

## **Investigation into Altruistic Surrogacy Committee (Old)**

I am delighted to submit my personal submission to assist the Queensland Committee make its recommendations to Parliament with regard to Investigating Altruistic Surrogacy.

I respond as follows:-

I believe that firstly, being the mother of a beautiful 7½ year old daughter born under a successful Altruistic Surrogate Arrangement, secondly, being a lawyer and having some understanding of the complexity of the legislation and protocols involved and thirdly, being a registered general nurse has offered me ample insight into the medical technology and treatment processes that are involved with IVF treatment, I believe this adequately qualifies me to provide an informed opinion as to why the Queensland Government should support the decriminalisation and regulation of Altruistic Surrogacy.

I feel very strongly that the Queensland Parliament should amend its current laws to come into line with what the amazing medical technology can do and look towards the future of what can only be a wonderful opportunity for many childless families. I strongly believe that provided adequate protocols are implemented (as they have been successfully by duly authorised clinics elsewhere in Australia), Queensland could move forward to legislating for Altruistic Surrogate Arrangements.

My personal position on why the Queensland Parliament should positively review their changes to altruistic surrogate arrangements is best illustrated by describing the process completed by myself which led to the birth of my darling daughter.

In summary;

*Robert and I were on IVF for nine long years with no success. We suffered four miscarriages and one ectopic pregnancy resulting in my tube being removed.*

*Then after going through such despair for so many years my sister, Laura and her husband Dom, provided light at the end of the tunnel. They offered to assist us by kindly offering Laura's services as a surrogate mother.*

*They had completed their family of two beautiful children, and offered us an "oven" for our embryos.*

*So after many discussions we decided to proceed.*

*Problems then arose and many difficulties were encountered. Laura and Dom were living in far North*

*Queensland, Robert and I in Melbourne and the procedure had to be carried out in Sydney. However, after two long years of psychological assessments, medical testing and independent legal guidance our darling daughter Phillipa (Pippy) was born.*

*Once she was born and came into our lives, the previous years of heartache just melted away. Pippy has brought more joy into all our worlds than one could ever have imagined.*

*To quote Pippy;*

*“I grew in my auntie’s tummy, but I am my mummy’s baby and I’m very lucky because I have two mummies”.*

In my capacity as a legal practitioner registered in Victoria who advises Victorian families entering into proposed Surrogate Arrangements, I believe my personal experience of negotiating a successful surrogate arrangement and having experience of both Melbourne IVF and Sydney IVF Clinics has given me considerable insight into the whole process.

I believe that all parties should be clearly apprised of the legal status of a child born under a surrogate arrangement and hence the requirement for legal advice to any parties considering surrogacy as a parenting option.

They must understand that Surrogacy Agreements are not legally binding and are not enforceable in a court of law in Australia. The Legal Advice is required to ensure the parties fully understand that if a dispute were to arise once the child had been born, the law considers that the birth mother is assumed to be the true and legal mother.

Both the Status of Children Act and the Family Law Act detail that a child born from artificial reproductive technology shall be determined to be the child of the birth mother and that of her husband (as the husband is deemed to have consented to the procedure being carried out on his wife). This is the legal status even though there is no biological connection between the child and the gestational mother.

There is case law that reflects not all surrogacy arrangements are successful and that the gestational parents are often given the lawful right to parent the child, even though there is no genetic attachment to the child they have carried on behalf of the commissioning parents.

At present in Victoria, all children born under a surrogate arrangement must be then adopted by the surrogate (commissioning) parents. The other option is that the commissioning parents can apply to the Family Court to obtain “Parenting Orders” giving the surrogate parents the right to parent their own child until the age of 18 years. However, these orders are limited in their effect

as they do not extinguish the parental status of the gestational mother and her husband and the records of Births Deaths and Marriages is not amended and the gestational parents names appear on the child's birth certificate.

The Victorian Law Reform Commission was asked to prepare a report on the desirability and feasibility of changes to the current legislation under the Infertility Treatment Act 1995 and the Adoption Act 1984.

One of the recommendations in the Final Report by the Law Reform Commission, March 2007, is that the commissioning parents be given legal recognition their child. As at the time of writing this submission, the legislation has not yet been passed by the Victorian Parliament.

As we are all aware, advanced medical technology allows the process of altruistic surrogacy to be performed. In the Australian States whereby the process is legal the Infertility Clinics have very strict guidelines and protocols in place to enable a Surrogate Arrangement to be completed. The procedures will not be carried out if prior consent has not been given by the individual States Ethics Committee.

As part of the process and prior to any parties entering into a surrogate arrangement they have to be seen by and attend for psychological counselling and psychiatric assessments as is a requirement by the Infertility Clinic prior to the procedure being carried out.

I believe Queensland should follow these guidelines and protocols to enable *The Surrogate Parenthood Act 1988 (Qld)* to be amended to legalize Surrogate Arrangements in Queensland.

I would be only too happy to discuss my viewpoint direct with any member of the Committee at their convenience. I would also be available to assist any working group or organisation where changes to the existing law are proposed or to assist in the design and implementation of protocols that could be followed to enable legalisation of Altruistic Surrogate Arrangements in Queensland.

Thanking you in anticipation for reading the enclosed submission.

Fiona Rushford LL.B & RGN  
(Mother of Phillippa Laura Rushford)  
10<sup>th</sup> June, 2008