervisor and ask them to help you with your problem. It's best you do this in writing.

Your local Community Law centre or Citizens Advice Bureau can help you write down your complaint.

# **Bereavement leave (for miscarriage or stillbirth)**

## *What is bereavement leave?*

Holidays Act 2003, ss 63, 69 and 70

Bereavement refers to feelings of grief and sadness following a death. "Bereavement leave" is a special type of paid leave that you can take if someone close to you dies. You can take bereavement leave if you have a miscarriage or stillbirth.

You are able to take a minimum of three days leave (if you've been working for 6 months). It does not have to be taken straight away or one day after the other.

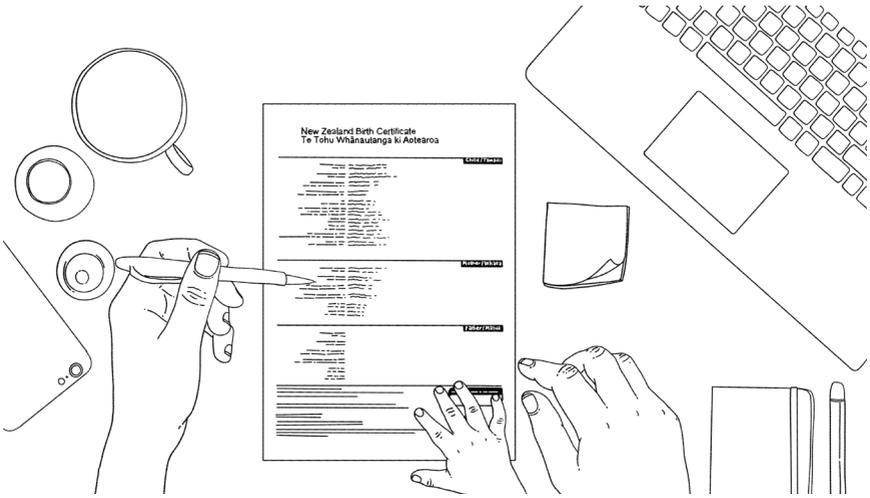
This leave is to give you time to grieve and to take care of things to do with the bereavement like planning or going to a funeral.

*See the "Employment conditions and protections" chapter in the Community Law Manual for more info on bereavement leave [www.communitylaw.org.nz/community-law-manual/](http://www.communitylaw.org.nz/community-law-manual/)*

### ***Can my partner or the other parent take bereavement leave if I have a miscarriage or stillbirth?***

Holidays Act 2003, ss 63, 69 and 70

Yes. They are also entitled to leave for a minimum of three days (if they've been working for 6 months).



# Registering the birth

## What is registering a birth?

When your baby is born, the birth has to be registered with the New Zealand government. Registrations are handled by the Births, Deaths and Marriages office (a part of the New Zealand Government). This is usually done within 2 months of your baby being born.

Registration is when you give your baby a name. It is also the first legal step towards New Zealand citizenship for your baby.

### *How do I register the birth?*

You can register the birth online at [www.smartstart.services.govt.nz/register-my-baby](http://www.smartstart.services.govt.nz/register-my-baby). You can also get a form from the hospital. It doesn't cost to register but there is a cost to get a copy of the birth certificate.

## ***Can I register the birth without the signature of the other parent?***

Births, Deaths, Marriages, and Relationships Registration Act 1995, s 9

No. Generally speaking, both parents of a child must sign the birth registration form.

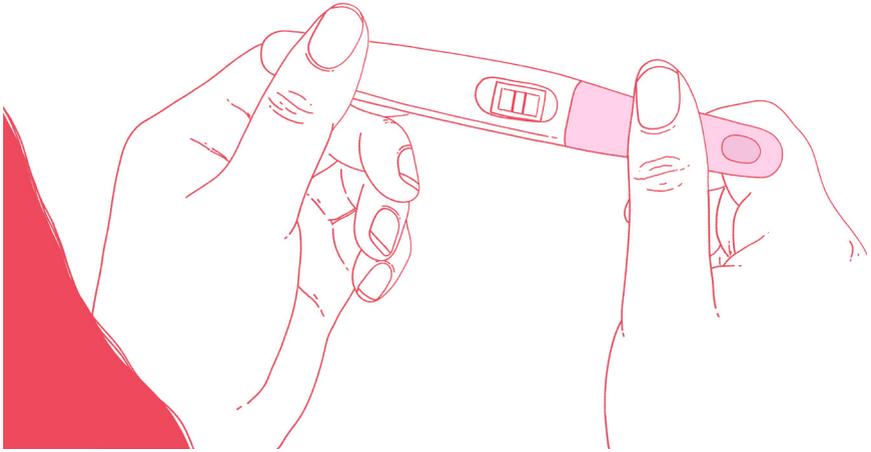
However, you may be able to send a birth certificate signed only by you if you can show the office of Births, Deaths and Marriages that:

- you have conceived the child through assisted human reproduction (AHR) and so are the only legal parent, OR
- the father (other parent) is unknown, dead, missing, of unsound mind or unable to sign because of a medical condition (you will need to provide evidence for this), OR
- it's not possible to get the other parent's signature because they are overseas and can't be contacted within a reasonable period of time, OR
- requiring the other parent to sign the form would cause either of you unwanted distress (for example, in situations of family violence).

## ***Do I have to register the birth if my child is stillborn or has died?***

Yes, you still need to register the birth. If you don't want to name the baby you can choose to leave that part of the birth registration form blank.

*For more detailed information about registering the birth visit [www.govt.nz](http://www.govt.nz) and search 'registering a new baby.'*



# The other parent

## Who's the other parent ("paternity")

When possible we like to use non-gendered language to honour non-binary communities. However, it can be tricky to do this when the words in the law don't reflect gender diversity (and can quite often feel outdated).

For example, in the Care of Children Act 2004, gendered words like father and fatherhood are used to refer to the other natural biological parent ("paternal parent"). The process of confirming who is the other parent, is referred to as "establishing legal fatherhood".

In this section, 'father' and 'other parent' have the same meaning.

### *What is paternity?*

Paternity is the legal word that most commonly refers to the biological parent who is not pregnant or who has not given birth to the child. In the law this is called "fatherhood".

## *Why is paternity important?*

Establishing paternity can be important for many reasons, including the well-being of the child's parents and caregivers.

Paternity can also affect a number of important legal rights and responsibilities, including:

- a parent's entitlement to day-to-day care of, or contact with a child
- a parent's responsibility for paying Child Support
- a child's right to inherit property from the person they believe is their parent
- a child's right to New Zealand citizenship (if this is based on the other parent's citizenship).

## *Do you need to establish paternity to get Sole Parent Support from Work and Income?*

Social Assistance Legislation (Budget 2019 Welfare Package) Amendment Act 2019, s 6

No. Work and Income don't have the power to reduce or refuse your Sole Parent benefit if you do not name the other parent of the child.

## *How is paternity established?*

Status of Children Act 1969, ss 5, 7, 8 and 9

A person will be presumed to be the father of the child if they:

- admit that they are the father (either by words or actions), OR
- are named on the child's birth certificate as the father of the child, OR
- were married to you at the time of the child's birth or if the child was born within 10 months of the marriage ending, OR
- sign an Acknowledgement of Paternity document, which is also signed by the mother and is witnessed by a lawyer.

# Parent titles for gender-diverse parents

## *What is a parent title?*

A “parent title” is the legally recognised description for the parents of the baby (like “mother,” “father” or “parent”). The parent title is recorded on a child’s birth certificate.

## *Can I choose a different gender marker to the one listed on my birth certificate?*

No, current law requires the parent title to reflect the parent’s gender marker as recorded on their birth certificate.

For example, if your gender marker is recorded as male, you can be recorded as the “father” or “parent” on your child’s birth certificate.

## *How do I change my gender marker?*

You can go to the Family Court to change the sex / gender marker on your birth certificate if you meet certain criteria. The child’s birth registration may be delayed until after the Court has considered the application.

*For more information see ‘Gender and sexuality’ chapter in the Community Law Manual [www.communitylaw.org.nz/community-law-manual](http://www.communitylaw.org.nz/community-law-manual)*

Note: A Parliamentary Select Committee recommended changes to the process of changing gender markers in 2018, which may mean the law will change to make things easier in the future.

# Paternity Orders

## *What is a “Paternity Order”?*

Family Proceedings Act, s 51

A Paternity Order or Declaration of Paternity from the court is conclusive evidence that a person is the father of a child.

## ***The baby's other parent refuses to acknowledge they are the other parent. What can I do?***

Family Proceedings Act, ss 47, 49

If you are not married to the other parent, and the child is under six, you can apply for a Paternity Order from the Family Court. You can apply for an order while you are still pregnant. The court might ask the other parent to take a DNA test (which might need to be done after the baby is born).

A Paternity Order is conclusive evidence of paternity for Child Support and for relevant Work and Income benefit applications.

A lawyer at Community Law can help you with this application for free, or you may be able to get legal aid to cover the costs.

*See the section on 'Legal Aid' for more information.*

## ***When do I need to apply for a Paternity Order?***

Family Proceedings Act 1980, s 49

You need to apply for a Paternity Order before your child is 6 years old. There are some exceptions to this, such as if you have been living with the other parent before making the order, or if the other parent has admitted that they are the father.

You can talk to a lawyer at Community Law about whether these exceptions apply to your situation.

## ***Can anyone else apply for a Paternity Order for me?***

Family Proceedings Act, s 47

Yes, if you are under 16, anyone who has the role of providing you with day-to-day care can apply for a Paternity Order. For example, if you are still living at home your caregivers could apply. You can also give written consent for a social worker to make the application on your behalf.

## *How does the court decide who the other parent is? (“establish paternity”)*

Family Proceedings Act 1980, ss 54–59

The court needs to be convinced that it is “more probable than not” that a person is the father (or other parent). The court will look at things like:

- the history of your relationship and whether other people knew about your relationship
- the likely dates of sex compared with the date of the baby’s birth
- whether or not you had any other sexual partners around the time your child was conceived (to establish whether anyone else could be the child’s father)
- whether the person has acknowledged paternity, either through words or actions.

Often, the court will recommend that DNA tests are done to help determine paternity.

## *What does a DNA test involve?*

DNA tests involve either blood samples or mouth swab samples to be taken from you, from the person believed to be the father, and from your child. These samples are then sent to a specialist laboratory for tests to compare DNA. The tests determine if a person is more likely than not to be the other parent of your baby or if he is unlikely to be the other parent.

## *Do I have to pay for DNA testing?*

Usually you will split the cost of DNA testing with the person believed to be the father. If paternity is established, your lawyer could ask for your share of the costs to be paid back to you by that person.

## Can the other parent refuse to undergo DNA testing?

Family proceedings Act 1980, s 57

Yes. The person who is believed to be the father can refuse to have the test, but the court can take their refusal into account when it makes its decision.

If a person refuses to have a DNA test, the court could consider that they are refusing because they are the likely other parent and don't want it to be proved. If other things point to them being the father, the court can decide that the standard of reasonable proof has been reached and make a Paternity Order anyway.

## Can I give my child the other parent's surname even if they refuse to acknowledge the child?

Yes. If the other parent refuses to sign the birth certificate, then you will need to choose the name yourself. If you want to, you can give your child the other parent's surname.

The other parent can't apply to have the child's name changed unless they become a guardian (*for more information see the section on "Guardianship"*). The court will only change the child's name if it's in the best interests of the child – the parent's feelings don't affect the decision.



# Caring for a child

## Guardianship of a child

### *What is guardianship?*

Care of Children Act 2004, ss 15 and 17

Guardianship of a child means having duties, powers, rights and responsibilities that a parent has for bringing up a child.

If you have guardianship of a child, you will be referred to as their guardian.

The parents of a child are usually joint guardians of the child. Parents are often referred to as natural guardians. However, in some circumstances the birth parent may be the sole guardian of the child.

### *What are the responsibilities of a guardian?*

Care of Children Act 2004, s 16

A guardian's responsibilities include contributing to the child's intellectual, emotional, physical, social, cultural and other personal development, as well as helping to make decisions in a child's life.

The important decisions guardians make about their child's upbringing include naming a child, where a child will live, and decisions about a child's education, religion and medical treatment. This may mean deciding these things on behalf of a child, or if the child is old enough, helping the child make decisions about the important things affecting them.

### *Am I the guardian of my child?*

If you are the parent who gave birth, you are the guardian of your child.

If your baby was conceived by assisted human reproduction (AHR), different rules apply.

### *Is the other parent of my child a guardian?*

Care of Children Act 2004, ss 17, 18

The other parent is a guardian if you were married, in a civil union, or living together in a de facto relationship any time between when the baby was conceived and when the baby was born.

### *What is a de facto relationship?*

A de facto relationship is where two people who are both over 18 years old live together as a couple but are not married or in a civil union. In some cases, you could be in a de facto relationship before you turn 18.

### *What if the other parent is not a guardian?*

Care of Children Act 2004, ss 18, 19

If a child's other parent is not a guardian, then they can become a guardian if both of you agree in writing to record them as the other parent on your child's birth certificate, or if they apply to the court to become a guardian.

## ***What happens if the other parent applies to the court to become a guardian?***

Care of Children Act 2004, s 19

The court must appoint them as a guardian if they apply, unless it's not in the welfare and best interests of the child.

If you think they should not be a guardian it would be up to you to prove that it wouldn't be in the child's best interests. For example, if the other biological parent had been violent or abusive, this may be a reason for them not to be appointed as a guardian.

## ***What happens if the other parent and I split up? Are they still a guardian?***

Care of Children Act 2004, s 16

Yes. If the other parent is a natural guardian, or they have been added as guardian by the court or by signing the birth certificate, then they are still a guardian even if you are not together. This means you still need to be able to talk to each other and make the important decision about bringing up your child together.

## ***What happens if guardians disagree with each other?***

Care of Children Act 2004, ss 46E and 46R

If guardians can't agree on decisions about a child they can use Family Dispute Resolution (FDR) to try and resolve the disagreement.

If that doesn't work, you can apply to the court for it to make the decision. The welfare and best interests of the child will guide the court in any decision it makes.

*For more information see the Community Law Manual at [www.communitylaw.org.nz/legal-information](http://www.communitylaw.org.nz/legal-information) and search "family dispute resolution".*

## *Will I stop being the guardian of my child?*

Care of Children Act 2004, s 28

You remain a guardian of your child until:

- your child is 18 years old, OR
- your child get married or enters a civil union, OR
- your child lives with another person in a de facto relationship.

Guardianship also ends if a guardian is removed by the court, but this happens very rarely. *For more information see "When can guardians be removed?" in this section.*

## *Can anyone else be a guardian of my child?*

Care of Children Act 2004, ss 23, 27, 31

Usually the natural biological parents of a child are the child's guardians. A partner of a parent can be appointed as a guardian if the existing guardians appoint them.

This does not need a court application, although there is some paperwork. If there are two guardians, both guardians must give consent.

For example, if you have a new partner both you and the other parent of your child need to consent to your new partner being appointed as an additional guardian.

## *Can the court appoint additional guardians?*

Care of Children Act 2004, s 27

Yes. Additional guardians can be appointed by the court, a parent, or any other person (such a social worker). In deciding whether to appoint an additional guardian, the court must treat the welfare of the child as the most important consideration.

The court or Oranga Tamariki may sometimes be appointed as a guardian of a child, if the natural guardians are not fulfilling their responsibilities towards the child.

## ***Can my parents be the guardians of my children with me?***

Care of Children Act 2004, s 27

Yes, if you want your parents (or grandparents or other whānau, for example) to help you with bringing up your child.

To make this responsibility formal you can apply to the court for them to be appointed as additional guardians. If the child's other parent is a guardian, they would have to do this too. If they don't agree, the application would need to go to a full court hearing and the court would decide.

Remember that once your parents are appointed as guardians they will remain guardians, unless there is a very serious reason why they should be removed. This means that, until your child turns 18, you will need to work together to make decisions about your child's upbringing.

## ***If my child is living with other guardians, do I still have a say in how my child is raised?***

Care of Children Act 2004, s 16

Yes. You are still a legal guardian of your child. This means you must be involved in all important decisions concerning your child, even if your child is no longer living with you.

## ***If I have a new partner, can they become a guardian of my child?***

Care of Children Act 2004, s 23

In some situations, you may be able to appoint a new spouse or partner as an additional guardian. Your new partner would have to have been sharing the day-to-day care of your child for at least one year. The child's father would also have to agree to the appointment, even if they are not a guardian.

There are also a number of restrictions that apply. For example, your new partner will not be able to be appointed if they have been involved in court cases about the care of children, or have been an alleged abuser in a family violence case. Alleged means the person has been accused but it has not been legally proven.

There are also restrictions stopping your new partner being appointed if you or your child has been involved in Family Court cases or the child already has an additional guardian.

If you and your partner don't qualify for this, you can still both apply to the court on the grounds that it is in the child's welfare and best interests for your partner to be appointed as an additional guardian.

### *I don't want the other parent to be a guardian anymore. Can they be removed?*

Care of Children Act 2004, s 29

A guardian can only be removed in serious situations and it is only in very rare circumstances that a parent would be removed as a child's guardian. The parent would also have to be unwilling or unable to be a guardian.

You, a guardian, or a relative of the child can apply to remove a guardian which means they won't have the same rights and responsibilities towards the child anymore.

## Day-to-day care and contact with a child

### *What is day-to-day care?*

"Day-to-day care" means having the responsibility for the child's daily living arrangement. Responsibilities including the child's safety, making sure the child gets to school and that they are properly fed. Day-to-day care used to be called "custody".

### *What is contact?*

"Contact" means when the child spends time with a parent or other person who does not have day-to-day care of the child. Contact used to be called "access".

## ***Do I have automatic day-to-day care of my child?***

Care of Children Act 2004, s 16

As the birth parent, you are a legal guardian and are responsible for your child's day-to-day care.

## ***Does the other parent have automatic day-to-day care too?***

Care of Children Act 2004, s 16

The other biological parent may also be a legal guardian. If they are guardians too, they will also have a say in the day-to-day care of the child. *For information see the section on "Guardianship".*

If you and the other parent are not living together, both of you will need to decide how your child will be cared for.

## ***If I have an agreement with the other parent of my child, how do I make sure they stick to it?***

Care of Children Act 2004, s 40

If you and the other parent have made an agreement about how you will care for your child, you can apply to the Family Court to have that agreement made into a Court Order. You will need a lawyer to help you with this. *For information see the section on "Getting legal help".*

## ***What if the other parent and I can't agree on day-to-day care or contact?***

Care of Children Act 2004, s 46E

You can use the Family Dispute Resolution (FDR) service to help you reach a decision. FDR is a meeting with you, the other parent and another person who is trained to help people come to an agreement (mediator).

If you are on a benefit or low wage, FDR will be free. If you don't qualify for the FDR service, the cost of counselling may be reduced according to your income.

If you don't reach an agreement at FDR, you can apply to the court for a Parenting Order.

If FDR would not be safe for you (for example if you or your child were affected by family violence) you can apply straight to the court for a Parenting Order.

### *What is a Parenting Order and when would I need one?*

Care of Children Act 2004, s 48

Parenting Orders are orders made by the Family Court to decide who will have day-to-care of a child and who can have contact with a child. They are made as a last resort when parents haven't been able to agree on these things themselves.

### *When can I apply for a Parenting Order?*

Care of Children Act 2004, s 47B

If you and the other parent are not together anymore, you usually have to do a free Parenting Through Separation course in the two years before you can apply for a Parenting Order. The course might also help you to reach an agreement. You do not attend this course with the other parent of your child, but you can take a support person with you.

You may also need to use the FDR service (*see above question "What if the other parent and I can't agree on day-to-day care or contact?"*)

If you still haven't reached an agreement you can then make an application to the court for a Parenting Order.

### *Does it cost to apply for a Parenting Order?*

There's a filing fee for an application for a Parenting Order (unless you are eligible for legal aid). You can also make an application to waive the fee if you can't pay it.

## *What is supervised contact?*

Care of Children Act 2004, s 58

Supervised contact means that contact is overseen by an approved organisation or a suitable person approved by the Family Court, such as a relative or family friend. The cost of supervised contact is paid by the government.

## *How does the court decide about the care arrangement for a child?*

Care of Children Act 2004, ss 4, 64

In making a decision about the care arrangements for a child, the most important thing the court will consider is the welfare and best interest of the child. The court has to recognise that it is important for both parents to be in the child's life.

This means that the court will usually make a decision that makes sure the child is able to have a continued relationship with both parents, unless that would not be in the child's best interests.

## *What sort of rules could be in a Parenting Order?*

Care of Children Act 2004, ss 48, 55

A Parenting Order will record which parent has care for the child and at what times. For example, it could require that your child will stay with you from Monday – Thursday, and with the other parent from Friday – Sunday. It could also deal with who picks up your child from school and who drops them off. Your lawyer will explain the order to you.

If you and the other parent live in different neighbourhoods, the order could mean that your school-aged child stays with one parent during school terms, so that they don't miss out on school.

A Parenting Order could also record when the other parent can contact the child. For example, it could be that the child is in your care at all times, but the other parent can contact the child during weekends.

Parenting Orders have conditions on how you, or the other parent, take care of your child, or how either of you are able to see your child.

Conditions could include:

- a parent must make sure that the child is wearing a seatbelt when in the car;
- a parent needs to be supervised by someone else when they see the child;
- a parent cannot have any alcohol or drugs when they are taking care of, or seeing, the child;
- the parents cannot move towns;
- all parents will get copies of school reports and school notices;
- the child must continue to see a specific doctor / dentist;
- when the other parent has care of the child, they have to call you "mum" or "dad", or other term that you feel comfortable with. This rule means that the child feels more comfortable calling only you by that name and it also means that the child doesn't hear the other parent calling you any other names.

There's a lot of options here and the court could make different Parenting Orders for each child, if there is more than one child in the relationship. This could be because the children are of different ages, or have different relationships with you and the other parent.

When deciding how day-to-day care and contact will be divided between the two of you, the most important thing is the welfare and best interest of the child.

### *I have a Parenting Order but the other parent doesn't stick to it. What can I do?*

Care of Children Act 2004, ss 40, 68, 78

First you and the other parent should try and work it out between yourselves. You can include your lawyers, or the lawyer

for the child, to help you through this process. If you can't solve this, you can apply to the court to deal with breaches of the Parenting Order.

The court can deal with the breaches in many ways, such as by telling the other party off as a warning or changing the order. In serious situations, the court can involve the police or a social worker to help enforce the order.

It is also a criminal offence to intentionally breach a Parenting Order without a reasonable excuse. A person can be jailed for up to 3 months, or fined up to \$2,500.

### *Can someone else apply for a Parenting Order?*

Care of Children Act 2004, s 47

Other people (like other family members) may be able to get permission from the court to apply for a Parenting Order. There are specific situations where another family member may be able to apply.

For example, if the other parent of your child has passed away, refused contact with the child by the court, or they are making no attempt to have contact, then their parents or siblings may be able to apply for a Parenting Order.

### *What if the other parent has been violent toward me or my child?*

Family Violence Act 2018, ss 90, 91 and 96; Care of Children Act 2004, ss 4, 5, 5A, 58 - 60

You should seek help and report this to the police. Violence against you or your child is a crime.

You can also get legal protection against family violence by getting a Protection Order. If you have a Protection Order against the other parent, they won't be allowed to live with you or see your child, unless you agree.

*See the Family law chapters in the Community Law Manual for more information. [www.communitylaw.org.nz/legal-information](http://www.communitylaw.org.nz/legal-information)*

# Child support and benefits

## *What is Child Support?*

Child Support is money paid by a parent who is not living with their child (the "liable parent") to help with the cost of raising the child. Sometimes, Child Support is paid where you and the other parent share the day to day care of your child. To find out more, or to apply, contact Inland Revenue.

## *Can I apply for Child Support?*

You can apply for Child Support against the liable parent if you are the sole or principal caregiver of your child, or you share the care of your child with another person.

## *Will the other parent have to pay Child Support?*

Child Support Act 1991, s7

They will have to pay Child Support if they do not live you and:

- their name is on the child's birth certificate as the parent or mother or father, OR
- they were married to you and the child was born, or conceived, during your marriage, OR
- they legally adopted the child, OR
- a court has found them to be the parent, OR
- the court has declared them to be a step-parent, OR
- they are the natural father of the child and have been appointed a guardian by the court.

## *The parent that has to pay is still at school. Will they have to pay Child Support?*

Child Support Act, s 89E

If they fall into one of the categories listed above they will have to pay. However, if they're under 16 years old and don't have any income, they probably won't need to pay Child

Support until they turn 16, or start getting an income (speak to IRD).

### *How long will a parent have to keep paying Child Support?*

Child Support Act, s 5

They have to pay Child Support until your child:

- turn 18 (or if they are 18 and at highschool, when the school year ends)
- is adopted
- gets married, enters a civil union or de facto relationship
- becomes financially independent (this could be because they are working full time on an average of 30 hours or more a week, or by receiving a benefit or student allowance).

### *How much Child Support will they have to pay?*

There is a formula to work out how much Child Support they have to pay. The formula looks at their income, the number of children they are supporting, whether they share care of your child, and their cost of living. If either of you are on Sole Parent Support or an Unsupported Child's Benefit you must use this formula.

The Inland Revenue website ([ird.govt.nz](http://ird.govt.nz)) has an online calculator you can use to check what they may have to pay.

You and the other parent can also agree on an amount that will be paid between the two of you ("voluntary agreement"), with or without Inland Revenue involvement.

### *Can I get financial support from Work and Income?*

Whether or not you are eligible for any financial support from Work and Income will usually depend on your income, living circumstances, whether or not you have a partner, and your age. Always discuss thoroughly, and be honest about, your situation with staff at Work and Income. Your individual

circumstances are extremely important and should be taken into account.

You can also get additional support from your local benefit rights service, Citizens Advice Bureau or Community Law Centre.

### *Can I get financial support for the costs of childcare?*

Yes, Work and Income can help with childcare costs so that you can return to full-time education.

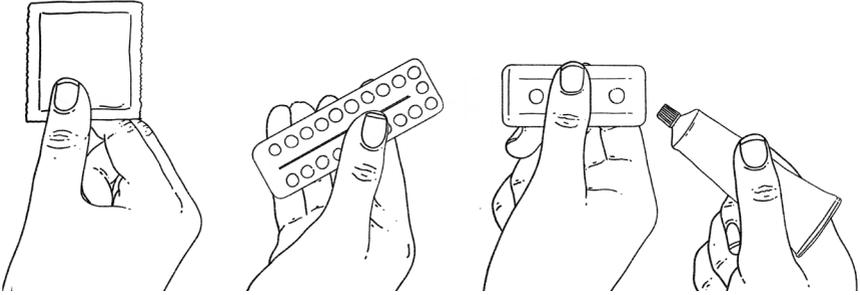
If you are under 20 and have a child under five (or is five but can't start until the next school term), and are in full-time study, training or work-based learning, you may be able to get the Guaranteed Child Care Assistance Payment (GCAP) to assist with the cost of childcare.

### *What are Working for Families Tax Credits?*

Working for Families Tax Credits (previously called "Family Assistance") are payments made by Work and Income (if you're on a benefit) or Inland Revenue (if you're working) to families with dependent children. These payments are to help with your day-to-day family costs and are intended to make it easier to work and raise a family. There are a range of different types of payments.

To be eligible for Working for Families Tax Credits you must be the principal caregiver for your child and be aged 16 years or older.

If you are under 16 and living with your parents, they might be able to claim Working for Families Tax Credits for both you and your baby.



# Dealing with Oranga Tamariki

## *What is Oranga Tamariki?*

Oranga Tamariki – Ministry of Children is the part of the New Zealand government that is responsible for making sure children and young people under 18 are safe and protected from abuse and neglect.

Oranga Tamariki is supposed to help families find ways to care for their children. When families can't care for their children, Oranga Tamariki is supposed to provide care and protection for them.

## *What if I think a child is in danger at home?*

Crimes Act s 195A

People who are over 18 that know a child abuse is happening in their home (for example, by their partner or parent), must take reasonable steps to protect the child from death, serious harm or sexual assault – for example, calling the police or reporting the crime to Oranga Tamariki (0800 FAMILY – 0508 326 459).

If a person doesn't take reasonable steps to protect a child from death, serious harm or sexual assault, they are committing a crime and could face up to 10 years in prison.

### ***What if someone complains to Oranga Tamariki about how a child is being treated?***

Oranga Tamariki Act 1989, ss 15, 17

The complaint will be investigated by a social worker and/or the police. As part of the investigation a social worker or a police officer will come and talk to the parents of the child and the family. The social worker or police officer must decide whether or not they believe that the child is in need of care and protection.

### ***If someone complains to Oranga Tamariki about another person's parenting, can you find out who it was?***

No, that person's name is protected under the Privacy Act.

### ***What should I do if Oranga Tamariki wants to investigate my family?***

If Oranga Tamariki is involved, it's important to work with the Oranga Tamariki social worker, and not to avoid them. Some immediate changes can be made that might help satisfy the Oranga Tamariki social worker that the home is a safe place.

If you think Oranga Tamariki might take your child out of your care, it's important to see a lawyer as soon as possible, and also to access help and advocacy from an independent local social work service.

Visit your local Community Law Centre to get legal help.

*For more detailed information on Oranga Tamariki, see "Dealing with Oranga Tamariki/ Ministry for Children" in the Community Law Manual [www.communitylaw.org.nz/legal-information](http://www.communitylaw.org.nz/legal-information)*

# Legal Aid

## *What is legal aid?*

Legal aid will help pay for your lawyer's fees and you won't need to pay it back. If you are on a benefit you will usually be able to get legal aid.

There are two types of legal aid - Civil/Family Legal Aid and Criminal Legal Aid.

Civil/Family legal aid is to help with the legal costs of bringing or defending a civil case (for example, if you take your boss to the Employment Relations Authority) or a case in the Family Court (for example, a Parenting Order).

*For more information see [www.communitylaw.org.nz/legal-information](http://www.communitylaw.org.nz/legal-information) and search 'legal aid'. You can also contact your nearest Community Law Centre.*

# Where to go for more support

## *Community Law Centres*

Community Law Centres are independent community organisations that provide free legal support for members of the public. There are 24 Community Law Centres across Aotearoa, and even more outreach clinics. Find the details of your nearest Community Law Centre at [www.communitylaw.org.nz](http://www.communitylaw.org.nz)

## *Community Law Manual*

Check out the Community Law Manual for more easy-to-read legal information across community, family and personal life.

free online at [www.communitylaw.org.nz/legal-information/](http://www.communitylaw.org.nz/legal-information/)  
email [publications@wclc.org.nz](mailto:publications@wclc.org.nz) to buy a hard copy

## *Other helpful services mentioned in this guide*

### *Citizens Advice Bureau*

Free volunteer service that can help you navigate your rights, responsibilities and other services available to you

0800 367 222  
[www.cab.org.nz/](http://www.cab.org.nz/)

### *Barnados*

Nationwide charity that provides support and guidance to parents, whānau and communities

0800 227 627  
[www.barnados.org.nz/](http://www.barnados.org.nz/)

### *Family Planning*

Family Planning clinics help with contraception, STI testing and treatment, cervical screening, pregnancy testing, abortion advice, HPV vaccinations, and advice for other sexual and reproductive health issues

04 384 4349  
[www.familyplanning.org.nz/](http://www.familyplanning.org.nz/)

### ***Healthline***

A free phone line that provides health advice, anytime, 24 hours a day, 7 days a week  
0800 611 116  
[www.healthline.com/](http://www.healthline.com/)

### ***Plunket***

Health and wellbeing support service for tamariki (under 5) and their whānau.  
Centres nationwide  
0800 933 922 (available 24/7)  
[www.plunket.org.nz/](http://www.plunket.org.nz/)

### ***NZ College of Midwives***

Can help with midwife related queries, including finding a midwife  
03 377 2732  
[www.midwife.org.nz/midwives](http://www.midwife.org.nz/midwives)

## **Government**

### ***Ministry of Health***

0800 855 066  
email: [info@health.govt.nz](mailto:info@health.govt.nz)  
[www.health.govt.nz/](http://www.health.govt.nz/)

### ***Office of Births, Deaths and Marriages***

Register a birth and order birth certificates  
0800 22 52 52  
[www.govt.nz/organisations/births-deaths-and-marriages](http://www.govt.nz/organisations/births-deaths-and-marriages)

### ***Oranga Tamariki***

General enquiries  
0508 326 459  
email: [enquiry@ot.govt.nz](mailto:enquiry@ot.govt.nz)  
Adoptions phonenumber: 0508 326 459  
[www.orangatamariki.govt.nz/](http://www.orangatamariki.govt.nz/)

## ***Sexual and Family Violence - Free phone lines***

Victim Support 0800 842 846

Rape Crisis 0800 88 33 00

Youthline 0800 37 66 33

Women's Refuge Crisis Line 0800 733 843

Shine 0508 744 633

## **Complaints and advocacy**

### ***Employment Relations Authority***

50 Customhouse Quay

Wellington

04 915 9550

[www.era.govt.nz/](http://www.era.govt.nz/)

### ***Health and Disability Commissioner***

Advocacy and support with making complaints

0800 11 22 33

[www.hdc.org.nz/](http://www.hdc.org.nz/)

### ***Human Rights Commission***

PO Box 5045

Wellington

0800 496 877

[www.hrc.co.nz/](http://www.hrc.co.nz/)

### ***Nationwide Health and Disability Consumer Advocacy Service***

0800 555 050

[advocacy.org.nz/](http://advocacy.org.nz/)