



# Auckland Women's Health Council

## Submission of the Auckland Women's Health Council on Adoption Law Reform

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### Background

The Auckland Women's Health Council (AWHC) is a voluntary organisation of individual women who have an interest in and commitment to women's health issues. The organisation was formed in 1988 to provide a voice on women's health issues in the Auckland region.

The Council has a special interest in patient rights, informed consent and decision-making in health care, health consumer advocacy, the Code of Health and Disability Services Consumers' Rights, the National Cervical Screening Programme, and ethics.

Our vision is that all women in Auckland have agency over their physical, mental, emotional and spiritual well-being and are fully informed of health services available and have access to them, and while we specifically serve and support Auckland women, we believe in this vision for all women in Aotearoa New Zealand. Our philosophy is that:

- women users of health services have the right to make informed decisions regarding their own health care and treatment.
- women have the right to the information necessary to enable them to make informed decisions.
- health care must be accessible, affordable and available as well as culturally appropriate and acceptable to women.
- consumer participation on all decision-making processes for health care services is essential.

### Our Submission

AWHC supports changes to this legislation given changes to reproduction technology, the need to acknowledge Te Tiriti and the diverse nature of our culture. We also support the statements of purpose as set out on page 12 of the discussion document and agree that the needs of the child should be the paramount consideration. There are several areas for discussion that are of particular interest to AWHC and which address the rights of the birth parent(s) and the child as much as the rights of the intending parents.

Too often the loudest voices in discussion of gestational surrogacy issues are those of intending parents and the businesses that serve them. There is an imbalance of influence evident, and AWHC wishes to emphasise the perspectives and needs of surrogate mothers and the children.

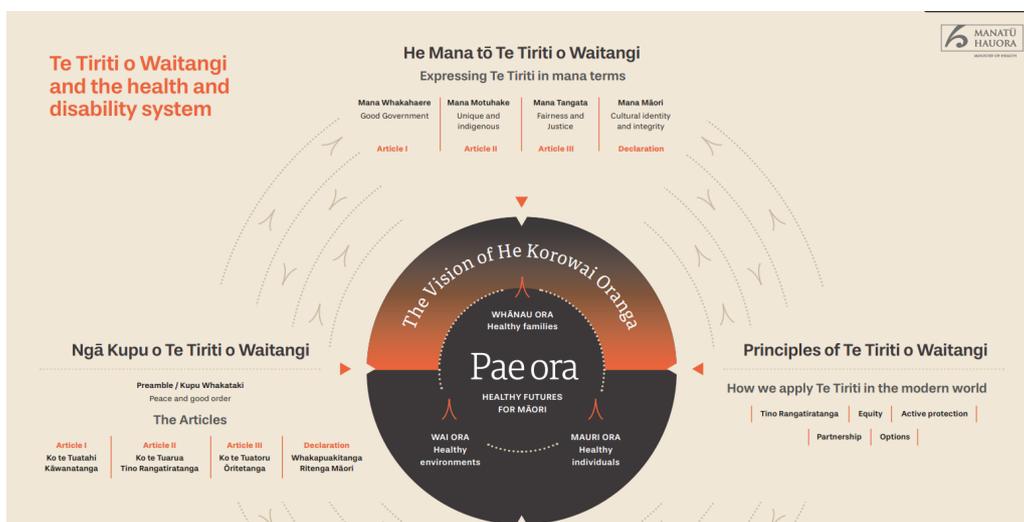
We submit that with an updated and more flexible adoption process, adoption remains the appropriate mechanism by which legal parentage of children born to surrogate mothers should be achieved.

How do you think the Crown could meet its obligations toward Māori under Te Tiriti O Waitangi in regard to Adoption? (p.9 of the discussion document).

We submit the absolute right under Article 2 of Te Tiriti O Waitangi for the expression of Rangatiratanga – self-determination – and Mana Motuhake (the right for Māori to exercise authority over their lives and to live on Māori terms and according to Māori philosophies. We believe Māori will submit and advocate for appropriate changes supportive of adoption arrangements themselves.

Where mainstream services for children and legal frameworks are concerned, these often are not best-placed to meet the needs of Māori. Te Kuku O Te Manawa 2020, a report by the Office of the Children’s Commissioner based on the evidence of their enquiry. The report advises that the first principle in improving services is to recognise the role of Māori mothers as te whare tangata, (“the house of humanity”), their sacred role as a mother, and treat them and their pēpi with humanity

We refer to Pae Ora – Healthy Futures which is set out in [Whakamaui](#): The Māori Health Action Plan 2020–2025 as a framework for honouring the principles of Te Tiriti. Māori health and wellbeing frameworks are whānau-centred and include principles of wellbeing relevant to the adoption process, the impact on the child, the family and the community.



Do you think there should be changes to how a child's culture is considered in the adoption process (p.27 of the discussion document)

We support all the options for change described on p. 27 of the discussion document.

It is important that children are guaranteed access to their birth culture and community, and we believe that the philosophy of openness and disclosure is an essential principle in this day and age. It is essential that birth certificates include information about birth parents. Our agency in the world is based on knowing where we come from:

“As children grow up, they develop a positive sense of their identity, a sense of psychosocial well-being. They gradually develop a self-concept (how they see themselves) and self-esteem (how much they like what they see. Ultimately, they learn to be comfortable with themselves. Adoption may make normal childhood issues of attachment, loss and self-image even more complex. Adopted children must come to terms with and integrate both their birth and adoptive families.” (*Paediatric Child Health*. 2001 May-Jun; 6(5): 281–283.)

This may be even more of an issue with cross-cultural adoption where the child is Māori. Even though in recent years there has been the choice of “open adoption” there remains the potential to continue dislocation for Māori children who are adopted outside of their whanau or culture. Māori children, placed for adoption, have suffered loss of cultural and family history and a compromised sense of belonging. (“The Closed Stranger Adoption of Māori Children into Pakeha Families” Maria Haenga Collins, p.72

Do you think there should be any changes to the adoption process where the child is born by domestic surrogacy? (p.64 of the discussion document)

We recommend that the surrogate and the child are given as much weight in considerations as those given to the intending parents.

As a feminist organisation we have a particular interest in changes in respect of domestic and international surrogacy arrangements. We wholeheartedly support user-friendly information for all parties before, during and after surrogacy arrangements and the adoption process. We also support an adoption process which avoids expensive and repetitive home visits and agree this may involve changing the agency that carries out home visits.

There is a formal and required process already in use for gestational surrogacy parties who use fertility services that ensures future relationships and issues are explored and discussed. Within the structure of that process, the potential surrogate and intending parents access counselling and legal advice and are guided in the process of reaching a shared understanding with the intending parents over the range of potential issues that can arise.

ECART counselling requirements are extensive and have occasionally identified surrogacy arrangements that have been unsuccessful. We acknowledge that this process takes both time and money. However, we believe that it ensures that the principles of the HART Act<sup>1</sup> and the best interests of all parties are met. Of particular relevance to the proposed Adoption Amendment Act are principles a, b, c and d, which acknowledge the interests of the child and the mother. These, we believe should inform the amendments.

Because of this required process for gestational surrogates we suggest/believe that the three visits with Social Workers are not necessary. For this reason, the process of adoption for gestational surrogacy should be streamlined.

We are aware that traditional surrogacy arrangements do not require the same processes and so the expectations of future relationships between the surrogate and intended family may not have been negotiated so explicitly.

#### Timing of consent and withdrawing consent

There should be no grounds for dispensation of birth parental consent to adoption in the case of a breakdown to a surrogacy arrangement.

Whilst understanding the frustrations for intending parents who may be anxious to finalise legal parental status, it is important not to remove the rights of the surrogate to confirm her consent to gift her baby after it is born. We note that one of the key principles in the HART Act (2004) makes particular reference to the surrogate, as well as the woman who provides the oocyte see footnote principle c :

We acknowledge that it is rare for a surrogate mother to change her mind about gifting her baby to intending parents. As above, AWHC Se suggest this is a result of the comprehensive ECART approach considering the perspectives and needs of all parties, yet public discussion

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- <sup>1</sup> (a) the health and well-being of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure:
- (b) the human health, safety, and dignity of present and future generations should be preserved and promoted:
- (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and well-being of women must be protected in the use of these procedures:
- (d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent:
- (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins:
- (f) the needs, values, and beliefs of Māori should be considered and treated with respect:
- (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

continues to focus on enhancing legal protections for intending parents. We understand that for traditional surrogacy parties who do not access fertility services that there is no formal requirement for them to go through these procedures. We submit that ideally the ECART counselling process would be valuable for all parties thinking of surrogacy, but acknowledge the costs are considerable and there is an equity issue here.

The needs of the birth mother and her family and the emotional consequences of the process – the conceiving, gestating and birthing a child require attention and protection whether she is genetically related to the child or not. It is the surrogate mother who provides nurture and nourishment in her body for the baby to grow, and then gives birth. It is her baby to gift after it is born, and most often this is what happens, but it is important to provide a flexible approach which is responsive to the needs of the surrogate mother. She may need more time, or she may not. The surrogate mother will not know for sure how she will feel about her baby after giving birth, or how she will feel then about gifting her baby to the intending parents. A fully informed decision in advance is not possible for the surrogate mother. Ensuring ECART counselling requirements are used in all surrogacy preparations would mitigate some of this risk, and the process of confirming legal parentage must take the needs of the surrogate mother into account.

We understand the frustrations for intending parents anxious to attain legal parentage but believe the timeframe should take into account the needs and rights of the child and surrogate (the mother) first and foremost, as well as the needs of the intending adopting parents to bond with the baby as early as possible.

Birth Parent's role in the adoption process (discussion p.17)
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We submit that especially in the case of traditional and gestational surrogacy, it is important for birth parents to be present at the final court hearing for the reasons outlined on page 17 of the discussion document.

Children are not chattels nor accessories. AWHC accepts that both adoptive parents and those becoming parents through surrogacy need more certainty and that there must be a huge amount of emotional strain and potential trauma in the process, but nothing that could compare with the trauma for children and birth mothers who may end up feeling commoditised.

Submitted by the Auckland Women's Health Council 31/08/2021