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LAW & JUSTICE

Ms Rachel Callinan
Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY N.S.W. 2000

Dear Ms Callinan,

Inquiry into legislation on altruistic surrogacy in NSW

Further to your letter of 20 March 2009, please find enclosed the transcript with a few amendments. There is one section which I believe needs to be changed because it gives an incorrect impression of fact. On page 42, it appears as if I am saying that Canberra Fertility treats surrogacy situations where there is no previous relationship, which I do not believe is correct. Could the transcript be changed to:

“...and said so in my report. In adding to that question, Canberra Fertility have a requirement – again I do not think it is an enforceable one - ...”

REMAINING QUESTIONS FROM HEARING

Psychological assessments required by ART clinics

1. These criteria were developed by Canberra Fertility and Sydney IVF clinics as part of their assessment. They are not based on NHMRC guidelines, but because these two clinics have done the most surrogacy treatment, they could be taken to be industry guidelines.

2. The “in-clinic” counselling is more information and support counselling, than psychological assessment counselling. The “in-clinic” counsellor acts as a co-ordinator of surrogacy treatment. The clinic counsellor would usually have contact with parties to a surrogacy proposal at the preliminary stage when they first contact the clinic, and I understand that they do a lot of first line contact with people who may think that surrogacy is a small next step, but whose situation does not fit the guidelines. I understand that there are many more people making an initial contact about surrogacy treatment than would get to first base at the clinic. The clinic counsellor would give information and support, but then refers the those involved in a surrogacy proposal to an independent counsellor for the assessment when they have been initially reviewed by the medical practitioner. The “in-clinic” counsellor also provides counselling support during and after surrogacy treatment at the clinic.

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Assessment counselling is distinctly different in that it is a formal structured counselling process which is used to gather relevant information about the functioning and motivation of all involved in the surrogacy proposal. The assessment process includes a structured clinical interview of all involved, and the use of an objective measure of psychopathology as part of the screening process before surrogacy, as well as formal consideration of all the issues required to be considered as part of the psychological assessment.

- There is potential for a conflict of interest if an ART clinic routinely refers surrogacy parties to a particular counsellor for 'independent' assessment. This potential conflict of interest would be not dissimilar to many professions where an independent assessment or opinion is requested. Also given the level of expertise in such a specialised area as ART there are very few counsellors available to conduct such assessments. Further if the psychological assessment were conducted by an in-clinic counsellor there would potentially be greater conflict of interest.
- Given the current requirement by clinics that there is a pre-existing relationship between the parties to a surrogacy proposal I do not believe that there would be benefit in the proposed intending parents and birth parents receiving counselling from separate counsellors. The psychological assessment process includes separate couple, individual and group counselling sessions which allows for the exploration of individual issues, and there are a number of group issues which would be more difficult to explore in depth if this were being done by separate counsellors.
- If however legislation were to permit brokerage by ART clinics, and possible future surrogates and intending parents were not to have a prior relationship then there could be an argument for separate counsellors. This situation is not dissimilar to that involved in the anonymous donation of gametes or embryos which is covered by the recent ART Bill. Whilst it could occur that the parties involved are seen by different counsellors there is no formal requirement that this be done.

3. An independent psychological assessment currently requires 7 – 8 hours of face to face sessions, including the completion of a personality assessment inventory, and the completion of a standard report of 4 – 5 pages. The current cost for this work as recommended by the Australian Psychological Society is \$2498. My current charge for an independent assessment is \$1700.

4. **Experiences of birth mothers**

- The relationships between the intending parents and surrogate and partner in a surrogacy proposal are complex, and usually involve many years of family or friendship history which includes the usual range of patterns which can be observed in all families. Whilst coercion (implicit or explicit) is not something which I encounter in the assessments, though it is definitely looked for, there may be a complex set of emotional needs which can underlie an offer from a woman to act as a surrogate as also there are complex emotional needs in the infertile woman and her partner. Because of the intensity of the emotional pain of infertility and the power of the need to be a parent the normal needs for the fertile surrogate can be minimised or

overlooked, albeit unconsciously, by all involved. Thus I believe that the paradoxical effect in there not being an enforceable contract gives implicit weight to the rights of the surrogate after having delivered a baby which validate her connection to the child she is preparing to relinquish. This does not mean that I have known of surrogacy birth mothers who wished to change their mind regarding relinquishment but the paradoxical effect keeps their actions focussed on the gift of life which they are giving to the intending parents, rather than being forced to relinquish the baby they have borne.

- The usual plan is for the commissioning couple/intending parents to take the baby home with them after the delivery when the surrogate leaves the hospital. It is usually planned that there will be more contact with the surrogate and the commissioning couple and baby immediately after delivery when the surrogate feels the strongest physical and emotional connection with the baby. From feedback from some clients I understand that overtime the connection between surrogate and baby diminishes and longer term the relationships between the parties to the surrogacy proposal becomes less close than during treatment, though I would estimate that it is more close than before the proposal was planned. In this context I believe that the time required before legal proceedings can commence should be within 2 – 6 weeks after delivery.
- Yes, I believe that the time before the commencement of legal proceedings should be the same whether or not the baby is the genetic material of the intending parents.

Criteria to meet before entering into an altruistic surrogacy arrangement

5. I support the establishment of a Surrogacy Review Panel, which is independent of ART clinics. I agree with legislated criteria that parties wishing to enter into surrogacy agreements must satisfy, and that each proposal based on these criteria, would be submitted to the Panel for approval before treatment.

6. I believe that the surrogate should be aged at least 25 years, medically fit for another pregnancy, and have delivered a child of her own who is still living. She should not have had a child removed from her care. The commissioning mother should be not less than 21 years of age nor older than the average age of natural menopause (50.7 years), which is the current maximum for treatment in ART generally. Neither she nor her partner should have had a child removed from their care. The commissioning couple should have been living together for at least two years.

There is a condition applied by some clinics practising surrogacy, that there is a demonstrated meaningful relationship between the surrogate and the intended parents of some duration, prior to surrogacy approval. It is believed that this helps ensure the true altruistic nature of the proposal as well as the best protection for all parties going forward, particularly as there has been no legal protection for surrogacy arrangements in NSW. This condition may change if legislation were to permit brokerage by ART clinics.

7. I believe that the surrogate should not be permitted to act as a surrogate for a large number of times, as has been reported as occurring overseas. For me surrogacy is not a woman acting as an incubator, but a woman giving the gift of life to a child who would not otherwise be born. It is about transparency and long term relationships of all, including a

child born through surrogacy treatment. Thus whilst I do not believe that surrogacy should be restricted to once only, I believe it should be limited. The power to decide on limits could be given to the independent Surrogacy Review Panel, which would also make a decision if there were to be a proposal by a surrogate to act as a surrogate for more than one commissioning couple.

Legal Parentage

8. Transfer of legal parentage is extremely important to all involved in the surrogacy proposals with which I have been involved. As I mentioned in my submission under Issue e., currently there are difficulties for the intended parents of a baby born through surrogacy in not being able to put the baby's name on their Medicare card (hence difficulties with medical treatment such as immunisation) or obtain a passport, or sign documents such as those required by child care centres, or schools. The importance of a quick efficient transfer of legal parentage has been expressed to me by both commissioning couples/intended parents and surrogates and their husbands/partners.

9. In my opinion the pre surrogacy assessment processes, as now implemented by the ART clinics which are undertaking altruistic surrogacy, are rigorous enough assessments before treatment. Whilst I do not believe that further psychosocial assessment is necessary after delivery, I do believe that supportive and implications counselling is indicated during and pregnancy and after delivery. Thus I would recommend the post surrogacy treatment counselling protocol of Canberra Fertility, which requires counselling sessions once in each trimester, and once after delivery of a baby born through surrogacy treatment. This support and implications counselling can then be used as the basis for a report to be used in court proceedings.

Yours faithfully,



Miranda Montrone

Psychologist

PS 0015921

HIC Provider No 2612571B

April 2, 2009

Enc Report of Standing Committee on Law and Justice Wednesday 18 March 2009