

20th July 2022

Improving arrangements for Surrogacy Bill

New Zealand College of Midwives

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The New Zealand College of Midwives is the professional organisation for midwifery. Our members are employed and self-employed and collectively represent over 90% of the practising midwives in this country. There are approximately 3,000 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to, on average, 60,000 women and babies each year. Aotearoa has a unique and efficient maternity service model which centres care around the needs of the woman and her baby.

Midwives undertake a four-year equivalent undergraduate degree to become registered followed by a first year of practice program that includes full mentoring by senior midwives. The undergraduate curriculum meets all international regulatory and education standards. Midwives are authorised prescribers in relation to their Scope of Practice as determined by the Midwifery Council.

Midwives provide an accessible and primary health care service for women in the community within a continuity of carer model as Lead Maternity Carers. Midwives can also choose to work within secondary and tertiary maternity facilities, providing essential care to women with complex maternity needs.

The College offers information, education and advice to women, midwives, Te Whatu Ora, health and social service agencies and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health and wellbeing



New Zealand
College of Midwives
TE KĀRETI O NGĀ KAIWHAKAWHANAU KI AOTEAROA

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Improving arrangements for Surrogacy Bill

Tēnā koutou

The New Zealand College of Midwives (the College) welcomes the opportunity to provide feedback for the review of surrogacy.

We understand that the aim of this is to streamline and better regulate the surrogacy process in Aotearoa. Surrogacy has been described positively as a unique method of building a family by the Law Commission but it does involve complex ethical, medical and safety issues for the woman who is acting as a surrogate as well as the infant/child in the future. As midwives the welfare and best interests of childbearing women and their children are our primary interests, along with laws, institutional and environmental policies and practices that affect them. Midwifery in Aotearoa utilises a partnership model of care which is holistic, and underpinning this practice philosophy is a concern for women's rights, health, psychological wellbeing, sexuality, reproduction, social support, autonomy, and empowerment.

We are aware that The Law Commission has provided a report to the government for improving the legal framework for surrogacy in Aotearoa. The College made a submission in October 2021 to the Law Commission's issues paper on surrogacy.

Feedback from the College is below:

1. Surrogacy arrangements raise ethical issues for women related to reproductive freedom, health and wellbeing. As it is women who are undertaking pregnancies and birthing (and

potentially undertaking risk in some situations) for surrogacy purposes, autonomy and the recognition of the rights of these women need to always be taken into account to avoid discrimination and exploitation, as has been reported internationally.

2. In regards to the language used under section 66A of the Act we support the continuation of the use of the term surrogate. We would like to register our opposition to any recommendation to change the term surrogate to gestational carrier – a term we note is being used in some policies. The term gestational carrier is dehumanising.
3. In regards to the use of language the College would not support the removal of the word woman from the Surrogacy Bill. The ‘additive use’ approach described in the Brighton and Sussex University Hospital guidance¹ is preferable, where necessary.
4. The College supports a post-birth model of consent by the surrogate which means the surrogate woman provides final consent after giving birth, as recommended by the Law commission, rather than the proposal of an enforcement of pre-birth surrogacy orders.
5. We strongly oppose a pre-birth consent model. This is consistent with our point related to women’s autonomy during pregnancy and birth.
6. The reproductive rights of the surrogate are supported with the post-birth consent model but not with the pre-birth consent model.
7. In regards to point 5 and autonomy, the College considers that the surrogate woman also retains the right to terminate her pregnancy.
8. Powell & Baird ² suggest there are relevant rights related to women acting as surrogates that are recognised in international human rights law, and they describe the ability for the surrogate to exercise control over her pregnancy as a critical issue. Relevant rights are the right to health; the right to privacy; the right to work; the right to just and favourable working conditions; and the right to freedom from discrimination.
9. Powell & Baird ³ state that the right to health requires that a surrogate should receive antenatal, intrapartum and postnatal healthcare of an adequate standard. The College considers that the birth mother should retain her autonomy in regards to her body and her pregnancy which includes being able to determine care received during pregnancy, labour,

¹ Brighton and Sussex University Hospitals. (2020). Gender inclusive language in perinatal services: Mission statement and rationale. <https://www.bsuh.nhs.uk/maternity/wp-content/uploads/sites/7/2021/01/Gender-inclusive-language-in-perinatal-services.pdf>

² Powell, R., & Baird, N. (2020). *Surrogacy and human rights in New Zealand*. School of Law, University of Canterbury.

³ Ibid

and birth and the postnatal period. Informed consent is paramount and this also includes the ability to refuse / withhold consent to treatment without coercion.

10. The College supports an administrative pathway for transfer of legal parenthood as outlined by the Law Commission as opposed to the court processes under the Bill.
11. The College agrees with the Law Commission in terms of the fundamental importance of a person's origins and whakapapa and considers that information about surrogacy arrangements should be preserved and accessible to the child in the future.
12. The College does not support commercial surrogacy arrangements due to the potential for exploitation of women, and we agree that this should remain illegal in Aotearoa.
13. The College is aware of recent legal battles in regards to couples engaging in surrogacy arrangements when they did not achieve their required outcome in terms of the sex of the infant.^{4 5} These situations have occurred when the surrogacy arrangements were made using a fertility clinic who agreed to explicit requests about the desired sex of the infant. Sex screening for fertilised eggs to enable intending parents to choose the sex of the infant is unethical and problematic, and illegal in Aotearoa. This may have no relevance for the contemporary context in Aotearoa, but we consider that increasing the awareness of the full complexity of the issues that can arise in surrogacy when arranged through overseas providers is necessary.

Other issues that concern the College are related to support during birth recovery for the surrogate mother. Urgent consideration of these associated issues is necessary. It is important to consider the differences between maternity leave for birth recovery and parental leave. We consider that women who undertake surrogacy, as well as the intended parents, should be eligible for maternity/parental leave.

Thank you for the opportunity to make a submission.

Ngā mihi

New Zealand College of Midwives | Te Kāreti O Nga Kaiwhakawhanau Ki Aotearoa

⁴ <https://www.cbsnews.com/losangeles/news/same-sex-couple-sues-fertility-clinic-over-alleged-wrong-sex-embryo-implant/>

⁵ <https://www.news.com.au/lifestyle/parenting/pregnancy/couple-who-asked-for-female-embryo-sues-fertility-clinic-over-baby-boy/news-story/208afead1791139fa034f24e3973e9f7>

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