

**GOVERNMENT RESPONSE TO
LAW COMMISSION REPORT
ON
NEW ISSUES IN LEGAL PARENTHOOD**

Presented to the House of Representatives

GOVERNMENT RESPONSE TO LAW COMMISSION REPORT ON NEW ISSUES IN LEGAL PARENTHOOD

INTRODUCTION

1. The Government has carefully considered the Law Commission's report NZLC 88 "*New Issues in Legal Parenthood*". The Government responds to the report in accordance with Cabinet Office circular CO (01) 13.

BACKGROUND

2. The Law Commission's report responds to a Government referral, in 2003, to review the legal rules that determine parenthood. In particular, the Commission was asked to inquire into and report on:
 - (i) How parental status should be determined in law, specifically what value should be ascribed to a person's biological relationship with a child; a person's social or care giving relationship with a child and a person's gestational relationship with a child;
 - (ii) Whether the assumption underlying the current law, that a child should have no more than two parents, be amended to allow a child to have more than two parents identified in law;
 - (iii) Whether the law should permit a child to have only one parent recognised in law;
 - (iv) Whether the current statutory presumptions as to parenthood based on relationships with the child's birth mother be amended, and if so, how;
 - (v) What should be the processes and evidence by which an adult can prove or disprove parenthood;
 - (vi) What value should the law attach to agreements between adults as to parenthood and what should be the effect of disproving a biological relationship with the child;
 - (vii) What legal effect should surrogacy agreements have in determining the parental status of the adults who are party to the agreements and what should be the consequences if one party to an agreement reneges on it;
 - (viii) Whether a commissioning couple, before entering into a surrogacy agreement, be required to gain approval as parents as adoptive parents are required to;
 - (ix) To consider and comment upon any other legal issues relating to status of parenthood which arise in the course of this review.

LAW COMMISSION REPORT

3. The Law Commission made specific recommendations covering a range of subjects dealing with acquiring and proving legal parenthood and genetic parentage. The recommendations fall into 3 broad areas:
 - (i) *Establishing genetic parentage*, including recommendations about:
 - Legal presumptions of parentage for couples;
 - Standards and protocols for tests to prove genetic parentage (eg DNA profiling); and
 - Powers of parents and the courts to undertake or compel parentage testing.
 - (ii) *Assigning legal parenthood*, including recommendations about:
 - Allocating legal parenthood status (and consequent rights and responsibilities) where assisted human reproductive (AHR) procedures have been used; and
 - Processes for assigning and transferring legal parenthood status, for example to a known sperm or egg donor or to implement surrogacy arrangements.
 - (iii) *Information about genetic parentage and legal parenthood*, including recommendations about registering and accessing genetic parentage and legal parenthood information for children conceived using AHR procedures.
4. The Commission considered the primary purpose of parenthood laws is to provide security and protection that children, as vulnerable members of our society, need. It did not consider parenthood laws should focus on the 'rights' of parents or be used as a way to encourage particular family forms.
5. The Commission applied five guiding principles when considering whether to recommend law reform in this area. These principles were:
 - (i) The child's welfare and best interests are a primary consideration;
 - (ii) Clarity and certainty of status at the earliest possible time and simplicity in court processes;
 - (iii) Everyone should be able to access information about their genetic and gestational parentage;
 - (iv) Collaborative and autonomous parenting should be facilitated by legal processes; and
 - (v) Children are to be equal and they and their families not disadvantaged by the circumstances of their creation or form of family.

OVERVIEW OF GOVERNMENT RESPONSE

6. The Government notes that the legal status of being a parent is both *legally* and *socially* significant for many people. Parenthood carries with it a number of legal rights and responsibilities that do not attach to guardianship. Socially, parenthood is important because it establishes permanent, inter-generational family relationships.
7. Legal rules allocating parenthood impact upon the interests of many parties – more so than ever before, due to the increased range and availability of AHR technologies. The Government accepts the Commission’s view that a primary purpose of parenthood laws is to provide security and protection that children, as vulnerable members of our society, need. However, this purpose must be considered in the context of the continuing legal and social importance of the parent-child relationship once the child reaches adulthood.
8. The Government agrees with the Commission’s view that, when considering law reform in this area, the child’s welfare and best interests are a primary consideration. The law should provide clarity and certainty of parental status at the earliest possible time and processes for allocating parentage and resolving disputes about parentage should be simple. However, there should also be sufficient flexibility to allow adults involved in a child’s creation through an AHR procedure to decide on the legal roles of each party in family formation. Where the State has provided a legal framework for parenthood arrangements that differ from ordinary parental presumptions, it should enable access to appropriate assistance.
9. While every New Zealander is affected by parenthood laws (whether as a parent or a child), the problems identified by the Law Commission are only likely to affect a relatively small number of people. In some cases the significance of the problem is also small (for example, the legal definition of ‘mother’). However, in others the problem is of great significance (for example, transferring parenthood to implement surrogacy arrangements).
10. The Government acknowledges that the effect of current parenthood laws can be that a child’s genetic or social parent is not the legal parent. This outcome may not be appropriate in every case. However, the range and complexity of circumstances in which these cases arise, and the significance of parenthood, mean that any steps to amend parenthood laws must be considered carefully and taken with caution.
11. In addressing the recommendations, the Government has identified recommendations with which it:
 - Agrees in principle, and will consider undertaking further work towards implementing. These include:
 - Extending the presumption of paternity;
 - Enacting a minimum framework formalising consent requirements for DNA parentage testing;
 - Making court orders to undergo parentage testing enforceable; and

- Transferring parentage to implement surrogacy arrangements.
- Agrees that the concerns prompting the recommendation are valid, but considers that further policy work and consultation is required before drawing conclusions on the concerns and any proposed solutions. These include:
 - Allowing parenthood to be allocated by agreement to 'known' donors of sperm or eggs;
 - Allowing a 'known' donor to be declared liable for child support if the donor has assumed some responsibility for the child;
 - Allowing the court to make orders establishing or extinguishing legal parenthood in cases of mistaken implantation;
 - Providing information with birth certificate applications to alert more people to the possibility they may be donor-conceived;
 - Allowing parents to have an annotation put on birth certificates stating the child was born by 'donor';
 - Considering whether there is a need for a best practice counselling protocol for fertility clinics providing treatment with egg and sperm donation;
 - Providing counselling for donors and donor offspring accessing the 'voluntary' HART Act register;
 - Increasing the types of samples available for DNA parentage testing;
 - Providing subsidised DNA testing;
 - Requiring parents of children born from donor or surrogacy arrangements without the assistance of fertility clinics to provide the donor's information to Births, Deaths and Marriages; and
 - Identifying the policy objectives for recording legal parents and genetic information.
- Disagrees. These include:
 - Enacting definitions of 'mother' and 'father';
 - Abolishing the indirect presumption of maternity and enacting an explicit presumption;
 - Accrediting providers of DNA parentage testing;
 - Making court formalised agreements between parents and a 'known' donor about the donor's role in the child's life presumptively enforceable;
 - Requiring parties to receive independent legal advice before having a court formalise agreements between parents and a 'known' donor;
 - Requiring certain people receiving AHR to undergo compulsory counselling and education;
 - Requiring fertility clinics to counsel all unpartnered women receiving donor gametes about the importance of appointing a second guardian for their child;
 - Requiring parents intending to have a child through embryo donation to undergo mandatory screening; and
 - Revisiting a number of areas already considered when Parliament enacted the Human Assisted Reproductive Technology Act 2004 (the 'HART' Act).

12. Justice Ministers will consider the priority to be accorded to any further work when setting the Ministry of Justice's annual work programme.

LAW COMMISSION'S RECOMMENDATIONS AND GOVERNMENT RESPONSE

Establishing Parentage

Law Commission recommendations – defining mother and father, presumptions of parentage

13. The Law Commission has recommended that:

- There should be specific statutory definitions of 'mother' and 'father';¹
- The indirect statutory presumption of maternity should be abolished and replaced by an explicit provision;² and
- The presumption of paternity should be extended to situations where children are conceived outside of marriage but within an opposite-sex de facto or civil union relationship.³

Government response

14. The Law Commission was concerned that there are no explicit definitions of 'mother' and 'father.' However, it has not provided evidence to suggest that the status quo has caused any problems. In cases where a question arises over maternity (for example, surrogacy, embryo donation), the Law Commission has proposed other legal processes to transfer parenthood. The Government considers that introducing new definitions would risk creating unintended consequences. For these reasons, the Government disagrees with the proposal.

15. The legal presumption of 'paternity' applies if the child's mother and father are married when it is born, or the child is born within 10 months of the marriage being dissolved. The Government agrees that the presumption should be amended. Given the significant number of children born into de facto relationships, it is sensible to extend the presumption of paternity to children born within those relationships. The proposal also avoids discrimination on the basis of marital status and provides a more logical basis for determining paternity of a child born after a couple separate. All children and parents in analogous family situations would be subject to the same regime. It will, however, be extremely important to create a presumption that is simple to apply.

16. The Commission considers that there is an 'indirect' statutory presumption of maternity (arising from the presumption of paternity) that should be abolished. Whether this is in fact the case is a matter of interpretation. The Government believes that the common law rule that evidence of birth constitutes maternity continues to work well and is unmodified by the presumption of paternity

¹ Recommendation 1.

² Recommendation 2.

³ Recommendation 3.

discussed above. Enacting an explicit presumption of maternity, as suggested by the Commission, would risk creating unintended consequences.

Law Commission recommendations – DNA parentage testing

17. The Commission has made a range of recommendations on DNA parentage testing. It has recommended that providers of DNA parentage testing should be accredited, that an increased range of bodily samples be available for DNA parentage testing and that information about DNA parentage testing be accessible to the public and professionals involved.⁴
18. The Commission has also proposed that the consent of both parents to DNA parentage testing be required, with protocols for verifying parties' consents and a court process for dealing with parental conflict about consent.⁵ It also recommended that the courts should be able to order, rather than just recommend, parentage testing and that the courts have powers to enforce the order.⁶

Government response

19. The issue of disputed parentage is significant for those involved and the Government agrees that it is desirable to consider ways of improving the resolution of issues about parentage testing.
20. However, the Government disagrees with the Law Commission's proposal to accredit providers of parentage testing. The general accreditation system for medical laboratories has sufficient scope to specifically consider a laboratory's suitability to undertake DNA testing as well. The Government agrees there is likely to be benefit in ensuring information about DNA parentage testing is widely available. The Government sees some merit in increasing the types of samples that can be used for parentage testing in court, but further consideration of the reliability of using other sample types is required before reaching any firm conclusion.
21. The Government agrees that it is desirable to enact a legislative framework that formalises minimum consent requirements for parentage testing where test results will be used in court or by government agencies. It also agrees that the current unenforceability of court recommendations for parentage testing may not be in the best interests of the child. Enforceable court orders may be preferable. However, any changes to parentage testing law will require careful consideration – testing raises fundamental issues about the extent to which it is appropriate for the State to compel the taking of bodily samples.

⁴ Recommendation 4.

⁵ Recommendations 5, 6 and 7.

⁶ Recommendation 8.

Assigning Parenthood

Law Commission recommendations – agreements between donors and parents

22. The Law Commission has recommended a number of legislative amendments aimed at implementing or recognising agreements made between donors of eggs or sperm and the legal parents of a child born as a result of the use of donor eggs or sperm. These include:

- Enabling legal parenthood to be assigned to a ‘known donor’, either as the child’s second or third parent;⁷
- Enacting a presumption that agreements between donors and parents under section 41 of the Care of Children Act 2004 (about the involvement of a donor in the child’s life), that are the subject of a court consent order, be enforceable, unless the court considers it demonstrably in the child’s best interests to vary the agreement.⁸
- Requiring parties (donor and parents) to receive independent legal advice before having a section 41 agreement made into a court order.⁹
- Allowing a ‘known donor’ to be declared liable for child support, if the donor has knowingly assumed some parental responsibility for the child.¹⁰

Government response

23. Currently, known donors have no parental status regarding children they have helped conceive. They can access:

- *Some* parental rights and responsibilities, by entering into an agreement with the child’s legal parents¹¹ or becoming a legal guardian; or
- *All* parental rights and responsibilities by adopting the child or later becoming the partner of a woman who was single when she became pregnant with the donor’s assistance.

A recent court case¹² highlighted that some known donors would like to be ‘parents’ of the child, together with the current legal parents.

24. This issue is not likely to affect large numbers of people, however the Government appreciates that it is of great significance to those affected. Research has shown that it is desirable for genetic parents to be involved in the child’s life, if the parties agree. However, the proposal raises complex questions that are likely to attract diverse views. Before drawing conclusions on the Commission’s proposals, the Government will need to consider and undertake further consultation on questions such as:

- Whether the ability to formalise agreements under section 41 of the Care of Children Act meets the needs of families wanting ‘known’ donors to have a formal role in the child’s life;

⁷ Recommendations 9 and 10.

⁸ Recommendation 11.

⁹ Recommendation 12.

¹⁰ Recommendation 13.

¹¹ Section 41 of the Care of Children Act 2004.

¹² *P v K* [2003] 2 NZLR 787, [2003] NZFLR 489 (HC); [2004] NZFLR 752 (FC); [2004] 2 NZLR 421 (HC).

- The number of legal parents the law should recognise for one child (AHR technology means that a child could be conceived using genetic material from more than two people); and
 - How the best interests of the child are promoted and the extent to which they coincide with the interests of the legal and genetic parents.
25. Known donors and parents can formalise agreements about the donor's role in a court order. The Commission expressed concern that the Court's power to vary such agreements disregards the intentions of the parties and recommended that they should be presumptively enforceable. The Government disagrees with this recommendation. The State has a social and economic interest in promoting sustainable and workable parent-child relationships. If a dispute arises (which is when one party would be seeking enforcement of an agreement), it is appropriate for the Court to be able to reconsider the parties' arrangements. In addition, the proposal does not offer significant advantages over the current law, as the Court could still vary the agreement if it is demonstrably in the child's best interests to do so. The proposal would also establish a legal anomaly by giving such agreements higher status than other court orders.
26. The Government disagrees with the Commission's recommendation that parents and donors should be required to receive independent legal advice before having agreements about the donor's role made into court orders. The Government does not consider the cost to parties justifies the benefit. Parties are increasingly participating in the Family Court in cases that are just as complex, without such a requirement being imposed on them. Information about parenting agreements and orders is already available on the Ministry of Justice website and parenting orders must contain terms that the parties can understand or an explanation of the order.
27. The Government appreciates the Commission's reasons for recommending that it should be possible in some circumstances to declare a donor liable for child support. This would place donors on an equal footing with step parents who can be declared liable for child support where they have assumed responsibility for maintenance of the child. However, the Government has reservations about the recommendation. There is a real risk that potential child support liability would have the effect of reducing egg and sperm donations and, given the small numbers of people involved, the overall benefits may not be great. This risk may be minimised if information clearly explaining the situations in which 'known' donors could be made liable for child support is available to donors and parents. However, the risks, together with complex issues such as criteria for establishing a donor's liability and apportioning payments between two liable parents, will need to be considered before the Government forms any views on this proposal.

Law Commission recommendations – surrogacy

28. The Law Commission has recommended enacting specific mechanisms for transferring parenthood to implement surrogacy arrangements. These mechanisms would be available for up to six months after the child is born and mean that intending parents would not need to adopt the child.¹³

¹³ Recommendation 15.

Government response

29. At present, the only way to transfer parenthood from the surrogate mother (and potentially her partner) to the intending parents is for the intending parents to adopt the child. The adoption process is not well-suited for implementing surrogacy arrangements for many reasons, but primarily because the purpose of adoption is ensuring a permanent and secure family relationship for a child whose parents are unable or unwilling to parent it. This is quite different from surrogacy, where the purpose of the arrangements is to create a child for the intending parents. The result of difficulties in going through the adoption process is that some parties to surrogacy arrangements do not formalise the transfer of parenthood or guardianship.
30. Surrogacy arrangements have been occurring in New Zealand for many years and many of these cases receive ethical approval from a state-appointed body.¹⁴ While only a small number of people are affected by these laws, the issue is significant for them and the numbers involved are likely to grow if the trend of deferred family formation continues.
31. The Government agrees that specific mechanisms are required for transferring parenthood to implement surrogacy arrangements. Families created by surrogacy should not be disadvantaged through lack of certainty and clarity about parental status. The Government will, however, need to give careful consideration to the design and legal implications of mechanisms for transferring parenthood.

Law Commission recommendations – mistaken implantation

32. Mistaken implantation may occur if a woman receiving fertility treatment is implanted or inseminated with the wrong egg, sperm or embryo. In such situations, the Law Commission has recommended specifically allowing the court to make orders in favour of, or extinguishing, the legal parenthood of any one or more of a group of adults with a proper interest in the parenthood of the child.¹⁵

Government response

33. Although such cases will be very rare, the Government agrees that current laws deeming the birth mother to be the legal mother and her partner to be the father (or other parent) may not provide sufficient scope for resolving questions over legal parenthood where mistaken implantation has occurred. Given the number of adults who may claim or disclaim parenthood on the basis of a genetic or gestational connection to the child and the range of possible individual circumstances, such questions should be determined by a court.
34. Before forming a view on this proposal, the Government will need to give further consideration to:

¹⁴ Ethical approval is required for IVF surrogacy. Ethical approval is not required if the parties do not require assistance from a fertility clinic (eg, if the surrogate mother's own egg is used).

¹⁵ Recommendation 16.

- Whether it is necessary to empower the court to clarify legal parenthood in cases of mistaken implantation; and
- If so, whether the court should be required to consider specific factors (and if so, which factors) when making decisions about reassigning parenthood.

Law Commission recommendations – counselling and education

35. The Law Commission has identified two areas where it considers that the parents involved would benefit from education and/or counselling. It has recommended:
- Requiring fertility clinics to counsel all unpartnered women receiving donor gametes about the importance of appointing a second guardian for their child;¹⁶ and
 - Imposing mandatory screening and education for parents having a child through embryo donation. The education would be on the challenges of parenting a child with no genetic connection.¹⁷

Government response

36. The Government disagrees with the Commission’s proposal to target unpartnered women for counselling on the importance of appointing a second guardian. Fertility clinics already counsel all people using AHR procedures about the importance of appointing a second guardian. It is not clear that having a second guardian would, of itself, improve the child’s life – the person would need to play a meaningful role in the child’s life. However, it is sensible for parents to consider appointing a testamentary guardian for their children. The Government could consider making information available to all people using AHR procedures about the legal implications of those procedures on the parenthood of the child and parenthood options.
37. The Commission has suggested mandatory screening and education in the context of embryo donation, due to its similarities with adoption. However, the Government has adopted a self-regulatory approach to AHR. The HART Act requires the new Ethics Committee on Assisted Reproductive Technology (ECART) to provide advice to the Minister of Health on embryo donation.¹⁸ In the meantime, guidelines adopted by ECART require fertility clinics to screen intending parents for criminal convictions and to provide pre-treatment counselling services to intending parents and donors. This counselling is also educative. The Government therefore considers it premature to impose a statutory requirement for mandatory education or screening.

Information about Parentage and Parenthood

38. The Law Commission has made a series of recommendations aimed at addressing difficulties people may have obtaining information about their genetic parentage.

¹⁶ Recommendation 14.

¹⁷ Recommendation 17.

¹⁸ Section 38(a) HART Act 2004.

Law Commission recommendations – birth certificates

39. The Law Commission has recommended that specific information be included, or be able to be included, on birth certificates. In particular, it proposed that:
- All birth certificates include a statement indicating that the Births, Deaths and Marriages Register contains other information that may be accessed by the person whose certificate it is;¹⁹ and
 - Parents be able to have an annotation put on birth certificates stating that the child was born by “donor”.²⁰

Government response

40. Donor offspring (those conceived from donor eggs or sperm or in surrogacy arrangements) are reliant upon others to tell them about the circumstances of their birth before they can access information about their genetic heritage. The Law Commission’s recommendations aim to alert more people to the possibility they may be donor-conceived and to encourage more parents to give this information to their children.
41. The Government understands the concern underlying the Commission’s recommendation. However, it does not agree that a birth certificate is the appropriate place for a statement indicating that additional information may be held by Births, Deaths and Marriages. It may cause confusion for third parties relying on birth certificates as a source of information, particularly overseas organisations unfamiliar with New Zealand registry documents. The Government considers that including this information with birth certificate application forms may be a more effective way of encouraging people to enquire about their genetic origins. The Department of Internal Affairs will consider this issue further.
42. The proposal to allow parents to have their child’s birth certificate annotated to state the child was born by ‘donor’ is likely to facilitate openness, if used, and would be an alternative to the term ‘not recorded’ for the father of donor children born to single women. However, before agreeing to implement this proposal, the Government will need to give further consideration to issues such as:
- Who would have the right to add or remove the annotation;
 - Whether an annotation would cause any stigma for the child; and
 - Whether an annotation could be added if no other AHR information is held by Births, Deaths and Marriages (eg, there is no donor information recorded under the HART Act).

Law Commission recommendations – counselling and education

43. The Law Commission recommended that:
- Recipients of donated gametes and embryos be required to attend pre-conception education programmes;²¹

¹⁹ Recommendation 18.

²⁰ Recommendation 19.

²¹ Recommendation 20.

- Fertility clinics and counsellors develop a best-practice counselling protocol, to be included in standards for their accreditation;²² and
- Consideration should be given to whether counselling should be mandatory.²³

Government response

44. The Commission considered that families using donor gamete conception would benefit from mandatory education and counselling. Education, based on that provided by Child, Youth and Family for adoptive parents, could provide information in a group setting on the implications of the lack of genetic connection between a parent and child and the task of telling the child about their origins. Counselling would allow people to discuss the personal implications of using AHR technology.
45. The Government does not agree that there should be a mandatory requirement to attend education and counselling programmes. As noted above, fertility clinics are already required to provide pre-treatment counselling services to both intending parents and donors.²⁴ This counselling is also educative. The proposal is inconsistent with the Government's self-regulatory approach to AHR and would create inequities between those using fertility clinics and those who make their own arrangements. People may even be deterred from using fertility clinics, which would be undesirable as clinics screen donor sperm for infectious diseases. In addition, the use of AHR and donor sperm or eggs is not directly comparable to the adoption process, where the State has particular responsibility for ensuring the appropriate placement of children.
46. The Government does, however, agree that it may be useful to explore whether there is a need for a best practice counselling protocol. Guidelines are currently provided by the Australian and New Zealand Infertility Counsellors Association (ANZICA). In order to be accredited, fertility clinics are required to provide counselling by a person with expertise recognised by (and preferably a member of) ANZICA. Standards New Zealand is also currently developing a New Zealand fertility standard that will include requirements for fertility clinics to make counselling available to users of their services and for counselling protocols to be in place. The Government could seek views from the Reproductive Technology Accreditation Committee and ANZICA about whether the current guidelines meet the need for a 'best practice' consistent counselling protocol.

Law Commission recommendations – information registers and access to information

47. The Law Commission has made a number of recommendations aimed at promoting the recording of genetic information and access to that information.
48. In relation to the information registers established under the Human Assisted Reproductive Technology Act 2004, the Commission has proposed that:

²² Recommendation 21.

²³ Recommendation 21.

²⁴ See paragraph 37.

- The voluntary information register (for recording information about donor conceptions before the Act came into force) be accompanied by a publicity campaign designed to reach as many donor offspring and donors as possible;²⁵
 - Counselling (potentially paid or subsidised by the Government) be available for donor-conceived offspring and donors using the voluntary information register;²⁶ and
 - The Government consider providing subsidised DNA testing for people using the voluntary information register.²⁷
49. The Commission also recommended that the Government consider providing subsidised DNA testing for people where real doubt exists as to their paternity.²⁸
50. To promote better initial recording of genetic information, the Commission proposes requiring parents of children born from gamete donation or surrogacy without the assistance of fertility clinics to provide the donor's identifying information to Births, Deaths and Marriages. Such information would then be added to the HART Act information register.²⁹
51. Finally, the Commission recommended that the Government consider in its policy work on minimum ages whether there should be an age restriction on when children can access their own genetic information.³⁰

Government response

52. Several of the Commission's recommendations have already been considered in the context of the HART Act. In particular:
- In August 2005, the Department of Internal Affairs commenced a targeted publicity campaign to inform donors and donor offspring of the voluntary HART Act register.
 - The Government has considered making counselling available for those accessing the compulsory information register. Its preferred approach, reflected in the HART Act, was to require the Registrar-General to advise those accessing the register on the desirability of obtaining counselling. However, as the voluntary register was added to the HART Act during the final stages of its consideration by Parliament, the Government agrees it could explore whether there is special justification for providing services to those accessing the voluntary register that are not available to those accessing the compulsory register.
 - The minimum age at which children can access genetic information held on the HART Act register was thoroughly canvassed during Parliament's consideration of the HART Act. The Government does not consider there is any reason to reconsider the issue at this stage.

²⁵ Recommendation 23.

²⁶ Recommendation 24.

²⁷ Recommendation 25.

²⁸ Recommendation 28.

²⁹ Recommendations 26 and 27.

³⁰ Recommendation 22.

53. The Government has not yet formed a view on whether it should provide subsidised DNA testing, although the Commission has raised an issue worthy of further consideration. There are complex questions about the extent of the State's responsibility for misattribution of parentage and correcting such misattributions, and the appropriate role of the State in helping children identify their genetic origins. The Government will consider this proposal further in the context of the Commission's general proposals about DNA parentage testing (see paragraphs 17 - 21 above).
54. The Government recognises that it is desirable for children conceived through sperm donation or surrogacy outside of a fertility clinic to have access to their genetic information, particularly if the law allows that information to be obscured by recording legal (rather than genetic) parentage. However, the Government would need to consider carefully whether and how a requirement to provide such information to Births, Deaths and Marriages could be effectively enforced, before deciding whether or not to implement it.

Law Commission recommendations – policy objectives of recording parentage and parenthood information

55. The Law Commission has recommended that the Government should identify policy objectives for recording legal parents and genetic information, and develop strategies for achieving these objectives.³¹

Government response

56. A number of agencies have an interest in ensuring birth information identifies all legal parents. The Commission has also suggested the Government has a broader obligation under the United Nations Convention on the Rights of the Child to provide a repository of genetic information. The Government agrees there is scope for agencies to work together to give further thought to ways of improving the recording of accurate and complete birth information.

CONCLUSION

57. The Government is grateful to the Law Commission for providing this report. As noted earlier, every New Zealander is affected by parenthood laws. Questions about who is and who should be a legal parent, and the role of the State in facilitating changes to legal parenthood and access to information about parentage, are of fundamental importance to our society.
58. The Commission's report will provide valuable guidance and promote informed debate as the Government progresses work on issues relating to legal parenthood.

³¹ Recommendation 29.