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To: Surrogacy Committee

Subject: Online Submission - Investigation into Altruistic Surrogacy Committee

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)?

The legal restrictions should be removed as it forces people to become law breakers and go "underground" for surrogacy. This can lead to exploitation. It also prevents people from moving to or living in the state if they want to use surrogacy to form a family legally. My husband and myself (both professionals) currently live in NSW - this is due to the surrogacy laws. My sister in law is acting as our surrogate and is currently 7 weeks pregnant. I would love to live back in QLD (where I grew up and with all my family) but I can't because I need surrogacy to have a family.

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

The government should only be responsible for setting up legislation and guidelines. Clinics should be responsible for assessing the suitability of parties for surrogacy. Making the government responsible for regulating surrogacy will only lengthen the process.

What other issues should be addressed by the Government?

The government needs to look at Medicare funding for surrogacy. Currently Medicare does not fund surrogacy (as it is "treating" fertile women - the surrogate). However the commissioning parents require medical intervention and surrogacy to create a family. I was diagnosed with cancer at the age of 23, and lost my uterus - however I still have fully functioning ovaries. I cannot create embryos without IVF yet it is viewed as social infertility because the surrogate is treated as the patient. On the other hand Medicare does fund IVF for older women (those over 40) whose chances of falling pregnant are greatly diminished.

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

Surrogacy should be medically required - criteria could include: risks to mother or baby, recurrent miscarriage, no uterus, or malformed uterus. Medical professionals should be able to assess whether patients meet this criteria. The surrogate should have previously had children and be completed their family.

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

The criteria for commissioning parents should not be similar to adoptive parents as quite often commission parents may not need to criteria required by adoption. Surrogacy is not about giving a baby up, but giving a baby back to its intended family. As long as the surrogate and commissioning parents are informed on the consequences of their choices they should be free to pursue surrogacy. The current assessment for adoption takes too long, to needlessly put people who require surrogacy through such process is unnecessary. I had cancer 4 years ago, under adoption criteria I would not be eligible for surrogacy until the 5 year mark - even though my oncologist is pleased with my progress. Other people who may have medical issues, which while impacting their everyday lives would not prevent them from being a capable parent should not be excluded.

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

It is preferable that the commissioning parents be the genetic parents of a child born through surrogacy. However donor gametes should be allowed if there is a medical reason for this, as commissioning parents should have the same choices as others who choose to use donor gametes. The commissioning parents should be considered the legal parents of the child, provided that the surrogate agrees to this. It is unfair and unjust to make parents and children go through 5 years of legal limbo in order to adopt their own child.

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

If possible yes, but if there is a medical reason why they can't produce gametes then exceptions should apply.

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

Commissioning parents should pay all costs involved with surrogacy. The surrogate should have the right to transfer parentage to the commissioning parents after a child is born. This transfer should be allowed to happen while the child is relatively young (ie under 6 months). I don't feel that there should be commercial brokerage services as these services would be primarily set up for financial gain, exploiting vulnerable people.

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

No parties involved in surrogacy should have the opportunity to access fertility services outside of Queensland. Say that a couple live in QLD, however they have a family member wanting to be a surrogate living interstate. The surrogate should not be put out by having to travel to Queensland as these women do have families and want to spend minimal time away from them. Couples should be free to travel to the surrogate's home state (provided that surrogacy is not illegal in that state) to minimise inconvenience on the surrogate. The surrogacy agreement should however fulfill the requirements of Queensland law. Another case for using interstate medical facilities could be one of history and familiarity. Couples may have embryos created in interstate clinics while they resided interstate. They may feel comfortable with certain doctors. Also embryos created interstate and frozen (which can be from 5 to 10 years depending on where the procedure occurred) may be used by commissioning parents years after they were created when life situations change.

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

It should be defined by medical professionals.

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

Surrogacy is NOT adoption. Adoption is about providing homes for children without homes - it is never a primary goal of the birth parents. Surrogacy is about creating families, giving children back to their parents.

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?

Current adoption laws do not cater for surrogacy as they were not set up to meet the specific situations involving surrogacy. Legal parentage should be transferable provided that the surrogate consents to this. Transfer of parentage should happen when the child is born, so that it has legal rights in relation to inheritance and acknowledgement of its genetics and true parents.

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?

Genetic commissioning parents should automatically go on the child's birth certificate if the surrogate consents to this.

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?

Children born of surrogacy should have the right to know their genetic parentage, this information should be contained in central governing body.

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

On a personal note. I grew up in Queensland and always intended to live in Queensland. However that changed when I got cancer at 23. I went through IVF and ended up with 3 embryos. I lost my uterus and therefore the ability to be pregnant. Still having 3 embryos (and not being able to donate or destroy them) I needed to use surrogacy to have a family. I am a teacher, my husband is a radiographer. We cannot move back to Queensland because of the current legislation. How many other professional couples like us are there? Prevented from moving to Queensland or moving away from Queensland to go through surrogacy. We are expecting our first child in Feb - with my sister in law acting as our surrogate. If the current legislation stays as it is we will have to stay in NSW until we complete our family. Yes adoption is an option, but it is fraught with many issues, and much time. We had embryos to use, they needed a "home" for nine months. I have waited 4 years till I am healthy and ready, and we have started our family. Surrogacy is about creating families, it is not about tearing mothers and babies apart like adoption. It is about giving babies back to their families.