

1st DEC

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

POSSIBLE QUESTIONS

David and Denise Norman  
Submission 18

Tabled by :  
Mr David  
Norman  
5/11/08 .  
KM .

1. Would you like to make an opening statement?

We would like to thank the committee for taking the time to look into the laws related to surrogacy, and to thank our local member Lylea McMahon for her assistance in trying to help us to see the laws reviewed. We need to point out that our experience was having surrogacy performed through Canberra IVF, since our surrogacy application to Sydney IVF was rejected. So although legally Emily was born in NSW and most of the processes were done under NSW law, some of our experiences may not apply to those who have had surrogacy arrangements and the full process conducted in NSW.

Government regulation of altruistic surrogacy

2. Do you believe that Government regulation could play a role in improving the experience of parties wishing to enter into surrogacy arrangements? If so, what issues should be addressed?

There are three main issues I think regulation could assist:

- Standardising the legal reports required of someone entering a surrogacy agreement. At the moment each time someone wants to start a surrogacy they have to seek legal advice, and get a legal report completed for inclusion with the surrogacy application. This means in effect the wheel is being re-invented each time, at a great cost to each applicant.
- Streamlining the "handover" of the child from a legal perspective. At the moment we have to apply to the family Law court for a parenting order, followed much later by an application for adoption. We believe the birth mother should be able to sign over to the commissioning parents immediately after the birth or at worst after a specified cooling off period of up to a few weeks.
- Recognition of both the birth parents and the genetic parents on the birth certificate.

Legal status of altruistic surrogacy arrangements

3. What is your view on the fact that surrogacy agreements are not legally enforceable?

~~This is probably the most difficult area. While we can see that there is some merit in having the agreements "non-binding", it is our belief that the agreements should hold a legal binding for two reasons:~~

- All parties have gone through a rigorous vetting process to determine the success of the application for surrogacy, and therefore all should be well aware of their obligations;

- There is a massive cost to the commissioning parents in undertaking the process, all of which would be forfeited if the "contract" is broken and the surrogate is unwilling to hand over the child; and
- The legal reports and legal counselling required as part of the process seems pointless if the documents aren't worth the paper they're written on.

#### Existing requirements and guidelines relevant to surrogacy arrangements

4. In your submission (p 1) you mention making applications to both the NSW Ethics Committee and Canberra IVF. Could you describe in more detail what those application processes involved?

The application to NSW Ethics Committee was actually done through Sydney IVF, via our local doctor from Sydney IVF Dr James. The application was made on our behalf, so we don't know details of the application, only that Dr James told us our application had been rejected.

The Canberra IVF process was very sophisticated, they even have a booklet to guide you through the process. It involved an initial application letter, followed by a formal application including (1) an independent gynaecological report on both the commissioning mother and the surrogate; (2) an appointment and report from a clinical psychologist who had to interview all parties including any children aged over 4; (3) an independent legal report on the surrogacy laws as they apply in NSW; and (4) a stat dec that the surrogacy agreement would be altruistic. This application had to be accompanied by an application fee of \$3500, with no refund if the application was unsuccessful. There were also interviews with Canberra IVF doctors, nurses and staff.

5. Can you describe the differences between guidelines in NSW and the ACT that lead to your application being rejected by the NSW Ethics Committee and accepted by Canberra IVF?

The main difference seems to be that Sydney IVF's ethics committee deemed that as Denise had suffered 3 miscarriages, Denise could technically <sup>be pregnant</sup> carry a child. However Canberra recognised that after 21 assisted reproduction attempts without an embryo making it past 6 weeks that Denise was unable to have a child of her own. *Sydney IVF Ethics seemed to have the view "if you have a womb you can have a child"*

6. In your submission (p 1) you mention having to pay many thousands of dollars during the surrogacy process, with more to come in the adoption process. Could you explain in a little more detail the costs involved?

#### Amounts already incurred:

\$3500 application fee to Canberra IVF  
 \$9100 to Canberra IVF for fertility treatment/transfer etc  
 \$1000 Miscellaneous pathology, radiography, egg freezing etc  
 \$1500 Clinical Psychologist Fees  
 \$3300 Legal fees (pre surrogacy agreement)  
 \$2900 Legal fees (parenting order)  
 \$800 Legal Fees (Surrogate's solicitor)  
 Total \$22,100

#### Other costs and yet to be incurred:

\$7500 (approx) Barb wages for time off work  
 \$7000-\$8000 estimate of legal fees for adoption

*No medical procedures  
 claimable via MEDICARE  
 OR HEALTH FUND*

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

7. Can you describe the counselling and assessment process you underwent?

**As part of the application process we underwent assessment by an independent clinical psychologist, as well as assessment by counsellors and doctors from Canberra IVF. Once the arrangement was approved we underwent further counselling, which continued through the pregnancy and included post birth sessions for all parties and separate sessions for the surrogate.**

8. Do you think this counselling and assessment process could be improved?

**From Denise's and my perspective we felt that there were probably too many sessions than were needed, but I can't say whether the surrogate thought the same. In our minds we were completely prepared for all outcomes and probably didn't need as much counselling as was required, but generally it seemed OK.**

9. Having experienced surrogacy, what do you think are the most important criteria that should be met by people wishing to enter into a surrogacy arrangement?

**Anyone who is prepared to go through what we have had to, or even a streamlined process which might result from this enquiry has clearly satisfied the most important criteria of all – they are prepared to do whatever it takes to have a child, and they will love that child with every ounce of their being. I don't know how you can prove that parents will love a child before that child is even conceived, if you can find a test use it.**

### **Parental status**

10. In your submission (p 1) you express the view that the birth certificate of a child born through a surrogacy arrangement should ideally record the names of both the surrogate parents and the genetic parents. Could you explain why you think this is the ideal situation?

**There are genealogy implications to NOT having the genetic parents appear. In a few generations someone checking their family history, or more significantly someone trying to trace a genetic link to a disease will head up a completely wrong path if they were relying simply on the birth certificate for Emily. For this reason alone it is imperative that the child's genetic parents should be recorded. However the surrogate and her partner played a significant role and should also be recognised on the birth certificate. It is my understanding that in the ACT both are shown, and this makes sense. What makes NO sense is that the child's genetic history is being incorrectly omitted from the record.**

**Having both on the birth certificate would circumvent a lot of the administrative problems we experienced following the birth. Medicare cards, registering the birth, health funds, Centrelink, etc all required some sort of record which we didn't have until we were able to obtain the parenting order from the Family Law Court. In theory until we had the parenting order, if Emily was sick and needed an operation it would have been the surrogate who needed to approve the procedure, not us!**

11. Can you describe the process you went through to apply to the Family Court for a parenting order, and what rights a parenting order bestows on the intending parents in a surrogacy arrangement?

**A parenting order applies legal guardianship on us. Through our solicitors an application for a parenting order was made, with documents supporting the application supplied by the surrogate and her partner, and we attended the Family Law Courts in Sydney where the matter was heard and the order made. Our solicitors also applied for Emily's surname to be changed to ours which was also approved by the judge. Most of the work for the application was done by our solicitors (at considerable expense) but we had to attend and there was no guarantee our application would not be rejected**

12. Can you describe the impact on your family of not being able to adopt Emily until she is at least 6 years old?

**On a day-to-day basis there is little impact, however it is still something that hangs over us – that at any time we may be denied the legal right to our own child. We think it's crazy enough that we are forced to adopt a child which, were we to abandon in the street and have a DNA test to claim her afterwards, would be deemed to be our child. But when DoCS have a policy whereby we can't apply for a section 21? Certificate which our solicitors tell us is "not essential but might as well be", until Emily is basically old enough to decide whether she wants to stay with us is emotionally upsetting. Knowing that DoCS will be required to come and assess our home, our lives, have us fingerprinted and cross referenced on criminal records is not threatening to us because we know there are no problems, it just seems unjust, and a waste of time for an already overstretched authority whose time could be better spent.**

#### **Ethics**

13. Some submissions to this inquiry have suggested that surrogacy arrangements put the rights of the adults involved above the rights of the child, by satisfying the intending parents desire to have a child. Can you comment on this view?

**This is a nonsensical argument. If there is no child (ie the surrogacy arrangement has not been allowed) there is no child to have rights for. Once there is a child (or even an embryo) all the processes which currently exist, even those in an improved system are or would be set up to ensure the rights of the child have priority.**

#### **Wellbeing of surrogate children**

14. Some submissions to the inquiry have raised concerns that surrogate children might suffer psychologically by virtue of being born through a surrogacy arrangement? Would you like to comment on this perception??

**Again this is a nonsense. We saw similar arguments with IVF, I remember the lyrics to "Computer Games" a song by Mi Sex in the 80s which said *"and what will happen to the families, when the day comes when a child discovers that one of its parents was a test tube"* these are the types of arguments put forward by people using any form of scaremongering to support their (often religious based) ideologies. I may be**

presumptuous, but I believe that people who have waited 5-10 years, spent tens of thousands of dollars, been through multiple disappointments and miscarriages would be more likely to bring a child of their own up in a caring loving and nurturing environment than just about any other parents on this earth. If that leads to psychological problems for the child then all our children are doomed.

15. What is your view on children born through a surrogate arrangement being told of the nature of their conception and birth?

We were always of the understanding all the way through the process that Emily would be told and we believe she should be told once she is old enough to understand. I'm pretty certain it was actually a requirement of the process being approved but I might be wrong. Either way I think it is essential, because I believe in being honest with your kids. We have nothing to hide, we have done nothing illegal or immoral, and in fact it is something that we are proud of and extremely grateful to the surrogate for allowing us the opportunity, and we hope Emily will grow up to be proud both of her birth significance, and that her parents were sufficiently loved by someone that that someone was prepared to do what Bard did for us.

#### Closing Statement

Thank you again for hearing our perspective. I hope the changes you make to the laws will incorporate our opinions, and importantly some retrospectivity is included, especially with regard to the birth certificate problem.

If we could leave you with one main thought it is this...

We understand that the laws related to surrogacy are controversial, but please remember that much as you might like to, and we might want you to, you cannot legislate to prevent inappropriate people from procreating... but you do have the power to make it difficult, or even impossible, for very appropriate people from having children.