

Wide Bay

Women's Health Centre Inc.

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The Secretary
Investigation into Altruistic
Surrogacy Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir

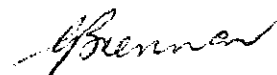
Re: Submission to the Investigation into Altruistic Surrogacy Committee

Attached is the Wide Bay Women's Health Centre's Submission to the Investigation into Altruistic Surrogacy Committee.

The Wide Bay Women's Health Centre is a community based service funded by Queensland Health and provides services to women and families the Wide Bay/Burnett region.

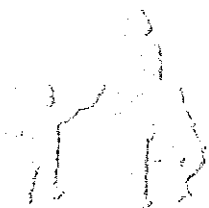
Should you require any further information please do not hesitate to contact the writer.

Yours faithfully,



Greta Brennan
Director

WBWHTC
For women
By women



Background:

The Wide Bay Women's Health Centre is a community based service established in 1991 and funded by Queensland Health in 1994.

Our clients represent a broad cross section of the community, ranging in age from, in the main, 12 years to 75+ years of age. Clients cover all denominations and races, including Aboriginal women and women from non-English speaking backgrounds.

Women access the Centre for assistance with issues including, but not limited to, welfare, housing, violence, emotional and mental health issues and reproductive difficulties including fertility issues.

Fertility issues can cause emotional problems for women and their partners often leading to relationship difficulties and subsequent relationship breakdown.

Technology is moving very quickly in the area of assisted fertility and surrogacy is featuring more in discussions of infertile couples who desire children. However in the desire for children the rights of those children conceived and born due to either assisted fertility or surrogacy should not be overlooked.

Legislators, when making decisions for the future on the benefits and potential disadvantages of assisted methods of reproduction including assisted contraception and surrogacy may wish to consider the comments made by some of those adults whose beginnings in life were through assisted contraception, namely, sperm donation in this particular case. As one young woman who was conceived by sperm donation has said *"the pain of infertility should not be appeased at the expense of the next generation."* In making decisions the Committee should remember that they are making decisions without the informed consent of the most vulnerable party – the child.¹

But equally, it can be claimed that no child brought into the world through natural or assisted contraception has any chance to express an opinion on the matter.

Part A – Should altruistic surrogacy be decriminalized in Queensland?

In the past if a couple was infertile and wished to have children they had only two options, one was to adopt, the other was to remain childless. Due to the limited number of children available for adoption in Australia this meant that couples, if for one reason or another, did not adopt from overseas they usually remained childless.

Today, with the advances in assisted reproductive technology there are any numbers of options to assist people to have children.

¹ *The Revolution in Parenthood* - The emerging global clash between adult rights and children's needs. pp 19,20

People desirous of having children will usually pursue all available options, including commercial surrogacy. In the past some Australian couples have travelled to the United States in their quest to obtain surrogates². Many of these couples have returned with their children and become happy and loving families, however many of these surrogates are obtained through commercial agencies with all the attendant risks this may entail, not least to the surrogate.

The investigation by the Committee would be advised to ensure that should they decide that the decriminalization of Altruistic Surrogacy in Queensland be recommended the resultant legislation is worded in such a manner that there is no avenue for commercial surrogacy to be permitted through misinterpretation of the legislation.

Altruistic Surrogacy has been defined as an arrangement in which the surrogate mother receives no financial or material gain except, perhaps, for reimbursement of pregnancy and birth related expenses.

One difficulty here is the difficulty in distinguishing between altruistic surrogacy and commercial surrogacy. As Ms Tucker stated in the Assembly for the Australian Capital Territory during the discussion in that territory on proposed surrogacy laws *There can be significant commercial benefits to someone in surrogacy arrangements. In reality the complexities of human nature could make it likely that a woman would act as a surrogate with both the intent of altruism and a wish not to be out of pocket – or even to improve her position – as a consequence*³.

However, irrespective of the laws regarding surrogacy, surrogacy will continue, in fact in some cultures it is accepted for a sister or other female relation to bear a child for an infertile woman.

Therefore, providing safeguards can be put in place to take account of the rights of all parties, the couple, the surrogate, and most important of all, the child who has no say in the matter, then altruistic surrogacy should be decriminalized in Queensland.

Part B:

Role of Government in regulating Surrogacy

The role the Government plays in regulating surrogacy should cover all parties and legislation should be enacted to protect the rights of all parties. In some states the biological parents of a child born of a surrogate mother have no legal connection with the child. This situation should not be replicated in Queensland.

² CSBQ Discussion Paper *Surrogate Motherhood* May 2002
ca.org.au/resources/csbq/surrogatemotherhood

³ Legislative Assembly for the ACT:1997 Week 13 Hansard (4 December) Page 4631

It goes without saying that both the surrogate and the infertile couple would be advised to obtain legal advice before agreeing to and signing any contracts. It is in the best interests of all parties to know how the law addresses surrogacy as it pertains to their case.

The best interests of the child should be protected and enshrined in legislation.

- (1) The child must have the right to be conceived with a natural biological heritage – that is, to have unmodified biological origins – in particular to be conceived from a natural sperm from one identified living adult man and the natural ovum of one identified living adult woman⁴.
- (2) The implanted embryo ideally is produced from gametes derived from the commissioning mother and father
- (3) In the event that the Committee recommends that a surrogate could be one of the biological parents then the child should have the right to know the identity of their biological parents.
- (4) The commissioning parents should be in a long term stable relationship i.e. marriage or recognised civil union.
- (5) The genetic parents of surrogate children should be legally recognised as their child's parents and listed on the original birth certificate.
- (6) The child must be fully informed of the circumstances in which they were born.
- (7) It be mandated that both parties have legal representation and a fully encompassing legal contract be drawn up between the commissioning parents and the surrogate setting out clearly the expectations of the parents and the surrogate.
- (8) The Proposed contract should cover but not be limited to the following issues:
 - a. That the surrogate be reimbursed for medical and associated expenses only;
 - b. The clinic or persons arranging the surrogacy ensure that the surrogate is fully informed as to the risks associated not only with pregnancy but any emotional and/or familial difficulties that can arise out of the relinquishment process before proceeding with any procedures⁵.
 - c. That non biased counselling is provided for the surrogate and the commissioning parents outside of the clinics handling the issues.
 - d. Would the surrogate surrender her privacy and the commissioning parents accompany the surrogate to medical appointments etc.?
 - e. In the event of discovery that the foetus is impaired then whether termination is to take place and if so, this to be the decision of the surrogate.
 - f. That the resultant child is the child of the commissioning parents.
 - g. The time and details of the handing of the child to the commissioning parents be set out clearly.
 - h. What, if any, ongoing contact the child will have with the surrogate

⁴ Somerville, M., *Children's human rights and unlinking child-parent biological bonds with adoption, same-sex marriage and new reproductive technologies*. Journal of Family Studies (2007) 13:179-201

⁵ Informed Consent: All those who give their consent should be given an oral explanation, supported by written information in plain language that if provided to them in sufficient time to be taken away, read and considered, prior to the giving of consent to any reproductive procedure, on any significant step in the procedure that requires consent. This explanation should be given with sensitivity to cultural diversity and accessibility to those with low literacy, disability, and/or those whose first language is not English.

(NHMRC –*Ethical Guidelines in Assisted Reproductive Technology*, 1996)

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- i. That the child has the right to access information surrounding their birth and genetic history.
 - j. In the event of any conflict between the surrogate and the commissioning parents then this be referred to mediation in the first instance with decisions made in the best interests of the child
 - k. It is advised that arrangements in regard to the sexual freedom of the surrogate be explored prior to the drawing up of any contract of surrogacy. .
- (9) In addition any surrogacy contract would state clearly and without any ability to be misinterpreted as to the proposed residence/care provisions should the child be born with a disability.
- (10) Should a child be born with a disability or other needs then the biological parents agree to accept financial responsibility for ongoing care and support of the child.
- (11) The child and their parents' privacy are protected in the event of any legal actions resulting from the surrogacy by restricting the publication of the names of the child, the parents and the surrogate.

It is suggested:

That the biological parents are recognised as the parents of the child and their names appear on the original birth certificate.

That an agency or agencies should be put in place to monitor surrogate agreements. The Department of Health and/or Department of Child Safety should register all surrogacy agencies involved with surrogacy and monitor them to ensure compliance with the relevant legislation, especially in regard to care of the child and compensation to the birth mother.

That a code of practice should be developed to govern the way agencies operate including an obligation on the Department of Health to collect information on the impact of surrogacy.

That research is carried out on the impact of surrogacy on the surrogate mother, her family, commissioning parents and the child and the community. This research to be a longitudinal study to gather reactions from resulting children as they become adolescents and then adults.

That the surrogate mothers only be paid for genuine and verifiable expenses incurred during pregnancy i.e. medical expenses and perhaps loss of earnings. Mothers would need to produce evidence of expenses.

Criteria for Commissioning Parents and/or Surrogate

One of the most important criteria is for proposed parents to be in a long term stable relationship i.e. marriage or recognised civil union.

The purpose of this submission is restricted to heterosexual couples in long term relationships, as same sex couples desirous of utilizing surrogates bring a whole new set of circumstances for the surrogate and the resulting children and would need to be dealt with separately.

Surrogacy should not be available for those who are able but unwilling to have a child. Surrogacy should only be accessible to infertile couples.

The procedure should not be used as a “convenience” for a couple who are desirous of a child and the woman is able to carry a child however does not want to go through the birth process. *It is important that surrogacy be considered as one of the many options for infertile couples rather than a way for women to avoid the rigours of pregnancy by shifting the burden onto another*⁶.

Care should be taken in the selection of the surrogate. It takes a special person to become a surrogate. She must be fully informed of the processes entailed which can be painful and stressful and take many months before a pregnancy is achieved.

It is common in some cultures for a sister or close female relative to bear a child for an infertile woman. However, care should be taken to ensure that the female relative does not feel pressured into agreeing to become a surrogate mother or guilty if she refuses. *Women may agree to serve as altruistic surrogate mothers because they wish to be seen as good, generous, loving people. However, with families there can be an element of emotional blackmail. In some ethnic groups the more the woman sacrifices herself the more she will be praised*⁷.

The proposed surrogate should undergo;

- Physical medical testing to see if there are any physiological impediments that would hinder her in carrying the baby;
- Infectious disease test to ensure that no contagious disease is present;
- Psychological testing to check motivations, attitudes and commitment

Role of Genetic Relationship between Surrogate and Commissioning Parents

Ideally the surrogate mother should be a relative or close friend of the commissioning couple; in this way the surrogate is often able to keep regular contact with the child and can prevent a number of difficulties arising.

By virtue of the practice of surrogacy, where a women carries and then gives birth to a child there is the very real potential for the birth mother to form a strong emotional attachment to the child she is carrying and may not wish to surrender the child. This has happened in the past overseas and in Australia and has resulted in court action.

⁶ Wilson, R.F. *Uncovering the rationale for requiring infertility in surrogacy arrangements* American Journal of Law and Medicine Volume 29, No 203; 2003

⁷ CSBQ Discussion Paper *Surrogate Motherhood* May 2002 ca.org.au/resource/csbq/surrogatemotherhood

History has shown that there is less potential for conflict or unhappiness between the parties when family members or close friends are involved and there is ongoing contact between all parties

In some cases overseas there is a requirement for the surrogate to have had a child in the past to show that she is capable of carrying and giving birth to a child. If her children are old enough to understand, there is the potential for trauma for them when they see their mother carrying a child, only to give it up at birth – how is this explained to them or even understood?

Legal Rights and Responsibilities of Commissioning Parents and Surrogate

The Commissioning Parents and the Surrogate have the responsibility to ensure that the child's interests are placed before their own in all dealings. However, in reality, this is easier said than done.

The surrogate has the right to be paid for her genuine and verifiable expenses and the commissioning parents have the responsibility to pay her.

In the event that the biological parents refuse to accept the child they must acknowledge that they have the responsibility to care financially for the child. To not do so could cause emotional and other problems for the child and the surrogate if she feels obliged to care for a child she did not intend to keep.

While not common, pregnancy can involve complications and risk to health and life. These issues should be taken into account when drafting a surrogacy contract, especially if the surrogate is responsible for the care of other children.

Rights of a Child born through altruistic surrogacy arrangement

Surrogacy involves not only the commissioning parents, the surrogate but the most vulnerable party who has no say in the process, the resultant child.

Ideally, everyone has the right to know their genetic and biological heritage; research shows that psychological harm can occur, especially in adolescence if this area remains a mystery. Children born of sperm donors and some adopted children on gaining adulthood find it very difficult to cope with the void in their knowledge.

Some go to great lengths to source information and when this information is not available can become quite angry at their impotence to rectify a large gap in their family tree. Professor Derek Morgan, Health law, QUT has coined the term *genetic anger* to describe the resentment felt by these young adults.⁸

⁸ *IVF youth experiencing genetic anger* Australian broadcasting Corporation 7"30 Report Transcript 23 November 2006 Reporter Nick Grimm

In order to minimize harm to children it has been suggested that the following statement of children's rights be legislated;

- The child must have the right to be conceived with a natural biological heritage – that is, to have unmodified biological origins – in particular to be conceived from a natural sperm from one identified living adult man and the natural ovum of one identified living adult woman⁹.
- The child has the right to know the identity of their biological parents.

Unlike adoption in an unregulated surrogacy arrangement there is no objective and impartial assessment of the suitability of the commissioning couple to be parents. The risk is that the governing selection criterion is the capacity to pay the surrogacy expenses¹⁰.

Should a child be born with a disability or other special needs then the child has the right to adequate care, protection and love. The biological parents must agree to accept financial responsibility for ongoing care and support of the child.

The child has a right to privacy and this privacy must be protected in the event of any legal actions resulting from the surrogacy by restricting the publication of the names of the child, the parents and the surrogate

Other Matters

When discussing surrogacy there is also the need to discuss the resulting child and how this child is to come into being. Will this child be?

- The biological child of the couple utilizing the surrogate and utilizing assisted reproductive techniques; or
- Will the child be the biological child of the surrogate mother and the male partner of the couple of the surrogate utilizing assisted reproductive techniques? Or
- Will the child be the result of donated gametes donated by the father and another donor (if the proposed mother is infertile) or donated by the mother and another donor (if the proposed father is infertile)

Once the child is born the surrogate mother is expected to hand the child over to the commissioning parents. Research has shown that this is often not as difficult for the surrogate if she is not genetically related to the child. However some surrogates have refused to relinquish the child and the resulting court battles have been devastating for all parties.

⁹ Somerville, M., *Children's human rights and unlinking child-parent biological bonds with adoption, same-sex marriage and new reproductive technologies*. Journal of Family Studies (2007) 13:179-201

¹⁰ Discussion Paper 18 (1988) – *Artificial Contraception Surrogate Motherhood* www.Lawlink.nsw.gov.au

While many women over the years have acted as surrogates and had very fulfilling experiences, many have encountered difficulties with relinquishing issues and family members not understanding or agreeing with the actions taken.

What about the family of the surrogate mother and any children she may already have? These children or family members are not generally considered when surrogacy is discussed. Firstly they must bear with her and aid her through what may be a difficult pregnancy. Then they may have to serve as a shoulder to cry on if she starts to go through emotional withdrawal after giving up the child¹¹.

As one surrogate mother said “ *It has affected my entire family.....I have lost a baby, and I don't say that out of pity for myself, but for the hundreds and maybe thousands of other surrogates who will reach that point of understanding some day, just as I did. Then they will look in the mirror and say, My God, what have I done*¹²”.

Any existing children of surrogate mothers must also suffer some feelings of loss when the new baby is surrendered. As one surrogate said “*My daughter was 11 at the time of the surrogate birth, she is now 17. She is still having problems with what I did and is still angry at me.*” Another stated that she had one son and had acted as a surrogate three times for three different couples. The son had expressed concern that she would give him away as well and when told his mother was expecting twins asked her to keep one. The son is now seeing a psychologist, but the mother states this is not due to her surrogacy but due to behavioural problems.¹³

What must also be taken into consideration is a changing attitude by the commissioning parents; if parenthood is not all they believed it to be or one parent is not the biological parent, pressure could be put on the relationship through one party feeling resentful as they are forced to bring up some one else's child.

Surrogacy, while bringing great joy to some couples can bring devastation to others and disadvantage all the children involved.

Conclusion:

Surrogacy is not new; it was a culturally accepted practice in biblical times and continues in many cultures today.

If surrogacy in Queensland is not decriminalized it will still occur, either in secret with all the dangers that presents to all parties. Alternatively, desperate parents will go interstate or overseas where it is legal and perhaps resort to commercial surrogacy with the problems that can entail for all parties involved.

¹¹ Vadeboncoeur, M., *Surrogate Motherhood - Bioethics – Some of the issues regarding surrogate motherhood* 1995

¹² Petersen, I., *Surrogate Mothers vent feelings of doubt and Joy.* The New York Times

¹³ Petersen, I., *Surrogate Mothers vent feelings of doubt and Joy.* The New York Times

There is a vast difference between commercial surrogacy, as is practiced in some parts of the world, and true altruistic surrogacy.

The difficulty is defining true altruistic surrogacy and preparing legislation so that the spirit of that legislation cannot be circumvented and that the resulting children have access to their genetic and biological history.

In an endeavour to assist childless couples to achieve their goals of having a family great care must be taken not to create difficulties the next generation, the resultant children themselves, any other children the surrogate may have, or the services that will have to assist them in their endeavours for understanding should problems arise.

Those defining the legislation and protocols surrounding it should bear in mind a quotation made earlier in this submission, *"the pain of infertility should not be appeased at the expense of the next generation."*