

**RESPONSES TO FEEDBACK RECEIVED FROM THE PUBLIC CONSULTATION
ON THE PROPOSED ENACTMENT OF THE STATUS OF CHILDREN (ASSISTED
REPRODUCTION TECHNOLOGY) ACT**

Experts consultation

1. On 14 March 2011, the Ministry of Law (MinLaw) released a closed consultation paper on the proposed Status of Children (Assisted Reproduction Technology) Bill (SOC Bill). Legal, medical and religious experts were approached to seek their views regarding issues relating to the legal parentage and status of children born through Assisted Reproduction Technology (ART).
2. The consultation paper had offered five options to deal with legal parentage in ART mix-up situations, derived from three options offered by the New Zealand Law Reform Commission. The options were:
 - a. To provide that the court determines legal parenthood on a case-by-case basis, taking into account the best interests of the child;
 - b. To provide that the court determines that *either* the gestational mother *or* the genetic mother will be the legal mother, and the person who will be the legal father will be the man to whom the legal mother is married. Those not granted legal parenthood can apply to be made guardians and can be granted contact with the child;
 - c. To provide that the gestational mother and her husband who consented to ART treatment will be the parents of the child. The third parties whose eggs, sperm, or embryos were inadvertently used in the ART treatment of the gestational mother will not have any legal status *vis-à-vis* the child;
 - d. To provide that both the gestational and the genetic mother are legal mothers, and the husbands of the legal mothers will be the legal fathers; and
 - e. To provide a *default* position that the gestational mother and her husband who consented to the ART treatment will be the legal parents of the child. However, any interested party may make an application to the court within two years from the date of *discovery* of the mix-up for a declaration that he or she be declared as the father or mother of the child, as the case may be. The court may, in the best interest of the child, make such a declaration.
3. Majority of the experts chose the option in paragraph 2(e), which is reflected in an updated form in clause 9 of the SOC Bill.

Public consultation

4. On 20 November 2012, MinLaw released a public consultation paper on the proposed SOC Bill.¹ The public consultation closed on 20 December 2012, and MinLaw received feedback from members of the public.
5. The respondents were generally supportive of the SOC Bill. MinLaw has considered the feedback received and our responses to the feedback are set out below.

Feedback received from public consultation

- (i) *Legal Parentage and Status of Children Conceived as a result of ART mix-up*
 6. It was suggested that MinLaw should consider differentiating:
 - (a) an ART mix-up involving the wrong embryo implanted in the gestational mother whereby both the gestational mother and her husband are not the biological parents of the child; and
 - (b) an ART mix-up involving the use of a wrong sperm or egg whereby only one of the legal parents is the biological parent of the child.
 7. It was suggested that in the case of paragraph 6(a), the approach adopted by MinLaw as set out in clause 9² of the SOC Bill should apply; in the case of paragraph 6(b), only the biological parent should be recognised as the sole legal parent and the court can determine who the other legal parent ought to be.
 8. In MinLaw's view, this suggested approach would not be in the best interests of the child, particularly where the spouse of the biological parent declines to make an application to Court to be declared the legal parent, or if another party outside the marriage so applies and is determined by the court to be the other legal parent. This may create a situation in which the child conceived through ART has a single parent even though his or her mother has a spouse, or a set of parents who are not in the same marriage. Such situations would foreseeably lead to complications in arrangements for the upbringing of the child, and would not be in the best interests of the child.
- (ii) *Intention-based concept of parenthood*
 9. It was proposed that the intention-based concept of parenthood should be adopted. This concept places emphasis on the fact that at the point when

¹ Please refer to <http://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-the-proposed-SOC-Bill.html>

² Clause 9 of the Bill provides that the default position shall be determined in accordance with rules determining parenthood, as if the mix-up had not occurred and the child was brought about with the egg, sperm, or embryo intended to be used, and not that which was actually used. However, any interested party may apply to Court, within two years from the date of discovery of the mix-up for a declaration that he or she is the father or mother of the child.

agreement is reached, all parties involved intend that any child born of the arrangement is to be regarded as the child of the commissioning couple upon birth.

10. This proposal is set against the background of women freezing their eggs for ART treatment in future and couples opting for ART treatment by way of surrogacy. Currently, ART services used for surrogacy arrangements in Singapore are not permitted. The Bill thus does not have any specific provision that addresses surrogacy.
11. Further, and in any event, the intention-based concept of parenthood would not be appropriate in most cases of children conceived through ART treatment. An intention-based concept of parenthood may lead to more disputes and litigation, as the subjective intention of the parties involved would need to be determined. This could lead to instances where the child conceived through ART is left parentless.
12. On balance, MinLaw is of the view that the legal position in clauses 6 to 8 in respect of children conceived through ART procedures, as well as the default position as set out in clause 9 for ART mix-up cases, is preferred. These positions ensure that the child will not be left effectively parentless if no one wants to take care of the child after the mix-up is discovered. At the same time, the Court has the flexibility to take into account circumstances on a case-by-case basis, bearing in mind the best interests of the child.

(iii) Persons Eligible for ART treatment

13. MinLaw received feedback on the eligibility of persons for ART treatment in Singapore, in particular, whether unmarried women should be entitled to undergo ART treatment.
14. The SOC Bill only seeks to provide for the legal parentage and status of children conceived through ART. It does not seek to regulate ART services and treatment in Singapore, which are presently regulated by MOH under the Private Hospitals and Medical Clinics Act (PHMCA). In order to provide ART services, licensed healthcare institutions must be approved under the PHMCA and the regulations thereunder.

(iv) Ethical Issues Regarding ART treatment

15. MinLaw also received feedback with respect to ethical issues regarding ART treatment, in which concerns such as consanguinity were raised.
16. In Singapore, ART services and treatment are regulated by law and can only be offered by licensed healthcare institutions that have been approved to provide such services. These institutions, also known as Assisted Reproduction (AR) centres, are bound by certain licensing terms and conditions. ART is not a substitute for natural child-bearing within marriage. ART can only provide medical assistance, to a certain degree, to assist

married couples who would otherwise not be able to have children of their own. It is not a fool-proof or guaranteed solution for all fertility problems.

17. It should also be clarified that consanguinity is a potential risk that results from the use of donor eggs or sperm, and not as a result of ART itself. In this regard, the risks of consanguinity in Singapore are minimised by limiting the number of live-births resulting from a particular donor's eggs or sperm to just three, and AR centres are required to abide by these restrictions which are stipulated in the Licensing Terms and Conditions on Assisted Reproduction Services.

Conclusion

18. MinLaw would like to thank respondents for taking the time to review and send us their feedback on the proposed SOC Bill, as well as providing us with their constructive comments.

**MINISTRY OF LAW
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