

Submission to the Investigation into Altruistic Surrogacy Committee

This submission is being placed by Queensland Right to Life, a non-party political organisation concerned with promoting respect for human life from its origin at conception to natural death.

Our position on surrogacy is based upon:-

1. opposition to the modern means of assisted reproductive technology (ART) which would be employed in most types of surrogacy arrangements
2. the child's birth is arranged with the intention that he/she be given away after birth and
3. the distortion of normal familial relationships caused by surrogacy

These are discussed below.

1. The modern means of ART involve treating the embryo(s) as commodities or the property of the parents. They are treated not as human beings but as objects subjected to quality control measures, including disposal if they look abnormal under a microscope and freezing for future use. These measures and others are designed to maximise "take home baby" rates, translated as statistics and reported by the various fertility centres in order to attract couples to their services. The best results are still amongst young women, whatever the cause of the infertility. The desire of infertile couples has overridden ethical concerns with many passing it off as a matter of the means justifying the ends, and the lack of babies available within Australia for adoption makes the pressure to employ ART even stronger. While couples can choose the "minimal intervention" approach with no embryo selection or freezing, most couples feel pressured into accepting the measures suggested by the laboratory to maximise their chances.

Surrogacy using ART techniques is in some ways a natural extension of already accepted fertility treatment such as ovum donation and AID (Artificial Insemination by Donor). It is the IVF industry that has made the concept of children derived from a mixture of sources of ovum and sperm acceptable, although a percentage of infertile couples do not approve of such confusion of relationships. Children can already be conceived using their parents' reproductive cells, or a known or unknown donor of either ovum, sperm or both! Such is the pressure put on women and men either by themselves or society that anything becomes acceptable in order to have a baby, and to oppose this is considered as "discrimination" or antediluvian and not fit for modern thinking.

Adding another component of the misnamed "surrogate" mother who in actuality is either the natural mother, the birth mother or both is a perversion of the natural relationships, and being able to pervert it through ART doesn't make it right, acceptable or harmless.

The Child Born of a Surrogacy Agreement

2. Much is made in the literature about the welfare of the child born from surrogacy being the paramount concern for legislators, but this is all "after the fact" - the child cannot be asked whether he/she wants to be a surrogate child given away in a prenatal arrangement like a commodity. It is adults' interests that are firstly served through surrogacy, not those of the child. Even if surrogacy arrangements are held secret from the child, they can still get an intuitive feeling that they are different. When questions arise as to what should the child be told, or if the contract becomes soured and the courts become involved, harm can ensue. Harm has come about to children born by AID who find they could and do have multiple half-siblings, and sometimes not knowing who their father is - "genealogical bewilderment". These circumstances have arisen through a perceived need to help infertile couples, but this does not justify all actions.

Adoption is not the same as surrogacy, since in the former, a child already exists whose parent(s) decide that their child is better cared for by someone else. Unfortunately, not all adoption stories are happy ones, and some children suffer greatly from a profound sense of loss. Due to the increased practice of abortion, the increasing acceptance of, and retention by single mothers of babies, and a strong antipathy towards suggesting adoption by certain pregnancy advisory services or other social welfare agencies, there are very few children available to adopt in Australia.

In legalising (decriminalising) surrogacy, the way is being prepared for another type of child - one who has been brought to birth to be given away, conceived in the knowledge that he/she will never live with the natural parents, or one of them at least. Is this really justifiable as a means of helping infertile couples? Do we really believe that it doesn't matter what a child's origins are, and how many genetic "parts" he/she is comprised of, so long as an adult can have a child? Surrogacy undermines the status of children in general by allowing the very life and existence of the child to be the object of a contract.

The "Surrogate" Mother

3. Other parties can be damaged too. Obviously the next most vulnerable person is the "surrogate" mother. There have been some well-publicised cases of surrogacy arrangements going wrong because the "surrogate" mother was acting naturally and had become too attached to the child growing within her, especially if she was the genetic mother also. This occurred partly because the women were responding "altruistically" to the request of others (if they were already mothers themselves and had proven they could gestate children, they can sympathise with others' childlessness) and partly because when they undertook to have a child for another, it was in the future. Nine months later, at the point of relinquishment, it was a reality they couldn't accept.

Another reason is the biological one of bonding that occurs throughout the pregnancy. When a woman consents to be a surrogate mother, she is not subject to these influences, but by the time she has to hand over the baby, she is. If the commissioning parents are a part of her family circle, she may have to relive this separation frequently. For the child, it is now widely believed that the time in utero is an important part of the development of the child's personality, and the biological and psychological bond between mother and child to be significant. If the surrogate mother consciously tries to prevent this happening in order to spare herself at the time of separation, will this "distancing" have a negative effect on the child?

In January 1987, the New York Times reported on a study of thirty women acting as surrogate mothers. Three of the women were so distraught after giving up their babies that they needed specific counselling although counselling throughout the pregnancy of each did not indicate that difficulties lay ahead. The situation in the USA is different as commercial surrogacy is allowed. "We cannot predict with any certainty how a surrogate mother will do psychologically, or whether she will decide to keep the child," said Philip Parker, a psychiatrist who interviewed almost five hundred women who sought to become surrogate mothers. (Goleman, Daniel, "Motivations of Surrogate Mothers" The New York Times 20/1/1987)

However, our opposition isn't based purely upon anecdotal accounts of bad experiences. This totally artificial partitioning of motherhood into genetic, gestational and social motherhood does women a great disservice and undermines the integrity of motherhood itself. On the one hand, if women using donor eggs in ART conceive, there is much joy as she is proclaimed as the mother, and legislation has been enacted to ensure that she is considered the legal mother of the child. Yet given the same situation in surrogacy, the women are considered NOT to be the true mothers of those children, are supposed to have no difficulty in considering the child not their own, and in the current state of the law, the commissioning couple will have to adopt the child back from her!

This dissonance is nonsensical and injurious to women's status as it places them in the role of a reproductive conduit, whatever their personal motivation.

Other Parties in a Surrogacy Agreement

4. Other parties include the spouse or partner of the 'surrogate' mother, the commissioning parents, other children of the surrogate mother, and other donors of genetic material not previously involved.

The commissioning parents obviously have to deal with the tension of being infertile, then relying upon another woman who may decide to keep the baby. If surrogacy arrangements are kept unenforceable, as they are in most states or countries that have legalised it, this must be an incredible wrench for them. There may also be disagreements and friction over what the surrogate mother may do or take into her body throughout pregnancy that may impact on 'their' child.

Other children of the surrogate mother can be confused or distressed with the apparent disappearance of their mother's baby after the birth, and may come to believe that they too could be given away.

The spouse or partner of the surrogate mother often feels in a "no-win" situation especially if she is a relative of the commissioning parents. He may not want to cause conflict within the family by refusing to be agreeable, but may believe it is an intrusion on his own family especially if there are other children. There are also the usual physical considerations of pregnancy and birth - what if his wife/partner became ill or even died as a result of being a surrogate?

Issues For Comment

The following responses are to some of the questions put in the Issues Paper. We do not wish to respond to all of them.

1. From what has been said above, we do not believe surrogacy should be legalised in Queensland.

There is no popular cry for it from the population, and we query who is actually pushing the matter. Is it from the Federal Government who wants the law tidied up so there will not be border-hopping? Is it in fact a push for Federalism so that as many laws as possible will be identical Australia-wide, and surrogacy is perceived as an easy 'first catch'? Is it from ART clinics who see another market, especially since, if surrogate mothers don't have to be infertile to access ART, they will be offering IVF to FERTILE women, meaning a higher chance of success?

When the Premier of Queensland, Anna Bligh announced the Enquiry into surrogacy, it seemed clear that she was signalling a change of position. It is also revealing that the example of Senator Stephen Conroy (who sought surrogacy interstate) was used to illustrate the issue. The people are justified in expecting as much respect for the laws of their state from their representatives as is expected from them.

We have been spared the harrowing legal cases such as seen in the USA where children are fought over because the surrogate mother changed her mind. Keeping it illegal has reduced the desirability.

However, there are non-legislative approaches which also discourage surrogacy without criminal penalty, for example:-

- I. Keeping altruistic surrogacy unenforceable at law
- II. Surrogacy to be prohibited as a part of any approved AID or IVF procedure
- III. It should be an offence to advertise or solicit parties for the purpose of a surrogacy arrangement
- IV. Medicare should not be used to fund surrogacy

5. Should Criteria for Commissioning Parents be similar to that for adoptive parents?

Yes, as this ensures as far as possible a normal family background for the child. This response ties in with Question 12 and we do not believe children should be made available to single people or people who lead a homosexual lifestyle as they do not provide a normal family situation. In the case of the latter, there is good evidence that children brought up in this type of situation are less well adjusted and have more sexual identity problems.

16. Rights of Children Born Through Surrogacy to Information on their Genetic Parentage

We see no reason why children born through surrogacy arrangements, with or without ART, should have less access than any other child to information on their genetic parentage once they are at a suitable age.