Submission
No 35

INQUIRY INTO LEGISLATION ON ALTRUISTIC SURROGACY IN NSW

Organisation: Swinburne University of Technology

Name: Associate Professor Roger Cook

Position: Director, Psychology Clinic

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Rachel Callinan
Project Officer
NSW Parliament.

Dear Rachel,

My involvement with surrogacy began in 1998 when I commenced providing independent psychological assessments for Victorian couples undertaking surrogacy at the Canberra Fertility Centre. Since then I have also provided similar services for Victorian couples attending Sydney IVF clinics and for two couples who were attempting to negotiate the confusing Victorian legislation relating to surrogacy.

I have also provided psychological counselling to couples interested in this procedure and as an academic member of the Department of Psychological Sciences and Statistics; I have established a research program which has produced several conference presentations concerning the experience of those patients who undertake surrogacy. I have contributed to the "Round table" discussions held by the Victorian Law Reform Commission, given two invited addresses to the South Australian Reproductive Technology Council and been interviewed by a Committee of the West Australian Parliament enquiring into similar matters that concern your committee.

First I will address those matters about which our research team has reached conclusions.

There have been three papers completed so far and these were presented to the Annual Scientific Meeting of the Fertility Society of Australia in Adelaide in 2005. These three studied the experiences of the women volunteering to act as surrogates; the experiences of the partners and the knowledge gained from the psychological assessments of the (usually) four adults who as a group, participate in this treatment. Shortly another of my students will complete her thesis concerning the experiences of the commissioning couples and a further doctoral student has ethical approval to commence (this year) her study of the children born from surrogacy. For this last study we have been assured of the cooperation of those clinics that have carried out surrogacy treatments.

The first of the three published studies, conducted by Goble and Cook, investigated the experiences of 13 women volunteering to be altruistic surrogates. All were involved in gestational surrogacy and none undertook partial (or traditional) surrogacy. This distinction was critical to these women.

The most important finding was that all of the women were able to make a strong cognitive distinction between the baby that they might have for another woman and those that they had already had to form their own families. They were able to state unequivocally that the commissioning couples were the true parents and that the role of a surrogate mother was to help another woman by carrying the baby through a pregnancy. This cognitive adaptation enabled them to develop effective emotional detachment and consequently there were no reports in our group of any relinquishment difficulties. Interestingly several of the women stated that they would not have been able to undertake surrogacy if their own eggs were to have been used.

Some observers have been concerned about the potential for some women not to relinquish a baby. The evidence does not support this and it has to be understood that some people who have doubts about the wisdom of this treatment believe that women build strong attachments to their babies during their pregnancies such that to relinquish a child to another couple would be unthinkable. This argument assumes that surrogate mothers would be relinquishing their own children but this is not the case. It needs to be kept in mind that surrogate women know clearly that they are not carrying their own child. A further thought to be kept in mind is that this procedure is not compulsory and those women, who for whatever reason do not think that they could relinquish a child with which they had been pregnant, will of course not volunteer for this altruistic program.

The second study of 8 men partners of women volunteering to be surrogates (Young and Cook) also examined those involved in gestational surrogacy. These men are sometimes thought to be less central to the procedure but this view risks ignoring their important role. The findings from this study also pointed to the important support that these men must give to their partners throughout the procedure and to their concern for their partner's well-being. One of the risks to these men was that they did not have many people (if any) to whom they could turn for understanding of what they were experiencing.

Women and men from both studies were very concerned about one of the most confusing aspects of surrogacy as it is allowed in Victoria and that is the legal interpretation of Victorian law which effectively means that the surrogate couple must both be infertile, in addition to the infertility of the commissioning woman. This dilemma is the reason why Victorian couples have travelled interstate, and occasionally overseas, to seek their treatment. Patients in the studies were also concerned about the inability of the commissioning couple (the biological parents) to be recorded on the children's birth certificates. These matters have been the subject of a long and thorough review of the Victorian legislation by the Victorian Law Reform Commission and their report is presently with the attorney general.

The third study (Cook) presented findings from my psychological assessments of all of those Victorian couples (28) involved to that time in undertaking surrogacy. These assessments are requested by the clinics and require that certain issues be addressed and assessed and that a report be provided to the relevant ethics committee.

The most significant issues are:
Relinquishment and acceptance of any baby born
Agreement about any pregnancy testing for abnormality
Consideration of the stability of the couples' marriages or relationships
Ability of the couples to resolve conflict, especially that which might be unpredictable
The expectations for the future of the couples' relationships
The possibility of one person changing his or her mind
Ability to manage failure of the procedure
Establishing a birth plan about circumstances at the birth of the child
Managing the responses of others: family, friends, neighbours and the community
Answering children's questions, especially those of the surrogate mothers' own families

Assessment also involves the administration of a psychological test to check for emotional disturbances and any evidence of psychopathology. Comment from couples after assessment indicates that they expect this to occur and understand the need for clinics to take steps to ensure that all involved are well informed and able to manage the stresses of the treatment. Many also report that they value the experience as they find it educative. These assessments are expected by ethics committees and from a significant part of the application to be considered.

In the light of what can be drawn from these studies and from my clinical experience there seem to be several important recommendations which your committee might want to consider;

1 That altruistic gestational surrogacy should be permitted

2 That altruistic traditional (partial) surrogacy also is permitted.

3 That clinics should develop protocols, involving their institutional ethics committees, for the approval of applications for treatment, for both gestational and traditional (partial) surrogacy.

4 These protocols should include a requirement that applicants (the commissioning couples and the potential surrogates and their partners) should at least have:

- a medical justification for their treatment
- received counselling from the clinic counselling staff
- been assessed by an independent psychologist
- consulted a lawyer trained in family law

It is worth noting that psychological counselling and psychological assessment are not the same task and should not be undertaken by the same practitioner. Patients will not find it easy to approach a psychologist/counsellor who has at another time been responsible for assessing them and providing a report which may or may not support their application.

5 That arrangements are in place for the commissioning couple to be recognised as the parents of any child born and their names to appear on the birth certificate(s).

6 That applicants should be permitted to make arrangements so that "out of pocket" expenses incurred by the surrogate couple can be reimbursed by the commissioning couple. These expenses could include: medical expenses for the surrogate to consult her doctor; travel and accommodation expenses incurred in attending consultations; a reimbursement for lost wages (which might occur towards the end of a pregnancy); costs for other consultations and psychological assessments.

7 That further research be encouraged and supported in order to describe and report on the Australian experience.

The further study of commissioning couples will be concluded this year. Preliminary findings from this work indicate that these couples express enormous gratitude for the offer that has been made; that they are distressed and confused by the necessity for them to adopt their own child; that they wish to be recognised on birth certificates; that they are able to make appropriate arrangements for reimbursement of "out of pocket" expenses; that they will be able to resolve issues that arise; that they are open and confident about their decision and that they are aware that that the duration of the surrogates offer is not unlimited.

The planned study concerning the children of surrogacy will begin data collection later this year and extend into 2009. There has been so far no study of these children in Australia so this study will be an important contribution to our knowledge. It is worth noting that there has been some research on this matter in the UK and this has not found any deleterious developments present in the children studied.

Since the research summarised here has concluded a further approximately 15 Victorian couples have proceeded through surrogacy treatment. Their circumstances and responses give no reason for any of the comments above to be altered.
Sincerely,

Associate Professor Roger Cook PhD FAPS
Swinburne University of Technology
Counselling and Clinical Psychologist