

THE 'EGGSPLOITATION' OF SURROGACY

The third most-watched *NZ On Air-funded* TV programme is "David Lomas Investigates", a series which reunites families and discovers lost family heritage.¹ It taps into a deep human longing: the need to know who we belong to and where we come from; our genetics and gestational origins and whakapapa.

THE LAW COMMISSION recently released its review of surrogacy laws in New Zealand – and **LABOUR MP TĀMATI COFFEY HAS A PRIVATE MEMBER'S BILL** currently before a Select Committee.² This Bill would make it easier to find surrogates and donors from a register, and may include some level of payment. It would mean recording some of the details of the biological parents – those who provide the embryo or cells for the pregnancy- **but not the surrogate or donor's name.**

SHOULD WE BE MAKING SURROGACY & SPERM DONATION "EASIER"?

"Surrogacy is an arrangement where a woman (the surrogate) agrees to become pregnant and carries and delivers a child on behalf of another person or people who intend to raise the child from birth (the intending parent(s))."

Te Kōpū Whāngai: He Arotake. Review of Surrogacy
Law Commission Issues Paper 47 (July 2021)

There are two types of surrogacy:

In **traditional surrogacy**, the surrogate mother's egg is used, making her the genetic mother. Pregnancy is usually achieved by artificial insemination, using the sperm of an 'intended' parent or a donor – and the donor may have no desire to be an active parent of the child.

In **gestational surrogacy**, the surrogate does not use her own egg in conception. Instead, an embryo is created using an ovum and sperm from the 'intended' parents or donors. The embryo is then implanted in the surrogate. So the surrogate is not the genetic mother.

(Surrogates are also sometimes called **gestational carriers**.)

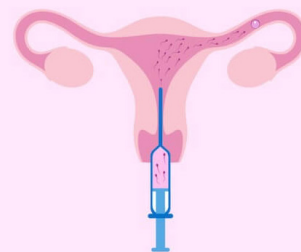
THE BILL v THE LAW COMMISSION REVIEW

According to legal advice obtained by Family First, there's a strong argument that the **Bill** is premature: it was drafted prior to the completion of the **Law Commission Review**. As a consequence, it fails to address a number of key recommendations made by the **Law Commission**. The most notable omissions of the **Bill** are:

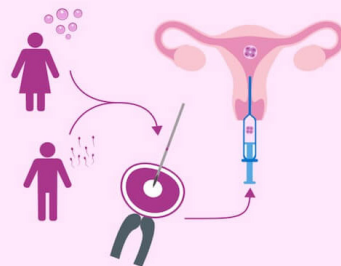
- A failure to set out **how the welfare and best interests of the child are to be considered** when gaining ethics approval and determining legal parenthood of the child
- The detail of what **reasonable costs** may be compensated under surrogacy arrangements, possibly leading to the **unintended commercialisation** of surrogacy arrangements
- The **rights of surrogate-born people to access information** about their surrogate parent
- The **consideration of Te Ao Māori (Māori world view) perspectives** in surrogacy arrangements.

The **Bill** is focused on making surrogacy more accessible for the benefit of the intending parents, whereas the **Law Commission Review** more roundly considers the interests of all parties- including the child, surrogate and intending parents.

According to the legal advice, the **Law Commission** also recommends the Government should commission research on *tikanga Māori* (Māori custom) and surrogacy, and Māori perspectives on surrogacy in practice.³ It recommends that ECART (the Ethics Committee on Assisted Reproductive Technology) receive further guidance to help determine whether counselling in relation to a surrogacy arrangement is culturally appropriate from a *te ao Māori* perspective.⁴ The **Bill** does not specifically account for *tikanga Māori* or *te ao Māori* perspectives on surrogacy, and does not appear to have been informed by any research on such.



Traditional surrogacy:
IUI



Gestational surrogacy:
IVF

BABIES FOR SALE?

It's important to say from the outset that we sympathise greatly with couples who cannot have children, and we understand why some consider going down this track in order to become parents. But this discussion tends to be focused only on the adults' rights and needs – and ignores the rights and needs of the child.

Ironically, in the explanatory note to the Labour MP's Private Member's Bill, it refers to the United Nations Convention on the Rights of the Child (UNCROC), which talks about *"a child's right from birth to know their parents and to be cared for by them."*⁵ But surrogacy and sperm donation can go against precisely that right.

What is it like to find out that your true biological father's only involvement in your life was the donation of his sperm? How do you deal with the feeling of loss and rejection from your biological mother, who is labelled as only your 'surrogate' or 'gestational carrier'? Is it normal that when you see someone who resembles you, you wonder if you are related? Can you be blamed for feeling disturbed that money may have been involved in your conception? What if your biological parent or parents don't want any contact?

Children have a deep longing to know who they belong to, where they come from, and who they look like. But identity of some donors can remain anonymous, or they may refuse contact – irrespective of what the child may want.

The surrogacy process can also lead to the commodification of children – the notion of *"renting a womb"*. As child advocate and expert Jennifer Lahl, President of The Center for Bioethics and Culture, says *"Women are not easy bake ovens and our children are not cupcakes."*

THE HARM TO SURROGATE MOTHERS

Surrogacy, even when done altruistically (without payment), can objectify children and surrogate mothers, creating lifelong emotional issues for both. The research shows that surrogate mothers can be at increased risk for emotional trauma and psychological burden. Deep bonds are formed between mother and child during gestation, and the inability of some surrogate mothers to relinquish their babies has resulted in excruciating levels of anguish and high-profile lawsuits.

Oxytocin's hormonal bond, firmly established between the mother and her preborn during gestation, is meant to be reinforced after birth by mother-to-baby physical interaction: skin-to-skin contact, eye-gazing and breast-feeding. This oxytocin link not only facilitates key physiological processes in the baby's development, but also helps the mother to recover after delivery. It promotes bonding patterns between the mother and neonate and *creates desire for further contact*.

Australian commentator Miranda Devine, who spoke at the Forum on the Family in 2019, argues that:

"...to have carried a baby in your womb, shared a blood supply, felt its little feet kick against your abdomen, heard its little heartbeat, sensed it growing bigger and stronger, while it changes your metabolism and the way you sleep, breathe and eat, and then to have given birth to a living, breathing human child you have been longing to cuddle is not a trivial act. So to have it described in such clinical, remote terms is insensitive and thoughtless, to say the least. It is so much more than being 'born through a gestational carrier', as if the woman was some sort of ceremonial archway through which the child was magically conveyed."



A powerful documentary called *"Breeders: A Subclass of Women?"* contains very moving stories of four surrogate mothers, revealing the more troubling side to what is becoming a big industry in many countries.⁶ And while health complications are possible with any pregnancy, there are many additional surrogacy-specific health risks.

EXPLOITATION

According to the legal analysis of the Bill obtained by Family First, **because the Bill is less prescriptive than the Law Commission about what constitutes reasonable expenses, there is arguably greater scope for the unintended commercialisation of surrogacy arrangements.**

We already know that commercial surrogacy can be exploitative, because the contracting parties are not always free and equal. Surrogacy can involve treating women and children as objects of commerce or trade. International experience shows that the women most at risk of being exploited in the industry are poor and vulnerable women, especially women in poor areas around the world who often agree to the arrangement because of financial incentives.

PICKING AND CHOOSING

Both surrogacy and IVF both open the door to sex-selection and the prospective 'designing' of children. In New Zealand, you can choose a donor based on information around ethnicity, eye colour, height, education and personality.⁷

There have been some disturbing examples of this 'picking and choosing' overseas:

- A surrogate mother being ordered to abort a baby in the USA after the surrogate learnt she was having triplets. The surrogate mother's response? "They are human beings. I bonded with these kids. This is just not right."⁸
- The Melbourne couple who aborted twin boys, conceived through IVF, because they already had three sons and wanted a daughter.⁹
- The 2015 Australian case of baby Gammy, born to a Thai surrogate mother and abandoned by his Australian parents after they discovered the twin boy had Down Syndrome.¹⁰

What happens when the surrogate mother has a 'multiple pregnancy', eg triplets? In theory, one could propose legislation to deal with multiple pregnancies – twins, triplets, quads – but we're dealing with biology, conception, gestation and the biological rights of children. At the risk of understatement, it is a complex issue.

MY DADDY'S NAME IS 'DONOR'

The majority of children conceived via third-party reproduction want to know the essentials of their heritage. A number of donor-conceived children are starting to speak up – even here in New Zealand.¹¹

A wealthy Australian sperm donor, who has sired more than 24 children, pleaded to keep his identity secret because he feared his offspring would want to contact him and establish relationships. In June last year, another Australian, Adam Hooper, with more than 20 donor-children, was planning to travel to New Zealand to donate more sperm – until the borders were closed by COVID.¹²

Serial sperm donor Kyle Gordy will soon have 58 kids - and is coming to NZ

4 Jun, 2022 03:25 PM 10 minutes to read

Gordy is planning to travel to New Zealand where he will donate.

Californian man Kyle Gordy said that he has fathered 47 children through sperm donation and has no plans to slow down. Video / NZ Herald

By Alanah Eriksen
Deputy Head of News, NZ Herald

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NZ Herald, 2022

Fertility clinics in New Zealand limit the number of children from a single sperm donor to 12.¹³ Yes, as many as 12!

Despite the lawmakers' best intentions, there's no mandate in Coffey's proposed Bill that a donor is to be involved in the child's life – and no guarantee a donor would even want to do so. The arrangement may still effectively be anonymous, except for disclosure about some aspects of the child's genetic origin. And the whole industry is very difficult to regulate – in fact, virtually impossible. DIY donor babies are a growing phenomenon.¹⁴



Daddy's name may still be Donor.
Mummy's name may still be Donor.

The Commission on Parenthood's Future recently released a report entitled *We Are Donor Conceived*.¹⁵ Those surveyed for it – mostly between 20 and 40-years-old – were asked to reflect on what it was like to learn they were donor-conceived. The top five most frequently selected words were **shocked, confused, curious, numb** and **sad**. More than 71% agreed with the statement "the method of my conception sometimes causes me to feel distressed, angry, or sad". And 88% of respondents believed it was a basic human right to know the identity of both biological parents.

BANS AROUND THE WORLD

In December 2015, the **European Parliament** wrote that it "condemns the practice of surrogacy." Under the heading **Rights of women and girls**, it stated that surrogacy undermined the human dignity of the woman because her body and reproductive functions were used as a commodity:

*"...[The European Parliament] condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments..."*¹⁶

Many countries have banned surrogacy: Denmark, France, Germany, Ireland, Italy, Spain, Portugal, Bulgaria, Cambodia. Other countries such as Britain, Sweden, Norway and Switzerland have banned anonymous sperm and egg donation. But these laws are easy to get around.

RIGHTS OF THE CHILD

Although largely ignored by the media when talking about surrogacy, **the rights of the child should remain paramount** in any discussion about it.

Biology matters – especially to the child. This is not a sexuality issue. This is a biological issue. Biology discriminates. It takes a mum and a dad to create a child. And children have a deep desire to know their parents.

As a society, we should take all the steps we can to meet this fundamental need of every child. Speak up for the rights of children.



The world knew him as 'baby Gammy', the boy with Down syndrome, left with an impoverished surrogate mum in Thailand, while his twin sister was flown to Australia.

Endnotes

- 1 <https://www.nzonair.govt.nz/research/audience-ratings-tv/>
- 2 https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_115955/improving-arrangements-for-surrogacy-bill
- 3 Law Commission Review, Recommendation 1
- 4 Law Commission Review, Recommendation 10
- 5 https://www.legislation.govt.nz/bill/member/2021/0072/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_improving+arrangements_resel_25_a#LMS555651
- 6 https://www.youtube.com/watch?v=summaryGNNCqs52jFU&ab_chann_el=TheCenterforBioethicsandCultureNetwork
- 7 <https://www.fertilityassociates.co.nz/media/1052/vii-01donorandsurrogacybasics.pdf>
- 8 <http://www.essentialbaby.com.au/conception/fertility/dad-orders-surrogate-mother-to-abort-baby-20151126-gl8926.html>
- 9 <https://www.perthnow.com.au/news/wa/couple-aborts-twin-boys-for-girl-ng-bfe8f89fe7be78bccdbd3319e22b94ab>
- 10 <https://www.independent.co.uk/news/world/australasia/hope-gammy-fund-set-after-australian-couple-refuse-take-downs-syndrome-baby-thai-surrogate-9642364.html>
- 11 <https://www.nzherald.co.nz/nz/washington-law-professor-rebecca-hamilton-finds-biological-fathers-family-after-20-year-search/A3SMJNMJYBD2ZRUEEF5TOXKP6U/>
- 12 <https://www.nzherald.co.nz/lifestyle/australian-sperm-donor-adam-hooper-to-help-new-zealand-women-get-pregnant/3KQUHQQRSTIRX336QKKMAALBJI/>
- 13 <https://www.rnz.co.nz/news/in-depth/370295/inside-new-zealand-s-unregulated-sperm-donor-network>
- 14 <https://www.rnz.co.nz/news/in-depth/370295/inside-new-zealand-s-unregulated-sperm-donor-network>
- 15 <https://www.wearedorconceived.com/2020-survey-top/2020-we-are-donor-conceived-survey/>
- 16 <http://europeanpost.co/the-european-parliament-condemned-all-forms-of-surrogacy/>



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