

ANZICA
Australian and New Zealand Infertility Counsellors'
Association
ABN: 79-670-390-033

President: Joi Ellis
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8 June 2008

Linda Lavarch MP
Chair
Investigation into Altruistic Surrogacy Committee
Parliament House
George St
Brisbane 4000

RE: Call for Public Submissions

Dear Ms Lavarch,

Thank you for the opportunity to provide a submission to the Committee investigating Altruistic Surrogacy in Queensland.

I am pleased to provide the following responses to your issues questions, as a representative of the Australia and New Zealand Infertility Counsellors Association (ANZICA). The submission has been circulated for approval and input from the executive of ANZICA.

Should you require any further comment or assistance, I would be most happy to be contacted by email Narelle.dickinson@ecn.net.au by phone 0407 118 969 or at my postal address PQ Box 381, Annerley 4103.

Yours Sincerely

Narelle Dickinson
Psychologist
ANZICA

Issues for Comment

1. Should the legal restrictions and criminal penalties against altruistic surrogacy be removed from the Surrogate Parenthood Act 1988 (QLD).

Yes. It is inappropriate for matters of altruistic surrogacy to be prohibited by law in Queensland.

2. Should the Queensland Government play a role in regulating altruistic surrogacy arrangements in Queensland? If so, how can the Government regulate altruistic surrogacy arrangements in a way that:
 - Ensures that the best interests of the child are protected;
 - Minimises intrusion into people's private lives
 - Protects the health and wellbeing of all parties; and/or
 - Ensures that any conflict between the surrogate and the commissioning parents is prevented or minimised?

It is appropriate for Government to play a regulatory role in instances of altruistic surrogacy. By legislating certain requirements be met prior to commencement or finalisation of the surrogacy arrangement, an increased potential exists to minimise any negative outcomes of the surrogacy arrangement.

These requirements may include:

- Ensuring that no financial or material inducement is exchanged in return for carrying a child for someone else.
- Ensuring that all parties (including partners) receive proper and independent counselling from an ANZICA counsellor on the legal and psycho/social implications of the arrangement.
- Ensuring all parties (including partners) receive legal assistance in the development of a surrogacy contract/agreement and are able to make informed consent to the arrangement.
- Ensuring all parties (including partners) receive proper and independent biosocial and psychological assessment prior to commencement of the surrogacy arrangement. This assessment should not be provided by the persons who are providing the psychosocial counselling to either the surrogate or the recipient couple.
- The following issues should be examined as a minimum:
 - Relationships between the couples and implications of surrogacy (capacity to make independent decisions- financial or emotional dependence issues).
 - Commitment to and motivation for surrogacy and its unique demands, potential benefits and costs to surrogate.
 - Reproductive and infertility history, how these have been coped with.
 - Informed consent for all parties.
 - Change of mind for a party before or during the process.
 - Other stress factors – major upheaval or transition.
 - Mental health history and current state.
 - Psychological and marital stability of both couples.

- Implications for the existing children and risk factors (any loss issues and how parents intend to deal with them). It is not necessary for the children to be seen unless special circumstances suggest it.
 - Possibilities of complications that may affect couples i.e. medical problems, even death, relationship breakdowns.
 - Attitude to prenatal screening and termination.
 - Issue of relinquishment or refusal to do so.
 - The possibility of the commissioning couple withdrawing from the arrangement for reasons such as: the situation of the child being born with a disability, or the commissioning couple separate during the pregnancy and neither wish to parent the child.
 - Ideas re future relationships.
 - Intentions re disclosure and explanations to others.
 - Differences in parenting styles.
 - Awareness and acceptance of legal ramifications.
- Ensuring all children born of surrogacy arrangements have access to proper and independent counselling about the arrangement.
 - Ensuring that children have access to the circumstances of their gestation and birth.
 - Ensuring any potential surrogate gains access to proper and independent obstetric review prior to embarking on a surrogacy arrangement to ensure that she is medically fit to undertake a surrogacy, for the wellbeing of all parties.
 - To ensure that only gestational surrogacy is supported, not traditional surrogacy.

3. What other issues should be addressed by the Government?

Establishing and maintaining a body such as Victoria's Infertility Treatment Authority to ensure that ART clinics properly comply with the requirements of the legislation.

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

In responding to this question, please outline:

- The reason for your choice;
- How you believe criteria could be monitored and enforced;
- Any consequences or dilemmas you see in adopting the criteria; and
- Any suggestion you may have to manage any of the issues identified.

Commissioning Couples:

- It is appropriate for commissioning couples to use a surrogate only in instances of unresolvable infertility, serious health risk.
- A minimum age of 25 is appropriate, and Government should consider the implementation of an upper age limit for commissioning parents, in the interests of the resultant child.

- A restriction on family type is inappropriate for reasons of discrimination on the basis of relationship or marital status. For couples using a surrogate it would be appropriate to ensure the relationship has been sustained for a period of at least 2 years, but not necessarily with a marital requirement.
- It is appropriate for at least one commissioning parent to be biologically related to the child.

Surrogates:

- Minimum age of 25, and suitability to surrogate assessed by an independent gynaecological specialist. She should have had at least one child but preferably completed her family.
- The surrogate should engage in gestational surrogacy only
- It would not be appropriate for a woman to delay commencing or continuing her own family in order to undertake a surrogacy arrangement.
- The surrogate should have a clear and demonstratable long and close relationship with the commissioning parents (family, close friend, etc). This ensures that the true altruistic nature of the surrogacy can be demonstrated.

Common Criteria:

- Legal and psychological counselling as outlined in Q3. Psychosocial and psychological assessment as outlined in Q3.
- Surrogacy arrangements should be agreed prior to conception.
- Any parties convicted of sexual or violent offences, or subject to a child protection order should be excluded.

5. Should criteria for commissioning parents be similar to that for adoptive parents?

Similar in respects of demonstrated infertility. No advantage to insisting that commissioning couple have a marital relationship of at least 2 years. No advantage in restricting the number of existing children the couple can already have.

6. What role should a genetic relationship between the child and the commissioning parents and/or surrogate play in an altruistic surrogacy arrangement?

In responding to this issue, you might wish to consider any evidence or experience relevant to:

- The role genetic relationships may play in the outcomes for the surrogate, commissioning parents and child;
- The impact of genetic relationships on the legal parentage of the child; and
- Any other relevant matters.

It is inappropriate for the surrogate to also be an egg donor. In the instance of a commissioning mother being unable to use her own eggs, a third party should be

sourced to act as egg donor. Where an egg donor is involved the resultant child must have access to the identity of, and information about the donor and this access must be legally protected.

At least 1 commissioning parent should have a biological relationship to the child. The complexity of the familial arrangements should be minimised while attempting to ensure a link between the child and the family in which they are raised.

The ACT model of transferring legal parentage is facilitated by the genetic relationship by at least 1 of the commissioning parents and this assists in simplifying the surrogacy arrangement.

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

Yes See Q6

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

Gestational surrogacy only should be supported. See Q6.

9. What legal rights and responsibilities should be imposed upon the commissioning parents and/or surrogate?

If relevant, it would be helpful to detail your comments in relation to the following:

- Conditions for access to assisted reproductive technology
- Conditions for transfer of legal parentage
- Reasonable expenses for surrogates
- Monitoring and enforceability of surrogacy agreements; and
- Access to advertising and brokerage services.

It is appropriate for the commissioning couple to have responsibility for all reasonable costs associated with ART and the preparation for and care of the pregnancy. Costs associated with the delivery and postnatal care should be responsibility of the commissioning couple. These costs may include payment of any necessary postnatal mental health expenses for the surrogate for up to one year.

Any other reasonable expenses that result from the surrogacy agreement should also be responsibility of the commissioning couple. As a method of calculating reasonable expenses it may be appropriate to consider what expenses would be incurred by the couple to undertake the same treatment, if they were not required to use a surrogate

As much as is reasonable, the surrogate should have the right to request her preferred doctor/hospital for all treatment/antenatal/delivery services.

A single body similar to Victoria's ITA may be able to provide a central function for and monitoring all surrogacy arrangements. This would help to ensure the safety of all parties, including any child born from a surrogacy arrangement.

It is appropriate for transfer of legal parentage to occur as soon as reasonably possible after birth of the child, and for all parties to be in agreement of this, prior to commencement of the surrogacy arrangement.

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

Yes

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

Refer question to fertility specialist.

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

The transfer of legal parentage should occur at the earliest possible opportunity after the birth of the child to ensure minimum disruption to all parties. A key difference in the commencement of a surrogacy arrangement is the deliberate intention of the pregnancy by a surrogate is the birth of a child for another person/couple. Therefore, normal processes for adoption after the birth of the child may be redundant or in fact inappropriate.

13. How important is it for there to be a mechanism for the transfer of legal parentage that is specific to surrogacy arrangements? What should this be?

Important that a specific process for reasons as outlined in Q 12. Mechanism for transfer of legal parentage should be clearly decided prior to commencement of the surrogacy arrangement with only review following the birth of the child.

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

The potential consequences for those children who are born in Queensland in illegal surrogacy arrangements are an ongoing veil of secrecy and prohibition surrounding themselves and their families. This could possible result in a sense of stigma or shame, and potentially create interruption to normal family bonding and attachment processes. It prevents Queenslanders from accessing this treatment in their own country, forcing them to consider commercial surrogacy as their only option to have a genetic child.

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

16. 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?

The same rights to knowledge about genetic parentage should be available as is permitted of all children born through ART. The establishment of a body such as Victoria's ITA would provide a simple and central source of this information ensuring easy access at the appropriate time by any child born of a surrogacy arrangement.

17. What, if any, other matters should be considered in the regulation of this issue?

Surrogacy arrangements can take place in the community without the safe guards of counselling, legal explanations, informed consent, sound medical advice and medical testing. Permitting surrogacy arrangements to take place in well regulated circumstances benefits and protects the well being of all involved particularly the as yet unborn child.

cc: Kim O'Dea, Waldron Smith Management