

STANDING COMMITTEE ON LAW AND JUSTICE
Inquiry into legislation on altruistic surrogacy in NSW

QUESTIONS ON NOTICE
(Remaining from the questions sent pre-hearing)

St Mark's National Theological Centre

Wellbeing of surrogate mothers

1. In your chapter (p 152) you state that a slightly disproportionate number of surrogates have previously had abortions or relinquished a child for adoption and deal with their feeling of guilt or remorse by acting as a surrogate. Can you elaborate on this and direct the Committee to the studies that demonstrate this point?

Wellbeing of surrogate children

2. The Committee has been directed to evidence that suggests surrogate children born through the use of assisted reproductive technology, including through surrogacy arrangements are no different to children conceived naturally, in terms of their psychological wellbeing. Would you like to comment on this issue?
3. Can you direct the Committee to any other studies you may know of that address whether or not being born through a surrogate arrangement harms children?

Criteria to meet before entering into an altruistic surrogacy arrangement

4. In your chapter (p 166) you state that surrogacies that have been permitted outside legally married heterosexual couples have been less than successful. Could you elaborate on this? Can you provide any examples or direct the Committee to any studies that demonstrate this point?
5. What other criteria do you think should be applied to parties seeking to enter surrogacy arrangements?

Ethics

6. Some submissions to this inquiry have suggested that surrogacy arrangements put the rights of the adults involved above the rights of the child, by simply satisfying the intending parents desire to have a child. In your view, what is the difference, if any, between surrogacy arrangements and traditional conception and birth in terms of being instigated by the desire of adults to have children?

Other

7. Some countries such as India allow commercial surrogacy, and Australians have been known to travel to these places to enter into commercial surrogacy arrangements. Is there a danger of this practice increasing if altruistic surrogacy is overly regulated in Australian jurisdictions?

8. In your chapter (p 164) you suggest that surrogacy 'must be deemed a last response to infertility that should be pursued only in extreme circumstances.' Could you describe what those circumstances might be, where you would view surrogacy as being acceptable?

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ANSWERS TO QUESTIONS ON NOTICE

PROFESSOR TOM FRAME
St Mark's National Theological Centre

1. As I explained to the Committee when giving evidence, the material gathered in the preparation of my book *Children in Demand* is stored in my house at St Georges Basin on the NSW south coast. I have still not been able to travel to that house and recover the material. I am afraid that my answer to this question must remain incomplete. I would refer the Committee to the references contained in my book for further leads, including some studies published on the internet. A copy of all the references is enclosed.

2. I believe it is too early to conclude with any conviction that children are or are not affected in some demonstrable way by surrogacy. I believe that some longitudinal studies are required before such conclusions can be made and that Australian legislation remain attentive to studies conducted overseas where surrogacy has been conducted for a longer period and studies have focussed on a larger sample group. In Australia, there are too few children born via surrogacy for any contemporary study to claim reliability.

3. My answer to this question is, I am afraid, the same as that for question 1.

4. Heterosexual couples living together in a legally recognised and supported relationship provide the most stable environment for the nurture of children. Therefore, these relationships are to be preferred for the long-term care of children if any choice is to be exercised. If surrogacy is to be permitted, those entering into a surrogacy arrangement should be in such a relationship because surrogacy does place great strain on relationships and the married heterosexual couple are most likely to withstand such strain. As there have been relatively few successful surrogacies in Australia, and even fewer not involving married heterosexual couple, I am not able to offer the Committee a firm conclusion on this matter. I would rather that surrogacy be restricted to married heterosexual couples simply because their relationship is the most likely to survive the stresses of being party to a surrogacy arrangement.

5. As I advised the Committee, I believe the guidelines currently in use in the ACT are adequate for the regulation of surrogacy although the prohibition on any commercial element to the arrangement might be better explained in terms of what constitutes a 'commercial' element.

6. I believe that I covered this question in my evidence. In brief: surrogacy requires state intervention; surrogacy produces more complicated parenting arrangements than those "allowed" by nature; surrogacy is a more demanding parenting arrangement; children do not need to be born; the state is entitled to exercise

some discretion if it is required to participate in the conception and birth of children. I believe the fact of state involvement and the participation of third parties makes the situation quite different to “natural” parenting.

7. Australians couples could travel overseas to arrange surrogacy if the local regulations were too rigorous or restrictive. However, I believe the incidence and likelihood of this possibility should not preclude a strict regulatory framework if that is what the Committee believes is necessary for its conduct in this country.

8. In brief, my opposition to surrogacy is least when: the couple cannot conceive “naturally” and this is confirmed by a medical practitioner; the woman cannot complete a pregnancy without endangering her health and well-being; when a suitable surrogate has been identified (and conforms with the extant ACT guidelines); when the commissioning couple provide the egg and sperm; and, when consent is informed and freely given by all parties.

TR Frame

28 November 2008