

To: ULTRUISTIC SURROGACY COMMITTEE
Chaiperson: Linda Lavarch MP

From: Beryl Holmes Member - WEL; Life Member of Children by Choice

This Submission was prepared first submitted in 1988, then revised and resubmitted in 1999
In Queensland, nothing has changed in this area of women's lives so re-submit it as it is.

Beryl Holmes

Position Paper

to

Task Force on Women and the Criminal Code

SURROGACY LAWS IN QUEENSLAND

From: WEL - Brisbane, Box 5 Red Hill Q.4059

WEL - Brisbane would appreciate the opportunity to input into discussion on laws relating to surrogacy. We believe that it is important to establish broad defendable principles when regarding these difficult issues.

We urge you to take these points into consideration, always keeping in mind the human rights of the birth mother.

Contents:

1. Changes in the role of women
2. Infertility
3. Future laws and practice
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1. CHANGES IN THE ROLES OF WOMEN:

During the last one hundred years the status of women has undergone enormous change with the recognition of their entitlement to be treated as full human beings.

Women now work in positions of great responsibility in positions such as governors, judges, doctors, members of parliament, business leaders, professors, as well as managers of their families.

Women fulfill these roles very satisfactorily yet are not trusted as decision makers about their own personal lives and fertility. Women's equality and status in any society can be judged by the manner in which reproductive decisions are approached. The key question is "Who decides?"

Laws that are enacted now are laws for the 21st Century. Such laws must be morally and ethically defensible and must recognise the changed status of women. This will include the right to make the decisions and choices that so fundamentally affect their lives.

What also must be considered "*...is not the outcome but the women's autonomy over the process of choice*" [Petchesky 1984]

2. INFERTILITY:

It is well documented that the number of infants available for adoption is miniscule.

Social changes and a significant level of both male and female infertility, means that many couples desirous of having children cannot achieve this "goal". There is an inability of some to accept this infertility.

In the past this need has been partly met by forcing women [no access to abortion] to bear unwanted children and surrender them for adoption [because of their circumstances]. This was compulsory surrogacy.

Now when some women are prepared, either for altruistic motives or financial need, to bear a child for someone else it is not considered ethical and is unlawful.

3. FUTURE LAWS AND PRACTICE:

It is our [society's] unwillingness to recognise that surrogacy occurs, and will continue to happen, that has prevented proper safeguards being put into place for all those involved.

In practice [and in law] in Australia, a child is the responsibility of the birth mother until she surrenders it for adoption or neglects/abuses it.

This should also be the practice/law in relation to surrogacy arrangements, whatever the birth mother's genetic relationship is with the child.

IVF techniques already in practice and used by many couples, could mean that women could choose to be a surrogate mother for a foetus that was not genetically related to her.

If a birth mother does not surrender the child for adoption then access/visiting rights would be pursued through the family court as is currently the situation for natural fathers/mothers, and grandparents, in divorce or single parent situations.

People contemplating to be any part of a surrogacy arrangement must have access to accurate information and specialised counselling including legal advice.

Prospective birth mothers should be provided with the fullest information so that they can make an informed choice. Women should have reached the age of majority.

Every effort should be made to provide a woman, considering a surrogacy arrangement, with other earning options.

People who seek the services of a birth mother, should have access to the fullest information and counselling. They should be informed of the possibility that the child might not be surrendered; what the birth mother's rights are; and of family law court procedures in relation to access.

As with adoption, children with different genetic history from that of their parents are entitled to know their genetic information at an appropriate time, with privacy principles still being adhered to.

4. CONCLUSION:

WEL - Brisbane's hope is that couples can adjust to their infertility and that other women will not be drawn into a surrogacy arrangement.

WEL - Brisbane recognises that unless good safeguards are in place, all those involved in surrogacy arrangements could be damaged.

WEL - Brisbane believes that women should have the right to make an informed decision about entering into a surrogacy arrangement.

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