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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)*?

Legal restrictions and criminal penalties against altruistic surrogacy should most definitely be removed. Their very existence is archaic in modern society.

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

I would see the overall government role being somewhat of a mediator - ensuring the rights of each party is protected. This could be through a 'surrogacy coordinator' such as a trained social worker or psychologist assessing suitability of both surrogate and commissioning parents as detailed in the question below. This 'surrogacy coordinator' would also be able to provide information on the fertility services and appropriate legal services. The government should play a role through the protection of the rights of commissioning parents through provision of contract and legal processes. This would include contract negotiation regarding associated cost payable by the commissioning parents. Subsidised counselling services for parties involved to ensure protection of the child and both parties concerned. This would be covered through appointing social workers or psychologist to coordinator roles. There should also be legalisation of advertising for surrogate so that those wishing to enter into this arrangement from either side can be located. The government could also manage a registration process for this to prevent private contracts and assist in the prevention of commercial surrogacy. The lists could be EOI similar to adoption, with one for Surrogates and one for commissioning parents. There could be a fee to be placed on this list as a commissioning parent but no fee for surrogate to do so. This list should be searchable for either party to ensure an appropriate match between surrogate and commissioning parents - this may be location, philosophies/beliefs for during pregnancy and birth procedures, desire and amount of compensation for cost incurred during pregnancy (eg maternity clothes vs lost wages), reason for entering the agreement.

What other issues should be addressed by the Government?

Partitioning federal reform to include at least part of the cost on the medicare subsidy scheme (considering subsidisation that occurs for IVF treatments).

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

Commissioning parents should be infertile according to current adoption process definition. Or either parent be at risk for passing on serious genetic conditions. Or the female is unable to safely carry a child to term as a result of a medical condition. It is unrealistic to expect a high number of women would wish to be a surrogate and therefore only those that are by other means unable for those reasons stated above to have genetically related children should be able to undertake this arrangement. Commissioning parents should be legally married for a period of no less than 2 years for a first marriage and 4 years for a second. This is to ensure (as much as possible) home stability for protection of the child. Preference for connection to a surrogate Mother should be given to couples without any genetically related children. Potential surrogate Mo should be of sound mental and physical health. This is to prevent any contracts being entered into being voided and for the protection of the child. This need only be a doctors letter stating appropriate physical health and perhaps psych evaluation/medical history check. This could be provided to a government appointed mediator rather than specific details being provided to commissioning parents. Commissioning parents should not be undertaking IVF themselves during the time of entering the EOI list/registering for surrogacy. Placement on EOI list / register for adoption should NOT discount a couple from undertaking surrogacy arrangements.

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

Commissioning parents should NOT have to go through criminal and medical history checks associated with adoption unless specified as a requirement by the surrogate at the time of contract negotiation. It is demoralising for a person who is infertile to be seen as a risk to child safety and essentially 'less worthy' of children just because they are unable to have them naturally, often due to horrific medical reasons. Those that conceive naturally are not regulated so closely and not seen as 'guilty before being proven innocent'!

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

Any donating party (either male or female) should have to sign over legal rights to a resulting child during contract formation period.

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

Yes, at least one commissioning parent should have a genetic relationship with the child to guide legal parentage. The non genetically related parent should be able to legally adopt the child upon birth in a similar manner available currently for step parents.

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

The surrogate mother should not have a genetic relationship with the child. This would reduce issues of legal parentage. Artificial insemination should therefore not be allowed. Fertilisation should occur outside of the body and implantation through IVF.

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

Reasonable expenses for surrogates should not exceed current cost for adoption. Surrogacy arrangements should be legally enforceable (for reasons and through processes previously stated).

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

Yes

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

This should be identified at the time commissioning parents wish to enter on an EOI list. This should be as simple as a doctor's letter (who has known the patient for at least a period of 12 months) stating either: one or both are infertile (as per current adoption policy) a significant genetic condition exists within one or both parent that places increased risk on any resulting children the female is unable to safely carry a child to term This should be the case as the idea of a 'significant genetic condition' is subjective and can only be determined through an associated doctor. If the doctor has not known the patient for that period of time then medical reports/scans should be included.

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

If both commissioning parents are genetically related to the child (eg issue related to carrying of child for female such as hysterectomy for medical or traumatic reasons), legal parentage should be thus designated and enforced through contracts prior to conception. Confusion relating to legal parentage would be reduced if donating persons sign over their parental rights for any children that result from their donation prior to conception. This would follow similar rules to sperm bank donation

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?

Very important and dictated at contract stage prior to conception. The legal rights of the commissioning parents should be protected, particularly if at least one must be genetically related to the child and adoption for the other parent expedited.

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

Is this asking about consequences of those children currently born through surrogacy in Queensland? The fact that commissioning parents can be imprisoned would have a significant impact on the child. Also the risk of the child not being able to know a genetic parent when there is no rights maintained for commissioning 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?

The surrogate should not be automatically recorded as the child's parent. In the plan /conditions detailed above, she should have no genetic relationship. Legal parentage should be confirmed at birth through presentation of surrogacy contract and through genetic testing of all parties as soon as safely possible either in utero or at birth. This is to ensure the child has not been naturally conceived by the surrogate incidentally during the time of IVF plantation.

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?

That should be at the discretion of the donating party. The information should be held by the collecting organisation as per sperm donation clinics currently. If provided by donating party, obtaining the information should be the same process as currently for an adopted child.

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

The fact that you are at the basic element dealing with humans. The desire to have a genetically related child is very strong and elementary civil right should be protected and upheld as far as medical science can allow.