

Improving Arrangements for Surrogacy Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Improving Arrangements for Surrogacy Bill and recommends that it be passed. We recommend all amendments unanimously.

Structure of this commentary

This commentary is set out as follows:

- About the bill and the process followed
- Overview of the current arrangements for surrogacy
- Our proposed amendments to the bill as introduced
- Other matters that we wish to highlight.

About the bill and the process followed

The Improving Arrangements for Surrogacy Bill was referred to the Health Committee of the 53rd Parliament on 18 May 2022. It was originally a Member's bill in the name of Tāmari Coffey, MP. The bill as introduced seeks to simplify surrogacy arrangements, provide a mechanism for enforcing them, and ensure that information recorded on birth certificates is complete. It would amend five Acts and two sets of Regulations.

On 30 May 2023, the previous Government announced that it had agreed to adopt the bill as a Government bill. The bill was reinstated with our committee in the 54th Parliament. Both committees sought and obtained several extensions to the report-back date to enable further detailed consideration of the bill.

Consideration by the Health Committee of the 53rd Parliament

In 2020, the Government asked the Law Commission to undertake a review of surrogacy. On 27 May 2022, shortly after the bill was referred to the committee, the Commission published its final report on its review.¹ That report made 63 recommendations addressing a range of issues related to existing surrogacy law, regulation, and practice. It also identified areas where further review or consideration was needed.

The bill and the Commission have different approaches to some policy matters. The Commission's report also addressed a wider range of policy areas, some of which were outside the scope of the bill. In the 53rd Parliament the committee received permission from the Business Committee to consider out-of-scope amendments and the recommendations in the Commission's report.

The committee received advice on whether the bill could be amended to incorporate the Commission's recommendations for legislative change. That advice, in the form of a departmental report dated May 2023 and supplementary advice dated 10 August 2023, contained 67 recommendations for amendments to the bill. The committee asked the Parliamentary Counsel Office to reflect the recommendations in that advice and prepare a revision-tracked version of the bill.

The committee published two interim reports to update the House on its progress.² In the second interim report, the committee informed the House that it had asked the Parliamentary Counsel Office to redraft the bill to incorporate the recommended changes.

Our consideration of the bill

The bill was reinstated with our committee in the 54th Parliament. In August 2024, we received a redrafted version of the bill that incorporated the changes recommended in the advice that we received. We also presented a third interim report to the House.³ Its purpose was to release the redrafted version of the bill for public input and to highlight specific matters that we were seeking feedback on. That public consultation has further informed our consideration and our proposed amendments to the bill, which we set out in this commentary.

We thank submitters for their efforts and engagement on the bill. We also wish to acknowledge Tāmati Coffey for his initial work in progressing the bill.

¹ A copy of the report *Te Kōpū Whāngai: He Arotake: Review of Surrogacy* is available on the Law Commission's website.

² The interim reports are available on the Parliament website.

³ The third interim report is available on the Parliament website.

Overview of the current arrangements for surrogacy

In New Zealand, surrogacy is regulated by several Acts and ethical committees. We set out below some of the main provisions. Further detail is provided in the body of our report.

Surrogacy refers to an arrangement under which a surrogate and intended parents agree that the surrogate will become pregnant and carry and give birth to a child for the intended parents to raise. Surrogacy arrangements take two forms. “Gestational surrogacy” is an arrangement where the surrogate does not use her own ovum in conception. An embryo is created using an ovum and sperm from the intended parents or donors. The surrogate is not the genetic mother of the child and the child is usually genetically linked to one or both of the intended parents. “Traditional surrogacy” is an arrangement where the surrogate’s ovum is used in conception, meaning she is the child’s genetic mother. Pregnancy is usually achieved by artificial insemination using the sperm of an intended parent or a donor.

Ethics committee approval

Under the Human Assisted Reproductive Technology Act 2004 (the HART Act), only altruistic surrogacy arrangements are permitted in New Zealand. Commercial arrangements are prohibited and a surrogate is not allowed to receive a fee for the role she plays. Payments are permitted for:

- collecting, storing, transporting, or using a human embryo or gamete⁴
- counselling
- insemination or in-vitro fertilisation (IVF)⁵
- ovulation or pregnancy tests
- legal advice for the surrogate.

Two committees were established by the HART Act to develop and implement detailed policy relating to surrogacy, other assisted reproductive procedures, and human reproductive research. The Advisory Committee on Assisted Reproductive Technology (ACART) develops ethical guidelines, which cover factors such as health, ethical, legal, psychological, and cultural aspects of surrogacy arrangements. The Ethics Committee on Assisted Reproductive Technology (ECART) assesses, against the guidelines, applications to undertake assisted reproductive procedures and research.

⁴ A gamete is a human reproductive cell. A female gamete is called an ovum and male gametes are called sperm.

⁵ IVF is an assisted reproductive procedure where ovum is combined with sperm outside the body. It is used in gestational surrogacy arrangements and requires the assistance of a fertility clinic.

Gestational surrogacies are achieved using IVF that usually involves donated ovum combined with donated sperm. They usually require ECART's approval before they can proceed. Pregnancy for traditional surrogacies is achieved through artificial insemination, which is considered to have lower health and ethical risks than IVF. They therefore do not require ECART approval.

ACART guidelines require parties to prospective gestational surrogacy arrangements to receive legal and medical advice, and counselling about the implications of the arrangement. They also set requirements relating to matters like the reasons for the arrangement, consent, future care arrangements for the surrogate-born child, and other matters intended to safeguard parties, including the child.

The HART Act states that surrogacy arrangements are unenforceable. Consequently, a court will not take action to require parties to abide by the surrogacy agreement.

Transferring parenthood in surrogacy arrangements

The Status of Children Act 1969 specifies that the surrogate and their partner (if any) are the legal parents of a surrogate-born child. No legislation deals specifically with the transfer of legal parenthood in surrogacy arrangements. To become the child's legal parents, the intended parents must apply to the court to adopt the child under the Adoption Act 1955. This is despite one or both of the intended parents often being the child's genetic parent.

Before the court can make an adoption order, a social worker must provide a report about the adoption application. The report's purpose is to inform the court about the applicants' suitability to adopt and whether an adoption will promote the welfare and best interests of the child. The current practice involves endorsement from Oranga Tamariki, following an assessment of the intended parents before conception. ACART guidelines require parties to a surrogacy arrangement to have sought independent legal advice and to have discussed and declared intentions between themselves about day-to-day care, guardianship, and adoption of a resulting child.

Registering the birth of a surrogate-born child

Sections 10 and 12 of the Births, Death, Marriages, and Relationships Registration Act 2021 provide that a birth must be notified to the Registrar. After adoption, the Family Court must notify the Registrar-General to record adoption information in the child's birth registration. A birth certificate issued before adoption will record the surrogate and any partner as the parents. It will not include information about the intended parents or the surrogacy arrangements. A birth certificate issued after the adoption will record the intended parents as if they are the child's birth parents.

International surrogacy

International surrogacies make up about 40 percent of surrogacy arrangements entered into by New Zealand parents. Intended parents pursuing surrogacy overseas do not need to seek ECART approval, and the prohibitions on commercial surrogacy do not apply. The government has established processes for a child born overseas to enter New Zealand. The intended parents can then seek a domestic adoption

through the New Zealand courts, which is subject to checks and balances that focus on the child's best interests. This process reflects the fact that other countries allow commercial surrogacy and that some New Zealanders use this option to seek to bring the child back to New Zealand.

Our proposed amendments

Typically, bill commentaries cover the main amendments recommended to the bill as introduced. Our proposed amendments have resulted in a bill that is substantially different from the one that was introduced. This makes comparisons between the two difficult and not particularly meaningful. We recommend retaining the title of the bill as introduced (clause 1) but deleting the remainder (clauses 2 to 32) and inserting new provisions. We recommend inserting the following:

- clauses 10A–10W: amendments to the Human Assisted Reproductive Technology Act 2004
- clauses 18–19L: amendments to the Status of Children Act 1969
- clauses 19M–19R: amendments to the Citizenship Act 1977
- clauses 25A–25S: amendments to the Births, Deaths, Marriages, and Relationships Registration Act 2021
- clauses 25T–25W: amendments to the Income Tax Act 2007
- clauses 33–42: amendments to other Acts.

This commentary covers the substantive changes to the bill as introduced. In addition to inserting new provisions that reflect, to a significant extent, the recommendations in the Law Commission's report, the bill includes a number of technical or consequential changes to improve its workability. We have not generally discussed those changes.

Commencement

Clause 2 provides that the bill would come into force on the day after the date of Royal assent. We understand that time would be needed to implement the new systems. A delay in the provisions coming into force is therefore necessary for most provisions. We recommend amending clause 2 to provide that the legislation should come into force a year after the date of Royal assent. The exception would be the provisions in clause 10I that relate to the review panel (new sections 23L–23S), which would come into force 18 months after Royal assent.

Ethics and advisory committee processes

ECART approval of a surrogacy arrangement

We note that traditional surrogacy does not normally involve any assisted reproductive procedures. However, it may involve an established procedure such as IVF or clinic-assisted artificial insemination.⁶ Although ECART approval is not required, fertility clinics may refer traditional surrogacy arrangements to ECART for ethical

review and non-binding advice. We recommend that the requirement for ECART approval should be extended to all traditional surrogacy arrangements that are clinic-assisted.

We recommend inserting clause 10I, new section 23E to this effect. If the surrogacy arrangement involved the assistance of a provider performing an assisted reproductive procedure, prior written ECART approval would be needed for the arrangement and the procedure. For surrogacy arrangements involving the assistance of a provider performing an established procedure, prior written ECART approval would only be needed for the arrangement.

Traditional surrogacy arrangements can also occur without the involvement of a fertility clinic. At present, it is only possible to seek ECART advice through fertility clinics. We think that the HART Act should allow direct applications to ECART, and our proposed new section 23F would enable this.

Oranga Tamariki surrogacy reports

New section 23H, inserted via clause 10I, would require Oranga Tamariki to prepare a report for all applications for approval of a surrogacy arrangement. Its purpose would be to advise ECART whether it had identified any concerns related to the risk of serious harm to any resulting child of the proposed surrogacy arrangement.

Clause 10W, new section 76(1)(aa) would enable the Governor-General to make regulations prescribing specified matters relating to social worker reports, including the steps and actions that must be taken by a social worker in preparing a surrogacy report. Before recommending that the regulations be made, the Minister responsible for the Oranga Tamariki Act 1989 would need to consult both the Minister of Justice and the Minister of Health (to provide input as the Minister responsible for ECART). The Minister responsible for the Oranga Tamariki Act would need to be satisfied that any regulations prescribed are necessary to identify any risk that the intended parents could cause serious harm to the future child.

Review of ECART decisions

The HART Act does not contain a right to review or appeal ECART decisions. ECART can only reconsider an application if relevant new information becomes available. We recognise that this could be a concern for applicants because ECART's decisions could end a person's pathway to building a family. The decision could also encourage them to use an arrangement outside the ECART process or an international surrogacy arrangement, both of which entail reduced oversight.

We recommend inserting sections 23L to 23S (via clause 10I) to provide for an independent right of review of any ECART decision declining approval of a surrogacy arrangement or a decision imposing a condition on approval. Our proposed amend-

⁶ The HART Act defines "established procedure" as any procedure, treatment, or application declared to be an established procedure under section 6 of the Act.

ments provide for a review panel to be established and reflect the range of procedural requirements that would be needed to ensure that a review was procedurally fair. The new sections set out the composition, powers, and duties of the panel.

Composition of the advisory and ethics committees

The HART Act sets requirements for ACART's membership. The committee must have between 8 and 12 members, and its membership must include expertise in a range of matters. The matters include having at least one member who is Māori, with expertise in Māori customary values, and at least one member who can articulate the interests of children.

The Act provides that ECART membership must include at least one member with expertise in assisted reproductive procedures and one with expertise in assisted reproductive research. The committee's requirements, including membership, are otherwise set in its non-legislative terms of reference. The terms of reference specify that ECART must have between 8 and 12 members, with at least 2 being Māori. They do not contain a requirement for members who may be able to articulate the interests of children.

The Law Commission recommended that the Government should review the membership requirements for ACART and ECART. It suggested that the review should consider amending the HART Act to require:

- a minimum two Māori members to be appointed to each of ACART and ECART
- at least two members of each of ACART and ECART to have the ability to articulate the interests of children
- a minimum of two members to be appointed to ECART with expertise in assisted reproductive procedures.

The Law Commission also suggested that ECART membership requirements should be prescribed in legislation rather than terms of reference.

We understand that, historically, committees have had challenges recruiting Māori and people with medical expertise. Setting prescriptive membership requirements in legislation could result in committees being unable to perform their legislative functions if the required expertise was unavailable. Assisted reproductive procedures and research could therefore not be approved, and ethical guidelines could not be updated. Despite this, some of us still support the Law Commission's recommendations.

However, we recommend inserting clauses 10L, which would amend section 27 (Designation of ethics committee), and 10Q, which would amend section 34 (Appointment of members).

Cancelling an ECART approval

We recommend inserting section 23K(5) to enable ECART to cancel an approval for a surrogacy arrangement. Our rationale for the timing of the cancellation relates to the pathways for legal parenthood, which are detailed later in this commentary. We

therefore discuss this recommendation in that section. To support transparency, we have also recommended that ECART report on the number of approvals cancelled by the committee (see next section below).

Reporting requirements for ethics and advisory committees

The HART Act specifies that ACART must provide an annual report to the Minister of Health. The report must outline ACART's progress in carrying out its functions and include information about ECART's decisions (the number and types) made in the period. The report should be provided as soon as practicable after each 12-month period ending on 30 June. The Act does not require ECART to prepare an annual report about its operations (although ECART does currently produce reports in accordance with its terms of reference).

We consider that the reports are an important information source for the public, and the information contained in them is useful for identifying emerging issues early. Therefore, we recommend inserting clause 10P, new section 31A(1) to require ECART to prepare an annual report about its operations. The annual report should include information about:

- the applications ECART received and its decisions
- feedback or complaints received about the operation of ECART's approval process
- actions taken in response to the feedback or to resolve the complaint
- the number of cancellations of approved surrogacy arrangements.

We also recommend inserting section 31A(3) via clause 10P, and section 42A(3) via clause 10U, to require ECART and ACART to publish their reports on their websites as soon as practicable.

Allowing people to use gametes that they preserved when a minor

Section 12 of the HART Act provides that it is an offence to obtain or use a gamete (sperm or eggs) from a person aged under 16, unless it was obtained to preserve the gamete or to bring about the birth of a child who would be raised by the person from whom the gamete was removed. This provision is usually used when a young person is about to undergo cancer treatment, which could harm their reproductive capacity. The current law does not allow the person, once they are an adult, to consent to their own gamete being used for another legal purpose such as a surrogacy arrangement.

We note that this provision was not part of the Law Commission's report or the bill as introduced, and it was not addressed in submissions. We received permission from the Business Committee to consider an amendment to this provision. We recommend inserting clause 10E, to replace section 12, enabling an adult who had gametes extracted when they were a minor to consent to the use of the gametes for any legal purpose in the same way as any other person could if the extraction had occurred when they were an adult.

Costs associated with domestic surrogacy arrangements

Under the HART Act, it is an offence to give or receive “valuable consideration” for participating in a surrogacy arrangement. The offence is punishable by imprisonment, a fine, or both. The term is defined as including “an inducement, discount, or priority in the provision of a service”. It is therefore unclear what it includes.

Section 14(4) of the Act allows payments to medical providers and legal advisers for a narrow range of costs relating to fertility treatment, counselling, and legal advice. Many of these services need to be accessed to submit an ECART application. The Act contains no explicit provisions for payments to a surrogate.

We recommend inserting section 23C(2)(d) (via clause 10I) to permit payments to the surrogate for any reasonable costs incurred that are associated with the surrogacy arrangement. We recommend inserting section 23D to provide a non-exhaustive list of what would be considered a reasonable cost.

We understand that the offence related to giving or receiving “valuable consideration” could be interpreted as prohibiting any paid advertising for a surrogacy arrangement. We were told that this can restrict the ability of intended parents to reach beyond their existing networks when searching for a surrogate. We recommend inserting section 23C(2)(c) to specify that the permitted payments include payments for advertisements in relation to lawful surrogacy arrangements.

We recommend inserting clause 25U, to insert section CW 63B into the Income Tax Act to make it clear how payments of reasonable surrogacy costs would interact with income tax liabilities and entitlements to the Working for Families tax credit. Our proposed amendment specifies that only the reimbursement of a surrogate’s loss of wages would be taxable or considered family scheme income.

Section 14(1) of the HART Act states that, although a surrogacy arrangement is not of itself illegal, it is not enforceable by or against any person. We recommend inserting section 23B(2) via clause 10I to provide that an obligation to pay or reimburse reasonable surrogacy costs is enforceable if they were agreed pre-conception.

Transferring legal parenthood in domestic surrogacy arrangements

Current legislative provisions

“Legal parenthood” refers to the parent–child relationship established in law. Numerous rights and entitlements flow from this relationship, including those relating to inheritance, child support, and citizenship.

The legal parents of a surrogate-born child are determined by common law and rules under the Status of Children Act. These rules were developed for people born by donor-gamete conception. As a result, the surrogate is the legal mother of the surrogate-born child. If the surrogate has a partner, they are also a legal parent, unless there is evidence that they did not consent to the assisted reproductive procedure.

As previously noted, no legislation deals specifically with the transfer of legal parenthood in surrogacy arrangements. To become the legal parents in place of the surrogate

and any partner, intended parents must apply to the court to adopt the surrogate-born child. Section 11 of the Adoption Act provides that the court can make an adoption order if it is satisfied that the applicants are fit and proper to care for and raise the child. The court must also be satisfied that the child's welfare and interests will be promoted by the adoption.

The Law Commission considered that current adoption legislation is inappropriate for dealing with surrogacy cases. The following were some of its concerns:

- The law does not promote the child's best interests. In particular, no legal relationship exists between the child and the intended parents until an adoption order is finalised. An adoption order also obscures the child's gestational origins and, in some cases, their genetic origins and whakapapa.
- The law does not respect the intent of the parties to the surrogacy arrangement.
- The adoption process is not suited to surrogacy and does not account for all scenarios.
- No avenue is available to resolve disputes about legal parenthood.
- The adoption process may prevent arrangements that accord with tikanga Māori.

Creating parentage pathways

The Commission recommended creating tailored parentage pathways that would prioritise the best interests of children and consider the rights of the participants in a surrogacy arrangement. The pathways would prioritise the transfer of parentage via the new pathways rather than by adoption law.

To provide for parentage pathways, we recommend inserting a new Part 3 (new sections 28–66) into the Status of Children Act, by means of clause 19I.

Our new section 34 would include specific provisions for determining the legal parenthood of a child born as a result of a surrogacy arrangement. This should provide for two pathways for transfer of parentage: one by “operation of law”⁷ and the other by court order. We refer to these pathways in our commentary as the administrative and court pathways.

Under an administrative pathway, the child would become the legal child of the intended parents and would cease to be the child of the surrogate by operation of law. This would be subject to certain conditions being met. If the conditions of the administrative pathway were not met, the court pathway would enable the Family Court to make a parentage order determining the legal parenthood of a surrogate-born child.

⁷ “Operation of law” refers to a way in which a person obtains certain rights or responsibilities automatically under the law without the involvement of a court.

Our new section 35(1) would set out the effect of a transfer of parentage, which would apply under both pathways. The child would become the legal child of each intended parent, and each intended parent would become the legal parent of the child. The child would cease to be the legal child of the surrogate, and the surrogate would cease to be a legal parent of the child.

Our new section 49 would specify the situations where an application could not be made for a parentage order for a surrogate-born child. An application for a parentage order may not be made in relation to a surrogate-born child if the court had previously determined an application for either a parentage order or an adoption order to transfer legal parenthood of the surrogate-born child (or such applications were pending). This would prevent parties to a surrogacy arrangement from using the court pathway to seek to override a previous court decision or a decision that is pending.

Unless otherwise noted, when discussing the administrative and court pathways, all references to the “the Act” are to the Status of Children Act.

Provisions related to the administrative pathway

When the administrative pathway could be used

Our new sections 41 and 42 would specify that the administrative pathway would only apply if:

- the surrogacy arrangement was approved by ECART or the review panel
- the surrogacy arrangement complied with any conditions imposed by ECART
- the intended parents who entered the surrogacy arrangement had taken the child into their care
- the surrogate had made a statutory declaration.

We note that guardianship is distinct from parental status. Guardianship covers duties, power, rights, and responsibilities relating to the upbringing of a child. It includes providing day-to-day care to the child and determining important matters affecting them, such as the child’s name, residence, and medical treatment. Our recommended section 31(2) would provide that, from the time of the child’s birth until parentage is transferred under the administrative pathway, the intended parents would be additional guardians.

Requirements of the surrogate’s statutory declaration

We think that a standard-form statutory declaration should be developed for the surrogate to complete to give their consent under the administrative pathway. The statutory declaration should be provided to the Registrar-General alongside the notification of birth. To implement this, we recommend inserting section 43(2) and also clause 25J, which inserts new sections 30B(2)(a) and 30C(2)(a) into the Births, Deaths, Marriages, and Relationships Registration Act.

We recommend amending the bill to provide for the following:

- The surrogate's consent would not be valid if it was given before the child was seven days old (new section 42(2)(a)).
- The surrogate's statutory declaration of consent should be witnessed by a lawyer who would need to be independent (new section 42(3)).
- The lawyer would need to certify on the standard form that they had explained the effect and implications of the statutory declaration to the surrogate (new section 42(5)).
- To assist in the timely transfer of parentage, the signed declaration could be delivered electronically to the intended parents if they had consented to the declaration being given electronically (new section 41(3)).

Our new section 42(4) would enable statutory declarations to be taken remotely using an audiovisual link. This would better accommodate situations in which the surrogate and lawyer were in different locations. The lawyer would need to be satisfied that the surrogate signed the declaration during the audiovisual link. As soon as practicable after signing the document, the surrogate would need to send the signed document, or a photograph or scan of it, to the lawyer to sign and certify.

Court order confirming parentage

We note that jurisdictions regulate legal parenthood in surrogacy arrangements in different ways. Some jurisdictions require a court order as confirmation of parentage. Our recommended new section 46 would apply in situations where the intended parents became the legal parents under the administrative pathway. It would enable the intended parents to apply to the Family Court for an order confirming that they are the child's parents.

Provisions related to the court pathway

When the court pathway could be used

New section 47 would provide for situations where a child was born as a result of a surrogacy arrangement, but the administrative pathway conditions were not met. In these situations, the intended parents, the surrogate, or any person granted leave under new section 48 could apply to the Family Court for a parentage order.

Determining the best interests of a child

New section 60 would enable a court to make a parentage order transferring the parentage of a surrogate-born child. The court would need to be satisfied that the order promoted the welfare and best interest of the child. We recommend inserting section 59 to list the matters that the Family Court may take into account when reaching this decision. The range of matters draws on the Verona Principles,⁸ a previous Law Commission report, principles that guide decision-making in other child-centred legislation, and approaches in other jurisdictions.

Parentage reports

Our new section 52 would require a parentage report to be prepared whenever an application for a parentage order was made in respect of a surrogate-born child, unless the child was of or over the age of 18 or was born before the commencement of new section 52. The report writer would be a social worker employed by Oranga Tamariki, and their role would be to assess the matters requested or any other matters the social worker considers relevant to the application. A copy of the report should also be made available to all parties before the hearing and any lawyers appointed to represent the surrogate-born child or to assist the court.

Our proposed amendment would also set the following procedural requirements:

- An application for a parentage order would need to be supplied to the chief executive of Oranga Tamariki.
- The reporter could be called as a witness.
- A party to the proceedings, or any lawyer appointed to act for a child who was the subject of the proceedings, could present evidence on any matter referred to in the report.

Powers available to the court when making a parentage order

We recommend enabling the Family Court, when making a parentage order, to:

- appoint a lawyer for the child (new section 55)
- appoint a lawyer to assist the Court (new section 57)
- order cultural, medical, or psychiatric reports about the surrogate-born person who is the subject of the application (new section 53).

These powers are similar to those that may be exercised by a court in proceedings under the Care of Children Act relating to guardianship and parenting orders.

Recording relevant information on the child's birth registration

We recommend inserting clause 25I to insert new sections 30D(2), 30E(2), and 30F(1) into the Births, Deaths, Marriages, and Relationships Registration Act. They would apply when the Family Court made a parentage order. They would require the Court Registrar to ensure that relevant identity information was sent to the Registrar-General. The Registrar-General would then need to register the information alongside the child's birth registration.

Status of surrogate's partner

As previously noted, the Status of Children Act specifies that the surrogate and their partner (if they have one) are the legal parents of a surrogate-born child.

⁸ In 2021, the International Social Service, a network of national entities involved in cross-border family law issues published the *Principles for the protection of the rights of the child born through surrogacy*. These are known as the Verona principles.

We recommend specifying in new section 30, inserted by clause 19I, that when a woman becomes pregnant due to a surrogacy arrangement, any partner would not be presumed to be a parent of any child of the pregnancy. This provision would apply regardless of whether the surrogate had a partner when the child was conceived, during the gestation period, or when the child was born.

Legal parenthood following certain events

We consider that the bill should be amended to clarify the status of legal parenthood if certain events occurred before legal parenthood was transferred. If the surrogate died before giving consent under the administrative pathway, the intended parents or the personal representative of the deceased surrogate could apply for a parentage order under the court pathway. We recommend inserting clause 19I, new section 47(1)(a) and (b) and (4) to this effect.

We consider that the administrative and court pathways should still be available if any of the intended parents died. We recommend inserting new sections 45 and 47(4) to enable this. If one of the two intended parents died, the remaining intended parent could continue the administrative pathway process (if applicable) on behalf of both parents. If there is one intended parent and they died, or both intended parents died, the court pathway would be available. An application for parentage could be made by the personal representative of the deceased. We recommend inserting new section 29 to define the term “personal representative”. In relation to a deceased person, “personal representative” would mean an executor, administrator, or trustee of the deceased person’s estate.

When a third party could apply for a parentage order

We note that the Law Commission recommended that only the surrogates and intended parents should be able apply for a parentage order. However, we acknowledge that there may be some rare cases where it could be in a child’s best interests for a third party to be recognised as the child’s legal parent. For example, a surrogate’s partner may be interested in applying for a parentage order. Also, a mistake could result in the child being the genetic child of a third party. That party may wish to be the child’s legal parent, while the surrogate and intended parents do not.

We therefore think that, in exceptional cases and where the court is satisfied that it is in the best interests of the child, persons other than the intended parents and the surrogate should be granted leave by the court to apply for a parentage order. We consider that the threshold for applying would need to be set very high, making such transfers very rare. This would recognise that a child’s best interests would likely be realised by parentage being transferred to the intended parents (in most cases) or remaining with the surrogate (in rare cases). Accordingly, we recommend inserting new sections 47(1)(d) to 48(1)(c).

When the Family Court would have jurisdiction

Our proposed new sections 47 and 48 provide that the Family Court would have jurisdiction to determine applications for parentage orders in domestic and international surrogacy arrangements. One of the following would need to apply:

- One of the participants in the surrogacy arrangement (an intended parent or the surrogate) was habitually resident in New Zealand when the application commenced.
- The Court had given the applicant leave to apply. The Court could grant leave if it was satisfied that a New Zealand court was the most appropriate forum to determine the matter and that granting leave would be in the best interests of the surrogate-born person (new sections 47(2), (3), and 48).

Our proposed amendment is intended to ensure that the Family Court has broad jurisdiction to accommodate the range of circumstances in which a child's parenthood status could be relevant for the purposes of New Zealand law. The amendment would also ensure that the court only determined parenthood in cases with a New Zealand connection. This aims to prevent the court from intruding on parenthood matters that would be more appropriately dealt with by another jurisdiction's legal processes.

Cancelling ethics committee approvals

The HART Act provides that ECART may cancel an approval for activities requiring the approval of an ethics committee. In our consultation draft revision-tracked version of the bill, we proposed inserting new section 23K to enable ECART to cancel the approval of a surrogacy arrangement. To do so, any of the following conditions would need to be met:

- It was satisfied that 1 or more conditions of the approval had been breached.
- The surrogacy arrangement or assisted reproductive procedure to be undertaken in conjunction with a surrogacy arrangement was inconsistent with ACART guidelines or advice, was inconsistent with the application's description, or breached the HART Act or applicable regulations.
- ECART had subsequently become aware that an assisted reproductive procedure posed a serious risk to human health and safety.

The cancellation would have two effects. The assisted reproductive procedure would need to be stopped. Parentage of the surrogate-born child could not be transferred to the intended parents through the administrative pathway. This is because ECART approval is one of the conditions of that pathway.

Our proposed new section 23K did not set a cut-off point by which ECART would need to cancel a surrogacy arrangement or an assisted reproductive procedure. We sought submitters' feedback on whether there should be a cut-off point.

Submitters expressed a range of views as to when a cancellation should be possible. They ranged from until certain medical procedures have started (such as before gametes are collected or until an embryo is implanted) up until parentage was transferred.

We consider that several factors need to be balanced when setting a cut-off point. They are enabling a regulatory response if risks to the surrogate-born child and parties to the arrangement are identified, and providing certainty to the parties and to providers of fertility services. On balance, we think that ECART should be able to cancel an approval of a surrogacy arrangement ahead of the transfer of parentage of the surrogate-born child. This would ensure that an arrangement could be diverted to the Family Court for a parentage determination if any material risks were identified. We recommend inserting section 23K(5) to this effect.

If the provider had already performed the procedure and the surrogate was pregnant, the cancellation would not affect the pregnancy or the surrogacy arrangement. However, the cancellation would affect the ease with which a transfer of parentage could be pursued. This is because the conditions of the administrative pathway could not be satisfied as it relies on a surrogacy arrangement having ECART approval. The Family Court could also take account of the cancellation when considering whether to make a parentage order under the court pathway.

Citizenship for a child who is the subject of a parentage order

The Law Commission considered that a child who was the subject of a parentage order should be treated the same way as a child adopted under the Adoption Act for citizenship purposes. To provide for this, we recommend inserting clause 19P to insert new section 3A into the Citizenship Act 1977. We discuss this matter in more detail in our “Other matters” section at the end of this report.

Transitional arrangements

We consider that the court pathway should be available for a surrogate-born child even if they were born before the bill commenced. This could be used by people who had not formalised their relationship by adoption. Accordingly, we recommend inserting Schedule 1 into the Status of Children Act to provide for this.

Familial relationships after the transfer of parentage

Our proposed new section 36 in the Status of Children Act provides that, for certain purposes, a surrogate-born child would be taken to have both the familial relationship that existed before parentage was transferred and the familial relationships that resulted from the transfer. The specific purposes are for:

- determining whether people are within the prohibited degrees of civil union set out in clause 1(1) to (7) of Schedule 2 of the Civil Union Act 2004 (section 36(2)(a))
- determining whether people are within the prohibited degrees of marriage as set out in clause 1(a) to (g) of Schedule 2 in the Marriage Act 1955 (section 36(2)(b))
- applying the law relating to a sexual offence where a familial relationship is relevant.

For marriages and civil unions, the relations that the prohibitions apply to are grandparent, parent, child, grandchild, sibling, parent's sibling, and sibling's child. Marriages and civil unions between people within the prohibited degrees of relationship are forbidden and void.

This provision would prevent a surrogate-born person from marrying or entering a civil union with the surrogate or someone from the surrogate's family who is within the relevant prohibited degrees. We note that it would prevent relationships between a surrogate-born person and the surrogate and their family even when they were not genetically linked and were raised in different families.

We considered whether the bill could be amended so that subsections 36(2)(a) and (b) would only apply if there was a genetic link between the surrogate-born person and the surrogate and surrogate's family. This would mean that marriages and civil unions would only be prohibited in situations when the surrogate-born person was genetically linked to the surrogate.

We were advised that, under the Marriage Act and Civil Union Act, there are two main reasons for prohibiting certain marriages and civil unions. The first is genetic, to avoid the damaging effects of incest because hereditary disabilities or diseases are more likely to occur in children born from incest. We acknowledge that the law treats marriage and civil unions as a proxy for procreation—many people have children outside of marriage, while others marry or form a civil union and do not have children. We acknowledge that this may not be relevant for surrogacy. The second main reason for the prohibition is to maintain the integrity of the family unit, with incest and marriage within close family relations being seen to threaten the security and stability of the unit. Other possible reasons for the prohibitions include power dynamics between the parties to the proposed marriage or union and societal taboos about relationships between family members.

We also considered a further option under which, after parentage was transferred to the intended parents, a surrogate-born person:

- could not enter a marriage or civil union with the surrogate under any circumstances
- could not (if they were genetically linked to the surrogate) enter a marriage or civil union with members of the surrogate's family who were within the prohibited degrees of relationship
- could (if they had no genetic link to the surrogate) marry within the prohibited degrees of relationship with the surrogate's family. They would need to apply to, and satisfy, the court that the surrogate-born person and the person they intended to marry do not have a familial relationship.

We received advice that this option has significant practical concerns. Courts would have to determine the meaning of "familial relationship", with limited legislative guidance. By requiring the court's permission, the option could also apply restrictions to surrogate-born people that do not apply to most of the population.

We spent some time discussing the implications of proposed section 36 and expressed a range of views. Some of us were comfortable with a surrogate-born child having a relationship with the surrogate's family members if there was no genetic link. Others of us were uncomfortable with this approach and supported the proposed prohibition on all relationships between a surrogate-born person and the surrogate and their family. In all situations, we acknowledged the potential for a power imbalance, particularly where a relative like an aunt or uncle is older.

We decided to seek submitters' views on the section's prohibition on marriages or civil unions, including whether a less restrictive approach was appropriate.

There was no consensus amongst submitters about how to regulate marriages and civil unions between surrogate-born people, the surrogate, and the surrogate's family. Their views included:

- supporting the proposed approach in the bill
- supporting the bill's proposed approach, unless the relationship was one of affinity and approved by the Family Court
- supporting a prohibition on a relationship with a surrogate but allowing relationships with the surrogate's family to be approved by the Family Court
- allowing relationships with the surrogate and their family where there is no genetic connection, except for the surrogate or case-by-case assessments.

We acknowledge the different views of submitters. We also had a range of views and were unable to reach an agreement. We therefore recommend retaining our proposed new section 36.

Preserving access to identity information

Current legislative provisions

The registry of births, deaths, and relationships is an official record of births, deaths, marriages, civil unions, and name changes. Not all information in the registry is printed on a birth certificate. The registry is an open register so anyone can request specific information contained in the register, subject to certain conditions.

Under the HART Act, the Registrar-General must keep a record of people conceived from sperm or egg donations made at a New Zealand fertility clinic, and their donors. The HART Act does not allow anonymous gamete donors so all people born from clinic-assisted gamete donations in New Zealand will be included on this record. It is a closed record. Access to the information is generally restricted to people 18 years and over who are named on the register and the parents and guardians of a donor-conceived child under the age of 18.

The state is not required to record that a child was born through surrogacy. Neither the information recorded by the Registrar-General under the Births, Deaths, Marriages, and Relationships Registration Act nor the information recorded by the Registrar-General under the HART Act record that a child was born as a result of a surrogacy arrangement.

Currently, the surrogate and any partner will be the child's legal parent(s) at birth and they are responsible for registering the birth. A birth certificate before an adoption will record the surrogate and any partner as the child's parents. It will not contain any information about the intended parents. The birth certificate issued after the adoption will record the intended parents as if they were the legal parents from birth. The birth certificate can note that the intended parents are adoptive parents but they (or the adopted person once they turn 18) would need to request this.

We consider that every person has rights relating to identity, including the right to access information about their origins. We therefore propose the amendments set out below to enable this.

Principles of the HART Act

Section 4 of the HART Act sets out the principles of the Act. We recommend inserting clause 10C to insert an additional principle. It would state that surrogate-born people should have the opportunity to learn their whakapapa and genetic and gestational origins and that they should be able to access information about them.

Recording information about surrogate-born people

The bill does not create a separate register for surrogate-born people. Instead, it would amend the Births, Deaths, Marriages, and Relationships Registration legislation to require information about surrogates and donors to be recorded, if the information is provided to the Registrar. Unless otherwise stated, all references to "the Act" in this section are to the Births, Deaths, Marriages, and Relationships Registration Act.

We recommend inserting clause 25I, to insert new section 30F. This would require the Registrar-General to register, alongside the birth record of a surrogate-born child, identity information received from any of the following three sources. They are the parents when notifying the Registrar-General of the birth of the child, the Registrar of the Family Court after the Court has made a parentage order, and a provider who performed an established procedure or an assisted reproductive procedure in conjunction with the surrogacy arrangement. The identity information does not form part of the child's birth record.

Information to be recorded

We asked submitters what information should be collected about surrogates and donors. In response to their feedback, we propose one amendment that we think could be of particular interest for surrogate-born children. We recommend inserting new section 30B(3)(k) and (4)(j) (via clause 25I), and clause 10V, new sections 66B(1)(j) and 66C(1)(k) into the HART Act. These provisions would require the information collected about the surrogate to include details about the nature of the relationship between the surrogate and the intended parents.

Information to be provided to surrogate-born people

We recommend inserting clause 25O, new section 106A (Access to restricted surrogacy information). Subsection (1) would require the Registrar-General, if asked by the surrogate-born person, to provide access to any information that is kept about the surrogacy arrangement.

Our proposed new section 106A(5) would enable the Registrar-General to refuse to provide access to surrogacy information if satisfied, on reasonable grounds, that the provision of the information is likely to endanger any person.

Our proposed new section 106A(6) would require the Registrar-General to advise people accessing surrogacy information that counselling may be desirable. We note that the HART Act contains a similar requirement to inform donor-conceived people who are accessing identity information.

Notifying a surrogate-born person that information is available about them

We recognise that some surrogate-born people may be unaware that they were born via surrogacy. We have proposed amendments to the bill to implement the Commission's recommendations related to preserving access to identity information. However, the bill does not contain provisions to proactively alert a surrogate-born person that information about their surrogacy origins and identity.

The Law Commission recommended that a review of the birth registration system should be undertaken before any significant changes were made to information recorded in the birth register or on the birth certificates of surrogate-born people. It noted that considerations as to what information should be captured and accessible are also relevant to others, such as adopted or donor-conceived people and those raised under a whāngai arrangement.

We note that the bill is intended to enable surrogate-born people to access information about their origins and identity. We therefore consider it problematic that nothing is available on a person's birth certificate that could indicate that they may look elsewhere for information about their surrogacy.

We discussed possible options to inform a person, including noting on a birth certificate that a person is surrogate-born, and having short- and long-form birth certificates. We received advice about the benefits and risks of annotating a surrogate-born person's birth certificate to alert them that more identity information is held about them. The benefits include increasing the likelihood that surrogate-born people know about their gestational and genetic origins and whakapapa and that the information would be targeted to people to whom it is relevant. An annotation would also be consistent with the right to privacy of the surrogate and any donors involved in the conception. The risks include intruding on the right to privacy of surrogate-born people and intended parents. This is because the annotation would only appear on surrogate-born people's birth certificates.

We acknowledge the need to balance a person's right to know about their origins against the privacy of the surrogate-born person and the intended parents. We con-

sulted on whether to propose clause 25L, new section 92A to provide a way of informing people that restricted surrogacy information was registered or recorded in the birth register alongside their birth record. It would apply when they requested a copy of information from their birth record. When the Registrar-General provided the birth information, they would need to notify the person that restricted surrogacy information existed and how to access the information.

We sought submitters' feedback on whether there should be a mechanism to alert surrogate-born people to the existence of their surrogacy information. Submitters supported identity information being flagged to surrogate-born people. Some supported the bill's approach, while others suggested alternative mechanisms. They included annotating surrogate-born people's birth certificates, notifying a child once they reached a certain age, or placing a duty on intended parents to inform their child.

On balance, we consider that our proposed approach in new section 92A appears to balance the rights to identity and privacy in a manner similar to, or better than, the other options considered. We therefore recommend inserting clause 25L, new section 92A.

International and overseas surrogacy arrangements

Overseas surrogacies are arrangements in which the intended parents and the surrogate live in an overseas country when the surrogacy arrangement occurs. They differ from international surrogacies, which involve intended parents who live in New Zealand engaging in a surrogacy arrangement overseas and bringing the surrogate-born back to live in New Zealand. We propose different processes for each arrangement, which we set out below.

International surrogacy arrangements

No international instrument governs international surrogacy, and countries regulate surrogacy and legal parenthood very differently. International surrogacy is not provided for in New Zealand law. The Status of Children Act recognises the surrogate as the legal parent of a child regardless of where they were born. Therefore, the legal parenthood of the intended parents generally needs to be determined through the New Zealand adoption process.

Before the adoption, New Zealand law does not recognise any parental link between the surrogate-born child and the intended parents. This affects the child's ability to enter New Zealand. A joint government agency process supports families to bring their child to New Zealand using existing legislation. It involves Oranga Tamariki, the Department of Internal Affairs, and Immigration New Zealand. The process enables the intended parents to apply for a visitor visa for the child. When deciding whether to issue the visa, the Minister of Immigration considers the Cabinet-endorsed non-binding guidelines. The guidelines cover matters relevant to the child's best interests and preventing the irregular movement of children between countries. If the visa is granted, the intended parents and child can travel to New Zealand, and the parents can apply for an adoption order in the Family Court. The Family Court Protocol

also enables intended parents to adopt the surrogate-born child via the Family Court before the family returns to New Zealand. This option is available to intended parents who habitually live in New Zealand.

We consider that the Family Court should have jurisdiction to make a parentage order under the court pathway regardless of whether the surrogate-born child was born in New Zealand. We think this is necessary to protect a child's best interests.

Our proposed new section 59 of the Status of Children Act sets out the matters that the Court may consider when deciding whether to make a parentage order. We propose that the Court should also be able to consider several additional matters when making decisions about international surrogacy arrangements. The additional considerations relate to whether the surrogacy arrangement complied with the law of the jurisdiction in which the surrogate person was born. They also deal with the provision of appropriate consents for the use of donor material, changes in parenthood, and the surrogate-born child's departure from their place of birth. These additional considerations reflect the risks that may be associated with some international surrogacy arrangements. They are based on the considerations included in the non-binding guidelines used by the Minister of Immigration to determine whether to issue a visitor visa to a surrogate-born child. We recommend inserting clause 19I, new section 59(3) to this effect.

Overseas surrogacy arrangements

Two current processes recognise legal parenthood in overseas surrogacy cases. The intended parents can adopt the child through the New Zealand courts. Alternatively, an overseas adoption or foreign court order transferring legal parenthood can be recognised under section 17 of the Adoption Act.

We note that intended parents in overseas surrogacy arrangements are not habitual New Zealand residents. They also did not travel offshore solely for the purpose of the surrogacy arrangement and did not intend to live in New Zealand immediately after the child's birth. The intended parents will also have completed a legal process offshore and may be seeking to verify their parental status several years after the child's birth. We therefore consider that legal parenthood of children born through these arrangements should be recognised through an administrative process rather than the court pathway.

We recommend inserting clause 19I, new section 63 to provide that an overseas parentage determination would have the same legal effect in New Zealand as if it were a transfer of parentage under subpart 2 or 3. Those subparts respectively deal with the transfer of parentage by the operation of law and by court order. The overseas determination would need to meet the following criteria:

- The parents were not habitually resident in NZ when the surrogacy was undertaken.
- The overseas legal parenthood determination established a legal parent-child relationship between the intended parent and surrogate-born child. The deter-

mination would need to be final and legally valid according to the law of the place in which it was made.

We recognise that there could occasionally be cases where an overseas parentage determination met the requirements of proposed new section 63 but the New Zealand Family Court had declined to make a parentage order for the same child. We recommend inserting section 63(1)(f) to make it clear that an overseas parentage determination could not be recognised in New Zealand in these circumstances.

To help preserve identity information of surrogate-born people whose parentage is recognised in New Zealand, we recommend inserting clause 19I, new section 64 in the Status of Children Act and clause 25I, new section 30G into the Births, Deaths, Marriages, and Relationships Registration Act. This would require the Registrar-General, where the Department of Internal Affairs had recognised the overseas legal parenthood determination, to record in the registry information received from the Secretary of Internal Affairs about the surrogacy arrangement.

Other matters that we wish to highlight

During our consideration of the bill, we explored several other matters that relate to costs to the taxpayer and employers. Although we have not recommended amendments to the bill, we consider that they warrant further consideration. We are therefore drawing these matters to the attention of the House.

New Zealand citizenship for surrogate-born children

We proposed a potential scenario involving intended parents in another country who are not New Zealand citizens or Residence visa holders. They could enter into a surrogacy arrangement with a surrogate who is a New Zealand citizen and gives birth here. We requested advice about the entitlement of the surrogate and the child to publicly funded health services, and about the child's citizenship status. We considered the potential costs to the New Zealand taxpayer that we consider should be borne by the intended parent, especially if the child needed neonatal care. The bill would allow for international parents to enter into surrogacy arrangements in New Zealand. We consider that the prohibition against commercial surrogacy is a strong enough protection against exploitative arrangements.

Our proposed amendments include a recommendation to insert clause 19Q, which would amend section 6 of the Citizenship Act. We understand that this reflects the recommendation in the Law Commission's report that surrogate-born children should be treated the same as adopted children for citizenship purposes. It provides that a person who is a New Zealand citizen by birth would not lose that citizenship because their parentage was transferred under Part 3 of the Status of Children Act. This provision would apply even if the intended parents were not New Zealand citizens or entitled under the Immigration Act 2009 to be in New Zealand indefinitely or to reside indefinitely in the Cook Islands, Niue, or Tokelau.

We were advised that, as a New Zealand citizen, the surrogate would be eligible for publicly funded health and disability services. These can include hospital care,

primary care, maternity services, and community mental health services. The child would also be entitled to publicly funded health care because they would be a New Zealand citizen.

As our proposed amendments are largely intended to align with the Law Commission's report, we have not recommended further amendments to the bill. Members had a range of views on whether the surrogate's maternity care or the child's neonatal care should be publicly funded. For the scenario that we described, we suggest that further consideration should be given to requiring intended parents to have private health insurance and to removing the child's New Zealand citizenship. We acknowledge that there may be situations where a surrogacy arrangement breaks down, and we would not want to leave the child stateless. However, we consider that this could be addressed by only removing the citizenship once the parentage has transferred from the surrogate to the intended parent.

Surrogates' access to paid parental leave

The Parental Leave and Employment Protection Act 1987 provides that surrogates can access paid parental leave on the same basis as others who give birth. Their entitlement does not end when they hand over care of the child to the intended parent. If they meet all other criteria under the Act, both the surrogate and the new primary caregiver are fully entitled to paid parental leave for up to 26 weeks.

We were told by one of the agencies that administers the Act (the Ministry of Business, Innovation and Employment) that the leave can serve different purposes for each parent. It enables the surrogate to recover from the birth, while allowing the primary carer to bond with and care for the child. We were interested to learn that surrogacy is one of the situations in which two people can simultaneously receive paid parental leave for the same child. The other situations are those involving taking primary responsibility for a child through arrangements like whāngai, adoption, or a Permanent Care agreement with Oranga Tamariki.

We are concerned that the surrogacy situation could be seen as "double dipping". We recognise that not all births are the same and recovery is different for everyone. We agree that surrogates need time for recovery and that the intended parents need time to bond with their child. However, as the surrogate will no longer have care of the child and does not need bonding time, we do not think that the surrogate should automatically be entitled to the full 26 weeks of paid parental leave. We suggested an alternative approach in which time for recovery and bonding would be separate. Fourteen weeks could be attributed to each, with a provision for the surrogate to apply for further recovery time if needed.

As the Law Commission did not make recommendations about paid parental leave entitlements, we are unable to recommend amendments to the Act. We consider, however, that our suggested approach warrants further exploration.

Appendix

Committee process

The Improving Arrangements for Surrogacy Bill was referred to the Health Committee of the 53rd Parliament on 18 May 2022. The committee called for submissions on the bill with a closing date of 20 July 2022. It received and considered submissions from 34 interested groups and individuals. It heard oral evidence from 12 submitters at hearings in Wellington.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. We called for submissions on the bill with a closing date of 18 September 2024. We received and considered submissions from 132 interested groups and individuals. We heard oral evidence from 13 submitters at hearings in Wellington.

Advice on the bill was provided by the Ministry of Justice, the Department of Internal Affairs, the Inland Revenue Department, the Ministry of Health, and the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality.

Committee membership

Sam Uffindell (Chairperson)

Dr Hamish Campbell

Dr Carlos Cheung

Ingrid Leary

Cameron Luxton

Hūhana Lyndon

Jenny Marcroft

Debbie Ngarewa-Packer

Hon Dr Ayesha Verrall

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nicole McKee

Improving Arrangements for Surrogacy Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Improving Arrangements for Surrogacy Act **2021**.

2 Commencement

- (1) This Act comes into force ~~the day after the date on which it receives the~~ 5
12 months after Royal assent.
- (2) However, **section 10I**, to the extent that it relates to **new sections 23L to 23S** of the Human Assisted Reproductive Technology Act 2004, comes into force 18 months after Royal assent.

Part 1

10

Amendments to Human Assisted Reproductive Technology Act 2004

3 ~~Amendments to Human Assisted Reproductive Technology Act 2004~~

~~This Part amends the Human Assisted Reproductive Technology Act 2004.~~

4 ~~Section 5 amended (Interpretation)~~

- (1) ~~In section 5, insert in their appropriate alphabetical order:~~ 15

- intending parent** means a person to whom custody of a child born as a result of a surrogacy arrangement will be transferred
- surrogacy order** means an order made under **section 124C** of the Care of Children Act 2004
- surrogacy register** means the register established under **section 66B** of this Act 5
- Surrogacy Registrar** means the person, organisation, or department appointed under **section 66A** of this Act
- surrogate** means a woman who becomes pregnant for the purpose of transferring custody under a surrogacy arrangement of a child born as a result of the pregnancy 10
- (2) In section 5, in the definition of **surrogacy arrangement**, replace “surrendering custody of a child born as a result of the pregnancy” with “transferring custody of a child born as a result of the pregnancy to the intending parents”; and 15
- 5 Section 13 amended (Commercial supply of human embryos of human gametes prohibited)**
- After section 13(2), insert:
- (3) Subsection (2) does not apply to a payment for the actual and reasonable expenses incurred in the supply of a human embryo or human gamete or as a consequence of supplying a human embryo or human gamete, including the following: 20
- (a) the costs of counselling;
 - (b) the costs of travel;
 - (c) reimbursement for lost wages or salary. 25
- 6 Section 14 amended (Status of surrogacy arrangements and prohibition of commercial surrogacy arrangements)**
- (1) In section 14(1), after any person, insert except under
- (2) After section 14(1), insert:
- (1A) To avoid doubt, a surrogacy order under **section 124C** of the Care of Children Act 2004 may, so far as it relates to custody of the child, be enforced under that Act as if it were a parenting order related to contact. 30
- (3) Replace section 14(4) with
- (4) Subsection (3) does not apply to a payment for the actual and reasonable expenses of making a surrogacy arrangement, treatments to become pregnant, or incurred as a result of a pregnancy arising under a surrogacy arrangement, including the following: 35

- (a) ~~payments to a provider of fertility treatment (including counselling related to a surrogacy arrangement or pregnancy):~~
- (b) ~~payments for legal advice to the woman who is, or who might become, pregnant under the surrogacy arrangement:~~
- (c) ~~the costs of travel:~~
- (d) ~~the reimbursement of lost wages or salary.~~

5

7 **New section 23A and cross-heading inserted**

After section 23, insert:

Approval of surrogacy arrangement for the purposes of surrogacy order

23A Approval of surrogacy arrangement for the purposes of surrogacy order

10

- (1) ~~The ethics committee may receive a written application for approval of a surrogacy arrangement for the purposes of obtaining a surrogacy order under **Part 2A of the Care of Children Act 2004** if the application is in a form approved by the ethics committee.~~

- (2) ~~The ethics committee may give its written approval of a surrogacy arrangement for the purposes of obtaining a surrogacy order under **Part 2A of the Care of Children Act 2004** if it is satisfied of each of the following:~~

15

- (a) ~~the woman who would be the surrogate will not be a genetic parent of any child resulting from the surrogacy:~~

- (b) ~~the woman who would be the surrogate and the intending parents have each received medical advice:~~

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- (c) ~~any health risks associated with a surrogacy for the adult parties and any resulting child are justified:~~

- (d) ~~the woman who would be the surrogate and the intending parents have each received independent legal advice and clearly understand the legal consequences of a surrogacy order:~~

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- (e) ~~the woman who would be the surrogate and the intending parents have each received counselling in accordance with the current Fertility Services Standard:~~

- (f) ~~the woman who would be the surrogate and the intending parents have agreed the following matters:~~

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- (i) ~~the timing and manner of transfer of custody of the child; and~~

- (ii) ~~the nature of information about the pregnancy and the foetus that the surrogate will disclose to the intending parents; and~~

- (iii) ~~the method by which that information will be disclosed:~~

35

- (g) ~~the risks that the woman who would be the surrogate may change her mind about transferring custody of any resulting child or that the intending parent or parents may change their minds about taking custody of~~

	any resulting child have been carefully considered by all the parties and are small.	
(3)	In this section, Fertility Services Standard means the standard approved by the Minister under section 13 of the Health and Disability Services (Safety) Act 2001 for the provision of fertility services.	5
8	Section 28 amended (Functions of ethics committee) After subsection 28(1)(d), insert:	
(da)	to consider and determine whether to provide approval of a surrogacy arrangement:	
9	New section 66A and cross heading inserted After section 66, insert:	10
	<i>Surrogacy register</i>	
66A	Appointment of Surrogacy Registrar	
(1)	The Minister may, by notice in writing,—	
(a)	appoint any person, organisation, or department as the Surrogacy Registrar for the purposes of this Act:	15
(b)	prescribe the functions of the Surrogacy Registrar that are in addition to the functions specified in section 66B :	
(c)	prescribe any reporting requirements, accountability measures, or other terms or conditions that the Surrogacy Registrar must comply with.	20
(2)	Before making an appointment under subsection (1)(a) , the Minister must be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions of the Surrogacy Registrar under this Act.	
(3)	The Surrogacy Registrar holds office for the term specified by the Minister in the notice of appointment under subsection (1) .	25
(4)	As soon as practicable after making an appointment under subsection (1)(a) , the Minister must give notice of the appointment by notice in the Gazette.	
66B	Functions, powers and duties of Surrogacy Registrar	
(1)	The functions of the Surrogacy Registrar are—	
(a)	to establish and maintain a surrogacy register for the purpose of facilitating surrogacy arrangements by enabling women who are willing to become surrogates and intending parents to be matched:	30
(b)	to receive applications for registration from women who are willing to become surrogates and from intending parents:	
(c)	to register, if the Surrogacy Registrar considers it appropriate, the details of women who are willing to become a surrogate, including the reasons	35

	she wishes to become a surrogate and what characteristics she is seeking in intending parents:	
(d)	to register, if the Surrogacy Registrar considers it appropriate, the details of intending parents, including the reasons they wish to engage the services of a surrogate and what characteristics they are seeking in a surrogate:	5
(e)	to adopt a process to match women who are willing to become a surrogate and intending parents on the basis that the characteristics each party is seeking in the other party matches the characteristics of the other party;	10
(f)	to facilitate a meeting between matched women who are willing to become a surrogate and intending parents for the purpose of the parties determining whether they wish to enter into a surrogacy arrangement.	
(2)	The Surrogacy Registrar—	
(a)	must remove the details of any person from the register if the Surrogacy Registrar is notified by that person that they no longer wish to be registered on the register:	15
(b)	may remove the details of any person from the register if the Surrogacy Registrar considers that there is good reason to remove those details from the register.	20
66C	Fee for registration on the surrogacy register	
	The Surrogacy Registrar may charge the prescribed fee to any intending parent applying for registration on the surrogacy register.	
66D	Delegation of Surrogacy Registrar's functions, powers, and duties	
(1)	The Surrogacy Registrar may delegate to any person or organisation any of its functions, powers, and duties except this power of delegation.	25
(2)	Before delegating any functions, powers, or duties, the Surrogacy Registrar must be satisfied that the delegate has the appropriate knowledge, skills, and experience to carry out those functions and powers.	
(3)	A delegation—	30
(a)	must be in writing; and	
(b)	is subject to any restrictions and conditions specified by the Surrogacy Registrar that the Registrar thinks fit; and	
(c)	is revocable at any time, in writing; and	
(d)	does not prevent the performance or exercise of a function, power, or duty by the Surrogacy Registrar.	35
(4)	A person or organisation performing or exercising any delegated functions, powers, or duties may perform and exercise them in the same manner and with	

	the same effect as if they had been conferred directly by this Act and not by delegation.	
(5)	A person or organisation who acts under a delegation given under this section is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.	5
(6)	Any action or decision of a delegate under the delegation is treated as an action or decision of the Surrogacy Registrar under this Act.	
66E	Protection for employees of Surrogacy Registrar	
(1)	This section applies if the Surrogacy Registrar is not a department.	
(2)	If this section applies, no civil action lies against the Surrogacy Registrar, a delegate of the Surrogacy Registrar, or any employee of the Surrogacy Registrar or delegate for any act done or omitted by that person in good faith in the performance or intended performance of the functions, powers, or duties of the Surrogacy Registrar.	10
(3)	However, subsection (2) does not prevent a person from filing an application for review under section 8 of the Judicial Review Procedure Act 2016 in relation to the exercise, refusal to exercise, or proposed or purported exercise by the Surrogacy Registrar, delegate, or employee of the Surrogacy Registrar or delegate of a statutory power within the meaning of that Act or otherwise affect the operation of that Act.	15 20
10	Section 76 amended (Regulations)	
	After section 76(1)(c), insert:	
(ea)	prescribing the fees to be paid by intending parents applying to register their details on the surrogacy register.	
10A	Principal Act	25
	<u>This Part amends the Human Assisted Reproductive Technology Act 2004.</u>	
10B	Section 3 amended (Purposes)	
	After section 3(f), insert:	
(g)	<u>to provide for the approval of surrogacy arrangements:</u>	
(h)	<u>to establish an information-keeping regime in relation to surrogacy arrangements to assist people born as a result of surrogacy arrangements to learn about their genetic and gestational origins and whakapapa.</u>	30
10C	Section 4 amended (Principles)	
(1)	Replace section 4(a) with:	
(a)	<u>the health and well-being of children born as a result of the performance of an assisted reproductive procedure, an established procedure, or a</u>	35

surrogacy arrangement should be an important consideration in all decisions about that procedure or arrangement:

(2) After section 4(e), insert:

(ea) persons born as a result of a surrogacy arrangement should have the opportunity to learn about their genetic and gestational origins and whakapapa, and that information about them should be recorded and stored so that they may access it in the future:

10D Section 5 amended (Interpretation)

(1) In section 5, replace the definition of **surrogacy arrangement** with:

surrogacy arrangement means an arrangement or agreement, whether formal or informal, between a surrogate and intended parents under which—

- (a) a surrogate will seek to become pregnant; and
- (b) a child born as a result of the surrogate's pregnancy is to become the child of the intended parents and cease to be the child of the surrogate; and
- (c) the intended parents are to become the parents of, and assume responsibility for the care of, the child instead of the surrogate

(2) In section 5, replace the definition of **valuable consideration** with:

valuable consideration includes a payment, a reward, a discount, an inducement, or a priority in the provision of a service.

(3) In section 5, insert in their appropriate alphabetical order:

intended parents means—

- (a) the 2 persons who enter into a surrogacy arrangement under which it is agreed they will become the parents of a child born under the arrangement and assume responsibility for the care of the child; or
- (b) the 1 person who enters into a surrogacy arrangement under which it is agreed they will become the sole parent of a child born under the arrangement and assume responsibility for the care of the child

review panel or **panel** means the review panel established and maintained under **section 23L**

surrogate means a person who enters into a surrogacy arrangement under which it is agreed the person will become, or try to become, pregnant and give birth to a child for the intended parents

surrogate-born child means a child born as a result of a surrogacy arrangement

10E Section 12 replaced (Restriction on obtaining gametes from minors)

Replace section 12 with:

12	<u>Restriction on obtaining and using gametes from minors</u>	
(1)	<u>A person commits an offence if they obtain a gamete from an individual who is under 16 years.</u>	
(2)	<u>It is a defence to a charge under subsection (1) if the defendant proves that they—</u>	5
	(a) <u>obtained the gamete from the individual for the purpose of preserving the gamete; and</u>	
	(b) <u>the procedure was undertaken with consent given by a person in accordance with section 36 of the Care of Children Act 2004.</u>	
(3)	<u>A person commits an offence if they use a gamete obtained from an individual when the individual is, or was, under 16 years.</u>	10
(4)	<u>It is a defence to a charge under subsection (3) if the defendant proves that the gamete was used with the consent of the individual, after the individual turned 16 years, for a lawful purpose.</u>	
(5)	<u>A person who commits an offence against subsection (1) or (3) is liable on conviction to a term of imprisonment not exceeding 1 year or a fine not exceeding \$100,000, or both.</u>	15
10F	<u>Section 14 repealed (Status of surrogacy arrangements and prohibition of commercial surrogacy arrangements)</u>	
	<u>Repeal section 14.</u>	20
10G	<u>Section 15 amended (Advertising for illegal action prohibited)</u>	
	<u>In section 15(1), replace “section 8 or section 13 or section 14” with “section 8, 13, or 23C”.</u>	
10H	<u>New section 15A inserted (Application of subpart)</u>	
	<u>In Part 2, after the subpart 2 heading, insert:</u>	25
15A	<u>Application of subpart</u>	
	<u>This subpart does not apply to any of the following undertaken or performed in conjunction with a surrogacy arrangement:</u>	
	(a) <u>an activity:</u>	
	(b) <u>an assisted reproductive procedure:</u>	30
	(c) <u>an established procedure.</u>	
10I	<u>New subpart 2A of Part 2 inserted</u>	
	<u>After section 23, insert:</u>	

Subpart 2A—Surrogacy arrangements

General provisions

23A Interpretation

In this subpart,—

applicant, in relation to an application for the approval of surrogacy arrangement, means the person or persons who made the application 5

income has the meaning given to it by section YA 1 of the Income Tax Act 2007

serious harm, in relation to a surrogate-born child, means—

- (a) physical, emotional, or sexual abuse of the child: 10
- (b) deprivation or ill-treatment of the child:
- (c) neglect or impairment of the child’s development or physical or mental or emotional well-being:
- (d) exposure to family violence (within the meaning of section 9 of the Family Violence Act 2018) 15

social worker has the meaning given to it by section 2(1) of the Oranga Tamariki Act 1989.

23B Status of surrogacy arrangements

- (1) A surrogacy arrangement is not illegal, but is not enforceable by or against any person. 20
- (2) However, an obligation to pay or reimburse reasonable surrogacy costs (as defined in **section 23D**) is enforceable if the payment or reimbursement of reasonable surrogacy costs was agreed between the parties to the surrogacy arrangement before the surrogate became pregnant.
- (3) **Subsection (1)** does not affect **Part 3** of the Status of Children Act 1969. 25

23C Commercial surrogacy arrangements prohibited

- (1) A person commits an offence if they are involved in a surrogacy arrangement that is a commercial surrogacy arrangement.
- (2) For the purposes of **subsection (1)**, a person is **involved in a commercial surrogacy arrangement** if the person gives or receives, or agrees to give or receive, valuable consideration for their participation, or any other person’s participation, or for arranging any other person’s participation, in a surrogacy arrangement, but does not include valuable consideration given to— 30
 - (a) a provider for any reasonable and necessary expenses incurred in relation to a surrogacy arrangement for any of the following purposes: 35
 - (i) collecting, storing, transporting, or using a human embryo or human gamete:

(ii)	<u>counselling 1 or more parties:</u>	
(iii)	<u>insemination or <i>in vitro</i> fertilisation:</u>	
(iv)	<u>ovulation or pregnancy tests; or</u>	
(b)	<u>a legal adviser for independent legal advice to a person who is, or who might become, a surrogate under a surrogacy arrangement; or</u>	5
(c)	<u>a person who publishes by any means an advertisement, statement, notice, or other material that—</u>	
(i)	<u>states or implies that a person is willing to act as a surrogate without receiving valuable consideration; or</u>	
(ii)	<u>seeks a person who is willing to act as a surrogate without receiving valuable consideration; or</u>	10
(iii)	<u>is intended, or likely to induce, a person to act as a surrogate without receiving valuable consideration; or</u>	
(d)	<u>a surrogate for reasonable surrogacy costs incurred (<i>see</i> section 23D).</u>	
(3)	<u>A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both.</u>	15
23D	Meaning of reasonable surrogacy costs	
(1)	<u>Reasonable surrogacy costs are the reasonable costs incurred by a surrogate that are associated with any of the following matters:</u>	20
(a)	<u>becoming or trying to become pregnant:</u>	
(b)	<u>a pregnancy or birth:</u>	
(c)	<u>post-partum recovery:</u>	
(d)	<u>entering into, and giving effect to, a surrogacy arrangement.</u>	
(2)	<u>Without limiting subsection (1), the following are a surrogate's reasonable surrogacy costs:</u>	25
(a)	<u>a reasonable medical cost incurred by the surrogate associated with any of the matters referred to in subsection (1)(a) to (c):</u>	
(b)	<u>a reasonable travel cost incurred by the surrogate, the surrogate's partner, or the surrogate's support person, as a result of the surrogacy arrangement:</u>	30
(c)	<u>a reasonable accommodation cost incurred by the surrogate, the surrogate's partner, or the surrogate's support person, as a result of the surrogacy arrangement:</u>	
(d)	<u>a reasonable cost incurred by the surrogate relating to the care of the surrogate's dependants as a result of the surrogacy arrangement:</u>	35

(e)	the cost of obtaining any product or service recommended by the surrogate's healthcare provider that is associated with any of the matters referred to in subsection (1)(a) to (c) :	
(f)	the cost of any premium payable for health, disability, income protection, or life insurance obtained for the surrogate in connection with the surrogacy arrangement, or of any increase in premium for an existing insurance policy payable for the surrogate as a result of the surrogacy arrangement:	5
(g)	the amount of lost or diminished income (including any employer's superannuation contribution) because of leave taken during any of the following periods (less any parental leave payments received in the same period):	10
(i)	a period of not more than 3 months during which the birth occurred or was expected to occur; or	
(ii)	any other period during the pregnancy when, because of the pregnancy, the surrogate was unable to work on medical grounds:	15
(h)	a reasonable out-of-pocket expense incurred by the surrogate because of the surrogacy arrangement (for example, the expense of maternity clothes, additional food, and dietary supplements).	
	<i>Approvals</i>	20
23E	Surrogacy arrangement involving assistance of provider must be approved	
(1)	This section applies if a surrogacy arrangement involves the assistance of a provider performing an established procedure or an assisted reproductive procedure in conjunction with the arrangement.	
(2)	If a surrogacy arrangement involves the assistance of a provider performing an established procedure in conjunction with the arrangement, the ethics committee's prior written approval of the surrogacy arrangement must be obtained, but approval of the established procedure need not be obtained.	25
(3)	If a surrogacy arrangement involves the assistance of a provider performing an assisted reproductive procedure in conjunction with the arrangement, the ethics committee's prior written approval of the following must be obtained:	30
(a)	the surrogacy arrangement; and	
(b)	the assisted reproductive procedure.	
(4)	A provider who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding \$50,000.	35
23F	Surrogacy arrangement not involving assistance of provider may be approved	
	If a surrogacy arrangement does not involve the assistance of a provider performing an established procedure or an assisted reproductive procedure in con-	

junction with the arrangement, the ethics committee's prior written approval of the surrogacy arrangement may be obtained.

23G Application for approval

- (1) An approval under **section 23E or 23F** must be sought by an application to the ethics committee. 5
- (2) An approval under **section 23E(3)** for both a surrogacy arrangement and an assisted reproductive procedure must be sought in the same application.
- (3) An application must—
 - (a) be made in the form and manner approved by the ethics committee; and
 - (b) provide detail of the surrogacy arrangement for which approval is sought; and 10
 - (c) describe the assisted reproductive procedure for which approval is sought (if applicable).
- (4) If an approval is sought under **section 23E**, the application must be made by the provider. 15
- (5) If an approval is sought under **section 23F**, the application must be made—
 - (a) jointly by the surrogate and the intended parents; or
 - (b) by a provider who is assisting the surrogate and the intended parents making the application (but not assisting by performing an established procedure or an assisted reproductive procedure). 20

23H Report by social worker

- (1) Before determining an application made under **section 23G** for the approval of a surrogacy arrangement, the ethics committee must consider a report from a social worker that assesses whether the intended parents under the proposed surrogacy arrangement would pose any risk of serious harm to a child born as a result of the arrangement. 25
- (2) The chief executive of Oranga Tamariki—Ministry for Children must, on receiving a request from a provider or the ethics committee, arrange for the preparation of a social worker's report.
- (3) The social worker's report must— 30
 - (a) be prepared in accordance with—
 - (i) any regulations made under section 76; and
 - (ii) any relevant guidelines issued by the chief executive of Oranga Tamariki; and
 - (b) contain the information required by regulations made under section 76. 35

23I Approval of ethics committee

(1) The ethics committee may give its written approval of a surrogacy arrangement if it is satisfied that the surrogacy arrangement—

(a) meets all requirements set out in any guidelines issued by the advisory committee relevant to the arrangement; and

(b) is consistent with any relevant advice given by the advisory committee.

(2) The ethics committee may give its written approval of any assisted reproductive procedure proposed to be undertaken in conjunction with the surrogacy arrangement if it is satisfied that the procedure—

(a) meets all requirements set out in any guidelines issued by the advisory committee relevant to the procedure; and

(b) is consistent with any relevant advice given by the advisory committee.

(3) If the ethics committee declines an application for approval of a surrogacy arrangement or any assisted reproductive procedure proposed to be undertaken in conjunction with a surrogacy arrangement and the applicant has not applied under **section 23M** for a review of that decision, the committee may, at any time, for any reason that it considers appropriate, reconsider the application in the event that any relevant new information becomes available.

23J Conditions

(1) The approval of a surrogacy arrangement or any assisted reproductive procedure proposed to be undertaken in conjunction with a surrogacy arrangement (the **approval**) may be given subject to any conditions the ethics committee considers appropriate.

(2) The ethics committee may, on its own initiative or on the request of the applicant, change the conditions on the approval by doing any or all of the following:

(a) varying a condition imposed on the approval:

(b) revoking a condition imposed on the approval:

(c) imposing 1 or more new conditions on the approval.

(3) The ethics committee may make any of the changes specified in **subsection (2)** on the request of the applicant if it is satisfied that the change is consistent with any relevant guidelines or advice issued or given by the advisory committee before, on, or after the date on which the approval was given.

(4) A decision of the ethics committee on the request of the applicant to make a change of the kind specified in **subsection (2)(a)** may be made by 1 or more members of the ethics committee authorised for the purpose.

(5) The ethics committee may make any of the changes specified in **subsection (2)** on its own initiative only if the committee—

(a) is satisfied that the change is necessary to—

- (i) ensure consistency with this Act, or any relevant guidelines or advice issued or given by the advisory committee before, on, or after the date on which approval was given; or
- (ii) correct an error or omission made by the ethics committee; and
- (b) has— 5
 - (i) informed the applicant why it is considering making the change; and
 - (ii) given the applicant a reasonable time to make written submissions and be heard on the matter, either personally or by their representative; and 10
 - (iii) considered any submissions made in that time.

23K Cancellation of approval

- (1) The ethics committee may cancel, in whole or in part, an approval given under section 23I if—
 - (a) it is satisfied that 1 or more conditions on the approval have been breached; or 15
 - (b) the surrogacy arrangement or any assisted reproductive procedure proposed to be undertaken in conjunction with a surrogacy arrangement—
 - (i) is inconsistent with any relevant guidelines issued or relevant advice given by the advisory committee before, on, or after the date on which the approval was given; or 20
 - (ii) is inconsistent with the description of the arrangement or procedure set out in the application in which the approval was sought; or
 - (iii) breaches, or has breached, this Act or any regulations made under section 76; or 25
 - (c) in the case of an approval relating to an assisted reproductive procedure proposed to be undertaken in conjunction with a surrogacy arrangement, the ethics committee has become aware that the procedure poses a serious risk to human health and safety.
- (2) Before cancelling an approval, the ethics committee must— 30
 - (a) inform the applicant why it is considering cancelling the approval; and
 - (b) give the applicant a reasonable time to make written submissions and be heard on the matter, either personally or by their representative; and
 - (c) consider any submissions made in that time.
- (3) Cancellation of an approval is by written notice given or sent to the applicant and must— 35
 - (a) state the date on which it takes effect (which must not be a date earlier than the date of the notice); and

- (b) if the cancellation relates to only part of the approval, identify the part to which it relates.
- (4) If the ethics committee cancels the approval of an assisted reproductive procedure proposed to be undertaken in conjunction with a surrogacy arrangement,—
 - (a) the procedure must be stopped; and
 - (b) any directions given by the ethics committee relating to how the procedure is to be stopped must be complied with.
- (5) The ethics committee may cancel the approval of a surrogacy arrangement before the parentage of a child born as a result of the surrogacy arrangement is transferred under **Part 3** of the Status of Children Act 1969.

Reviews

23L Review panel

- (1) The Minister must establish and maintain a review panel of any number of persons that may be required for the purpose of determining applications for review made under **section 23M**.
- (2) A panel member must be appointed by notice in writing that states—
 - (a) the date on which the appointment takes effect; and
 - (b) the term of the appointment; and
 - (c) any conditions on the appointment.
- (3) The Minister must appoint 1 member as chairperson of the panel.
- (4) The Minister must appoint to the panel members who, in the Minister's opinion, have relevant skills or experience and, in appointing members, the Minister must have regard to the need for the panel to have available to it, collectively from its members, expertise in, knowledge of, or experience in—
 - (a) assisted reproductive procedures; and
 - (b) articulating the interests of children; and
 - (c) mātauranga Māori and articulating Māori perspectives.
- (5) A panel member vacates office if they—
 - (a) are removed by written notice given by the Minister; or
 - (b) resign by giving written notice to the Minister.
- (6) The Director-General of Health must provide the panel with administrative support for the purposes of assisting the panel to perform its functions.

23M Application for review of ethics committee's decision

- (1) The applicant for approval of a surrogacy arrangement or an assisted reproductive procedure proposed to be undertaken in conjunction with a surrogacy arrangement may apply to the review panel for a review of a decision made by the ethics committee to—

	(a) <u>decline the application; or</u> (b) <u>impose conditions on the approval.</u>	
(2)	<u>An application for review must be—</u>	
	(a) <u>made in a form and manner approved by the panel; and</u>	
	(b) <u>lodged with the chairperson of the panel within 28 working days after the date on which the applicant is notified of the decision.</u>	5
23N	<u>Meetings of panel</u>	
(1)	<u>The chairperson of the panel must, on receiving an application for review that is made in accordance with section 23M(2), convene a meeting of the panel to consider the application.</u>	10
(2)	<u>The quorum necessary for the meeting is 3 panel members, which must include—</u>	
	(a) <u>the chairperson; and</u>	
	(b) <u>2 panel members.</u>	
(3)	<u>A decision of the panel on an application must be made by consensus or, if consensus cannot be reached, by a majority of members in attendance at a meeting.</u>	15
23O	<u>Power to obtain information</u>	
	<u>The chairperson of the panel must request the ethics committee to supply to the chairperson the original of, or copies of, any records, reports, documents, or other information relating to any decision of the committee that is the subject of a review, and may—</u>	20
	(a) <u>make inquiries of, and request explanations from, the ethics committee as to the reasons for any decision of the committee that is the subject of a review; and</u>	25
	(b) <u>seek the advice of the advisory committee on any matter relevant to the review.</u>	
23P	<u>Power to dismiss trivial applications</u>	
	<u>The panel may at any time dismiss an application brought under section 23M if it is satisfied that the application is trivial.</u>	30
23Q	<u>Review decisions</u>	
(1)	<u>In determining an application, the panel must—</u>	
	(a) <u>look at the matter afresh on the basis of the information provided at the review; and</u>	
	(b) <u>decide the matter in accordance with any relevant guidelines or relevant advice issued or given by the advisory committee.</u>	35
(2)	<u>The panel must—</u>	

	(a) <u>confirm the ethics committee’s decision; or</u> (b) <u>modify the ethics committee’s decision (including imposing any conditions or additional conditions, or removing any conditions); or</u> (c) <u>replace the decision with any other decision that the panel considers appropriate in the circumstances of the case; or</u> (d) <u>refer the decision back to the ethics committee for reconsideration with any directions or recommendations.</u>	5
(3)	<u>The panel must provide the applicant with a written copy of its determination, including the reasons for its determination, as soon as practicable after determining the application.</u>	10
23R	<u>Panel must operate expeditiously</u> <u>In performing its functions and exercising its powers, the panel must operate expeditiously having particular regard to the effect that undue delay may have on the reproductive capacity of individuals.</u>	
23S	<u>Ethics committee and advisory committee to be informed of decision</u> <u>As soon as practicable after the panel determines an application, it must give a copy of its determination to—</u> (a) <u>the ethics committee; and</u> (b) <u>the advisory committee.</u>	15
10J	<u>New subpart 2B heading in Part 2 inserted</u> <u>Before the cross-heading above section 24, insert:</u>	20
<u>Subpart 2B—Moratoriums</u>		
10K	<u>New subpart 2C heading in Part 2 inserted</u> <u>Before the cross-heading above section 27, insert:</u>	
<u>Subpart 2C—Ethics committee</u>		
10L	<u>Section 27 amended (Designation of ethics committee)</u>	
(1)	<u>In section 27(3)(b)(ii), replace “research.” with “research; and”.</u>	
(2)	<u>After section 27(3)(b)(ii), insert:</u>	
	(iii) <u>2 or more members with the ability to articulate the interests of children.</u>	30
(3)	<u>After section 27(3), insert:</u>	
(3A)	<u>In designating a committee under this section, the Minister must have regard to the need for the committee to have available to it collectively from its members expertise in, knowledge of, or experience in mātauranga Māori and the ability to articulate Māori perspectives.</u>	35

10M Section 28 amended (Functions of ethics committee)

- (1) In section 28(1)(a), after “procedures”, insert “, surrogacy arrangements,”.
- (2) In section 28(1)(b), after “performed”, insert “, any surrogacy arrangements entered into,”.
- (3) In section 28(1)(c), after “procedures”, insert “, surrogacy arrangements,”.

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10N Cross-heading above section 31 replaced

Replace the cross-heading above section 31 with:

Notices and annual reports

10O Section 31 amended (Information about ethics committee must be made public)

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Repeal section 31(3).

10P New section 31A inserted (Annual reports of ethics committee)

After section 31, insert:

31A Annual reports of ethics committee

- (1) The ethics committee must, as soon as is reasonably practicable after each 12-month period ending on 30 June, give the Minister a report that includes the following information for the period to which the report relates:
 - (a) the name of the chairperson of the committee; and
 - (b) the names of the members of the committee; and
 - (c) the number and kind of applications for approval received by the committee; and
 - (d) the number of applications seeking approval of a surrogacy arrangement received from each of the following classes of persons:
 - (i) providers;
 - (ii) other persons; and
 - (e) the number of applications referred to in each of **subparagraphs (i) and (ii) of paragraph (d)** that were—
 - (i) approved;
 - (ii) declined; and
 - (f) the types of conditions imposed on approved surrogacy arrangements and how frequently those conditions were imposed; and
 - (g) the number of approvals cancelled (in whole or in part) under **section 23K** that related to—
 - (i) surrogacy arrangements;
 - (ii) assisted reproductive procedures; and

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|--|-------------------------------|
| <p>(h) <u>any negative feedback received about the committee’s approval process and any actions taken in response to that feedback; and</u></p> <p>(i) <u>the number of reviews undertaken by the review panel and the number of the decisions made by the ethics committee that the panel—</u></p> <p style="padding-left: 20px;">(i) <u>confirmed:</u></p> <p style="padding-left: 20px;">(ii) <u>modified:</u></p> <p style="padding-left: 20px;">(iii) <u>replaced:</u></p> <p style="padding-left: 20px;">(iv) <u>referred back to the ethics committee.</u></p> <p>(2) <u>As soon as practicable after receiving a report, the Minister must present a copy of the report to the House of Representatives.</u></p> <p>(3) <u>As soon as practicable after a copy of a report is presented to the House of Representatives, the ethics committee must publish the report on a publicly accessible Internet site maintained by or on behalf of the ethics committee.</u></p> | <p>5</p> <p>10</p> |
| <p>10Q Section 34 amended (Appointment of members)</p> | |
| <p>(1) <u>In section 34(4)(g), replace “1” with “2”.</u></p> <p>(2) <u>After section 34(4), insert:</u></p> <p>(4A) <u>In appointing persons to be members of the advisory committee under this section, the Minister must have regard to the need for the committee to have available to it collectively from its members expertise in, knowledge of, or experience in mātauranga Māori and the ability to articulate Māori perspectives.</u></p> <p>(3) <u>Replace section 34(5) with:</u></p> <p>(5) <u>One member appointed under subsection (4)(g) must, at the time of their appointment, be a board member, representative, or employee of the Children and Young People’s Commission.</u></p> | <p>15</p> <p>20</p> <p>25</p> |
| <p>10R Section 35 amended (Functions of advisory committee)</p> | |
| <p>(1) <u>Replace section 35(1)(a) with:</u></p> <p style="padding-left: 20px;">(a) <u>to issue guidelines and give advice to the ethics committee on any matter relating to the following and to keep the guidelines and advice under review:</u></p> <p style="padding-left: 40px;">(i) <u>assisted reproductive procedures:</u></p> <p style="padding-left: 40px;">(ii) <u>surrogacy arrangements:</u></p> <p style="padding-left: 40px;">(iii) <u>human reproductive research:</u></p> <p style="padding-left: 20px;">(ab) <u>to give advice to the review panel, if requested, in relation to an application for review made under section 23M:</u></p> <p>(2) <u>After section 35(1)(b), insert:</u></p> | <p>30</p> <p>35</p> |

	(ba) to provide the Minister with advice on aspects of, or issues arising out of, surrogacy arrangements:	
(3)	In section 35(1)(c), after “procedures”, insert “, surrogacy arrangements,”.	
(4)	After section 35(2)(a), insert:	
	(aa) the outcomes of approved surrogacy arrangements; and	5
10S	<u>Cross-heading above section 42 replaced</u>	
	Replace the cross-heading above section 42 with:	
	<i>Notices and annual reports</i>	
10T	<u>Section 42 amended (Information about advisory committees to be made public)</u>	10
	Repeal section 42(3) and (4).	
10U	<u>New section 42A inserted (Annual reports of advisory committee)</u>	
	After section 42, insert:	
42A	<u>Annual reports of advisory committee</u>	
(1)	The advisory committee must, as soon as is reasonably practicable after each 12-month period ending on 30 June, give the Minister a report that includes detail of its progress in carrying out its functions for the period to which the report relates.	15
(2)	As soon as practicable after receiving a report, the Minister must present a copy of the report to the House of Representatives.	20
(3)	As soon as practicable after a copy of a report is presented to the House of Representatives, the advisory committee must publish the report on a publicly accessible Internet site maintained by or on behalf of the advisory committee.	
10V	<u>New Part 3A inserted</u>	
	After section 66, insert:	25
	<u>Part 3A</u>	
	<u>Information about surrogates, donors, and surrogate-born children</u>	
66A	<u>Application of Part</u>	
	This Part applies to a provider who, on or after the commencement of this Part, assists with a surrogacy arrangement by performing an assisted reproductive procedure or an established procedure.	30

*Information about surrogates and donors***66B Provider must obtain information about surrogates**

(1) A provider must ensure that they obtain the following details about a surrogate:

- (a) the surrogate's name; and
- (b) the surrogate's contact details, including their address; and 5
- (c) the date, place, and country of the surrogate's birth; and
- (d) the surrogate's citizenship and residency status; and
- (e) the surrogate's ethnicity and any other relevant cultural affiliation; and
- (f) in the case of a Māori surrogate, the surrogate's hapū and iwi, to the extent that the surrogate is aware of those affiliations; and 10
- (g) the surrogate's reasons for being a surrogate; and
- (h) whether the surrogate's ovum was used in the conception of the surrogate-born child; and
- (i) if the surrogate's ovum was used in the conception of the surrogate-born child,— 15
 - (i) the surrogate's height; and
 - (ii) the colour of the surrogate's eyes and hair; and
 - (iii) any aspects, considered significant by the provider, of the medical history of—
 - (A) the surrogate; and 20
 - (B) the surrogate's parents and grandparents; and
 - (C) the surrogate's children (if any); and
 - (D) the surrogate's siblings (if any); and
- (j) the nature of any relationship between the surrogate and the intended parents. 25

(2) The provider must accept any information that a surrogate offers that updates or corrects any of the information that the provider holds about the surrogate that was obtained under **subsection (1)**.

66C Provider must obtain information about donors

(1) A provider must ensure that they obtain the following details about each donor who donated genetic material that resulted in the surrogate's pregnancy: 30

- (a) the donor's name; and
- (b) the donor's contact details, including their address; and
- (c) the date, place, and country of the donor's birth; and
- (d) the donor's height; and 35
- (e) the colour of the donor's eyes and hair; and

	(f) <u>the type of donation made by the donor; and</u>	
	(g) <u>the donor's ethnicity and any other relevant cultural affiliation; and</u>	
	(h) <u>in the case of a Māori donor, the donor's whānau, hapū, and iwi, to the extent that the donor is aware of those affiliations; and</u>	
	(i) <u>any aspects, considered significant by the provider, of the medical history of—</u>	5
	(i) <u>the donor; and</u>	
	(ii) <u>the donor's parents and grandparents; and</u>	
	(iii) <u>the donor's children (if any); and</u>	
	(iv) <u>the donor's siblings (if any); and</u>	10
	(j) <u>the donor's reasons for making the donation; and</u>	
	(k) <u>the nature of any relationship between the donor and the intended parents.</u>	
	(2) <u>The provider must accept any information that a donor offers that updates or corrects any of the information the provider holds about the donor that was obtained under subsection (1).</u>	15
	66D Providers to give advice to surrogates and donors before obtaining information under section 66B or 66C	
	(1) Subsection (2) applies before a provider—	
	(a) <u>obtains information from a surrogate under section 66B; and</u>	20
	(b) <u>obtains information from a donor under section 66C.</u>	
	(2) <u>The provider must ensure that a surrogate and donor are each told—</u>	
	(a) <u>about the information that the provider collects and keeps about them; and</u>	
	(b) <u>how long the information is kept; and</u>	25
	(c) <u>why the information is obtained and kept; and</u>	
	(d) <u>that the information is forwarded, under section 66G, to the Registrar-General for keeping, or is otherwise destroyed under section 66H; and</u>	
	(e) <u>that a person born as a result of a surrogacy arrangement has rights under the Births, Deaths, Marriages, and Relationships Registration Act 2021 to obtain information about the surrogate and donors; and</u>	30
	(f) <u>of the importance of persons born as a result of a surrogacy arrangement knowing about the nature of their conception and gestation and about their whakapapa; and</u>	
	(g) <u>of the availability of counselling.</u>	35

- (3) To avoid any doubt, this section does not limit any right or duty set out in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996.

Information about surrogate-born children

66E Providers must have systems to ensure notification of children born as a result of surrogacy arrangement

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A provider must ensure that, at all times, there is in place an effective system for being notified of, or otherwise becoming aware of, the birth of a child as a result of the surrogacy arrangement.

66F Provider to obtain information about surrogate-born children

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A provider who learns of the birth of any child as a result of a surrogacy arrangement must promptly take all reasonably practicable steps to obtain from any person who knows of the child the following information:

- (a) the child's full name; and
- (b) the date and place of the child's birth; and
- (c) the names of the intended parents; and
- (d) the address of each intended parent.

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Providers to give Registrar-General information relating to surrogacy arrangements

66G Providers must give Registrar-General information relating to surrogate-born children, surrogates, and donors

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- (1) A provider must, as soon as reasonably practicable after obtaining the information referred to in **section 66F** in relation to a surrogate-born child,—

- (a) advise the Registrar-General of the birth of the child; and
- (b) give to the Registrar-General, in the format and manner required by the Registrar-General for the purpose,—
 - (i) the information that the provider has obtained under **section 66B** about the surrogate; and
 - (ii) the information that the provider has obtained under section 47 or **66C** about each donor whose donation resulted in the birth of the child; and
 - (iii) the information that the provider has obtained under **section 66F** about the surrogate-born child; and
- (c) give the Registrar-General details of the provider's name and contact details.

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- (2) If, after providing information to the Registrar-General under **subsection (1)**, a provider receives additional information under **section 66B(2) or 66C(2)**

that updates or corrects any of that information given, the provider must promptly give the Registrar-General the updated or corrected information.

Destruction of information held by providers if no surrogate-born child

66H Destruction of information by provider

(1) **Subsection (2)** applies if—

(a) the provider assisting with a surrogacy arrangement performed an assisted reproductive procedure or an established procedure using a donation of an embryo or a cell made by 1 or more donors whose information was collected under section 47 or **66C**; and

(b) the donation of the embryo or cell did not result in a surrogate-born child.

(2) If this subsection applies, the provider may destroy the information held by the provider about the surrogate and each donor whose donation was used in the assisted reproductive procedure or established procedure on the occurrence of any of the following events:

(a) the termination (otherwise than by the birth of a living child) of the surrogate's pregnancy resulting from the implantation of a donated embryo or an embryo formed from the donated cell;

(b) the destruction before implantation of a donated embryo or an embryo formed from the donated cell;

(c) the destruction of a donated cell.

10W Section 76 amended (Regulations)

(1) After section 76(1)(a), insert:

(aa) prescribing, for the purposes of a social worker's report referred to in **section 23H**,—

(i) the steps and actions that must be taken by the social worker in the course of preparing the report; and

(ii) the information that must be gathered and considered in the course of preparing the report; and

(iii) the information that the report must contain; and

(iv) providing for any other matters in connection with the preparation of a social worker's report;

(ab) requiring providers that assisted with a surrogacy arrangement to keep information of a kind specified in the regulations (that is not identifying information) about the surrogacy arrangement, and requiring the provider to disclose that information, in a manner provided for by the regulations, to the advisory committee or any duly authorised representative of that committee or the Director-General of Health;

- (2) In section 76(1)(b), replace “paragraph (a)” with “paragraph (a) or **(ab)**”.
- (3) After section 76(2), insert:
- (2A) Regulations under **subsection (1)(aa)** may be made only on the recommendation of the Minister responsible for the administration of the Oranga Tamariki Act 1989, if the Minister—
- (a) has consulted the Minister of Justice; and
- (b) has consulted the Minister of Health; and
- (c) is satisfied that the regulations are reasonably necessary to identify any risk that the intended parents may cause serious harm to a child born as a result of a surrogacy arrangement.

Part 2

Amendments to Care of Children Act 2004

11 Amendments to Care of Children Act 2004

This Part amends the Care of Children Act 2004.

12 Section 8 amended (Interpretation)

In section 8, insert in its appropriate alphabetical order:

surrogacy order means an order made under **section 124C**

13 Section 77 amended (Preventing removal of child from New Zealand)

- (1) In section 77(2)(b), replace “complied with.” with “complied with; or”.
- (2) After section 77(2)(b), insert:
- (e) prevent a surrogacy order from being complied with.

14 Section 77B amended (Orders under section 77(3)(e) may be suspended for specified period)

After section 77B(3), insert:

- (4) This section does not apply if the order made under section 77(3)(e) (that the child not be removed from New Zealand) was made to prevent the non-compliance with a surrogacy order.

15 Section 78 amended (Contravening parenting or guardianship order)

- (1) In the heading to section 78, replace “parenting or guardianship” with “parenting, guardianship, or surrogacy”.
- (2) After section 78(1)(a)(ii), insert:
- (iii) a surrogacy order; or
- (3) In section 78(1)(b)(ii), replace “46R.” with “46R; or”
- (4) After section 78(1)(b)(ii), insert:

(iii) a surrogacy order.

16 Section 80 amended (Taking child from New Zealand)

(1) In section 80(e), replace “complied with.” with “complied with; or”

(2) After section 80(e), insert:

(d) with intent to prevent a surrogacy order from being complied with.

5

17 New Part 2A inserted

After section 124, insert:

Part 2A
Surrogacy orders

124A Interpretation

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In this Part, ~~intending parent, surrogacy arrangement, and surrogate~~ have the same meanings as in section 5 of the Human Assisted Reproductive Technology Act 2004.

124B Arrangements between surrogates and intending parents

(1) A surrogacy arrangement cannot be enforced under this Act, but a party to a surrogacy arrangement may seek to have the terms of the arrangement that relate to the transfer of custody of any child resulting from the arrangement embodied in an order of the court made under **section 124C**.

15

(2) An order under **section 124C** may, so far as it relates to custody of the child, be enforced under this Act as if it were a parenting order.

20

124C Surrogacy orders

(1) On an application made to it for the purpose by some or all of the parties to a surrogacy arrangement, the court may make a surrogacy order determining that the custody of any child resulting from a pregnancy under the surrogacy arrangement must transfer from the surrogate to the intending parents within ten days of the birth of the child.

25

(2) The court may make the order under **subsection (1)** only if it is satisfied of the following—

(a) both the surrogate and the intending parents consent to be legally bound by the surrogacy arrangement;

30

(b) either—

(i) the ethics committee has provided approval in writing under **section 23A(2)** of the Human Assisted Reproductive Technology Act 2004 for the surrogacy arrangement; or

	(ii) if the surrogacy arrangement involves an assisted reproductive procedure performed by an overseas provider of fertility services, an entity in that overseas country that performs equivalent functions to the ethics committee has provided written notice that it is satisfied that each of the requirements described in section 23A(2) of the Human Assisted Reproductive Technology Act 2004 have been met.	5
124D	Content and explanation of surrogacy orders	
(1)	An order under section 124C(1) —	
(a)	must contain an explanation, based on the precise terms of the particular order, of—	10
(i)	the effect of the order (for example, of the obligations the order creates); and	
(ii)	the consequences that may follow if the order is not complied with; and	15
(b)	without limiting paragraph (a) , must be accompanied by general information, in a form approved by the Secretary, about the matters stated in paragraph (a)(i) and (ii) .	
(2)	A lawyer acting for, or other person representing, a party to an order under section 124C(1) must explain to the party the effect of the order.	20
(3)	Explanations required by subsections (1)(a) and (2) must be given in a manner and in language that the recipients of those explanations understand.	
(4)	A failure to comply with a requirement imposed by this section does not affect the validity of the order concerned.	

	Part 3	25
	Amendments to Status of Children Act 1969	
18	Amendments to Status of Children Act 1969	
	This Part amends the Status of Children Act 1969.	
19	New section 22A and cross-heading inserted	
	After section 22, insert:	30

	<i>Rule about surrogacy arrangements</i>	
22A	Rule about surrogacy arrangements	
(1)	This section applies if—	
(a)	a woman becomes pregnant as a result of a surrogacy arrangement; and	

- (b) ~~the surrogacy arrangement is the subject of a surrogacy order made under **section 124C** of the Care of Children Act 2004; and~~
- (c) ~~the pregnancy results in the birth of a living child.~~
- (2) ~~From the birth of the child, the following apply:~~
 - (a) ~~the surrogate and any partner of the surrogate are not, for any purpose, parents of any child of the pregnancy and no longer have the rights and liabilities of parents of the child:~~ 5
 - (b) ~~the intending parents are, for every purpose, the parents of any child of the pregnancy and have all the rights and liabilities of parents of the child:~~ 10
 - (c) ~~the child has, in relation to the intending parents, the rights and liabilities of a child of those persons.~~
- (3) ~~Sections 17 to 22 are subject to this section.~~
- (4) ~~For the avoidance of doubt, **subsection (2)** applies in the circumstances described in **subsection (1)** even if the surrogacy arrangement involves an assisted reproductive procedure performed by an overseas provider of fertility services.~~ 15
- (5) ~~In this section, **intending parent**, **surrogacy arrangement**, and **surrogate** have the same meanings as in section 5 of the Human Assisted Reproductive Technology Act 2004.~~ 20

18 Principal Act

This Part amends the Status of Children Act 1969.

19 Section 2 replaced (Interpretation)

Replace section 2 with:

- 2 Interpretation** 25
 - In this Act, unless the context otherwise requires,—
 - adoption order** means an adoption order made under the Adoption Act 1955
 - marriage** includes a void marriage
 - Registrar-General** means the Registrar-General appointed under section 124(1) of the Births, Deaths, Marriages, and Relationships Registration Act 2021 30
 - surrogacy arrangement** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004.

19A New section 2AA inserted (Transitional, savings, and related provisions)

After section 2, insert: 35

2AA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

19B Section 5 amended (Presumptions as to parenthood)

Before section 5(1), insert:

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(1AAA) This section does not apply in respect of a child born as a result of a surrogacy arrangement.

19C New section 7AAA inserted (Application of sections 7 to 10)

Before section 7, insert:

7AAA Application of sections 7 to 10

10

Sections 7 to 10 do not apply in respect of a child born as a result of a surrogacy arrangement.

19D Section 9 amended (Instruments of acknowledgment may be filed with Registrar-General)

Repeal section 9(4).

15

19E Section 11 amended (Regulations)

(1) In section 11(2), delete “(as defined in subsection (4) of section 9)”.

(2) In section 11(3), delete “(as so defined)”.

19F Section 12 amended (Repeals and consequential amendments)

(1) In the heading to section 12, after “amendments”, insert “arising from this Part”.

20

(2) In section 12(2), replace “the Schedule” with “**Schedule 2**”.

19G Section 13 amended (Purpose of this Part)

In section 13(a), after “procedures”, insert “that are not performed in conjunction with a surrogacy arrangement”.

25

19H New section 13A inserted (Part not to apply to surrogate-born children)

After section 13, insert:

13A Part not to apply to surrogate-born children

This Part does not apply to a child conceived as a result of an AHR procedure that was performed in conjunction with a surrogacy arrangement.

30

19I New Part 3 inserted

After section 27, insert:

Part 3

Parentage of children born as result of surrogacy arrangements

28 Purposes of this Part

The purposes of this Part are to—

- (a) determine the parentage of surrogate-born children; and 5
- (b) provide for the transfer of parentage of surrogate-born children and set out the effect of a transfer of parentage; and
- (c) provide for the recognition of certain overseas parentage determinations.

29 Interpretation

In this Part, unless the context otherwise requires,— 10

child refers to the status of a person in a relationship of a parent and child, and includes a person of that status even after the person has reached the age of 18 years

court means the Family Court of New Zealand, and includes a Family Court Judge 15

established procedure has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004

ethics committee means the committee designated under section 27 of the Human Assisted Reproductive Technology Act 2004

guardian has the same meaning as in section 8 of the Care of Children Act 2004 20

intended parents has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004

lawyer means a person who holds a current practising certificate as a barrister or as a barrister and solicitor under the Lawyers and Conveyancers Act 2006 25

Minister means the means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is the person for the time being responsible for the administration of this Act

parentage order means an order of the court made under **section 60** transferring the parentage of a surrogate-born child from the surrogate to— 30

- (a) the intended parents; or
- (b) the surrogate and the surrogate's partner; or
- (c) any other person or persons

parties, in relation to a surrogacy arrangement, means the surrogate and intended parents 35

personal representative, in relation to a deceased person, means an executor, administrator, or trustee of the estate of the deceased person

	<u>provider has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004</u>	
	<u>review panel has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004</u>	
	<u>stillborn child means a dead foetus that—</u>	5
	(a) <u>weighed 400 g or more when born; or</u>	
	(b) <u>was born after the 20th week of pregnancy</u>	
	<u>surrogate has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004</u>	
	<u>surrogate-born child means a child who is born inside or outside New Zealand as a result of a surrogacy arrangement, and includes—</u>	10
	(a) <u>a stillborn child; and</u>	
	(b) <u>a child who died shortly after birth</u>	
	<u>surrogate's partner means the person who was the spouse, civil union partner, or de facto partner of the surrogate at any or all of the following times:</u>	15
	(a) <u>the time of the conception of the surrogate-born child;</u>	
	(b) <u>any time during the gestation of the surrogate-born child;</u>	
	(c) <u>the time of the birth of the surrogate-born child.</u>	
	<u>Subpart 1—General provisions relating to transfer of parentage</u>	
30	<u>Surrogate sole parent of surrogate-born child until parentage transferred, etc</u>	20
(1)	<u>The surrogate of a surrogate-born child is the sole parent of the child until such time (if any) that—</u>	
	(a) <u>the parentage of the child is transferred under subpart 2 or 3; or</u>	
	(b) <u>an adoption order is made in respect of the child under which the surrogate ceases to be a parent of the child.</u>	25
(2)	<u>Subsection (1) applies whether or not the surrogate had a partner at any of the following times:</u>	
	(a) <u>the time of the conception of the surrogate-born child;</u>	
	(b) <u>any time during the gestation of the surrogate-born child;</u>	30
	(c) <u>the time of the birth of the surrogate-born child.</u>	
31	<u>Guardians of surrogate-born child until parentage transferred, etc</u>	
(1)	<u>The surrogate of a surrogate-born child is the sole guardian of the child until such time (if any) that—</u>	
	(a) <u>the parentage of the child is transferred under subpart 2 or 3; or</u>	35

	(b) <u>an order is made by the court that removes the surrogate as a guardian of the surrogate-born child; or</u>	
	(c) <u>an order is made by the court appointing 1 or more other persons guardians of the surrogate-born child; or</u>	
	(d) <u>an adoption order is made in respect of the child.</u>	5
(2)	<u>However, if the surrogacy arrangement was approved by the ethics committee or review panel, the intended parents are additional guardians of the child under this section until such time (if any) that—</u>	
	(a) <u>the parentage of the child is transferred to them under section 41; or</u>	
	(b) <u>an application for a parentage order in respect of the child is determined by the court under section 60; or</u>	10
	(c) <u>an order is made by the court under section 33 removing the intended parents as guardians of the surrogate-born child; or</u>	
	(d) <u>an order is made by the court that has the effect of suspending the intended parents as guardians of the surrogate-born child; or</u>	15
	(e) <u>an adoption order is made in respect of the child.</u>	
(3)	<u>This section overrides sections 17 to 25 of the Care of Children Act 2004.</u>	
32	<u>Additional guardians of surrogate-born child until parentage transferred, etc</u>	
(1)	<u>If, before the parentage of a surrogate-child is transferred, the court appoints 1 or more persons as additional guardians of a surrogate-born child under section 27 of the Care of Children Act 2004, or under section 110, 110AA, or 113A of the Oranga Tamariki Act 1989, the appointment of the additional guardian or guardians ceases to have effect when the parentage of the child is transferred under subpart 2 or 3.</u>	20 25
(2)	<u>This section does not limit—</u>	
	(a) <u>sections 28 to 29A of the Care of Children Act 2004; or</u>	
	(b) <u>section 127 of the Oranga Tamariki Act 1989; or</u>	
	(c) <u>section 16(2)(h) of the Adoption Act 1955.</u>	
33	<u>Court may remove either or both intended parents as guardians of surrogate-born child</u>	30
(1)	<u>This section applies in respect of intended parents who are additional guardians of a surrogate-born child under section 31(2).</u>	
(2)	<u>On an application for the purpose by an eligible person, the court may make an order—</u>	35
	(a) <u>removing one of the intended parents as an additional guardian of the surrogate-born child; or</u>	

	(b) <u>removing both of the intended parents as additional guardians of the surrogate-born child.</u>	
(3)	<u>An order under subsection (1) must not be made unless the court is satisfied that the order will serve the welfare and best interests of the surrogate-born child.</u>	5
(4)	<u>In subsection (1), eligible person means any of the following persons:</u>	
	(a) <u>the surrogate;</u>	
	(b) <u>an intended parent;</u>	
	(c) <u>any other person granted leave to apply by the court.</u>	
34	<u>How parentage of surrogate-born child transferred under this Part</u>	10
(1)	<u>The parentage of a surrogate-born child may only be transferred from the surrogate to 1 or more other persons under this Part by—</u>	
	(a) <u>operation of law under subpart 2; or</u>	
	(b) <u>a parentage order made under subpart 3.</u>	
(2)	<u>Nothing in this section limits the Adoption Act 1955.</u>	15
35	<u>Effect of transfer of parentage</u>	
(1)	<u>When the parentage of a surrogate-born child is transferred from the surrogate to 1 or more other persons, the following paragraphs have effect for all purposes, whether civil, criminal, or otherwise (but <i>see</i> subsection (4)):</u>	20
	(a) <u>the child becomes the child of the person or persons to whom parentage is transferred; and</u>	
	(b) <u>the child ceases to be the child of the surrogate (unless the parentage of the child is transferred to the surrogate and the surrogate's partner); and</u>	
	(c) <u>the person or persons to whom parentage is transferred become the parents and guardians of the child; and</u>	25
	(d) <u>the surrogate ceases to be the parent and a guardian of the child (unless the parentage of the child is transferred to the surrogate and the surrogate's partner).</u>	
(2)	<u>Other familial relationships are determined in accordance with subsection (1).</u>	30
(3)	<u>This section is subject to—</u>	
	(a) <u>sections 36 and 37; and</u>	
	(b) <u>the provisions of any other enactment that distinguish between children who were born as a result of a surrogacy arrangement and children who were born other than as a result of a surrogacy arrangement.</u>	35
(4)	<u>Nothing in this section affects section 6(7) or 7(5) of the Citizenship Act 1977.</u>	

36	<u>Familial relationships that existed prior to transfer of parentage continue for certain purposes</u>	
(1)	<u>For the purposes set out in subsection (2), a surrogate-born child is taken to have—</u>	
(a)	<u>the familial relationships that existed before parentage was transferred;</u>	5
	<u>and</u>	
(b)	<u>the familial relationships that resulted from the transfer of parentage.</u>	
(2)	<u>The purposes referred to in subsection (1) are—</u>	
(a)	<u>determining whether persons are within any of the prohibited degrees of civil union set out in clause 1(1) to (7) of Schedule 2 of the Civil Union Act 2004;</u>	10
(b)	<u>determining whether persons are within any of the prohibited degrees of marriage set out in clause 1(a) to (g) of Schedule 2 of the Marriage Act 1955;</u>	
(c)	<u>applying a law relating to a sexual offence where a familial relationship is relevant.</u>	15
37	<u>Effect of transfer of parentage on property rights</u>	
(1)	<u>The transfer of parentage does not have effect to deprive a surrogate-born child of any vested or contingent property rights acquired by the child before the transfer of parentage.</u>	20
(2)	<u>Subject to subsection (1), a transfer of parentage has effect in relation to—</u>	
(a)	<u>a disposition of property, whether by will or otherwise, and whether made before or after the commencement of this section, unless the will or other instrument distinguishes between children who were born as a result of a surrogacy arrangement and children who were born other than as a result of a surrogacy arrangement; and</u>	25
(b)	<u>a devolution of property of a person dying intestate.</u>	
	<u>Compare: Surrogacy Act 2010 s 40 (NSW)</u>	
38	<u>Interpretation of references to mother and father</u>	
(1)	<u>This section applies if—</u>	30
(a)	<u>the parentage of a surrogate-born child is transferred under subpart 2 or 3; or</u>	
(b)	<u>an overseas parentage determination is recognised in New Zealand under subpart 4 in respect of a surrogate-born child.</u>	
(2)	<u>A reference in any enactment, instrument, or other document (whenever passed or made) to the mother or to the father of the surrogate-born child is—</u>	35
(a)	<u>in the case of a surrogate-born child who has 1 parent, a reference to that parent:</u>	

	(b) <u>in the case of a surrogate-born child who has 2 parents, a reference to either of those parents.</u>	
(3)	<u>A reference in any enactment, instrument, or other document (whenever passed or made) to the mother and the father of the surrogate-born child is—</u>	
	(a) <u>in the case of a surrogate-born child who has 1 parent, a reference to that parent:</u>	5
	(b) <u>in the case of a surrogate-born child who has 2 parents, a reference to both of those parents.</u>	
(4)	<u>However, subsections (2) and (3) do not apply if a contrary intention is expressed or appears in the enactment, instrument, or document.</u>	10
39	<u>Interpretation of reference to blood relationship</u>	
(1)	<u>A reference in any enactment, instrument, or other document (whenever passed or made) to 2 persons having, or being related or connected by, a blood relationship includes a relationship that exists between—</u>	
	(a) <u>a surrogate-born child (A); and</u>	15
	(b) <u>a person (B) who, at the time of determining the existence of the relationship, is a parent of A in accordance with—</u>	
	(i) <u>section 30:</u>	
	(ii) <u>section 41(2):</u>	
	(iii) <u>section 60(2):</u>	20
	(iv) <u>an overseas parentage determination recognised in New Zealand under section 63(2).</u>	
(2)	<u>Subsection (1)</u> applies even if there is no genetic link between A and B.	
(3)	<u>However, this section does not apply if a contrary intention is expressed or appears in the enactment, instrument, or document.</u>	25
(4)	<u>Other familial relationships of persons between whom a blood relationship exists under subsection (1) are determined in accordance with that relationship.</u>	
40	<u>Interpretation of reference to natural child and natural parent</u>	
(1)	<u>A reference in any enactment, instrument, or other document (whenever passed or made) to a person being a natural child of another person includes a person (A) who is a surrogate-born child and who has a child-parent relationship with another person (B) because, at the time of determining the existence of the relationship, B is the parent of A in accordance with—</u>	30
	(a) <u>any of the following provisions:</u>	35
	(i) <u>section 30:</u>	
	(ii) <u>section 41(2):</u>	
	(iii) <u>section 60(2); or</u>	

- (b) an overseas parentage determination recognised in New Zealand under **section 63(2)**.
- (2) **Subsection (1)** applies even if there is no genetic link between A and B.
- (3) A reference in any enactment, instrument, or other document (whenever passed or made) to a person being a natural parent of another person includes a person (C) who is the parent of a surrogate-born child (D) and who has a parent-child relationship with D because, at the time of determining the existence of the relationship, C is the parent of D in accordance with—
- (a) any of the following provisions:
- (i) **section 30:**
- (ii) **section 41(2):**
- (iii) **section 60(2); or**
- (b) an overseas parentage determination recognised in New Zealand under **section 63(2)**.
- (4) **Subsection (3)** applies even if there is no genetic link between C and D.
- (5) However, this section does not apply if a contrary intention is expressed or appears in the enactment, instrument, or document.

Subpart 2—Transfer of parentage by operation of law

41 Parentage transferred by operation of law

- (1) This section applies if—
- (a) the surrogacy arrangement entered into between the surrogate and intended parents has been approved by the ethics committee or review panel; and
- (b) the surrogate-born child is in the care of the intended parents; and
- (c) the surrogate has made a statutory declaration in accordance with **section 42**.
- (2) If this section applies, parentage of the surrogate-born child is transferred from the surrogate to the intended parents immediately upon the intended parents receiving the surrogate's declaration.
- (3) The intended parents may receive a surrogate's declaration electronically if the intended parents agree to the declaration being given in an electronic form and by means of electronic communication.

42 Statutory declaration of surrogate

- (1) The surrogate who has given birth to a child as a result of a surrogacy arrangement entered into with the intended parents of the child may make a statutory declaration verifying that—

- (a) the surrogacy arrangement was approved by the ethics committee or review panel and the approval has not been cancelled; and
- (b) the conditions imposed by the ethics committee or review panel on its approval of the surrogacy arrangement (if any) have been satisfied; and
- (c) the child (unless deceased) is in the care of the intended parents; and 5
- (d) an application has not at any time been made for a parentage order in respect of the child or, if an application for a parentage order has at any time been made in respect of the child, it has been withdrawn; and
- (e) the surrogate consents to relinquish their parentage and guardianship of the child. 10
- (2) A statutory declaration—
- (a) may not be made earlier than 7 days after the birth of the child; and
- (b) must be in the form approved by the Registrar-General.
- (3) A surrogate must—
- (a) receive independent legal advice before making a declaration; and 15
- (b) make the declaration in the presence of the lawyer from whom that independent legal advice was received.
- (4) The requirement in **subsection (3)(b)** may be met using an audiovisual link if—
- (a) the lawyer in whose presence the declaration is made is satisfied that the surrogate signed the declaration in the course of the audiovisual link; and 20
- (b) as soon as practicable after signing the declaration, the surrogate sends the declaration (or a photograph or scan of the signed declaration) to the lawyer for certification. 25
- (5) The lawyer in whose presence a declaration is made by a surrogate must, at the end of the declaration, certify that before the surrogate signed the declaration the lawyer explained to the surrogate the effect and implications of the declaration.
- 43 Surrogate required to provide personal information to intended parents in certain cases for purposes of registering birth of surrogate-born child** 30
- (1) This section applies if—
- (a) the parentage of a child born as a result of a surrogacy arrangement is to be, or has been, transferred from the surrogate to the intended parents by operation of law under **section 41**; and 35
- (b) the surrogacy arrangement did not involve the performance of an assisted reproductive procedure or an established procedure by a provider.
- (2) The surrogate must, at the same time as providing a statutory declaration in accordance with **section 42** or immediately after making that declaration,

	provide to the intended parents or parent (as the case may be) the details specified in section 30B(3) of the Births, Deaths, Marriages, and Relationships Registration Act 2021 that is required by section 30B(2)(c)(i) of that Act to be provided to the Registrar-General for the purposes of registering the child's birth.	5
44	<u>Donor required to provide personal information to intended parents in certain cases for purposes of registering birth of surrogate-born child</u>	
(1)	<u>This section applies if—</u>	
	(a) <u>the parentage of a child born as a result of a surrogacy arrangement is to be, or has been, transferred from the surrogate to the intended parents by operation of law under section 41; and</u>	10
	(b) <u>the surrogacy arrangement did not involve the performance of an assisted reproductive procedure or an established procedure by a provider.</u>	
(2)	<u>To enable the intended parents to provide to the Registrar-General the information required by section 30B(2)(c)(ii) of the Births, Deaths, Marriages, and Relationships Registration Act 2021 (the Act) when notifying the birth of the child under section 12 of the Act, the donor must, before that notification is given, provide to the intended parents or parent (as the case may be) the details specified in section 30B(4) of the Act.</u>	15
45	<u>Death of 1 intended parent before parentage transferred</u>	20
(1)	<u>Subsection (2) applies if—</u>	
	(a) <u>a surrogacy arrangement entered into by 2 intended parents has been approved by the ethics committee or review panel; and</u>	
	(b) <u>1 intended parent dies before parentage of the surrogate-born child is transferred to the intended parents under section 41; and</u>	25
	(c) <u>the surrogate-born child is in the care of the surviving intended parent.</u>	
(2)	<u>If this subsection applies, parentage of the surrogate-born child may be transferred under this subpart to the surviving intended parent and the deceased intended parent, and—</u>	
	(a) <u>the references in sections 41(1)(b) and 42(1)(c) to the intended parents must be read as references to the surviving intended parent; and</u>	30
	(b) <u>the reference in section 41(2) to the intended parents receiving the surrogate's declaration must be read as a reference to the surviving intended parent receiving the surrogate's declaration.</u>	
46	<u>Order recording transfer of parentage by operation of law</u>	35
(1)	<u>The purpose of this section is to provide for a parent-child relationship established by operation of law under this subpart to be recorded in a court order.</u>	
(2)	<u>If the parentage of a surrogate-born child is transferred from the surrogate to the intended parents by operation of law under section 41, any of the</u>	

following persons may apply to the court for an order recording the transfer of parentage:

- (a) the surrogate; or
 - (b) one or both of the intended parents; or
 - (c) the surrogate-born child. 5
- (3) On receiving an application under **subsection (1)**, a Family Court Associate or Judge must deal with the application on the papers and make an order in the terms sought if satisfied that the parentage of the surrogate-born child has transferred by operation of law.
- (4) For all purposes, an order made under this section must be treated as if it were a parentage order made under **section 60**. 10

Subpart 3—Transfer of parentage by court order

47 Who may apply for parentage order

- (1) An application may be made to the court by—
- (a) an intended parent for a parentage order transferring the parentage of a surrogate-born child from the surrogate to— 15
 - (i) the intended parent; or
 - (ii) the intended parent and the other intended parent; or
 - (b) the intended parents jointly for a parentage order transferring the parentage of a surrogate-born child from the surrogate to the intended parents; or 20
 - (c) the surrogate for a parentage order transferring the parentage of a surrogate-born child from the surrogate to either or both of the intended parents; or
 - (d) any person or persons granted leave under **section 48** to apply to the court for a parentage order transferring the parentage of a surrogate-born child from the surrogate to— 25
 - (i) the person; or
 - (ii) the person and any other person.
- (2) However, if, at the time the application is made, neither the applicant nor any party to the surrogacy arrangement is habitually resident in New Zealand,— 30
- (a) the applicant must seek the leave of the court to make the application; and
 - (b) a Family Court Judge may grant leave only if they are satisfied that—
 - (i) the court is the appropriate forum to determine the parentage of the child; and 35
 - (ii) granting leave is in the best interests of the child.

- (3) In considering whether the court is the most appropriate forum to determine the parentage of a child, the Family Court Judge must take into account—
- (a) the habitual residence of each of the parties to the surrogacy arrangement; and
 - (b) the habitual residence of the applicant, if the applicant is not a party to the surrogacy arrangement; and 5
 - (c) the place of birth of the child; and
 - (d) whether a similar or related proceeding in respect of the child has been commenced in another jurisdiction; and
 - (e) any other matters the Judge considers relevant. 10
- (4) If any of the persons referred to in **subsection (1)(a), (b), or (c)** have died, an application may be made by the personal representative of the deceased.
- 48 Court may grant leave to apply for parentage order**
- (1) The following persons may apply to the court for leave to apply for a parentage order in relation to a surrogate-born child: 15
- (a) the surrogate and the surrogate’s partner; or
 - (b) the surrogate’s partner; or
 - (c) any other person.
- (2) A Family Court Judge may grant leave to a person referred to in **subsection (1)** to apply for a parentage order in relation to a surrogate-born child only if the Judge is satisfied that— 20
- (a) there are exceptional circumstances; and
 - (b) granting leave is in the best interests of the child.
- 49 Application for parentage order may not be made in certain circumstances**
- An application for a parentage order may not be made in relation to a surrogate-born child if— 25
- (a) an application for a parentage order has previously been made in relation to the child and that application has been determined or is awaiting determination; or
 - (b) an application for an adoption order has been made before the commencement of this section in relation to the child and that application has been determined or is awaiting determination. 30
- 50 Information that must be in, or accompany, application for parentage order if surrogacy arrangement not assisted by provider**
- (1) This section applies if— 35
- (a) an application for a parentage order is made in respect of a child born as a result of a surrogacy arrangement that did not involve the performance

- of an assisted reproductive procedure or an established procedure by a provider; and
- (b) the child is not deceased.
- (2) The application for a parentage order must contain, or be accompanied by, so much of the prescribed information as is known to the applicant. 5
- (3) In this section, **prescribed information** means the information prescribed under **subsection (4)** that must be provided by a Registrar of the court to the Registrar-General under **section 30D** of the Births, Deaths, Marriages, and Relationships Registration Act 2021 if a parentage order is made.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing information for the purposes of **subsection (3)**, and that information must be, or include, information about— 10
- (a) the surrogate; and
- (b) any donor who—
- (i) donated genetic material that resulted in the surrogate's pregnancy; and 15
- (ii) is not an intended parent.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 51 Donor to provide personal information required to be in, or accompany, application for parentage order** 20
- (1) A donor must, on the request of an applicant for a parentage order, provide to the applicant any of the information about the donor that is required by **section 50(2)** to be contained in, or accompany, an application for a parentage order. 25
- (2) In this section, **donor** does not include a donor who is an intended parent.
- 52 Parentage report**
- (1) In this section,—
- chief executive** means the chief executive of the department responsible for the administration of the Oranga Tamariki Act 1989 30
- parentage report** means a social worker's report on their assessment of matters relating to an application for a parentage order
- social worker** has the same meaning as in section 2(1) of the Oranga Tamariki Act 1989.
- (2) Before an application for a parentage order is determined, a Registrar must, or a Family Court Judge or Family Court Associate must, direct a Registrar to— 35
- (a) send a copy of the application to the chief executive; and

- (b) request the chief executive to provide to the court, within a specified time, a parentage report in relation to the application that includes—
- (i) an assessment of any of the matters in **section 59** specified; and
 - (ii) any other specified matters.
- (3) However, a direction need not be made under **subsection (2)** if the surrogate-born child in respect of whom the application is made—
- (a) is of or over the age of 18 years; or
 - (b) was born before the commencement of this section.
- (4) On receiving a request from a Registrar of the court made under **subsection (2)(b)**, the chief executive must arrange for a social worker to prepare a parentage report in accordance with the request.
- (5) In addition to providing an assessment of the matters specified in the request, a parentage report may also include an assessment of any other matters that the social worker considers relevant to the application.
- (6) A copy of a parentage report received by a Registrar of the court must be given to—
- (a) the lawyer for each party to the proceedings or, if a party has no lawyer acting for them, to that party; and
 - (b) any lawyer appointed under **section 55** to represent the surrogate-born child; and
 - (c) any lawyer appointed under **section 57** to assist the court.
- (7) The court may call the social worker who prepared the report as a witness, either on its own initiative or on the application of any party.
- (8) Any party to the proceedings, or any lawyer appointed under **section 55 or 57**, may tender evidence on any matter referred to in the report.
- 53 Other reports**
- (1) Before determining an application for a parentage order, the court may also obtain any 1 or more of the following reports in respect of the surrogate-born child:
- (a) a cultural report:
 - (b) a medical report:
 - (c) a psychiatric report.
- (2) To obtain a report, the court may—
- (a) request a person whom the court considers qualified for the purpose to prepare a written report; or
 - (b) direct a Registrar of the court to request a person whom the Registrar considers qualified for the purpose to prepare a written report.
- (3) The court may act under **subsection (2)** only if satisfied that—

- (a) the information that the report will provide is essential in the particular circumstances of the case for the proper disposition of the application; and
- (b) the report is the best source of the information, having regard to the quality, timeliness, and cost of other sources, including any report provided to the court under **section 52**; and 5
- (c) the proceedings will not be unduly delayed by the time taken to prepare the report; and
- (d) any delay in the proceedings will not have an unacceptable impact on the surrogate-born child. 10
- (4) If the court is entitled by **subsection (3)** to act under **subsection (2)** and if the court knows the wishes of the parties to the proceedings about the obtaining of a report or can speedily ascertain them, the court must have regard to the parties' wishes before deciding whether to act under **subsection (2)**.
- (5) A copy of any report obtained under this section must be given by a Registrar of the court to— 15
- (a) the lawyer for each party to the proceedings or, if a party has no lawyer acting for them, to that party; and
- (b) any lawyer appointed under **section 55** to represent the surrogate-born child; and 20
- (c) any lawyer appointed under **section 57** to assist the court.
- (6) Any party to the proceedings, or any lawyer appointed under **section 55 or 57**, may tender evidence on any matter referred to in a report.
- (7) The court may call the person from whom a report was obtained as a witness, either on its own initiative or on the application of any party to the proceedings. 25
- 54 Costs of reports requested under section 53**
- (1) Fees for reports prepared pursuant to a request under **section 53**, and reasonable expenses incurred,—
- (a) may be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and 30
- (b) are payable by such party or parties to the proceedings as the court orders or, if the court so decides, are payable out of public money appropriated by Parliament for the purpose. 35
- (2) Any amount of any fees and expenses ordered to be paid by any party under **subsection (1)(b)** must, if paid by the Crown, be a debt due to the Crown by that party and, in default of payment of the amount, payment may be enforced, by order of the District Court or the High Court as the case may require, in the same manner as a judgment of that court. 40

55 Appointment of lawyer to represent surrogate-born child in proceedings

(1) The court may appoint, or direct a Registrar of the court to appoint, a lawyer to represent a surrogate-born child who is the subject of an application for a parentage order.

(2) An appointment may be made only if the court— 5

(a) has concerns for the safety or well-being of the surrogate-born child; and

(b) considers an appointment necessary.

(3) When appointing a lawyer to represent a surrogate-born child, the court or Registrar must, so far as is reasonably practicable, appoint a lawyer who is, by reason of their personality, cultural background, training, and experience, suitably qualified to represent the child. 10

56 Lawyer appointed to represent surrogate-born child must explain proceedings to child

A lawyer appointed under **section 55** to represent a surrogate-born child who is the subject of an application for a parentage order must, if it is reasonably practicable to do so having regard to the age and maturity of the child, explain the nature of the proceedings to the child in a manner that the child is most likely to understand. 15

57 Appointment of lawyer to assist court

In any proceedings under this subpart, a court may— 20

(a) appoint a lawyer to assist the court; or

(b) direct a Registrar of the court to appoint a lawyer to assist the court.

58 Fees and expenses of lawyer appointed under section 55 or 57

(1) The fees and expenses of a lawyer appointed under **section 55 or 57** must—

(a) be determined under regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and 25

(b) be paid by such party or parties to the proceedings as the court orders or, if the court so decides, are payable out of public money appropriated by Parliament for the purpose. 30

(2) An invoice rendered by a lawyer appointed under **section 55 or 57** for fees and expenses must be given to a Registrar of the court, and the Registrar may decide to adjust the amount of the invoice.

(3) If the lawyer is dissatisfied with the decision of a Registrar as to the amount of the invoice, the lawyer may, within 14 days after the date of the decision, apply to a Judge of the court to review the decision. 35

(4) The Judge may, on an application under **subsection (3)**, make any order varying or confirming the decision that the Judge considers fair and reasonable.

59	<u>Matters court may take into account when deciding whether to make parentage order</u>	
(1)	<u>In deciding whether to make a parentage order, the court may take into account the following matters:</u>	
(a)	<u>the intentions of the parties to the surrogacy arrangement when entering into the arrangement in relation to the future parentage of the child:</u>	5
(b)	<u>whether the parties consented in writing to the transfer of parentage and whether the consent was informed consent freely given:</u>	
(c)	<u>the child's genetic and gestational links:</u>	
(d)	<u>the sibling relationships of the child:</u>	10
(e)	<u>any arrangements in place to enable the child to establish and maintain relationships with the surrogate and persons to whom they have genetic links, and with those persons' family groups, whānau, hapū, and iwi:</u>	
(f)	<u>the arrangements in place for preserving the child's genetic and gestational origins and whakapapa and for the child to have access to this information:</u>	15
(g)	<u>the value of the child having continuity in their care, development, and upbringing:</u>	
(h)	<u>the likely effect of the parentage order on the child, including psychological and emotional impacts:</u>	20
(i)	<u>any harm the child has suffered or is at risk of suffering:</u>	
(j)	<u>if appropriate, having regard to the age and maturity of the child, the child's views on the application:</u>	
(k)	<u>any other matters the court considers relevant.</u>	
(2)	<u>Subsection (3) applies if—</u>	25
(a)	<u>a surrogacy arrangement was entered into outside New Zealand; or</u>	
(b)	<u>a child born as a result of a surrogacy arrangement was conceived outside New Zealand; or</u>	
(c)	<u>a child born as a result of a surrogacy arrangement was born outside New Zealand.</u>	30
(3)	<u>If this subsection applies, the court may also take into account the following matters when deciding whether to make a parentage order:</u>	
(a)	<u>whether the surrogacy arrangement was entered into and carried out in accordance with all applicable laws (if any) of—</u>	
(i)	<u>the country in which the surrogacy arrangement was entered into (if not New Zealand):</u>	35
(ii)	<u>the country in which the child was conceived (if not New Zealand):</u>	

	(iii) <u>the country in which the child was born (if not New Zealand):</u>	
	(b) <u>the steps (if any) taken in the country of the child's birth (if not New Zealand) to secure parentage of the child in accordance with the surrogacy agreement:</u>	
	(c) <u>if the child was conceived outside New Zealand using donated genetic material, evidence of the written consent of the donor of the genetic material to their donation being used for the purposes of the surrogacy arrangement:</u>	5
	(d) <u>if the child was born outside New Zealand, evidence of—</u>	
	(i) <u>the written consent of the surrogate that was given after the birth of the child to the child leaving the country of the child's birth; and</u>	10
	(ii) <u>the written consent of the surrogate's partner (if the surrogate has a partner) that was given after the birth of the child to the child leaving the country of the child's birth and to the transfer of the parentage of the child in accordance with the surrogacy agreement.</u>	15
(4)	<u>For the purposes of subsection (3)(d)(ii), a person is a partner of the surrogate if, under the law of the country of the child's birth, the partner is a parent of the child.</u>	20
60	<u>Parentage order</u>	
(1)	<u>The court may, on an application, make a parentage order transferring the parentage of a surrogate-born child if the court is satisfied that the order promotes the welfare and best interests of the child.</u>	
(2)	<u>When a parentage order is made under subsection (1), the parentage of the surrogate-born child is transferred in accordance with the parentage order immediately after the order is made.</u>	25
61	<u>Court must notify Registrar-General of New Zealand parentage orders</u>	
	<u>A Registrar of the court must, as soon as is reasonably practicable after a parentage order is made, notify the Registrar-General of the order and provide the information required by—</u>	30
	(a) <u>section 30D of the Births, Deaths, Marriages, and Relationships Registration Act 2021; or</u>	
	(b) <u>section 30E of the Births, Deaths, Marriages, and Relationships Registration Act 2021.</u>	35
62	<u>Destruction of information provided under section 50 if no parentage order made</u>	
(1)	<u>Subsection (2) applies if, on an application made to it, the court declines to make a parentage order.</u>	

- (2) If this subsection applies, a Registrar of the court may destroy any information provided by the applicant to the court under **section 50**.

Subpart 4—Recognition of overseas parentage determinations

63 Overseas parentage determinations

- (1) **Subsection (2)** applies if— 5
- (a) a child was born as a result of a surrogacy arrangement; and
 - (b) the child was born in a place outside New Zealand; and
 - (c) the parties to the surrogacy arrangement were not habitually resident in New Zealand when they entered into the surrogacy arrangement or when the child was born; and 10
 - (d) a parent–child relationship exists between the intended parents and the child pursuant to an overseas parentage determination; and
 - (e) the overseas parentage determination is a final determination and is legally valid in the place in which it was made; and
 - (f) an application for a parentage order in respect of the child has not been declined by the court. 15
- (2) If this subsection applies, the overseas parentage determination is recognised in New Zealand and has the same effect as if it were a transfer of parentage under **subpart 2 or 3**.
- (3) For the purposes of **subsection (1)(e)**, the production of a document purporting to be the original or a certified copy of an overseas parentage determination or record of the overseas parentage determination is, in the absence of evidence to the contrary, sufficient evidence of the overseas parentage determination and that it is legally valid according to the law of the place outside New Zealand in which the determination was made. 20
25
- (4) This section has effect in place of any rules of common law about the recognition of overseas parentage determinations.
- (5) In this section and **section 64**, overseas parentage determination means—
- (a) a parentage order or other judicial determination made in a place outside New Zealand; or 30
 - (b) a parentage declaration declared in a place outside New Zealand; or
 - (c) an administrative determination or process in a place outside New Zealand; or
 - (d) the operation of law in a place outside New Zealand.

64	<u>Secretary to give Registrar-General information relating to surrogate-born children whose parentage has been determined overseas and recognised in New Zealand for purposes of citizenship or New Zealand travel documents</u>	
(1)	<u>This section applies if the Secretary has relied on an overseas parentage determination for the purposes of determining—</u>	5
	(a) <u>an application for, or registration of, New Zealand citizenship in respect of a surrogate-born child; or</u>	
	(b) <u>an application for a New Zealand travel document in respect of a surrogate-born child.</u>	10
(2)	<u>If this section applies, the Secretary must provide to the Registrar-General the following information that the Secretary holds in relation to the child who is the subject of the overseas parentage determination:</u>	
	(a) <u>the name of the child; and</u>	
	(b) <u>the date of the overseas parentage determination; and</u>	15
	(c) <u>the date on which the overseas parentage determination became effective; and</u>	
	(d) <u>the name of each parent of the child; and</u>	
	(e) <u>any of the details specified in subsection (3) about the surrogate held by the Secretary; and</u>	20
	(f) <u>any of the details specified in subsection (4) about each donor held by the Secretary.</u>	
(3)	<u>The details about the surrogate referred to in subsection (2)(e) are—</u>	
	(a) <u>the surrogate's name; and</u>	
	(b) <u>the surrogate's contact details, including address; and</u>	25
	(c) <u>the date, place, and country of the surrogate's birth; and</u>	
	(d) <u>the surrogate's citizenship and residency status; and</u>	
	(e) <u>the surrogate's ethnicity and any other relevant cultural affiliation; and</u>	
	(f) <u>in the case of a Māori surrogate, the surrogate's hapū and iwi, to the extent that the surrogate is aware of those affiliations; and</u>	30
	(g) <u>the surrogate's reasons for being a surrogate; and</u>	
	(h) <u>whether the surrogate's ovum was used in the conception of the surrogate-born child; and</u>	
	(i) <u>if the surrogate's ovum was used in the conception of the surrogate-born child,—</u>	35
	(i) <u>the surrogate's height; and</u>	
	(ii) <u>the colour of the surrogate's eyes and hair; and</u>	

	(iii) <u>any aspects, considered significant by the Secretary, of the medical history of—</u>	
	(A) <u>the surrogate; and</u>	
	(B) <u>the surrogate’s parents and grandparents; and</u>	
	(C) <u>the surrogate’s children (if any); and</u>	5
	(D) <u>the surrogate’s siblings (if any); and</u>	
	(j) <u>the nature of any relationship between the surrogate and the intended parents.</u>	
(4)	<u>The details about each donor referred to in subsection (2)(f) are—</u>	
	(a) <u>the donor’s name; and</u>	10
	(b) <u>the donor’s contact details, including address; and</u>	
	(c) <u>the date, place, and country of the donor’s birth; and</u>	
	(d) <u>the donor’s height; and</u>	
	(e) <u>the colour of the donor’s eyes and hair; and</u>	
	(f) <u>the type of donation made by the donor; and</u>	15
	(g) <u>the donor’s ethnicity and any other relevant cultural affiliation; and</u>	
	(h) <u>in the case of a Māori donor, the donor’s whānau, hapū, and iwi, to the extent that the donor is aware of those affiliations; and</u>	
	(i) <u>any aspects, considered significant by the Secretary, of the medical history of—</u>	20
	(i) <u>the donor; and</u>	
	(ii) <u>the donor’s parents and grandparents; and</u>	
	(iii) <u>the donor’s children (if any); and</u>	
	(iv) <u>the donor’s siblings (if any); and</u>	
	(j) <u>the nature of any relationship between the donor and the intended parents.</u>	25
(5)	<u>In this section,—</u>	
	<u>donor, in relation to a surrogate-born child, means a person who donated genetic material that resulted in the surrogate’s pregnancy but who is not a parent of the child</u>	30
	<u>New Zealand travel document has the same meaning as in section 2 of the Passports Act 1992</u>	
	<u>Secretary means the Secretary of Internal Affairs.</u>	

Subpart 6—Other provisions

65 Rules of court

Rules may be made under section 16A of the Family Court Act 1980 relating to the practice and procedure of the court in proceedings under this Part.

66 Consequential amendments

Amend the legislation specified in **Schedule 3** as set out in that schedule.

5

19J New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

19K Schedule amended

Replace the Schedule heading with:

10

Schedule 2

Consequential amendments arising from Part 1 as enacted

19L New Schedule 3 inserted

After **Schedule 2**, insert the **Schedule 3** set out in **Schedule 2** of this Act.

15

Part 3A

Amendments to Citizenship Act 1977

19M Principal Act

This Part amends the Citizenship Act 1977.

19N Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

20

child refers to the status of a person in a relationship of a parent and child, and includes a person of that status even after the person has reached the age of 18 years

surrogacy arrangement has the meaning given to it by section 5 of the Human Assisted Reproductive Technology Act 2004

25

surrogate has the meaning given to it by section 5 of the Human Assisted Reproductive Technology Act 2004

surrogate-born child has the meaning given to it by section 5 of the Human Assisted Reproductive Technology Act 2004

30

19O Section 3 amended (Special provisions relating to parentage)

In section 3(1), replace “another person” with “another person (not being a person who is a surrogate-born child)”.

19P New section 3A inserted (Special provisions relating to parentage of surrogate-born children)

5

After section 3, insert:

3A Special provisions relating to parentage of surrogate-born children

(1) This section applies to a person who is—

- (a) a New Zealand citizen; or
- (b) entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.

10

(2) For the purposes of this Act, a person to whom this section applies is treated as a parent of a surrogate-born child if the parentage of the surrogate-born child has been transferred to the person by—

15

- (a) operation of law under **subpart 2 of Part 3** of the Status of Children Act 1969; or
- (b) a parentage order made under **subpart 3 of Part 3** of the Status of Children Act 1969; or
- (c) an overseas parentage determination recognised in New Zealand under **subpart 4 of Part 3** of the Status of Children Act 1969.

20

(3) If, for the purposes of this Act, a person is, under **subsection (2)**, treated as a parent of a surrogate-born child,—

(a) the terms mother and father used in this Act are to be read with reference to the person accordingly; and

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(b) the surrogate-born child is to be treated as having been born at the place, and on the date, as follows:

(i) if **subsection (2)(a)(i)** applies, the child is to be treated as having been born in New Zealand on the date that the parentage of the child was transferred:

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(ii) if **subsection (2)(a)(ii)** applies, the child is to be treated as having been born in New Zealand on the date that the parentage order was made:

(iii) if **subsection (2)(a)(iii)** applies, the child is to be treated as having been born at the place and on the date that the determination was made.

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19Q Section 6 amended (Citizenship by birth)

After section 6(6), insert:

- (7) A person who is a New Zealand citizen by birth does not lose their New Zealand citizenship by reason of the person's parentage being transferred (under **Part 3** of the Status of Children Act 1969) to a parent or parents who are neither—
- (a) New Zealand citizens; nor 5
- (b) entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.
- (8) If a person was born as a result of a surrogacy arrangement, references in this section to a person's parents, mother, or father at the time of their birth are to be read in each case as references to the surrogate who gave birth to the person. 10

19R Section 7 amended (Citizenship by descent)

After section 7(4), insert:

- (5) A person who is a New Zealand citizen by virtue of subsection (1)(a) does not lose their New Zealand citizenship by reason of the person's parentage being transferred (under **Part 3** of the Status of Children Act 1969) to a parent or parents who are not New Zealand citizens otherwise than by descent. 15
- (6) If a person was born as a result of a surrogacy arrangement, references in this section to a person's parents, mother, or father at the time of their birth are to be read in each case as references to the surrogate who gave birth to the person. 20

Part 4

Amendments to Child Support Act 1991

20 Amendments to Child Support Act 1991

This Part amends the Child Support Act 1991.

21 Section 7 amended (Meaning of parent)

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- (1) In section 7(1)(i), replace “set aside.” with “set aside; or”.
- (2) After subsection 7(1)(i), insert:
- (j) the person is an intending parent under a surrogacy order made under **section 124C** of the Care of Children Act 2004.

Part 5

Amendments to Births, Deaths, Marriages, and Relationships Registration Act ~~1995~~ 2021

- 22** **~~Amendments to Births, Deaths, Marriages, and Relationships Registration Act 1995~~** 5
- This Part amends the Births, Deaths, Marriages, and Relationships Registration Act 1995.
- 23** **~~Section 2 amended (Interpretation)~~**
- In section 2, insert in their appropriate alphabetical order:
- ~~intending parent~~** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004 10
- ~~surrogacy arrangement~~** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004
- ~~surrogate~~** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004 15
- 24** **Section 9 amended (Parents primarily responsible for notifying birth)**
- (1) After section 9(1), insert:
- (1A) **Subsection (1B)** applies if—
- (a) a child is born as a result of a surrogacy arrangement that is not the subject of a surrogacy order made under **section 124C** of the Care of Children Act 2004; and 20
- (b) the intending parents have taken custody of the child within ten days of its birth.
- (1B) In those circumstances, subsection (1) does not apply and the intending parents must, as soon as reasonably practicable after taking custody of the child,— 25
- (a) jointly notify a Registrar of the birth in accordance with this Act; and
- (b) inform the Registrar whether or not, to the best of their knowledge, either or both of the intending parents are New Zealand citizens or persons entitled, under the Immigration Act 2009, to be in New Zealand indefinitely. 30
- (2) After section 9(4), insert:
- (5) However, if the child is born as a result of a surrogacy arrangement, a child has 1 parent at law if—
- (a) there is only 1 intending parent; and
- (b) the donor of the ovum, embryo, or semen (as the case may be) for the pregnancy does not become the partner of the intending parent before the birth is notified for registration. 35

25 ~~New section 15AA inserted (Registration of details of donors of embryos or cells in surrogacy arrangements)~~

After section 15, insert:

15AA ~~Registration of details of donors of embryo or cells in surrogacy arrangements~~

- (1) ~~This section applies if a child is born as a result of a surrogacy arrangement and the pregnancy under that arrangement used donated embryo or donated cells.~~
- (2) ~~A Registrar who is authorised by the Registrar-General to register births must register, as part of the birth information of a child, any information about the identity of the following people that is notified to the Registrar:~~
- (a) ~~the surrogate;~~
- (b) ~~any person who donated the embryo or the cells.~~

25A Principal Act

This Part amends the Births, Deaths, Marriages, and Relationships Registration Act 2021.

25B Section 3 amended (Purpose of this Act)

- (1) In section 3(a), after “relating to births,”, insert “transfers of parentage of surrogate-born children,”.
- (2) In section 3(a)(ii), after “record of births,”, insert “transfers of parentage of surrogate-born children,”.

25C Section 4 amended (Interpretation)

- (1) In section 4, insert in their appropriate alphabetical order:

AHR procedure has the meaning set out in section 15 of the Status of Children Act 1969

established procedure has the meaning set out in section 5 of the Human Assisted Reproductive Technology Act 2004

restricted surrogacy information means the identity information registered under **section 30F** or recorded under **section 30G** alongside the birth record of a surrogate-born child

surrogacy arrangement has the meaning set out in section 5 of the Human Assisted Reproductive Technology Act 2004

surrogate has the meaning set out in section 5 of the Human Assisted Reproductive Technology Act 2004

surrogate-born child has the meaning set out in section 5 of the Human Assisted Reproductive Technology Act 2004

- (2) In section 4, definition of **birth information**,—

- (a) in paragraph (b)(iii), after “person”, insert “; but”; and
- (b) after paragraph (b)(iii), insert:
- (c) excludes restricted surrogacy information
- (3) In section 4, replace the definition of **registrable event** with:
- registrable event** means any of the following:
- (a) a birth:
- (b) an adoption:
- (c) a transfer of parentage under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969:
- (d) the Registrar-General receiving information under **section 64** of the Status of Children Act 1969 in relation to a child who is the subject of an overseas parentage determination (as that term is defined in **section 63(5)** of that Act):
- (e) a marriage:
- (f) a civil union:
- (g) a name change:
- (h) a death
- (4) In section 4, definition of **restricted information**, after paragraph (c), insert:
- (d) restricted surrogacy information
- 25D Section 12 amended (Parents must notify birth in New Zealand)**
- Replace section 12(4) with:
- (4) For the purposes of this section, a child has **1 parent at law** if—
- (a) the child is born as a result of an AHR procedure and—
- (i) the child is born to a woman acting alone in a situation described in section 20(1) or 22(1) of the Status of Children Act 1969; and
- (ii) the donor of the ovum, embryo, or semen (as the case may be) for the woman’s pregnancy does not become the partner of the woman after the time of conception but before the birth is notified for registration; or
- (b) the child is a surrogate-born child and, under **section 30** of the Status of Children Act 1969, the surrogate of the child is the child’s sole parent.
- 25E New section 12A inserted (Persons to whom parentage of surrogate-born child transferred must notify birth of child)**
- After section 12, insert:

12A	<u>Persons to whom parentage of surrogate-born child transferred must notify birth of child</u>	
(1)	<u>The persons to whom parentage of a surrogate-born child is transferred under subpart 2 or 3 of Part 3 of the Status of Children Act 1969 must, as soon as is reasonably practicable after becoming the parents of the child, notify the Registrar-General under section 12 of the birth of the child.</u>	5
(2)	<u>If the parentage of a surrogate-born child is transferred under subpart 2 or 3 of Part 3 of the Status of Children Act 1969 to only 1 person, that person must, as soon as is reasonably practicable after becoming a parent of the child, notify the Registrar-General under section 12 of the birth of the child as if the child has 1 parent at law for the purposes of that section.</u>	10
(3)	<u>Subsections (1) and (2) apply even if the birth of the child has previously been notified to the Registrar-General under section 12(2)(a)(i) by the surrogate of the child.</u>	
25F	<u>New section 16A inserted (Registration of birth of surrogate-born child)</u>	15
	After section 16, insert:	
16A	<u>Registration of birth of surrogate-born child</u>	
(1)	<u>On receipt of a notification of birth under section 12 given by parents of a surrogate-born child in accordance with section 12A, the Registrar-General must register the birth of the child.</u>	20
(2)	<u>If the birth of the child has already been registered by the Registrar-General following receipt of a notification given under section 12(2)(a)(i) by the surrogate of the child, that earlier registration is superseded by the registration of the birth under subsection (1).</u>	
(3)	<u>If the registration of the birth of a child is superseded under subsection (2), the Registrar-General must notify the surrogate that the persons to whom the parentage of the child has been transferred are now registered as the parents of the child (if the Registrar-General has the surrogate's latest contact details).</u>	25
25G	<u>Section 17 amended (When Registrar-General may register birth that occurs outside New Zealand)</u>	30
	After section 17(1)(a), insert:	
(aa)	<u>if the parentage of a child has been transferred under subpart 2 of Part 3 of the Status of Children Act 1969 and the parents of the child have provided to the Registrar-General the information required under section 30B(2) or 30C(2); or</u>	35
(ab)	<u>if a parentage order has been made in respect of the child under subpart 3 of Part 3 of the Status of Children Act 1969 and a copy of that order has been provided to the Registrar-General under section 30D(2) or 30E(2); or</u>	

25H Section 30 amended (Appeals against Registrar-General's decisions)

(1) Before section 30(1)(a), insert:

(aaa) **section 17(1)(aa)** (relating to the registration of a birth of a child outside New Zealand in respect of whom parentage has been transferred under **subpart 2 of Part 3** of the Status of Children Act 1969):

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(aab) **section 17(1)(ab)** (relating to the registration of a birth of a child outside New Zealand in respect of whom a parentage order under **subpart 3 of Part 3** of the Status of Children Act 1969 has been made):

(2) After section 30(1)(d), insert:

(e) **section 106A** (relating to access to restricted surrogacy information).

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25I New subpart 2A of Part 2 inserted

After section 30, insert:

Subpart 2A—Surrogate-born children

30A Interpretation

In this subpart,—

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non-provider-assisted surrogacy arrangement means a surrogacy arrangement that does not involve the performance of an AHR procedure, or an established procedure, by a provider

provider has the meaning set out in section 5 of the Human Assisted Reproductive Technology Act 2004

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provider-assisted surrogacy arrangement means a surrogacy arrangement that involves the performance of an AHR procedure, or an established procedure, by a provider.

Notification of change of parentage

30B Parentage transferred by operation of law in non-provider-assisted surrogacy arrangement

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(1) This section applies if—

(a) the parentage of a child born as a result of a surrogacy arrangement has been transferred by operation of law under **subpart 2 of Part 3** of the Status of Children Act 1969; and

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(b) the surrogacy arrangement was a non-provider-assisted surrogacy arrangement.

(2) If this section applies, the parents of the child must, at the same time as notifying the birth of the child under section 12, provide to the Registrar-General—

(a) a copy of the surrogate's statutory declaration made in accordance with **section 42** of the Status of Children Act 1969; and

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- (b) a statement of the date on which the parentage of the child was transferred from the surrogate to them in accordance with **section 41(2)** of the Status of Children Act 1969; and
- (c) unless the child is deceased,—
- (i) the details specified in **subsection (3)** about the surrogate; and 5
- (ii) the details specified in **subsection (4)** about each donor who donated genetic material that resulted in the surrogate's pregnancy but who is not a parent of the child.
- (3) The details about the surrogate referred to in **subsection (2)(c)(i)** are—
- (a) the surrogate's name; and 10
- (b) the surrogate's contact details, including their address; and
- (c) the date, place, and country of the surrogate's birth; and
- (d) the surrogate's citizenship and residency status; and
- (e) the surrogate's ethnicity and any other relevant cultural affiliation; and
- (f) in the case of a Māori surrogate, the surrogate's hapū and iwi, to the extent that the surrogate is aware of those affiliations; and 15
- (g) the surrogate's reasons for being a surrogate; and
- (h) the surrogate's height; and
- (i) the colour of the surrogate's eyes and hair; and
- (j) any aspects, that may reasonably be considered significant, of the medical history of— 20
- (i) the surrogate; and
- (ii) the surrogate's parents and grandparents; and
- (iii) the surrogate's children (if any); and
- (iv) the surrogate's siblings (if any); and 25
- (k) the nature of any relationship between the surrogate and the intended parents.
- (4) The details about each donor referred to in **subsection (2)(c)(ii)** are—
- (a) the donor's name; and
- (b) the donor's contact details, including their address; and 30
- (c) the date, place, and country of the donor's birth; and
- (d) the donor's height; and
- (e) the colour of the donor's eyes and hair; and
- (f) the type of donation made by the donor; and
- (g) the donor's ethnicity and any other relevant cultural affiliation; and 35

(h)	<u>in the case of a Māori donor, the donor's whānau, hapū, and iwi, to the extent that the donor is aware of those affiliations; and</u>	
(i)	<u>any aspects, that may reasonably be considered significant, of the medical history of—</u>	
(i)	<u>the donor; and</u>	5
(ii)	<u>the donor's parents and grandparents; and</u>	
(iii)	<u>the donor's children (if any); and</u>	
(iv)	<u>the donor's siblings (if any); and</u>	
(j)	<u>the nature of any relationship between the donor and the intended parents.</u>	10
30C	<u>Parentage transferred by operation of law in provider-assisted surrogacy arrangement</u>	
(1)	<u>This section applies if—</u>	
(a)	<u>the parentage of a child born as a result of a surrogacy arrangement has been transferred by operation of law under subpart 2 of Part 3 of the Status of Children Act 1969; and</u>	15
(b)	<u>the surrogacy arrangement was a provider-assisted surrogacy arrangement.</u>	
(2)	<u>If this section applies, the parents of the child must, at the same time as notifying the birth of the child under section 12, provide to the Registrar-General—</u>	20
(a)	<u>a copy of the surrogate's statutory declaration made in accordance with section 42 of the Status of Children Act 1969; and</u>	
(b)	<u>a statement of the date on which the parentage of the child was transferred from the surrogate to them in accordance with section 41(2) of the Status of Children Act 1969.</u>	25
30D	<u>Parentage transferred by parentage order in non-provider-assisted surrogacy arrangement</u>	
(1)	<u>This section applies if—</u>	
(a)	<u>the parentage of a child born as a result of a surrogacy arrangement has been transferred by a parentage order made under subpart 3 of Part 3 of the Status of Children Act 1969; and</u>	30
(b)	<u>the surrogacy arrangement was a non-provider-assisted surrogacy arrangement.</u>	
(2)	<u>If this section applies, a Registrar of the court must, as soon as is reasonably practicable after the parentage order is made, provide to the Registrar-General—</u>	35
(a)	<u>a statement of the names of—</u>	
(i)	<u>the surrogate-born child; and</u>	

(ii)	<u>the surrogate; and</u>	
(iii)	<u>the person or persons to whom the parentage of the child has been transferred under the parentage order; and</u>	
(b)	<u>a statement of the date on which the parentage order was made; and</u>	5
(c)	<u>a copy of the parentage order; and</u>	
(d)	<u>the information provided to the court by the applicant for the parentage order under section 50 of the Status of Children Act 1969 (if the child is not deceased).</u>	
30E	<u>Parentage transferred by parentage order in provider-assisted surrogacy arrangement</u>	10
(1)	<u>This section applies if—</u>	
(a)	<u>the parentage of a child born as a result of a surrogacy arrangement has been transferred by a parentage order made under subpart 3 of Part 3 of the Status of Children Act 1969; and</u>	
(b)	<u>the surrogacy arrangement was a provider-assisted surrogacy arrangement.</u>	15
(2)	<u>If this section applies, a Registrar of the court must, as soon as is reasonably practicable after the parentage order is made, provide to the Registrar-General—</u>	
(a)	<u>a statement of the names of—</u>	20
(i)	<u>the surrogate-born child; and</u>	
(ii)	<u>the surrogate; and</u>	
(iii)	<u>the person or persons to whom the parentage of the child has been transferred under the parentage order; and</u>	
(b)	<u>a statement of the date on which the parentage order was made; and</u>	25
(c)	<u>a copy of the parentage order.</u>	
	<i>Registration of information relating to identity of surrogate-born children</i>	
30F	<u>Registrar-General to register identity information relating to surrogate-born children</u>	
(1)	<u>The Registrar-General must register alongside the birth record of a surrogate-born child the identity information received in respect of the child under the following provisions:</u>	30
(a)	<u>section 30B(2)(b) and (c):</u>	
(b)	<u>section 30C(2)(b):</u>	
(c)	<u>section 30D(2)(a), (b), and (d):</u>	35
(d)	<u>section 30E(2)(a) and (b):</u>	

	(e) section 66G(1)(b) and (c) of the Human Assisted Reproductive Technology Act 2004.	
(2)	The information registered under subsection (1) does not form part of the child's birth record.	
	<i>Recording information relating to overseas surrogate-born children whose transfer of parentage is recognised in New Zealand for certain purposes</i>	5
30G	Registrar-General to record information relating to surrogate-born children whose parentage has been determined overseas and recognised in New Zealand for purposes of citizenship or travel documents	
	The Registrar-General must record in the registry all information received from the Secretary of Internal Affairs under section 64(2) of the Status of Children Act 1969.	10
	<i>Updating identity information relating to surrogate-born children</i>	
30H	Registrar-General to accept updated information	
(1)	The Registrar-General must accept, on a form provided by the Registrar-General for the purpose, information—	15
(a)	from a surrogate, or the surrogate's personal representative, that updates the surrogate's identity information—	
(i)	registered under section 30F ; or	
(ii)	recorded under section 30G ;	20
(b)	from a donor, or the donor's personal representative, that updates the donor's identity information—	
(i)	registered under section 30F ; or	
(ii)	recorded under section 30G .	
(2)	The Registrar-General must register or record all information accepted under subsection (1) to update the identity information relating to the surrogate or donor (as the case may be) held in the registry.	25
30I	Registrar-General not responsible for accuracy of information	
	The Registrar-General is not responsible for the accuracy of the information—	
(a)	registered under section 30F or 30H(2) ; or	30
(b)	recorded under section 30G or 30H(2) .	
25J	Section 88 amended (Person must confirm identity to access information under this subpart)	
	After section 88(1)(b), insert:	
(c)	request access to information under section 106A .	35

25K Section 91 amended (Any person may request access to information in relation to named person)

After section 91(3), insert:

- (4) No request may be made under this section in respect of restricted surrogacy information.

5

25L New section 92A inserted (Registrar-General to notify certain persons of existence of restricted surrogacy information when providing information from birth records)

After section 92, insert:

92A Registrar-General to notify certain persons of existence of restricted surrogacy information when providing information from birth records

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- (1) This section applies if,—
- (a) under section 92, the Registrar-General provides to a person a copy of information from the person's birth record; and
 - (b) in relation to the person, there is registered or recorded in the register restricted surrogacy information.
- (2) At the same time as providing to the person a copy of information from the person's birth record, the Registrar-General must notify the person—
- (a) that there is registered or recorded in the register restricted surrogacy information in relation to the person; and
 - (b) how the person may access that information if they wish.

15

20

25M Section 97 amended (Certain public sector agencies may request searches in public interest or named person's interest)

Replace section 97(4) with:

- (4) The Registrar-General may provide access to information under subsection (3) even if the information—
- (a) is subject to a non-disclosure direction; or
 - (b) is restricted surrogacy information.

25

25N Section 98 amended (Registrar-General must keep access register)

- (1) In section 98(3), replace “Subsection (2)(a)” with “Subsection (2)”.

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- (2) After section 98(3)(b), insert:

(c) a request for access that relates to restricted surrogacy information.

25O New section 106A inserted (Access to restricted surrogacy information)

After section 106, insert:

106A Access to restricted surrogacy information

- (1) The Registrar-General may provide a surrogate-born child with access to restricted surrogacy information relating to the surrogate-born child.
- (2) The Registrar-General may provide a surrogate with access to restricted surrogacy information about the surrogate. 5
- (3) The Registrar-General may provide a donor with access to restricted surrogacy information about the donor.
- (4) The Registrar-General may provide any other person with access to restricted surrogacy information only if satisfied that the person is—
- (a) a personal representative of the surrogate-born child; or 10
 - (b) a celebrant who wishes to access the information for the purpose of investigating prohibited degrees of relationship under the Marriage Act 1955 or the Civil Union Act 2004; or
 - (c) a person specified in section 95(a), (c), (d), or (e) for the purpose stated in that section in relation to the person; or 15
 - (d) a person specified in section 96 for the purpose stated in that section in relation to the person; or
 - (e) a department or an organisation specified in section 97 for a purpose stated in section 97(1); or
 - (f) a medical practitioner who produces a certificate signed by 2 medical practitioners that states that access to the information is relevant for the purposes of providing medical treatment or medical advice to a person. 20
- (5) The Registrar-General may refuse to provide a person access to restricted surrogacy information under any of **subsections (1) to (4)** if the Registrar-General is satisfied, on reasonable grounds, that the provision of the information is likely to endanger any person. 25
- (6) When providing restricted surrogacy information to a surrogate-born child under **subsection (1)**, the Registrar-General must advise the person that counselling may be desirable.

25P Section 109 amended (Registrar-General may provide access to restricted information on court order) 30

After section 109(b)(iii), insert:

- (iv) the parentage of a surrogate-born child (if the order relates to the transfer of the parentage of the child); or

25Q Section 126 amended (Registrar-General may delegate functions, duties, and powers to Registrars) 35

In section 126(3)(e), after “106,”, insert “**106A**,”.

25R Section 132 amended (Birth record of child conceived through assisted human reproduction procedure must specify parents as determined under Status of Children Act 1969)

Repeal section 132(3).

25S Consequential amendments

5

Amend the legislation specified in **Schedule 3** as set out in that schedule.

Part 5A

Amendments to Income Tax Act 2007

25T Principal Act

This Part amends the Income Tax Act 2007.

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25U New section CW 63B inserted (Surrogate costs)

After section CW 63, insert:

CW 63B Surrogate costs

Exempt income

- (1) Subject to **subsection (2)**, payments made to a surrogate for the surrogate's reasonable surrogacy costs are exempt income.

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Exclusion

- (2) **Subsection (1)** does not apply to a payment made to a surrogate for lost or diminished income (including any employer's superannuation contribution).

Defined in this Act: employer's superannuation contribution, exempt income, income, pay, reasonable surrogacy costs, surrogate

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25V Section MB 13 amended (Family scheme income from other payments)

- (1) After section MB 13(2)(r), insert:

(s) a payment made to a surrogate for the surrogate's reasonable surrogacy costs that is not a payment for lost or diminished income (including any employer's superannuation contribution).

25

- (2) In section MB 13, list of defined terms, insert "employer's superannuation contribution", "pay", "reasonable surrogacy costs", and "surrogate".

25W Section YA 1 amended (Definitions)

In section YA 1, insert, in appropriate alphabetical order:

30

reasonable surrogacy costs has the same meaning as in **section 23D** of the Human Assisted Reproductive Technology Act 2004

surrogate has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004

Part 6

Amendments to Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995

- 26 Amendments to Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995** 5
- This Part amends the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995.
- 27 Regulation 2 amended (Interpretation)**
- In regulation 2, insert in their appropriate alphabetical order:
- donor** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004 10
- surrogaey arrangement** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004
- surrogate** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004 15
- 28 Regulation 3A amended (Notification of birth for registration)**
- (1) In regulation 3A(c)(viii), replace “signatures.” with “signatures; and”.
- (2) After regulation 3A(c), insert:
- (d) if the birth is a result of a surrogaey arrangement, in relation to the surrogate and any donors of embryos or cells,— 20
- (i) the surrogate or donor’s address:
- (ii) whether the surrogate or the donor is a descendant of a New Zealand Māori (if known):
- (iii) the surrogate or donor’s ethnic group or groups:
- (iv) the surrogate or donor’s citizenship or residency status: 25
- (v) the date, place and country of the surrogate or donor’s birth:
- (vi) the type of cells donated.

Part 7

Amendments to Social Security (Exemptions under Section 105) Regulations 1998

- 29 Social Security (Exemptions under Section 105) Regulations 1998 amended** 30
- This Part amends the Social Security (Exemptions under Section 105) Regulations 1998.

30 Regulation 2 amended (Interpretation)

In regulation 2(1), insert in its appropriate alphabetical order:

~~surrogate~~ has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004

31 Regulation 3A amended (Exemption from obligations under section 60Q) 5

After regulation 3A(2)(d), insert:

- (da) the person is a surrogate and is—
- (i) at least 27 weeks pregnant; or
 - (ii) less than 27 weeks pregnant, if the chief executive is satisfied that the person is suffering from complications arising from the pregnancy; or

32 Regulation 4 amended (Exemption from work test obligations: all work-tested beneficiaries)

- (1) In regulation 4(2)(g)(iii), replace “ended.” with “ended; or”.

- (2) After regulation 4(2)(g), insert: 15

- (h) the person is a surrogate and is—
- (i) at least 27 weeks pregnant; or
 - (ii) less than 27 weeks pregnant, if the chief executive is satisfied that the person is suffering from complications arising from the pregnancy.

Part 8**Amendment to other Acts****Subpart 1—Amendment to Adoption Act 1955****33 Principal Act**

This subpart amends the Adoption Act 1955. 25

34 New section 4A inserted (Further restrictions for adoption orders in respect of children born as result of surrogacy arrangement)

After section 4, insert:

4A Further restrictions for adoption orders in respect of children born as result of surrogacy arrangement 30

- (1) This section applies in respect of a child born as a result of a surrogacy arrangement whose parentage has not been transferred from the surrogate to any other person under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969.

- (2) An adoption order may not be made in respect of the child on the application of a person who is a party to the surrogacy arrangement unless a Judge—
- (a) is satisfied that—
- (i) the parentage of the child is not able to be transferred to the person under **subpart 2 of Part 3** of the Status of Children Act 1969; and 5
- (ii) an application made by a party to the surrogacy arrangement under **subpart 3 of Part 3** of the Status of Children Act 1969 for a parentage order has been declined; or
- (b) considers that there are exceptional circumstances that justify the person making an application for an adoption order. 10
- (3) An adoption order may not be made in respect of the child on the application of any person who is not a party to the surrogacy arrangement unless a Judge—
- (a) is satisfied that—
- (i) no party to the surrogacy arrangement is intending to seek a transfer of the parentage of the child under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969; or 15
- (ii) an application made by a party to the surrogacy arrangement under **subpart 3 of Part 3** of the Status of Children Act 1969 for a parentage order has been declined; or 20
- (b) considers that there are exceptional circumstances that justify the person making an application for an adoption order.
- (4) **Subsections (2) and (3)** apply in addition to sections 3 and 4.
- (5) In this section, **surrogacy arrangement** has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004. 25

Subpart 2—Amendments to Child Support Act 1991

35 Principal Act

This subpart amends the Child Support Act 1991.

36 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order: 30

surrogacy arrangement has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004

surrogate has the same meaning as in section 5 of the Human Assisted Reproductive Technology Act 2004

37 Section 6 amended (Parents by whom child support payable) 35

- (1) After section 6(1), insert:

- (1A) Subsection (1) is subject to subsections (2) and **(3)**.
- (2) In section 6(2), replace “Notwithstanding subsection (1), where” with “If”.
- (3) After section 6(2), insert:
- (3) If the parentage of a child born as a result of a surrogacy arrangement is transferred under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969, child support from the child’s surrogate may not be sought in respect of the child in relation to any period after the transfer of parentage unless the parentage of the child has been transferred to the surrogate and any other person under **subpart 3 of Part 3** of the Status of Children Act 1969. 5
- 38 Section 7 amended (Meaning of parent)** 10
- (1) After section 7(1)(b), insert:
- (ba) the parentage of the child was transferred to the person under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969; or
- (2) After section 7(4), insert:
- (5) If a child is a child born as a result of a surrogacy arrangement,— 15
- (a) the surrogate’s partner is not a parent of the child under subsection (1)(b) unless parentage of the child has been transferred to the surrogate’s partner under **subpart 3 of Part 3** of the Status of Children Act 1969:
- (b) a person is not a parent of the child under subsection (1)(d) or (e) in any case where a decision of a New Zealand court is contrary to— 20
- (i) the finding of paternity of an overseas court or public authority; or
- (ii) the person’s acknowledgment of paternity.
- 39 Section 19 amended (When liability to pay child support starts)**
- After section 19(6), insert:
- (6A) Subsections (3) to (6) do not apply if a person named as a parent of a qualifying child in an application for a formula assessment is not a parent of the child within the meaning of section 7 at the time the Commissioner receives the application but later becomes a parent of the child under **section 7(1)(ba)**. 25
- 40 Section 25 amended (When liability to pay child support ceases)**
- Replace section 25(1)(b) with: 30
- (b) ceases to be a child of the liable parent because—
- (i) the child is adopted; or
- (ii) the parentage of the child is transferred from the liable parent to another person or persons under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969; or 35

41 New subpart 4A of Part 5A inserted

After section 89ZA, insert:

Subpart 4A—Exemption for surrogates

89ZAA Application for exemption by surrogate

A liable parent who is a surrogate under a surrogacy arrangement may, by notice in writing to the Commissioner, apply for an exemption from the payment of child support in relation to a child if the child was born as a result of the surrogacy arrangement.

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89ZAB Grant of exemption

(1) The Commissioner must, as soon as practicable after receiving an application under **section 89ZAA**, grant the exemption sought if the Commissioner is satisfied that it is just and equitable to do so.

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(2) An exemption granted under **subsection (1)** commences—

(a) on the day on which the Commissioner received the application for the exemption; or

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(b) on an earlier day determined by the Commissioner.

89ZAC Cancellation of exemption

The Commissioner may cancel an exemption granted under **section 89ZAB** if—

(a) the Commissioner is no longer satisfied that the exemption is just and equitable; or

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(b) an order is made under **subpart 3 of Part 3** of the Status of Children Act 1969 transferring the parentage of the child to the surrogate and the surrogate's partner; or

(c) an adoption order is made in respect of the child in favour of the surrogate and any other person.

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42 Section 152A amended (Relief in case of exemption granted to liable person)

In section 152A(1)(b), replace “subpart 2 or 4” with “subpart 2, 4, or **4A**”.

Schedule 1
New Schedule 1 inserted in Status of Children Act 1969

s 19J

Schedule 1
Transitional, savings, and related provisions

5

s 2AA

Part 1
Provisions relating to Improving Arrangements for Surrogacy Act 2021

- 1 Interpretation** 10
- In this Part,—
- Act** means the Improving Arrangements for Surrogacy Act **2021**
- commencement date** means the date on which **Part 3** of the Act comes into force.
- 2 Parentage of surrogate-born child born before commencement date** 15
- (1) This clause applies if—
- (a) a surrogate-born child was born before the commencement date; and
- (b) no adoption order has been made in respect of the child.
- (2) Parentage of the surrogate-born child may be determined by—
- (a) a parentage order made under **section 60**; or 20
- (b) an adoption order made under the Adoption Act 1955 as in force immediately before the commencement date.
- (3) Parentage of the surrogate-born child may not be transferred by operation of law under **subpart 2 of Part 3**.
- 3 Parentage of surrogate-born child born on or after commencement date** 25
- (1) This clause applies if a surrogate-born child was born on or after the commencement date.
- (2) Parentage of the surrogate-born child may only be determined by—
- (a) a transfer of parentage by operation of law under **subpart 2 of Part 3**; or 30
- (b) a parentage order made under **subpart 3 of Part 3**; or
- (c) an adoption order made under the Adoption Act 1955 (but *see* restrictions applying to surrogate-born children in **section 4A** of that Act).

4 **Recognition of overseas parentage determinations**

Section 63 applies in respect of a child born as a result of a surrogacy arrangement before, on, or after the commencement date.

Schedule 2**New Schedule 3 inserted into Status of Children Act 1969****s 19L****Schedule 3****Consequential amendments to enactments arising from Part 3****s 66****Part 1****Amendments to Acts****Care of Children Act 2004 (2004 No 90)**

Replace section 27(1)(b) with:

- (b) on its own initiative, on making an order removing a guardian under—
 - (i) section 29; or
 - (ii) **section 33** of the Status of Children Act 1969.

After section 28(1)(e), insert:

- (f) the guardian ceases, under **section 32(1)** of the Status of Children Act 1969, to be a guardian;
- (g) the guardian is removed by an order under **section 33** of the Status of Children Act 1969.

Children's Act 2014 (2014 No 40)

In Schedule 1, item (4), after “Care of Children Act 2004,”, insert “the Status of Children Act 1969,”.

In Schedule 1, after item (4), insert:

- (4A) services provided by a social worker under **section 23H** of the Human Assisted Reproductive Technology Act 2004:

Crimes Act 1961 (1961 No 43)In section 131A(2), definition of **guardian**, paragraph (a), replace “or the Oranga Tamariki Act 1989” with “, the Oranga Tamariki Act 1989, or **Part 3** of the Status of Children Act 1969”.**Electronic Identity Verification Act 2012 (2012 No 123)**

After section 30(1)(a), insert:

- (aa) an individual's core identity information has changed as a result of a change in the individual's parentage under **Part 3** of the Status of Children Act 1969; or

Electronic Identity Verification Act 2012 (2012 No 123)—continued

Before section 32(1)(a), insert:

- (aaa) the core identity information of the individual to whom it has been issued has changed as a result of a change in the individual’s parentage under **Part 3** of the Status of Children Act 1969; or

Family Court Act 1980 (1980 No 161)

After section 11(1)(b), insert:

- (ba) the Status of Children Act 1969:

After section 12A(2)(j), insert:

- (k) the Status of Children Act 1969.

After section 16A(4)(m), insert:

- (n) the Status of Children Act 1969.

In Schedule 2, after clause 1(a)(iii), insert:

- (iv) **section 55** of the Status of Children Act 1969:

In Schedule 2, after clause 1(g)(vii), insert:

- (viii) **section 57(a)** of the Status of Children Act 1969:

In Schedule 2, after clause 1(h)(vi), insert:

- (vii) **section 57(b)** of the Status of Children Act 1969:

In Schedule 2, after clause 1(i)(viii), insert:

- (ix) **section 58(3) and (4)** of the Status of Children Act 1969:

In Schedule 2, after clause 1(k)(iv), insert:

- (v) a cultural, medical, or psychiatric report under **section 53** of the Status of Children Act 1969:

In Schedule 2, replace clause 2(j) with:

- (j) sections 10(2) and (3) (in respect of undefended applications), **46(3)**, and **53(2)** of the Status of Children Act 1969.

Family Proceedings Act 1980 (1980 No 94)

After section 47(2), insert:

- (3) No application for a paternity order may be made under this section in respect of a child born as a result of a surrogacy arrangement (as that term is defined in section 5 of the Human Assisted Reproductive Technology Act 2004).

Income Tax Act 2007 (2007 No 97)

In section FD 1(1)(b)(i), replace “adoption, marriage, civil union, or de facto relationship who must be associated with person A since birth, adoption, marriage, civil union, or the start of the de facto relationship, as applicable” with “parentage transfer, adoption, marriage, civil union, or de facto relationship who must be associated with

Income Tax Act 2007 (2007 No 97)—continued

person A since birth, parentage transfer, adoption, marriage, civil union, or the start of the de facto relationship, as applicable”.

After section FD 1(5), insert:

Meaning of parentage transfer

- (6) In this section, **parentage transfer** means a transfer of parentage under **Part 3** of the Status of Children Act 1969.

In section FD 1, list of defined terms, insert “parentage transfer”.

In section YA 1, insert, in appropriate alphabetical order:

parentage transfer is defined in section FD 1 (Relief from bright-line test for transfers between associated persons) for the purposes of that section

Oranga Tamariki Act 1989 (1989 No 24)

After section 108(e), insert:

- (f) the parentage of the child or young person is transferred under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969—

In section 118, replace “in which case guardianship shall revert to the person so entitled” with “or a transfer of parentage under **subpart 2 or 3 of Part 3** of the Status of Children Act 1969”.

Replace section 158 with:

158 Applications may be heard together

The court may hear and determine an application for a care or protection order, an application under section 125 (which relates to the variation, suspension, and discharge of orders made under Part 2), or an application under Part 3A in conjunction with an application under any of the following Acts if all of the applications relate to the same child or young person (whether or not any or all of those applications also relate to any other person):

- (a) the Adoption Act 1955:
- (b) the Care of Children Act 2004:
- (c) the Family Proceedings Act 1980:
- (d) the Family Violence Act 2018:
- (e) **Part 3** of the Status of Children Act 1969.

Sale and Supply of Alcohol Act 2012 (2012 No 120)

Replace section 246 with:

246 Who is guardian

For the purposes of this Act, a person is a minor’s guardian only if he or she is guardian by virtue of—

Sale and Supply of Alcohol Act 2012 (2012 No 120)—*continued*

- (a) the Care of Children Act 2004; or
- (b) **Part 3** of the Status of Children Act 1969.

Social Security Act 2018 (2018 No 32)

Replace section 32(4) with:

- (4) In this section, **child** means a dependent child of the parents who—
 - (a) is a natural child of the parents; or
 - (b) has been adopted by the parents, or by one of the parents, during their relationship.

In Schedule 2, definition of **parents**, after paragraph (b)(ii), insert:

- (iii) a former guardian who is the surrogate of the young person, unless the surrogate has been appointed a guardian of the young person after—
 - (A) the transfer of parentage of the young person under **sub-part 2 or 3 of Part 3** of the Status of Children Act 1969; or
 - (B) an adoption order has been made in respect of the young person under the Adoption Act 1955

Tax Administration Act 1994 (1994 No 166)

In section 80KB(2)(c), replace “paragraph (d) applies”, with “paragraph (d) or **(e)** applies”.

After section 80KB(2)(d), insert:

- (e) in the case of a child whose parentage has been transferred under **Part 3** of the Status of Children Act 1969, a birth certificate or other evidence verifying the birth or existence of the child for whom an entitlement to a tax credit arises.

After section 80KB(4), insert:

- (5) **Subsection (2)(e)** does not apply to an application made by a person to whom parentage of the child has been transferred.

Part 2**Amendments to secondary legislation****Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (SR 2010/241)**

After regulation 26AAE(3), insert:

- (3A) A person is exempt from paying the IVL under regulation 26AAD(1)(a) if the visa application is made on the basis that the person was born as a result of

Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (SR 2010/241)—continued

a surrogacy arrangement and is travelling to New Zealand for the purpose of having their parentage transferred under **Part 3** of the Status of Children Act 1969 to intended parents, and one (if not both) of the intended parents is—

- (a) a New Zealand citizen; or
- (b) a person who holds a visa; or
- (c) an applicant for a visa.

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In section 26AAE(4), replace “subclause (3)(c)” with “subclauses (3)(c) and **(3A)(c)**”.

After regulation 26AAE(5), insert:

- (6) In **subsection (3A)**, **intended parents** and **surrogacy arrangement** have the meanings given in section 5 of the Human Assisted Reproductive Technology Act 2004.

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Schedule 3
Consequential amendments to enactments arising from Part 5

s 25S

Amendments to Acts

Identity Information Confirmation Act 2012 (2012 No 124)

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In section 21(2), after “106,”, insert “**106A**,”.

Legislative history

23 September 2021
18 May 2022

Introduction (Bill 72–1)
First reading and referral to Health Committee