

**Can you describe the role of TangledWebs and its interest in the issue of surrogacy?**

TangledWebs started off as an informal group of mostly donor conceived adults from Australia and internationally, we felt that we needed to be able to share with each other within a group views that at the time were completely unacceptable for discussion within the wider donor conception community. For the most part our focus has been on traditional forms of donor conception, specifically the use of donor sperm. But as time has gone on we've had to begin to consider the practices of using donor eggs and embryos as well as surrogacy. We think all the ART practices involving the use of donor gametes share pretty much the same issues so our concerns extend to surrogacy for that reason.

**Does TangledWebs include any surrogate children within its membership?**

Not at the moment. Membership to Tangledwebs is open to anyone who is concerned about ART practices so membership is certainly open to anyone conceived via surrogacy should they wish to join. Given that as far as we know there have only been very few surrogacy cases in Australia and the majority of these children are very young I think it'll be some time before we start to see them speaking out.

**Your submission states that TangledWebs 'unconditionally opposes all forms of surrogacy'.**

- **Can you tell us why your organisation holds this view?**
- **What detrimental effects could surrogacy have for children?**

As a group we all share the same position but different members of the group have different ways of explaining this depending on their experience. My personal reasoning stems from the primary position that we as human beings all have a mother and a father. Whether we would like it to be the case or not we are still constrained by the limits of our biology when it comes to reproduction. It has been and for the most part still is the case particularly within the practices of adoption, foster care and *our family court system that we only remove children from their families of origin when it is absolutely necessary to do so in order to provide for their best interests and well being.* In Victoria for example a court has to be satisfied that the interests of the child will be served by their being adopted. I personally find it really hard to reconcile what I see as current best practice in *protecting the interests of children to be parented by their genetic parents with practices such as donor conception and surrogacy where the decision is made to separate a child from their genetic family before that child is even conceived.*

So the first major issue as I see it is the intentional separation of the child from one or both of it's genetic parents without that separation being necessary for the child's wellbeing. I think the onus is on those regulating and providing these services to prove that it is in the best interests of a person to be conceived via

surrogacy or donor conception, I definitely don't think that burden has been discharged. The focus is instead still very much on meeting the needs of prospective parents.

The second issue is that where as a result of the surrogacy arrangement the parental relationships to the child are fractured, in surrogacy this can occur in a number of ways. There can be a genetic mother, a gestational mother and a legal mother and then also a genetic father and a legal father. So for example I personally have a genetic father and a legal father my paternity was split into two. The problem with this lies in how within the ART community we view each of those people. If for example the child is not going to be raised by their genetic parents then the attitude is invariably that the genetic parents don't matter and what is more important is that the child receives love and a stable family environment. But with gestational surrogacy the attitude is reversed and it's the genetic parents who are considered to be the most important to the child and the legal parents which is the surrogate and her partner are seen as a legal impediment to that child belonging to it's natural family. It's crazy. We decide before this child is even conceived who it's parents are going to be on a basis of who WANTS to be the parent, not who actually IS the parent. And we give little regard to the fact that this child when it matures may have a very different view of who it considers its parents to be. Which was the case for me.

### **Government regulation of altruistic surrogacy**

#### **5. Do you think the NSW Government should play any role in regulating altruistic surrogacy?**

I think regulation is a double edged sword. The danger in legislating to regulate this practice is that it appears in doing so the government is sanctioning the practice as a legitimate choice and also I think ultimately as has been proven historically that once this happens even if it's permitted only in limited circumstances the door is then open for future reform and ultimately wider availability. I think that ART procedures should always only be accessed as a last resort but I think instead we are tending to move towards a system like the US where it is becoming more about reproductive choice and once that happens there tends to be very little consideration for the effects of these practices on the person created.

The danger in not regulating though of course is that then there is no guidelines for how to deal with the issues which arise when people go ahead and utilise surrogacy anyway. Amongst other things, of concern is the fact that the birth certificate does not reflect the real truth of that child's parentage. However I think these types of issues can be overcome without necessarily sanctioning and appearing to legitimise surrogacy.

I can explain my thoughts on this further when I answer the question about legal parentage.

## **Criteria to meet before entering into an altruistic surrogacy arrangement**

**6. If the Government did act to regulate altruistic surrogacy do you have any comment to make about the criteria that might be applied before a surrogacy arrangement can be entered into, for example, that the birth mother be a certain age?**

Yes, I think the surrogate should be required to have had her own children before being allowed to act as a surrogate and that she should also be of a level of maturity where she understands exactly what it is she will be doing. I don't think partial surrogacy should be permitted, where she gives up her own biological child.

## **Legal parentage**

**7. Currently in NSW, birth mothers and their partners are legally recognised as the parents of a child born through a surrogacy arrangement and intending parents must pursue adoption to become legally recognised as the parents.**

- Some people argue that a mechanism to recognise the intending parents as the legal parents should be put in place, what do you think of this proposal?**
- Are your views the same in the situation where the intending parents are also the genetic parents and the birth mother has no genetic link at all to the child?**

I'm guessing by legal mechanism this would work like a presumption that where surrogacy is used the intended parents are the legal parents? Is that what is being suggested? I've thought about this particular issue quite a lot and I plan on making it a focus of my legal studies later on. I think presumptions as to the legal status of children related to ART procedures are in fact the main cause of a lot of the problems that end up being brought to committees like this for consideration. I think that parliament made a mistake when they first decided to treat children conceived via donor sperm no differently to children conceived naturally by presuming that the man married to the mother was the father and I think this is why we've ended up with the tangle of issues that we have. I think something similar to the adoption system is much more appropriate. Where in the first instance the genetic parents are the legal parents of the child and then legal parentage is transferred to the intended parents when the child is born. I think there are many advantages in doing this.

The first is which is particularly relevant to this enquiry is that where gestational

surrogacy is used you don't then need to worry about the genetic parents having to adopt their own child, I still think there needs to be some provision and recognition of the surrogate mothers involvement I think also a cooling off period is necessary but she and her partner would no longer be presumed to be the legal parents. I don't think it makes sense that the surrogate and her partner should be presumed to be the parents when they are not related to the child. Secondly I think such a system is vitally important in going some way to protecting the best interests of the child. If legal parentage is transferred from the genetic parents to the intended parents via a formal process then this transfer is recorded and the birth certification can reflect the truth of what took place and that child's parentage genetic, gestational and legal. This is much better than the current system of presumptions which I think is no longer able to cope with increasing complexity of family types that the law has to grapple with.

### **Rights of child to access genetic information**

**8. Do you think that surrogate children should have the right to access information about their genetic parentage?**

**9. Do you have any views as to how this information should be stored and accessed?**

Yes, absolutely. I don't think there should be any question that they have a right to access information about their own identity and parentage. I think NSW can look to Victoria and it's system of central registers as an example of how to achieve this eg. how the information should be stored and accessed.

### **Surrogacy legislation in other jurisdictions**

**10. Do you have any comment to make about surrogacy legislation states other than NSW such as Victoria's *Assisted Reproductive Treatment Act 2008*?**

I was opposed to the legalisation of surrogacy in Victoria and I disagree with the governments assessment that surrogacy was already legal and that they were merely regulating it. I think a lot of the provisions in the new ART bill were poorly considered and I don't think there was enough consultation in the reform process with stakeholders. I think this became abundantly clear when it came time for the bill to pass through parliament.

**11. Do you have any comment to make about the possibility and**

**desirability of working towards national consistency in legislation dealing with surrogacy?**

Yes, I think it is desirable to have national consistency in the laws regulating ART practices, I think it is very necessary to eliminate people going to another state for treatment *if the laws there are more lenient.*

**Ms SYLVIA HALE:** As I understand it from a very brief scan of your article, one of the things that concerns you is the feeling that you do not belong to any particular family, that you have connections with one grouping and yet another. Would you not agree, particularly in today's culture, that this is a very common experience for children as families—the original family divide, divorce, separate and the parents remarry and the children then obviously enter into blended families and have fairly complex relationships with other people? Would you say that this is an aspect of contemporary life and it is not just a problem for donor-conceived children?

**Ms WALKER:** I know what you are saying. I get asked that question quite a lot. I am also a member of a step-family. I have to say that it is very, very different. The dynamics are very, very different.

**Ms SYLVIA HALE:** What makes them different?

**Ms WALKER:** I think mainly because of infertility. You are dealing with a lot of sensitivity and subjects that are quite often taboo, not often talked about. I do not, for example, know, or I did not know too many other people who had been conceived like I was, so it was an isolating experience to be donor conceived. For a person conceived by surrogacy, that is going to occur much less frequently. It is very difficult to articulate and I do not know if I can do it justice over the phone. I can certainly take it on notice and attempt to outline it a little more clearly for you.

I agree it is common in Australia today that it is common for children to be raised within blended families (although it is not the majority experience, 73% of Australia's families are intact couple families in which the children are the children of both parents and there are no step children - Family Characteristics and Transitions, Australia, 2006-07 ABS).

But regardless whether or not children are raised within complex family constructs is immaterial to the issue of surrogacy because the question we need to be asking is whether it is in fact desirable to be deliberately creating a child who will face that complexity of relationships, as you say it is a "problem", should we be intentionally creating that problem?

The intentional nature of the decision making process of ART/Surrogacy is exactly what differentiates it from other complex family structures that occur as a result of life events, relationship breakdown etc.

The parents get to create their much wanted child but with the catch 22 that the child\* will not be raised by one or both of it's genetic parents.

I can appreciate that it is hard for most to understand the lifelong consequences of this decision for the child because for the most part they are emotional, invisible and often not expressed and/or understood until adulthood.

If it was (hypothetically) the case instead that parents could conceive their own genetic children using ART but on the condition that their child would have to be born without the use of their legs, I imagine (hope!) the community and governments would be able to appreciate much more readily the problem with the ethics of facilitating the practice of ART. And that would be because we can very easily empathise with the difficulty of trying to make it through life without the use of our

legs. The detriment to the child in such a case is obvious. And so whilst we might want to be able to help people to have their own children we probably wouldn't be so willing to do so where the cost of doing so was clearly significant. It would not be considered in the best interests of the child.

My parents made a choice which meant I was to be denied the ability to know my own paternal family and half siblings, I was legally and socially separated from them. I don't think I have ever been able to adequately articulate how this makes me feel, at least not in a way that someone who has not lived the experience of separation from family could understand. My Dad is still infertile, I am not and never will be his biological daughter, that is a source of great pain and loss for both of us. On the flip side is the pain relating to the loss of relationships with my biological father and family members. Even though I do now know my biological father and three of my half siblings and feel overwhelming fortunate to know them, these relationships are often strained and fraught with sensitivities. We *are* strangers and yet we have the same facial features, tone of voice and share many similar interests. I can tell myself as many times as I want that my family structure is what is normal for me, but a very innate part of me feels out of kilter and tells me that it is not. My husband and I are expecting our first child in September and being pregnant has brought with it a whole new set of issues: feeling guilt that we could conceive when Mum and Dad couldn't, knowing that my Dad once again is faced the reality of his infertility, gratitude that my child will know and be raised by it's biological parents and won't share the issues I face but yet sadness in knowing there are aunties/uncles and cousins out there somewhere who will never know my child, their new family member.

I would not choose to be donor conceived. I would not choose to be conceived/born using a surrogate. No one would choose to use donors and surrogates if they could conceive naturally, we understand that having to do so is less than ideal. That being the case I don't think we are in a position to say that it is in the best interests of the child to conceive them using a donor and/or surrogate.

\*With the exception of cases where the surrogate only gestates the child and is not biologically related to the child.