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**To:** Surrogacy Committee

**Subject:** Online Submission - Investigation into Altruistic Surrogacy Committee

**SUBMISSION FROM**

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**SUBMISSION**

**Should the legal restrictions and criminal penalties against altruistic surrogacy be removed from the *Surrogate Parenthood Act 1988* (Qld)?**

Absolutely. QLD is the only state in Australia where surrogacy is a criminal offence. There are many infertile couples in QLD that should be able to access surrogacy because other means of starting a family - like adoption - are out of reach. Decriminalisation should still prohibit commercial surrogacy so women are not being motivated into becoming surrogates for material gain and so commissioning parents of all classes are able to access this service. The arrangement of surrogacy by a surrogacy service or broker should also be decriminalised to allow for IVF clinics to offer a service/assistance similar to that they can now provide for donor egg/sperm and embryo (with no extra charge to either parties). In a similar vein advertising for altruistic surrogacy by the commissioning parents should be allowed, although with some form of limitations on how this is done and to allow it to be understood that there is no payment for altruistic surrogacy. Payment of reasonable expenses should be allowed by agreement between the commissioning parents and the surrogate. Also altruistic surrogacy should be available to all people despite their family arrangement eg married, single, gay or partnered.

**Should the Queensland Government play a role in regulating altruistic surrogacy arrangements in Queensland?**

The framework for regulation should be administered by the Government, with a strong enough legislation and framework for surrogacy that would allow IVF clinics to provide the services and counselling to ensure the surrogacy legislation and regulation is adhered to. Best interests of a child: This could cover essential items like their right to know how they were conceived and with a right to contact a surrogate once they turn 18, similar to that which currently exists for egg, sperm and embryo donors. The committee could possibly look into making a state register where all details of a surrogacy arrangement are kept so the resulting children can have access to who their birth parents are and any possible siblings they may have. Testing should be carried out on both the surrogate and commissioning parents to make sure the child will be born in the best possible health. Minimises intrusion into people's private lives. A framework of regulation that includes a similar process that currently exists for donor sperm, egg and embryo donations - such as counselling for all parties by a qualified and experienced counsellor so that all parties have a clear understanding of the ethical, social and legal implications a surrogacy arrangement will have on them and any resulting children should also be in place. Whilst this is somewhat intrusive, having a framework for this process should ensure intrusion into people's private lives is minimised. I do think intrusion is a relative term in this context when one considers that by the time commissioning parents have found a possible surrogate, initial discussions have taken place, all parties are made aware of legal issues, such as legal parentage and possible need for adoption, also they have received counselling about other issues so they have probably 'bared their souls' pretty extensively. Protects the health and well-being of all parties. Full and frank disclosure to all the parties of medical issues etc is important and needs to be made mandatory. This could be done by extensive testing carried out by IVF clinics and the counselling already mentioned above. The medical system should utilise processes such as full discussion of risks and maybe some sort of signage of understanding of these risks to help protect health the well-being of all parties involved.

**What other issues should be addressed by the Government?**

Who has rights over an unborn child? If there is something during the pregnancy that needs to be addressed and both parties don't agree on the best action to take who should have the final say? It is the commissioning parent's child, yet the surrogate's body, therefore some legal guidelines should be in place to make it clear who has the final say if something like this should arise. What rights a surrogate has over a child born from a surrogacy arrangement. I believe that legally a surrogate should have no right over the upbringing of a child they have helped create. This will help protect any relationship she has with the commissioning parents and protect the relationship the commissioning parents will have with any resulting children. This would also work in the surrogates favour as she would never have to pay child support. There should be no 'cap' on surrogacy arrangements per year. It is not possible to estimate how many arrangements will be agreed upon year by year as infertility is on the rise, so this should be left open to the digression of the commissioned IVF clinic.

**What criteria, if any, should the commissioning parent/s and/or surrogate have to meet before entering into an altruistic surrogacy arrangement?**

Criteria to meet by the commissioning parents would be a medical need for a surrogate. Proven or unexplained infertility as well as serious health risks as a result of a pregnancy are medical issues that can result in the need for a surrogate. Risks of passing on genetic conditions while are a serious matter may not need to be addressed in this instance as this can be overcome by the use of donor gametes. As previously stated above, commissioning parents should not be discriminated against because of their family arrangement. Whether they are homosexual, single, married or unmarried - all people should be able to access surrogacy in QLD. A commissioning parent should be able to advertise for a surrogate in the same way that infertile couples advertise for a sperm or egg donor. This would mean that couples who do not have a sister or long standing friend willing to be their surrogate will still be able to access surrogacy. This should also apply to surrogates choosing their own commissioning couple. The surrogate would need to be aware there is no payment for being a surrogate and they would need to be medically okay for a pregnancy. Monitoring of these medical issues could occur with the specialist Ob needing to certify the medical issues for all the parties are okay. Surrogates should not have to be infertile to become a surrogate. I believe that many women who have struggled with infertility would be less likely to want to put themselves through the strain of IVF again to help another couple become parents. Therefore all women who meet the criteria should

be able to become a surrogate. Further to this I believe there should be no limit on the age of the surrogate as long as the arrangement is a full surrogacy (or gestational surrogacy). For example if the commissioning couple have an older family member (mother or aunt) who wish to be their surrogate - as long as they are medically healthy - they should be able to use her as their surrogate. All issues that can arise during a pregnancy should be covered by both parties before entering into an arrangement. Personal decisions like terms for termination (medical issues) should be discussed; likewise all medical issues (as a result of pregnancy) that can arise should be covered. While a surrogate should not financially benefit from an arrangement expenses that can occur during conception, pregnancy and birth should be agreed upon pre conception. This could include income protection, counselling, maternity needs etc. Enforcing such a criteria could prove difficult. IVF clinics will be able to monitor criteria up to a certain point, however once a pregnancy has been established there is no need for the clinics involvement therefore it would be harder to enforce ground rules from that point on. Perhaps a legally binding agreement could be signed at the beginning of the surrogacy arrangement to cover all parties involved.

**Should criteria for commissioning parents be similar to that for adoptive parents?**

No. What's the difference between surrogacy and embryo/sperm/egg donation in this context? Adoption processes become very intrusive and drawn out and start to make judgments about a person's fitness to be a parent, which doesn't enter into donations. I also think that the fact the intended parents have probably gone through many years of IVF or knowledge of infertility and that surrogacy isn't an easy process at all, that it self selects the people who make good parents anyway. One has to have a great desire to be a parent to put oneself (and someone else) through everything involved in IVF and surrogacy

**What role should a genetic relationship between the child and the commissioning parent/s and/or surrogate play in an altruistic surrogacy arrangement?**

There may or may not be a genetic relationship between any of the parties. There are two types of surrogacy arrangements. Traditional or partial surrogacy is where the birth mother uses her own gametes and is the genetic mother and the commissioning father is usually the genetic father, although a donor is sometimes used. Gestational or full surrogacy is where the birth mother is carrying a baby that is not genetically hers and is usually created by the commissioning parents or donors. Both forms of surrogacy should be legalised because not all commissioning parents have viable gametes. The important item here is that all parties thoroughly consider the issues that apply to their particular circumstances and that informed consent and counselling is obtained before a surrogacy agreement is entered into. Again, the use of donor embryos is a very similar concept to consider in answer to this question. The issue here re parentage becomes one where the baby needs to be adopted by the commissioning parents after birth, as the surrogate is usually considered the legal guardian until they give up their parenting rights - usually through adoption. Legal parentage should be able to be given to the commissioning parents what ever their genetic relationship is with the child.

**Should at least one of the commissioning parents have a genetic relationship with the child?**

No. In some case both of the commissioning parents have fertility issues and it is not fair to exclude them from becoming parents through surrogacy because of this fact.

**Should the surrogate be able to use her gametes or should she have no genetic relationship to the child?**

Yes the surrogate should be able to use her own gametes, though only after counselling has been entered into and they have had time to consider all social, ethical and legal implications that can result from this type of arrangement both in the present and the future.

**What legal rights and responsibilities should be imposed upon the commissioning parent/s and/or surrogate?**

People who have been convicted of sexual or violent offences should be excluded from being able to access this reproductive technology, mainly to protect both parties and any child resulting from an arrangement. Legal parentage should be able to be transferred from the surrogate to the commissioning parents within 6 weeks of birth provided both parties undergo independent counselling. This gives the surrogate plenty of time to reflect on the process she has just been through. The transfer of legal parentage also should not be discriminated against and all commissioning parents whether gay, straight, single or married should be able to gain legal parentage. The type of surrogacy arrangement undertaken should also not dictate whether legal parentage can be gained. Commissioning parents that undergo either partial or full surrogacy arrangements should be able to access full legal parentage. The commissioning parent's names should be able to be placed on birth certificates just as adoptive parents are able to do with adopted children. The child should be able to access his or her original birth certificate once of age (18yrs). The commissioning parents should have to cover all costs incurred by the surrogate during their arrangement. Time off work should be considered for the surrogate and her husband/partner as well as child care and costs of maternity clothes and supplements. Monitoring of a surrogacy arrangement can be controlled by an IVF clinic or broker up until a pregnancy is established. From that point on it will be up to the parties individually to maintain that all criteria are met. Perhaps with legal representation if needed. All commissioning parents should be able to advertise for a surrogate if they do not have a family member or friend available to them. To control the advertising of surrogates the commissioning parents could be made to apply to the Attorney General to gain approval to advertise as is done in Victoria for couples who wish to advertise for egg or sperm donors. Surrogates themselves should not be able to advertise to protect themselves from possible exposure to 'desperate' couples willing to do anything to persuade a surrogate to choose them. IVF clinics would be the best institution to control the 'brokerage' of a surrogacy arrangement. However this service should be offered for no financial gain to the clinic as IVF itself is already a very costly exercise. IVF clinics can have a register for possible surrogates as well as commissioning parents so that all information of each party can be accessed by each other in the case of a 'match up'.

**Should the definition of altruistic surrogacy only include pre-conception agreements in Queensland?**

Yes, mainly to differentiate surrogacy from private adoption. Do I believe that private adoption should be made legal? Yes - but that is a different matter.

**If infertility and/or health risk to the mother or child is a criterion for surrogacy, how should these criteria be defined?**

Commissioning parents should be classified as infertile, whether their infertility is explained or not. Infertility can be caused by many things - lack of a uterus, a uterus that is not capable of sustaining a pregnancy and other medical issues like fibroids or severe endometriosis. Unexplained infertility is where there isn't a contributing factor that causes the infertility but commissioning couples may have gone through years of IVF treatment and never conceived. Commissioning parents who are unlikely to become pregnant, or be able to carry a pregnancy or give birth should all be able to access surrogacy. Health risks to the commissioning mother should also be taken into consideration. If a commissioning parent is likely to place her health at risk, or that of the baby, to carry a pregnancy or give birth should be able to access surrogacy. It would be impossible to name all health problems that could cause these risks, so judgement should be left up to the commissioned IVF specialist to decide whether the commissioning parent's medical problems deem them eligible for surrogacy.

### **How well does the transfer of legal parentage in a surrogacy arrangement fit with contemporary approaches in family law and adoption?**

These days there is a greater social acceptance of the diversity of family arrangements. Families are being created through new methods as well as old. While the concept of surrogacy is not new, other newer methods are sometimes wildly more accepted. Conception through egg, sperm and embryo donation are all contemporary approaches to parenthood and legally pose very few problems. When an egg donor donates her eggs she signs away all her rights over any embryos created by signing a consent form. The moment the egg is fertilised with the commissioning father's sperm she no longer has the legal right to call those eggs her own. By the time an egg donor signs the consent she has gone through numerous counselling sessions and appointments. I believe a similar approach could be adopted for surrogacy. Transferring legal parentage in cases of adoption would also be a good precedent to go on, as surrogacy is very similar to adoption - with the exception of a pre-conception arrangement. After the child is born the commissioning parents would simply place an adoption order on the child and parentage could be signed over by the surrogate within 6 weeks of birth. Then the commissioning parent's names will be able to be placed on the birth certificate and the original birth certificate will be held by the Department of Births Deaths and Marriages so the child can access the information once 18 years of age. The process is currently in use for adoptions and definitely should be in place for surrogacy.

### **How important is it for there to be a mechanism for the transfer of legal parentage that is specific to surrogacy arrangements? What would this be?**

Transfer of legal parentage is a very important matter in cases of surrogacy. The commissioning couple will be raising the child as their own so should be legally viewed that way. In the case of no legal parentage being transferred the commissioning couple would have to get the surrogate to enrol the child in school, apply for a passport and a separate Medicare card etc. This would pose a problem if the birth mother was not a family member or resides in a different state. All this can be avoided if legal parentage is assigned over to the commissioning couple. The issue would be in finding a department that could deal with the transfer of legal parentage. The Department of Child Safety could be an option, or simply the commissioning couple could apply to the Family Courts to transfer legal parentage. The latter would be the easier and less intrusive way of dealing with this matter. Of course there could be criteria in place like counselling before legal parentage is signed over.

### **What are the consequences for children born of a surrogacy arrangement in Queensland of maintaining the status quo?**

I believe that there is a real need for surrogacy in QLD and progress in this area can only be a good thing. Surrogacy has been done in QLD in the past so it is not a new concept. In my experience I believe it is still being done today even though illegally. During my time spent in various IVF forums I have come to the conclusion that infertility is on the rise. More options need to be in place for couples that have exhausted other means of starting a family. Surrogacy is socially more acceptable these days. While once taboo, in my view more and more social groups are warming to the idea of surrogacy. This practice has successfully been adopted in other Australian states with very little social impact. Children may think themselves special that they have been created through surrogacy. During one of my counselling sessions when I was doing an egg donation the counsellor mentioned that a child that was conceived through egg donation was being teased about being a 'test tube' baby. The child simply laughed and said to the other child 'well your parents had to have sex to make you'. Children these days are more accepting on this sort of topic and if a child does decide to disclose the truth about their own conception then they can do so with minimal social repercussions. As surrogacy becomes more and more common practice, any social implications will become insignificant.

### **Should the surrogate's rights to be automatically recorded as the child's parent on the birth certificate and to approve legal transfer after birth remain if she has no genetic connection to the child?**

Yes, I believe so. Whether or not the surrogate has any genetic relationship to the child she still carried that child for 9 months and was the one to bring the child into the world therefore should be acknowledged in the creation by being recorded as the birth mother. However the commissioning parents should still be able to apply for a separate birth certificate with their names as parents on it.

### **What rights should a child born through an altruistic surrogacy arrangement have to access information relating to his or her genetic parentage? Who should hold this information?**

I believe that it is a child's right to be able to access information in relation to his or her genetic origins and the circumstances of their birth. Similar to what is done in Vic a state register should be set up when all information surrounding the child's birth is held. The child is then able to access this information once they have reached 18 years of age with or without the consent of the commissioning parents. There are a few institutions which could control this information - the Department of Child Safety, the Family Courts, or the Department of Births, Deaths and Marriages to name a few.