

**From:** Patti Smith  
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**To:** Surrogacy Committee  
**Subject:** Altruistic Surrogacy Submission

## SUBMISSION ON ALTRUISTIC

### SURROGACY

I am taking advantage of the extended deadline until Friday 20th for which I thank you.

Name: Patricia Smith

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

A. No legal standing should be afforded altruistic (non-commercial) surrogacy. State and Territory Social Welfare and Health Ministers agreed in 1991 that ALL surrogacy arrangements be considered illegal. Even if other States and Territories have amended legislation to permit this, Queensland should not follow simply to have uniform National legislation.

Q. 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?

A. In principle it is impossible to legally and ethically protect the interests of the child and the parties to altruistic surrogacy but for the sake of this submission I offer the following comments. Surrogacy involves treating a woman as a useful gestator where feelings she may develop for the child she carries must be severed at birth. The role of law is to protect and uphold the rights of children to know their parents and to an unambiguous identity based on a shared genetic history. Altruistic surrogacy is emotionally and legally the most dangerous in terms of family dynamics where the other children of the surrogate are likely to be profoundly affected seeing their pregnant mother give the baby away after birth.

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

A. Legislation would be necessary to ensure participants to surrogacy formally agree that any children are protected by adequate external regulations, informed community review and approval, independent counselling and verified record-keeping. Amendments would be necessary to the Infertility Act, the Status of Children Act, the Births, Marriages and Deaths Act, the Adoption Act and the Family Law Act. It could become a legal minefield resulting in ambiguity as to whom is to be recognised as the mother of a child, currently held to be the woman who gives birth. There would also need to be laws providing ways of ensuring the relinquishment of children by birth mothers who had previously agreed to do so.

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

A. The law would need to be definitive in cases where the surrogate and her partner have sex during the abstinence time to ensure she is carrying the child of the commissioning couple. Further, should the child of a surrogacy arrangement be found through DNA after birth, to be the child of the surrogate and her partner laws would need to be enacted protecting the rights of this child. The surrogate could reject the child, the commissioning couple would most likely reject the child or alternatively the commissioning couple might want to adopt.

Often with IVF, 2, 3 or more fertilized eggs are implanted. The commissioning couple might want to increase their chances of a baby and want all fertilized eggs implanted resulting in the surrogate's health being threatened. With this in mind the surrogate might decide only to carry one fertilized embryo. This brings up the question of disposal of unwanted embryos/embryos being frozen for future use or used for experimentation. The surrogate could miscarry during the pregnancy and through complications her health could be threatened leaving her infertile.

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

A. The desire to adopt is linked to infertility. There is a major difference between surrogacy and adoption in that surrogacy involves many combinations of "genetic material" - partial where the surrogate contributes genetic material - total where ovum and sperm from the commissioning couple is implanted in the surrogate - donor egg, donor sperm, donor egg and sperm and surrogates being friends, sisters even mothers and grandmothers gestating the child. Legislation would need to be framed to protect all involved.

Adoption on the other hand involves the decision of the birth mother and sometimes the birth father. Unfortunately the adoption option is becoming more and more limited because of the anti-adoption approach where young mothers are influenced by social workers to keep their children and the guilt trip many are taken on if they indicate they wish to adopt. With the introduction of open adoption there is a lack of confidentiality and often adoptive parents feel they are merely fostering the child. From the child's perspective where the birth mother (and often other relatives) are involved in access and contact with the child, the children think of themselves as "nobody's" or "everybody's" child when that sense of belonging is so important to young children.

Q. What role should a genetic relationship between the child and the commissioning couple etc.

A. I have answered this question with the question above but I would just add that the terms I have used and which were used in previous inquiries on this issue eg "genetic material" instead of human child, "commissioning couple" instead of mother and father and the "surrogate who gestates the child" instead of the woman carrying a baby in her womb are indicative of how far down the slippery slope of genetic engineering we have slid and where we have abandoned common sense being left trying to give legitimacy to procedures which defy the common good on which all legislation should be founded - more particularly in this instance when the most vulnerable in society (a child) must be given the full protection of the law.

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

A. This brings up many legal and ethical questions if there is no genetic link with the child --

- \* What happens if the marriage of the commissioning couple breaks down and the surrogate wants full custody of the child?
- \* What happens if there is a multiple birth and the commissioning couple only want one child?
- \* What happens if the child is born disabled and no one wants the child?
- \* What legal arrangements will be made to allow male homosexuals and lesbians to access IVF and surrogacy where both males are sterile and need donor sperm and both lesbians are infertile and neither is able to carry a child?
- \* What happens if the commissioning couple would prefer a boy to a girl and the surrogate is opposed to sex selection. The father of IVF, Professor Robert Edwards has embraced sex selection and believes society should sanction this technology.
- \* What happens with inheritance - recently a NSW Court ruled that a sperm donor's family should share the estate with the donor child.

Confusion of parenthood and hence identity, affects not just a human embryo but the child, the adolescent and the adult that the embryo may become.

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

A. Similar problems as quoted above would apply exacerbated by the fact that if the surrogate's genetic material is used she will have deeper feelings for the child which she has agreed to carry for a family member or friend and realize that she may have been unduly influenced in the interests of the infertile woman. It is simply not possible for a woman to give informed consent to surrogacy arrangements before she becomes pregnant, because she cannot know ahead of time how strong the bond between herself and the child she carries may become. There is the added problems that she could disagree with the child rearing of the commissioning couple and in an extreme case see the child being physically, emotionally or sexually abused and seek to intervene.

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

A. There are already advertisements for donor eggs in the media. It has been suggested in previous debates (albeit when all surrogacy arrangements were banned in Australia) that the most enforceable way to prohibit malpractice would be to put the right to professional practice at risk, or to license the reproductive technology providers and give control of licence conditions to an independent authority for the discretionary issuing and withdrawal of licences. The State has a responsibility for children who are the result of IVF eg what is done in regard to embryo experimentation, intrusive procedures such as embryo biopsy, record keeping and establishing protocols for access to records. The letter of the law in all aspects of surrogacy is one thing but the interpretation is quite another. For example in terms of relinquishing the child and what is specified by the law becomes almost

impossible to enforce. As regards to the non-commercial aspect of altruistic surrogacy this can become blurred when medical and other expenses of the pregnancy are paid by the commissioning couple. I suspect that there will be those who either through ignorance or because the law is too prescriptive or restrictive will act outside the law.

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

A. In 1991 States and Territories, the General Synod of the Anglican Church, the Australian Catholic Bishops Conference, the Australian and Victorian Council of Social Services, the National Children's Bureau of Australia and the National Women's Consultative Council all agreed with the recommendations from the National Reproductive Technology Working Group to give no legal standing to ALL SURROGACY ARRANGEMENTS. Here we are in 2008 re-visiting the issue with the intent that altruistic surrogacy should become legal in this State. The question must be asked how long will it be before we are debating commercial (contractual) surrogacy which is the logical progression down the slippery slope of genetic engineering.

Q. 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. The rights of the child will become secondary to those of the surrogate and the commissioning couple and it will be at their whim what they tell the child. As we progress down this slippery slope we will see professional baby merchants including lawyers and doctors sourcing surrogates for infertile couples, arranging surrogacy agreements and soon there will be campaigns for the legalization of commercial surrogacy. Children have the right to know their parents and to an unambiguous identity. The physical and emotional connection between a woman and the child she carries and gives birth to has always been assurance that the child could be certain in respect of at least one of its parents. In most circumstances the rights of children to security and nurturing are protected by the natural strength of that relationship. A surrogacy arrangement breaks that connection and leaves the child vulnerable, especially if he or she is less than physically or mentally "normal" in some way.

South Australia, Tasmania, Queensland and Victoria enacted laws which made surrogacy contracts void and unenforceable and variously made third party and/or direct participants in surrogacy arrangements subject to criminal penalty. The Tasmanian Surrogacy Contracts Act 1992 while not penalizing the couples who become involved in surrogacy contracts, severely penalises those who in any way assist in surrogacy arrangements.

The crucial issue is that what is decided now will affect the entire lives of children being conceived through reproductive technology. They are the ones who will look back and judge whether or not today's legislators acted short-sightedly, serving the interests of infertile couples and the career interests of the reproductive practitioners while ignoring those of the most vulnerable - the children.

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

A. I would like to conclude by taking a societal and ethical telescope to the definitions used to describe surrogacy eg "genetic material", "commissioning couple" and "the person who gestates the child" which terms are intended to be clinical but I would suggest they are more chilling than clinical to describe pregnancy and the wonder of the birth of a child. The following quote resonated with me - The quote is from Professor Jerzy Zubrzycki, a Patron of the Australian Family Association of which I was the Queensland President (now retired) -

"We have lost the ability to speak the language of emphatic judgement. The ambition of the modern mind is to spare itself a chilling sight, that of the cold, blank stare of personal evil. The modern man's response to evil is squeamishness dressed up as sophistication. Its aim is to make the reality of evil disappear behind a rhetorical gaze of learned clichés and linguistic hypocrisy that it weakens our grip on reality and dilutes the moral sense".