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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)*?

Yes. Intended Parents (IP) have already had many years of anguish with unsuccessful IVF, miscarriages etc and to finally find a path to becoming parents (albeit rocky and still no guarantee) it would involve either moving to another state - away from the support of friends and family - or risk criminal prosecution. This is absurd. Surrogacy is more accepted in the general community. It has a higher public profile now. But the misconceptions need to be addressed. A lot of people assume it is illegal everywhere in Australia, or is similar to the commercial industry in parts of the United States. I have found that those willing to travel the hard path of IVF have already adapted to becoming parents - probably more so than the shock felt by the parents of a naturally conceived. Personally I was certainly still in a state of shock by the time my son was born. And although his brother was planned for the future, his timing found me chasing my tail too. A child that is planned before conception is still a miracle of life, but I think parents are more ready. To this end, they often have thought out exactly how they want things to proceed and how they feel about issues of parenting.

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

One of the main issues IP's find with surrogacy arrangements is the legal parentage. Who is on the birth certificate? If the government was prepared to issue legal parentage in the IP's favour providing they follow a set procedure, most IP's would not have too many problems with this. Providing of course these requirements were well thought out. This would give government the ability to ensure that the child's best interests were being upheld. Of course we would expect that the privacy of all parties would be similar to all other medical records. Just because it takes more than 'mum and dad' to create this child doesn't mean the world needs to know all the details. To be considered for a surrogacy journey the IP's should be deemed infertile, explained or unexplained. Or a health risk associated with bearing or a concern with passing on a genetic condition. I do not ever want to hear of a surrogacy case taking place because the commissioning mother did not want to lose her figure or won't take time out from a career. I would be outraged. Surrogates need to be deemed as healthy and able to withstand pregnancy and birth. To prevent conflict as much as possible, before conception counselling should be mandatory. Not as a pleading case of 'please let us go ahead with this', but as a 'these are the issues we have discussed and agreed upon'. It really doesn't matter what the surrogate and the IP's agree to as long as they are of the same mind. For instance the obstetrician may say natural birth is the preferred option, but if the IP's and the surrogate agree that they'd prefer a caesarean then that's the path they travel. If the IP's and the surrogate have different opinions then these must be sorted before conception. The same with lifestyle, exercise, diet, travel etc. I know of one surrogate who refused to start the IVF process until one of the IP's had quit smoking. I don't want the government to be standing over me while I discuss with IP's all the ins and outs, but if we could go to a counsellor and have them say, "Have you considered this?" this would ensure we had thought about almost everything. All the 'what ifs' need to be covered. Wills need to be written. In the event of death of the IP's, where will the child have a stable home? What if it is discovered the foetus has a disability? Who has the right to terminate? Under what circumstances? What about child support? Or inheritance? How much contact will the parties have during the pregnancy? What about after the birth? And as the child grows? Follow up counselling appointments should be made available too. Sometimes opinions change. Communication needs to be a major part of any surrogacy journey.

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

In 2006 I was a gestational surrogate for some friends. I do not believe we needed to be close friends or even relatives. I think if we were family there would be more chance that I would feel like I had the right to judge their parenting habits. Family members already help out in that department in some families. For me, the fact that I did not know this couple well (they were friends of friends), made us bring up issues just to find out each other's opinions. For others having a surrogate as a close friend or family member is a relief. I do not agree with VIC requirements for IVF saying the recipient must be infertile. This means a healthy woman must under go an unnecessary operation to make her infertile to become a surrogate. I agree that the IP's should be married - or at least together - for a substantial amount of time. Minimum 2 years I think. The IP's should be deemed infertile, explained or unexplained. Or a health risk associated with bearing or a concern with passing on a genetic condition. Both the surrogate and the IP's should be at least 25 years old and other than the above be overall healthy. Age may only be one factor in assessing maturity but there needs to be a line drawn in the sand. Surrogates need to be deemed as healthy and able to withstand pregnancy and birth. The surrogate should have at least one child of her own and be accepting of the manner of her child's birth. You can't change the past but if you've come to terms with a traumatic birth the next one is easier. Pregnancy and birth changes a woman in ways that cannot be understood until you go through them. Physically and Psychologically. In my opinion, to go through your first pregnancy and birth as a surrogacy arrangement would be just asking for trouble. All parties should have no convictions (or even any serious suspicions) of sexual or violent offences. Most of these requirements can be overseen as part of IVF criteria. Or in the event of a traditional surrogacy, should be a prerequisite before obtaining the change of legal parentage. I'd like to say that a social worker or counsellor should be a mandatory part of the journey, but I found mine to be more of a hindrance. As a surrogate, the only subject that anyone thought was relevant was 'how could I guarantee I would give away the babe?' I spent more time teaching the counsellor the legislation and showing her statistics from the United States proving it was more likely the IP's would change their minds. And it's not 'giving away your

child', it's returning the child to his/her parents after some intense baby sitting. So if counselling becomes the norm, please have them educated first.

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

As much as I would like to say yes, until all parents are scrutinised then it's just discrimination. The adoption requirement of not having a major physical or mental condition is common sense.

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

On a personal level, I found it easier to give back a child with whom I had no genetic link. Yes, there is emotional attachment and it should not be discounted, but for me was similar to babysitting. Now that the child is born I don't feel any differently toward him. I care, but it's the same maternal attitude I feel for all the babies and children in my social circle. I certainly don't feel like I'm his parent - legal or otherwise.

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

Yes. Even though IP's parents without a genetic link have a difficult time of finding both sides of the equation I feel this falls into the adoption category.

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

Personal choice. Some women feel they can, some don't. She should be 100% ok before conception. 99% is not enough. For me, I was comfortable with no genetic link. It was baby sitting. Yes 24/7, but still baby sitting. I have known cases of traditional surrogacy. They feel it's similar to egg donation but with an extra step. My opinion is gestational surrogacy is more medical but less emotional and traditional is the reverse. Less medical but more emotional.

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

A surrogate should be able to be compensated for reasonable expenses. All out of pocket expenses, including loss of wages, income protection and life insurance. Any legal costs and of course any costs involved in the preconception, pregnancy and birth. If the surrogate and IP's have made any sort of agreement on who pays what, this part should be legally binding. Media in the United States will often publish horror stories of surrogates being left with bills after their IP's stop taking their calls. I don't think a surrogacy contract should be a legal document. It would be a terrible thing for a child to become property to be fought over. For a surrogate to 'keep' a child would be like kidnapping. If she feels so strongly that the child would be in danger in the home of his/her biological parents then there are other avenues to pursue. If she feels she can not relinquish the child then it would become a shared custody issue to be mediated by the courts but not a contract problem. Even though I think that a surrogacy contract should not be a legal document, shared opinions still should be written down for future reference. A surrogate journey is long and the memory is weak. I don't believe Australia is ready for brokerage services like the surrogacy agencies in parts of the United States, but if a person knows someone who wants to be a surrogate and knows a couple looking for one, they should not be penalised for passing on phone numbers. Advertising should be allowed for the same reason. Only the parties themselves will know if they 'click'. Matching couples with surrogates (and vice versa) like a dating service feels a little commercial to me.

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

Yes. To be classified as a surrogacy arrangement, then the arrangements must be agreed upon before conception.

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

The same as IVF requirements. The IP's should be deemed infertile, explained or unexplained. Or a health risk associated with bearing or a concern with passing on a genetic condition.

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

In society, it is assumed that the genetic parents are the legal parents. People are astounded when I tell them that by law in NSW I am the baby's mother because I gave birth to him and his real mother must apply to the Family Court to adopt her own son.

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?

A pre birth order states the intention of all parties. It says that they have all thought exactly of the child's best interests and well being.

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

A child's birth should be celebrated not shrouded in secrets until the child is old enough to be discreet. How hard would it be to judge when your child is mature enough to handle the truth but not old enough for them to be traumatised that you lied to them for so many years?

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?

In 100 years what information will we want to know and only be able to find from birth certificates? A long certificate should be the norm stating all details. Birth mother, genetic parents, legal parents. A short certificate providing details of the child's name and date of birth is sufficient for most enrolling processes.

What rights should a child born through an altruistic surrogacy arrangement have to access information relating

his or her genetic parentage? Who should hold this information?

A child born through a surrogacy arrangement should have access to all their information. It should be kept together, not scattered all over various government departments and IVF clinics. It should be kept with the Births, Deaths and Marriages Register. I'd like to give them access when they reach 18 years of age, but I'm finding that 16 is more practical. Driver Licence's require a full certificate and most people apply for this around their 16th birthday. The NSW Assisted Reproductive Act 2007 has requirements that the child has access to all their relevant information when they are eighteen. This includes IVF procedures and if any donor gametes were used. To include the surrogacy arrangements would show the whole picture. We have to decide if a birth certificate is a document showing genetic history or legal parentage.

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

Please get this legislation right. It may just be a sentence in a law book to some but it is the whole world to others.