

SUBMISSION to:

**Investigation into Altruistic Surrogacy Committee
Queensland Parliament**

by

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Thank you for the opportunity to make a submission to the Investigation into Altruistic Surrogacy Committee of the Queensland Parliament.

Comments re Altruistic Surrogacy

1. Some adults in Queensland who wish to create a family may find themselves in the position of being unable to conceive for physical reasons other than those that would qualify them for assessment as adoptive parents; i.e., not being classified as infertile (the current requirement for general children's adoption) and therefore not eligible to adopt. It may be that one or both the adults carry a genetic condition which would put the life of the potential child at risk and/or pregnancy itself would risk the life/lives of the mother/child. Therefore, some Queenslanders may have no other way to create a family other than by altruistic surrogacy.
2. This is a complex issue, as surrogacy involves intentionally creating a child in order to provide for the desires or needs of adults to have a family. Usually, such matters are self-managed and free from state interference. The involvement of third parties to assist in family creation and, more importantly, the transfer of the care of children from the one set of parents to another obligates the state to seriously consider the welfare of those involved. For example, in considering adoption of a child resulting from unplanned pregnancy here in Queensland (general children's adoption) or for a child from another country where the birth parents are unable to parent or are deceased (intercountry adoption), one of the most important principles employed is *'the best interests of the child'*. Past adoption practice indicates that the desire to have children is highly charged emotionally, and as a community we can very easily find that our compassionate desire to meet this need might take precedence over the *'best interests of the child'*.

3. We may well question how this 'best interests' principle can be applied to the *creation* of a child in order to meet the perceived or real needs of adults, particularly as Queensland now recognises that 'adoption is a service for children, not a service for adults'. Queensland's *General Children's Adoption Program Information Booklet* provides details on eligibility and assessment processes for potential adopters. (It can be found at the website <http://www/childsafety.qld.gov.au/adoption/documents/adopt-eoi-kit-general.pdf> Appendix B reference 42 in the "Issues Paper"). Perhaps, while not totally transferable to altruistic surrogacy, some of these eligibility and assessment issues may be applicable to surrogacy; e.g., health issues, where it is reasonable to expect that the illness causing the infertility of the commissioning parent/s may preclude parenting beyond early childhood. The Background Paper has clearly highlighted the need to prevent the use of surrogacy as a form of private adoption by stealth. There seems to be a sufficient number of potential factors that may affect the best interests of the child in some surrogacy arrangements to justify regulation.
4. Issues of government intervention and the right to privacy for those who are able to create a family without the use of Assisted Reproductive Technology or surrogacy are no doubt minimal if not non-existent; therefore the issue of how far a government should legislate and regulate with respect to Altruistic Surrogacy arrangements are issues for considerable discussion and sensitive application. Does the government become involved and work with the principle of 'best interests of the child', or is the basis of decision making to be around the needs of the adults? Is there a way of juggling those two principles? If the government takes a completely hands-off position, apart from insisting on altruistic as opposed to commercial surrogacy, it is hard to see whether this approach in itself will be sufficient to define, let alone ensure, the respective legal and ethical responsibilities of all parties involved—the surrogate and her family, the so-called commissioning parents and their families, gamete donors, the professionals and the government.
5. Thankfully, commercial surrogacy is not in the terms of reference and not being considered; it is rightly perceived as commodifying babies and parenting and is fraught with all manner of negative implications for those involved, including the possibility of protracted court cases to enforce contractual rights.

Identity/Issues/The Right to Know

6. Article 8 of the United Nations' *Convention on the Rights of the Child*, states the *need to preserve the identity of a child including nationality, name and family relations*. Over the years, Jigsaw Queensland has observed how important identity issues are for many who phone in or attend our support groups. This is particularly so for those clients who have been the object of family secrets. Identity issues in surrogacy are probably even more complicated, as the child may well have three 'mothers': a social mother (the so-called commissioning parent); a birth mother to whom the child has been connected throughout the pregnancy (she may or /may not be connected genetically to the child); a genetic mother whose gametes have been used for the creation of the child. While it seems that commissioning parents may be extremely grateful to, and develop an attachment to and relationship with, the birth mother during the pregnancy and subsequently the child's life, the question of identity for the resulting child/adult may ultimately reach beyond the birth mother to the mother with whom there is a genetic connection and, thus, to issues of heredity, including not only health, talents and mannerisms, but also self-image. The child/adult will also have an extended family of biological and non-biological relatives. Where the commissioning parents have no genetic connection to the child, i.e., where the commissioning father is not also the 'donor', identity issues may be further complicated for the child/adult.

7. From the point of view of the adoption experience in recent times, and as evidenced by the changes made to legislation in the early 1990's here in Queensland, it would be reasonable to assume that, at the *very least*, a child/adult produced through the process of altruistic surrogacy ought to be entitled to as much detailed information as possible from any donor involved about medical issues, personality, talents and birth family culture. As we have observed in the case of those adopted people in Queensland who have faced an 'Objection' to the release of *identifying* information about the birth parent/s, access to *non-identifying* information alone has proven less than satisfactory. In effect, such secrecy fosters a residual stigma of illegitimacy; it has merely moved from the moral to the informational sphere. Contrary to the position of the present government, Jigsaw Queensland believes that it is legitimate for all people by right to know how they were born, how they came to be in the family they are in, and who they are related to. According to today's community standards, can there be any justification for claiming otherwise? A small number of individuals may be unhappy with this; however, the government response ought to be one of practical emotional support for these few, not legislative censure of the many.

8. As well as receiving information, many individuals will have a natural desire to put a face to the person from whom they have been produced. Being able to do so provides those in the community who have been raised in their genetic family with benefits (sometimes arguable) that they have been able to take for granted; e.g., maybe simply looking like someone else in the family, sharing interests and perhaps talents.
9. While governments cannot be a repository of all personal information, this perhaps is one instance where some form of agency or registering body may be the fairest way to ensure that information is retained in a fair and clear format for the child/adult to access. There is no guarantee that the commissioning parents' circumstances will not change considerably or even drastically throughout the child/adult's life, precluding the accessing of information directly from the commissioning parents, e.g. divorce or death of parents.
10. From our historical experience with adoption, we are able to identify that the promise of secrecy for those involved at the time of an adoption sometimes results in the distorting of facts about the circumstances surrounding the adoption and about the birth parents. Hence, it would be reasonable to assume that openness in relation to genetic identity for the child/adult of the commissioning parent would be highly desirable. To what extent and at what stage this heredity knowledge would be provided to a child is open to further discussion. There are issues of child psychological development here that are important. If our legislators were able to assume that *all*, not *most*, commissioning parents were able to be fair and reasonable and hold to the 'best interests of the child' principle balanced with a right to identity as per the *Convention on the Rights of the Child*, there would be little need for government intervention in this issue. Practical experience tells us, however, that many parents find it hard to do the right thing and could benefit from enlightened help and support. At the very least, it would be desirable for commissioning parents to be educated on the potential need of the child/adult to fill in their identity blanks. Knowing that their child has the right to access the truth at a later date will discourage secrecy; at the same time, it will maintain the rights of the parents to provide that information to their child at the time and manner that they deem appropriate.
11. Jigsaw Queensland supports the idea that the current systems of registering birth ought to be supplemented by enabling the registration of document, *an original birth certificate* (sometimes referred to as a 'third document'), which would include pre-and post-adoption information. *The Report: Public Consultation on Review of the Adoption of Children Act 1964* (April 2003, p. 59) reported that 85% of questionnaire respondents supported the provision of such a document in the case of adoption. We believe that such a document would also encourage and validate

openness and honesty where there is a birth by surrogacy. Surrogacy and adoption are unlikely to be the only areas that would benefit from such a document.

Severing the relationship between a child and birth mother

12. Over the years, Jigsaw Queensland has provided considerable support to birth parents who have relinquished a child for adoption. The loss of connection to a genetic relation has been one important issue but, from our experience, the severing of a relationship that began *in utero* for the child and the birth mother itself may also have profound effects for the parties concerned. It is unlikely that these effects will always be fully anticipated nor understood at the time when a woman agrees to bear a child for another. Child-bearing itself is important to both the mother and the child. This is perhaps one reason why, although adoptees are genetically connected to both their birth mother and their birth father, if forced to make a choice, the majority express a desire to connect with the mother (Nancy Verrier, *The Primal Wound*, 1999, p. 18). Some degree of prenatal bonding and attachment to a child during gestation would, one assumes, be a vital component of a healthy pregnancy.

Problems obtaining fully *informed* consent

13. It is unlikely that fully informed consent can be given to an altruistic surrogacy arrangement without the provision of *adequate pre-surrogacy support services*. Such support services would need to fully inform clients of potential core psychological issues--such as the 'seven core issues' of grief, loss, intimacy, control, shame and guilt, rejections, and identity--that ought to be adequately addressed, if not resolved, before consent is given.

14. The altruistic nature of the proposed surrogacy also raises its own subtle pressures that can influence decision-making; for example, a pressure to be giving can induce corresponding feelings of shame or guilt if one refuses to help another, *particularly* if that other is a sibling in need.

15. It would be prudent if at least some proportion of such pre-surrogacy support services were provided to intending surrogate mothers independently from the services provide to the commissioning parents.

16. In Jigsaw's experience, many the so-called 'seven core issues' can arise at a much latter date. The provision of *post-surrogacy support services* would, therefore, appear to be an important and responsible legislative consideration accompanying any decriminalisation of surrogacy.