

MEDIA RELEASE

Petition for adoption law reform – adoption and surrogacy

Adoption Action agrees that the Adoption Act 1955 is long overdue for review. The Law Commission stated this very strongly in 2000.

In 2016 the Human Rights Commission called for urgent reform of New Zealand adoption laws, following a Human Rights Review Tribunal finding that the Adoption Act and the Adult Adoption Information Act 1985 contradict New Zealand's human rights legislation by discriminating against people based on sex, age, marital status and disability.

Adoption Action agrees with the petitioners that the Adoption Act 1955 needs updating. But any reform must prioritise the best interests of the child and their vulnerabilities, and protect the women who give birth to the children concerned, rather than focusing mainly on the wishes of the intending parents.

Surrogacy in New Zealand is essentially based on a relationship between intending parents and a surrogate. As far as we know, under the current legislation there have been no disputes between the parties after a child's birth. This is evidence of the value of a system that is based on altruism, informed decision making, counselling and ethical review before an arrangement takes place. Using adoption law means that the birth mother's involvement is permanently recorded.

The functions of the Ethics Committee on Assisted Reproductive Technology (ECART) are distinctly different in law and operation from those of Oranga Tamariki, and this difference should be retained. ECART does not have the right to request and access information held by Oranga Tamariki (eg financial and police vetting information). Moreover, ECART does not review surrogacy arrangements outside a fertility clinic, and is not currently required to look at fertility clinic surrogacies which use a surrogate's own eggs.

There are valid arguments that adoption is not an appropriate mechanism to transfer legal parenthood after a child is born from a surrogacy arrangement. The purpose of adoption is to provide a permanent family for a child in need of such care, whereas the purpose of surrogacy is to create a child where an intending parent is unable to gestate a pregnancy.

However, adoption and surrogacy should both make the interests of children paramount, and protect the vulnerability of birth mothers/surrogates. Currently neither the Adoption Act 1955 nor the Human Assisted Reproductive Technology (HART) Act 2004 make children's interests and welfare paramount. Where a surrogacy uses donated eggs or sperm, offspring wanting to obtain information about the surrogate and donor will find inconsistencies (eg age at which information can be accessed) between the Adult Adoption Information Act and the HART Act.

We are pleased to note the Prime Minister's comment that adoption law reform is on the Government's work programme, and look forward to details about when such work will begin. But any such changes must fully protect the rights and interests of both children and birth mothers.

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