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Linda Lavarch MP
Chair, Investigation into
Altruistic Surrogacy Committee
Parliament House
George Street
BRISBANE QLD 4000

12 June 2008

Dear Mrs Lavarch

Thank you for the opportunity to provide a submission in response to your paper regarding altruistic surrogacy. I referred your paper onto the School of Psychology and Counselling's expert on Developmental Psychology, Adjunct Professor Heather Mohay. Heather has not been able to comment on every aspect of the submission but has provided the attached comprehensive feedback.
I hope you find this helpful.

Yours sincerely

Professor Ian Shochet
Head of School
Psychology and Counselling

Investigation into altruistic surrogacy

The committee is to be congratulated on the comprehensive and thoroughly researched Issues Paper which systematically addresses a wide range of legal, ethical, moral, practical and medical matters related to altruistic surrogacy. Most of the issues have been examined in the development of legislation in other States and this can therefore provide best practice guidelines for the development of law in Queensland.

Whilst altruistic surrogacy raises many issues which need to be carefully addressed in order to safeguard the well being of all the stakeholders,[1] it should be decriminalised in Queensland for the following reasons:

a) There is no evidence that it has any greater risk of adverse outcomes for the stakeholders than for those involved in adoption, assisted reproductive technology or indeed births resulting from a normal pregnancy.
b) There is little evidence of problems related to altruistic surrogacy arising in other jurisdictions where it is legal.
c) Queensland law should be brought into line with that of all other Australian jurisdictions to provide uniformity in national law and thus remove the need for families to travel interstate to obtain services to support a surrogate pregnancy and the need for surrogate parents and commissioning parents to reside in the same state.
d) Legal recognition of parents and children in surrogacy arrangements would eliminate some of the practical problems (listed on page 2 of the Issues Paper) eg passport applications for the child.

The benefits therefore seem to out weigh the risks.

In principle access to services supporting altruistic surrogacy should be non-discriminatory as recommended by the Victorian Law Reform Commission. However as this would require changes to be made to Queensland law related to same sex couples it might be preferable at this time to limit commissioning parents' eligibility to heterosexual couples who are infertile or have a high risk of transmission of genetic disease.

Altruistic surrogacy is an extremely complex issue. This document will not make comments on all of the issues but will focus on those relevant to protecting the psychological wellbeing of the stakeholders.

Firstly, and most importantly, the wellbeing of the child should take precedence in all decisions related to altruistic surrogacy. Secondly a strong case will be made for appropriate counselling to be available to all stakeholders. This will be the issue which will be specifically address.

The need for counselling services

Whilst most altruistic surrogacy arrangements appear to proceed without any problems the process is fraught with difficulties which may arise for any or all of the

[1] Stakeholders refers to the surrogate mother and her partner and children (if any) the commissioning parents, donors (if any) and the child.

stakeholders and their extended families. We therefore propose that arrangements are made for appropriate counselling to be available for all stakeholders prior to and during the pregnancy throughout the childhood and adolescence of the child. There are certain key transition points at which it can be predicted that the stakeholders will be most vulnerable to psychological stress and when counselling services will be particularly important. ART[2] clinics in the public and private sector, which employ multidisciplinary professional teams, are probably in the best position to provide this counselling. This may mean that the terms of reference for these clinics will need to be modified to enable them to provide services even when the surrogacy does not rely upon ART services or when ART services are only available to infertile couples and the surrogate mother unmarried or is not infertile.

Criteria for inclusion of parents in altruistic surrogacy arrangements.

A number of States have established age limits for surrogate and commissioning parents. In general these have been a lower age limit of 18 years and an upper age limit of 38-40 years. These age limits seem to be inappropriate given the changing demographics of our society. Eighteen years seems to be extremely young for a woman to enter into a surrogacy arrangement. Although at this age a woman is physically able to carry a child the risks to both the mother and child are greater in teenage pregnancies than at later ages. Furthermore the woman's life experiences are limited at this age and she is unlikely to have experienced a pregnancy and be aware of the physical and emotional demands of bearing a child. She may therefore lack the psychological maturity or experience to fully understand the commitment which she is making. An age limit of 25 years, in line with the recommendations of the Victorian Law Reform Commission) would seem to be more reasonable.
The upper age limit of 38-40 years also seems too low given the older ages of parenthood in our society and the increased healthy life expectancy.

Age, in any case, should be a guideline only and not a limiting criterion. Eligibility should be based on a thorough assessment of the psychological and physical health and wellbeing of the surrogate and commissioning parents, conducted by appropriately qualified personnel.

Pre- conception counselling

Pre conceptual counselling should be mandatory. Both surrogate parents and commissioning parents need to be aware of <u>all issues,</u> particularly the risks, associated with altruistic surrogacy to enable them to give informed consent and enter into a pre-conception agreement. Issues related to the future relationship of the surrogate parents to the child should be canvassed at this time as this may resolve issues which may develop later in terms of the surrogate parents relinquishing the child. The proposal by WA (see page 8 of the Issues Paper) to make a pre-conceptual agreement a condition for transfer of legal parentage to the commissioning parents is wise.

Pregnancy

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[2] ART = Assisted Reproductive Technology

Parents begin to form an attachment to the child during pregnancy, particularly once the movements of the foetus can be felt and when the baby can be seen on scans. At this time the surrogate mother and/ or her partner may start to have misgivings about relinquishing the child. This may also be true for other members of the family eg existing children, grand parents etc. Counselling needs to available throughout the pregnancy to resolve these issues if they arise and prevent problems at the time of adoption.
Counselling may also be needed if there are differences of opinion between the surrogate mother and the commissioning parents about the management of the pregnancy eg the surrogate mother's diet, exercise, smoking etc.
Counselling will also be needed where there is a threat to the surrogate mother's health or the wellbeing of the baby. This would be true for any pregnancy but the issues are likely to be more complex in cases of surrogacy. These services should again be provided by ART clinics or through other agencies which deal specifically with issues related to pregnancy eg antenatal clinics

Birth of the child and adoption by the commissioning parents

The birth of the child is likely to be a very emotional time for all persons involved (ie the surrogate mother and her partner, the commissioning parents and the extended families). The greatest problem is likely to be related to difficulties experienced by the surrogate parents in relinquishing the child to the commissioning parents. These problems may be alleviated if adequate prior consideration has been given to the stage at which the commissioning parents will assume the care of the child and the subsequent access which the surrogate parents will have to the child. A significant number of women suffer post-natal depression but given the circumstances surrounding surrogacy the surragate mother may be more prone to a depressive episode which requires access to appropriate mental health services.

Problems may also arise if the infant has a disability or is born preterm. This is equally true for all parents and the availability of counselling services is essential. (It should be noted however that most developmental disabilities are not identified until considerably later in the child's life and counselling services are needed at this point in time also.)

Even at this early age the rights of the infant need to be considered. Even newborns are sensitive to the sights and sounds of their surroundings. They respond to the emotional tone of those around them, and are beginning to learn about their environment and the people in it. Infants start to form an attachment to their primary caregives from birth (or even earlier) and by six months of age show a clear preference for certain people (usually parents) over all others. The formation of this primary attachment is a prototype for all subsequent relationships and can therefore have long term consequences in terms of peer relationships and the formation of intimate relationships in adult life.

Parents likewise have to get to know their infant, their likes and dislikes, ways of settling them etc. and to start to socialise them to the behaviour patters which are appropriate to their family.

All of these things begin to happen when the infant is very young therefore it is important not to delay the responsibility for the care of the infant, and transfer of parentage to the commissioning parents. This provides a level of certainty and security to both parents and child.

In term of the issue of birth certificates it would seem wise to follow the established precedent of issuing both a long form (recording details of birth parents and commissioning parents) and a short form recording details of only commissioning parents. These birth certificates should be available to the child when they reach 18 years of age or earlier with the consent of all parties.

Childhood and adolescence of the child.

As in the case of adoption it is recommended that the child be made aware of the circumstances of their birth and parentage from an early age. Counselling services may again be needed to achieve this.
In adolescence children seek to establish their own identity separate from that of their parents. At this stage children frequently experience conflict with their parents and this may be exacerbated by the complexities surrounding the genetic parentage of children resulting from altruistic surrogacy. In order to establish a sense of self and to feel comfortable and confident adolescents and young adults may need to have access to information about their genetic heritage.
It may also be necessary for them to have access to this information in order to resolve issues related to medical conditions etc. It would therefore seem to be within the rights of the individual to have access to accurate information about their genetic makeup. The ART clinic should be required to store all relevant information about the parentage of the child. This information along with genetic counselling should be available to the child when they reach 18 years of age (or earlier, with the consent of all parties).

Professor Heather Mohay

Heather Mohay
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