Submission
No 3

INQUIRY INTO LEGISLATION ON ALTRUISTIC SURROGACY IN NSW

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Our Expertise

Anita Stuhmcke is a leading national legal scholar in the area of surrogate motherhood. Her work identifies regulatory trends, gaps and jurisdictional inconsistencies across Australia. This research informs and broadens understandings of the regulatory regimes addressing surrogacy. Stuhmcke's work also pragmatically recognises that 'demand driven' new family forms such as surrogacy are occurring, and will continue to occur in Australia, to some extent regardless of the legal prohibitions put in place to prevent them. The significant impact she has had in the development of laws regarding surrogacy is illustrated by judicial and legislative reliance on her work. Her scholarship has been relied upon by the NSW Supreme Court (*Re A and B* (2000) 26 Fam LR 317) and the Supreme Court of Queensland (*Re Gray (deceased)* [2001] 2 Qd R 35; (2000) 117 A Crim R 22). The Australian Capital Territory relied upon her work in its recent surrogacy reforms (see ACT Law Reform Commission, leading to the introduction of the revolutionary *Parentage Act 2004* (ACT)). Most recently, in November 2007, a report of the Social Development Committee of the South Australian Parliament in an 'Inquiry Into Gestational Surrogacy' cited her work in recommending legislative change.

Jenni Millbank's research has made a distinctive and internationally recognised contribution to the development of critical scholarship on "functional family" and flexible interdependency principles for the recognition of non-traditional family forms. This work has had a significant impact on legal scholarship, broadening legal understandings of family laws and developing new approaches to relationship recognition in law. Her research on legal responses to non-traditional families has been relied upon extensively in judgments of the Family Court of Australia (see eg *Re Patrick* (2002) 28 Fam LR 579; *Re Alex* (2004) 31 Fam LR 503; *H and J and D* [2006] FamCA 1398; *Moore & Moore* [2008] FamCA 32), as well as by the Supreme Court of Queensland (*QFG & GK v JM* [1997] QSC 206) and the Administrative Appeals Tribunal (*Roll-over Relief Claimant and the Commissioner for Taxation* [2006] AATA 728). National and international law reform bodies that rely upon her work in developing their proposals include: the *Law Commission of Canada,* the *New Zealand Law Commission*, the *Belgian Federal Parliament*, the *Law Commission of England and Wales*, the *Human Rights and Equal Opportunity Commission*, the *NSW Law Reform Commission*, the *NSW Legislative Council Standing Committee on Social Issues*, the *Ministerial Committee on Relationships* (WA), the *Equal Opportunity Commission of Victoria,* the *Victorian Law Reform Commission*, the *Equal Opportunity Commission of South Australia,* the *Attorney General's Department of South Australia,* the *Social Development Committee of the Parliament of South Australia* and the *Tasmanian Law Reform Institute.* Millbank's "presumptive parenting" model for the recognition of the relationships of children with the second female parent in families formed through assisted reproduction was adopted in legislative reforms in Western Australia (2002), the Northern Territory (2003), the ACT (2004), NSW (2008), has been recommended by legislative committee in Tasmania (2004) and is due to be introduced in Victoria this year.

Our publications in this area include:

Stuhmcke

- 'Looking Backwards, Looking Forwards: Judicial & Legislative Trends in the Regulation of Surrogate Motherhood in the UK & Australia' (2004) 18 *Australian Journal of Family Law* 13-40.

- 'Limiting Access to Assisted Reproduction' (2002) 16 *Australian Journal of Family Law* 245-252.

- 'When Does a Child Have No Father?' (2002) 10(5) *Health Law Bulletin* 53

- 'Access to Infertility Treatments for Lesbians and Single Women: What is the State of Play?' (2001) 9 *Journal of Law and Medicine* 12-14.

- '*Re Evelyn*: Surrogacy, Custody and the Family Court' (1998) 12 *Australian Journal of Family Law* 297-304.

- 'For Love or Money: The Legal Regulation of Surrogate Motherhood' 3(1) (May 1996) *E Law Murdoch University Electronic Journal of Law.*

- 'Surrogate Motherhood: The Legal Position in Australia' (1994) 2 *Journal of Law and Medicine* 116-124.

- 'Surrogacy and substitute parent agreements in the ACT' (1994) 3 *Australian Health Law Bulletin* 43

- Halsbury's Laws of Australia – Medicine Title – "Surrogacy"

Millbank

- 'Unlikely Fissures and Uneasy Resonances: Lesbian Co-mothers, Surrogate Parenthood and Fathers' Rights' *forthcoming* (2008) 16(2) *Feminist Legal Studies* (accepted December 2007).

- 'The Limits of Functional Family: Lesbian Mother Litigation in the Era of the Eternal Biological Family' (2008) 22(2) *International Journal of Law, Policy and the Family* 149-177.

- 'The Role of Functional Family in Same-Sex Family Recognition Trends' (2008) 20 *Child and Family Law Quarterly* 155-182.

- With Reg Graycar, 'From Functional Family to Spinster Sisters: Australia's Distinctive Path to Relationship Recognition' (2007) 24 *Washington University Journal of Law and Policy* 121-164.

- 'The Recognition of Lesbian and Gay Families in Australian Law: Part 2 Children' (2006) 34 *Federal Law Review* 205-260.

- 'From Here to Maternity: A Review of the Research on Lesbian and Gay Families' (2003) 38 *Australian Journal of Social Issues* 541-600.

- *Areas of Federal Law that Exclude Same Sex Couples and Their Children*, Human Rights and Equal Opportunity Commission, Research Report, 2006.

Introduction

While there have been several law reform inquiries into surrogacy in Australia over the past 20 years, legislative change has rarely followed (and been distinctly haphazard when it has).[1] Earlier inquiries are of extremely limited utility for a number of reasons. Firstly, the early reports from the 1980s are simply out of date and do not reflect current legal regulation or the present technological context. For example, while all state and territory jurisdictions have legislation according parental status to the birth mother and a male partner and severing it from a sperm or egg donor, the inter-relation of these provisions with federal family law which ascribes automatic parental responsibility to parents (covering for example the ability to make major medical decisions) is increasingly problematic.[2] Recent Family Court cases demonstrate that state and federal provisions on parental status do not operate in harmony, and considerable confusion now arises over the parental status of known gamete donors, including but not limited to commissioning parents in surrogacy arrangements.[3] Moreover, the context of ART has changed significantly in the past decade, with, for example, a wider range of private providers in non-legislative states, far greater accessibility for unmarried

[1] See discussion in Anita Stuhmcke, 'Looking Backwards, looking forwards: Judicial & Legislative Trends in the Regulation of Surrogate Motherhood in the UK & Australia' (2004) 18 *Australian Journal of Family Law* 13.

[2] See Jenni Millbank, 'The Recognition of Lesbian and Gay Families in Australian Law: Part 2 Children' (2006) 34 *Federal Law Review* 205 at 232-258.

[3] See eg *Re Patrick* (2002) 28 FamLR 579; *Re Mark* (2004) 31 FamLR 162; *Re B and J* (1996) 21 FamLR 186 and commentary including Millbank, *ibid*, Adiva Sifris, 'Known Semen Donors: To Be or Not To Be a Parent' (2005) 13 *Journal of Law and Medicine* 230. See most recently, *King & Tamsin* [2008] FamCA 309

clients, growing use of fertility facilities by clients from other jurisdictions, and increasingly common use of donor eggs and embryos. These developments contribute to the blurring of traditional distinctions drawn between the 'medical' and 'non-medical' uses of ART such that surrogacy is both increasingly accepted and increasingly seen as a valid application of ART,[4] including for unexplained infertility.[5] The increasing usage of donor eggs and embryos broadens the potential number of genetic, legal and social parents in ART parentage arrangements. The use of fertility facilities by intended parents from other jurisdictions, as well as donor gametes from elsewhere, expands and complicates the range of applicable (and potentially conflicting) rules.

In order to achieve clarity the regulation of surrogacy must not be approached in isolation. This is because surrogacy cuts across issues of health, ethics, and family law. Indeed, the regulation of surrogacy across all Australian jurisdictions involves three interlinked dimensions of law:

- Surrogacy itself, including questions of the legality and enforceability of agreements, whether payment is permitted or prohibited, and controls on ancillary services such as advertising, facilitating or advising on arrangements;
- The use of assisted reproductive technologies (ART) to facilitate surrogacy, including donor insemination, the retrieval and use of donor ovum and/or in vitro fertilisation (IVF);
- The allocation of parental status of the resulting child or children (including adoption) and regimes for the collection and disclosure of genetic parentage where this differs from legal parentage.

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[4] See eg the Australian Medical Association, *Position Statement on Reproductive Health and Reproductive Technology* (2005), which acknowledges that doctors may assist in surrogacy arrangements in jurisdictions where this is lawful: http://www.ama.com.au/web.nsf/doc/SHED-5HY5U7 (accessed 2 February 2007). See also National Health and Medical Research Council, *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (June 2007) 13.2

[5] Advisory Committee on Assisted Reproductive Technology (NZ), *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* (November 2007); Victorian Law Reform Commission, *Assisted Reproductive Technology & Adoption, Final Report* (2007) recommendation 99 also encompasses this possibility.

While the regulation of the provision of surrogacy itself falls squarely within the purview of state and territory laws, the other dimensions of surrogacy law are not so clear cut. The second dimension, the use of ARTs, involves the interplay of state law, federal health funding, and a range of ethics regulation from both government and industry bodies. The third dimension, parental status, involves the jurisdictions of both state and federal law in allocating parental status and parental responsibility, respectively.

It is necessary for the New South Wales Government to be aware of a holistic approach to the regulation of surrogacy as in addition to the complex, shifting and inconsistent relationship between these three 'dimensions of law', the division of jurisdictions in Australia results in a fragmented approach to each dimension across the various state, territory and federal governments. This adds an additional issue of coherence in this complex area: the relationship *between* various jurisdictions, some of which regulate ART through proscriptive legislation and others of which rely upon ethics focused self-regulation through the health sector.[6] Further, there is increasing disparity between jurisdictions in respect of parental status; for example reforms in Western Australia, the NT ACT and now NSW in extending parental status to same-sex partners of parents conceiving through the use of ART.

Adoption law is not generally available to transfer parental status from surrogate to commissioning parents.[7] In the ACT parental status may be transferred to commissioning parents in surrogacy arrangements through a new form of court process that is not adoption.[8] This approach looks likely to be followed in Victoria and Western Australia and is under debate in South Australia.[9]

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[6] See Kerry Petersen, 'The Regulation of Assisted Reproductive Technology: A Comparative Study of Permissive and Prescriptive Laws and Policies' (2002) 9 *Journal of Law and Medicine* 483; Isabel Karpin & Belinda Bennett, 'Genetic Technologies and the Regulation of Reproductive Decision-Making in Australia' (2006) 14 *Journal of Law and Medicine* 127.

[7] 'Direct' or 'private' adoptions is available in some states if the adoptive parent is a 'relative' of the child and so is only available if for example the surrogate is the sister of one of intended mother. In NSW an 'unauthorised' adoption may also take place with the permission of the Director General: see *Adoption Act 2000* (NSW) s 29 and s 11(1)(a).

[8] *Parentage Act 2004* (ACT) ss 24, 26.

[9] Western Australia has a Bill currently before parliamentary committee: *Surrogacy Bill 2007* (WA), while South Australia responded to the Statutes Amendment (Surrogacy) Bill 2006 (SA) (a private member's Bill) with a

Finally, there are marked disparities between Australian jurisdictions in terms of the collection of, and provisions for the release of, information about children's genetic heritage where this differs from their legal parentage.[10]

In considering the range of possible approaches to altruistic surrogacy in NSW it may also be useful to compare the approaches of the various states and territories, as well as comparable jurisdictions which have recently undertaken comprehensive reviews of one or more of the legal dimensions of the field, in particular Canada,[11] New Zealand[12] and the United Kingdom.[13] The United Kingdom is of particular relevance in relation to expanding understandings of 'payment' with respect to altruism.

We propose that the ACT model for entering into surrogacy arrangement and overall regimes for transfer of parental status represents the best model in Australian law at this time, with the qualification that restricting eligibility for transfer of status to non-genetically connected surrogates and genetically connected commissioning parents is not justified by reference either to the sociological research on families formed through surrogacy or by reference to the unmet legal needs of children born into such families. The proposed

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Parliamentary Committee recommending a broad range of reforms: Social Development Committee, *Inquiry into Gestational Surrogacy*, 26th Report (2007). See also Victorian Law Reform Commission (VLRC), *Assisted Reproductive Technology & Adoption*, Final Report (2007).

[10] See eg Stella Tarrant, 'State Secrets: Access to Information under the Human Reproductive Technology Act 1991 (WA)' (2002) 9 *Journal of Law and Medicine* 336; Victorian Law Reform Commission, *Assisted Reproductive Technology & Adoption, Final Report* (2007) Chapter 15.

[11] The *Assisted Human Reproduction Act* 2005 created a new government agency, Assisted Human Reproduction Canada: see http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/2006/2006_133bk3_e.html (accessed 20 February 2007). For a discussion of the decade long Canadian process, see Francine Manseau, 'Canada's Proposal for Legislation on Assisted Human Reproduction' in Gunning & Szoke, note 6.

[12] See Rosemary De Luca, 'The New Zealand Way: ART Within an Ethical Framework' in Gunning & Szoke, note 6. See also Law Commission of New Zealand, *New Issues in Legal Parenthood*, Report 88 (2005) and New Zealand Ministry of Justice, *Response to New Issues in Legal Parenthood* (2006).

[13] See HFEA, *SEED Report: A Report on the Human Fertilisation & Embryology Authority's Review of Sperm, Egg and Embryo Donation in the United Kingdom* (2005); UK Department of Health, Human Tissue and Embryos Draft Bill May 2007; Joint Parliamentary Committee Report on the Bill, August 2007.

Victorian approach, which allows for transfer of status based on the twin principles of informed consent and child's best interests inquiry, is preferred.

Issues for comment:

a. **What role if any should the New South Wales Government play a role in regulating altruistic surrogacy arrangements?**

At present there is no state law in operation that directly regulates surrogacy. When proclaimed, the Assisted Reproductive Technology Act 2007 (NSW) will prohibit commercial surrogacy under Part 4. The Act in its present form does not give sufficient guidance on reasonable expenses and what they can cover. It defines "commercial surrogacy agreement" to mean "...a surrogacy agreement involving a fee or reward to the woman who gives birth, or intends to give birth, to the child that is the subject of the agreement." It is unclear from this provision whether the notion of a fee or reward precludes the payment of out of pocket or reasonable expenses to the woman who gives birth.

Altruistic surrogacy must include some payment of expenses. This is a difficult area as the line between commercial and altruistic is difficult to draw (and indeed it is ethically arguable as to whether one should be drawn at all).[14] At minimum, out-of-pocket costs should be paid to the surrogate mother together with legal advice and income protection. It is arguably also desirable to include a form of payment to recognize a loss of opportunity for earnings to be either gained or increased during that period of the surrogate's life when the surrogacy is in preparation and the pregnancy occurs. It can often be a period of years (especially where IVF is involved) that the life of the surrogate will be impinged upon. Such a step is in line with developments in the United Kingdom.[15]

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[14] See for example, Stuhmcke, 'For Love or Money: The Legal Regulation of Surrogate Motherhood' Law - Murdoch University Electronic Journal of Law, vol 3, no 1, (May 1996) http://www.murdoch.edu.au/elaw/issues/v3n1/stuhmck1.txt.

[15] Actual payment is illegal in the UK but it is not unusual for surrogates to receive £10,000 in expenses. http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=480230&in_page_id=1770 6 September 2007.

We urge the committee not pursue any additional form of legal regulation, either direct or indirect to try to control the use of ART for altruistic surrogacy, or to control who enters into altruistic surrogacy arrangements, thus our answer to the question above is: none. ART is already comprehensively regulated through complex intersecting ethical and legal rules, and will be even more so when the *Assisted Reproductive Technology Act 2007* (NSW) comes into effect. The decision to undertake surrogacy is one that concerns the participants most acutely, and governments are ill-placed to make decisions about who will make appropriate parents or what family forms should take. Counselling requirements in place already within ART regimes to assist participants in making informed choices, and an appropriate parentage transfer regime can ensure that there is informed consent for the birth mother and protection of the child's best interests once the child is born.

We strongly recommend that New South Wales introduce a regime for the transfer of parentage provision as children are arguably best protected where laws make the identity and responsibility of their parents clear before birth. Such provisions (covered in detail below in this submission) may provide an incentive to intending surrogacy participants to abide by laws prohibiting commercial surrogacy.

b. The criteria, if any, should the intended parent/s and/or birth parent have to meet before entering into an altruistic surrogacy arrangement?

The use of criteria for commissioning parent(s) and surrogates should be limited to a requirement for counselling which is currently in place in all RTAC accredited ART facilities. Apart from this there should not be 'limitations' in the form of criteria placed upon access to surrogacy.

Surrogacy arrangements are not like adoption; both the state interest and the child's interests differ markedly across these two contexts. With adoption an existing child is in the care of the state which must then chose the most suitable parent to care for her. The child exists, has interests that can be assessed, and that state stands in the position of legal guardian and is required to make such judgments. In surrogacy arrangements there is an attempt to

conceive a child within a particular family formation with the assistance of others, there is no child yet in existence and there are two or more adults who are genetic or social parents. As in other family forms, it is the intended parents who are best placed to make judgments about their interests and needs and any attempt of the state to do so will be crudely fashioned, inefficient and too often influenced by inappropriate stereotypes.

The positive impact of counselling as a singular entry requirement for surrogacy is that it will ensure that parties to a surrogate agreement make informed decisions. It is perhaps the only requirement that will at least ensure the adult parties have thought through the consequences for a child born of the arrangement. Indeed, in altruistic surrogacy where friends or family members may feel pressure to act as a surrogate counselling is a critical requirement. Counselling in these circumstances is the only appropriate mechanism which will aim to ensure that personal autonomy in decision making in a complex relationship is preserved. Again we point to the ACT approach as best practice in this area.

c. What legal rights and responsibilities should be imposed upon the intended parent/s and/or birth parent/s?

The existing state legislation that sets out the parentage presumptions for children born through ART should continue to apply.[16] These provisions are in harmony with those in every other Australian state and territory. Although these presumptions do not meet the immediate needs of families formed through surrogacy – because they accord parental status to the birth mother and partner rather than to the intended parents – they should be preserved. This system establishes a clear and consistent status quo for parentage that centres the birth mother and then adds a consenting partner. For reasons of both principle and practicality this is a useful general model that should not be departed from. In the context of surrogacy it also protects the interests of the birth mother in that it preserves her parental status and focuses on her decision to consent after the birth of the child (in contrast to pre-conception or pre-birth agreements that transfer parental status). Although the

[16] *Status of Children Act 1996* (NSW).

intention to parent and the contribution of genetic material, especially ova, is both emotionally and physically taxing, the contribution and commitment of the birth mother to the existence of intended child is far superior and should be given priority.

d. The role that a genetic relationship between the child and the intended parent/s and/or birth parent/s should play in any altruistic surrogacy arrangement.

Again we affirm that there should be no direct or indirect government regulation of surrogacy, so no attempt to set 'entry criteria' should be attempted.

There is no legal, empirical or social reason why genetics should be a limiting factor the parties to surrogacy. It is undesirable that genetics play any part in determining access to surrogacy for either the commissioning couple or the surrogate. Instead the focus of government should be upon the more important issues of dealing with legal parentage and determining access to genetic information for any child born of such an arrangement. The issue of genetics is important in relation to the wider legal responsibility of the State to keep registers of the biological lineage of children born through arrangements such as adoption and surrogacy. Registers are important for children who wish to have some access to parentage and genetic make-up. Apart from this issue genetics is a redundant issue with respect to surrogacy. Transfer of parentage is required to recognise the parent-child unit where caregiving takes place; this occurs regardless of whether one, both or neither of the intended parents has a genetic link to the child.

e. The legislative amendment that should be made to clarify the legal status of any child born of such an arrangement

We strongly support a transfer of parentage scheme for children born through surrogacy. As with the regime in the ACT and under consideration in WA and proposed in Victoria, this

should be based on the twin principles of informed consent and child's best interests. The parentage of the child at birth should be consistent with all other children born through ART; that a default position in which the birth mother and her partner are the legal parents until and unless a transfer is effected. A transfer regime should focus on the child's need to have a legal relationship with her primary caregivers/residential parents and not be restricted by any requirement of genetic connection.

Transfer should take place within set time (in the ACT this is between 6 weeks and 6 months, but could be up to the age of 1 year) and can only occur if the child is residing with the commissioning parents and a best interests inquiry has been undertaken. The Western Australian Bill also includes the additional ability to consider and register contact plans if the parties envisage that is to be some form of ongoing contact between the surrogate and child.

f. What rights should a child born through an altruistic surrogacy agreement have to access information relating to his/her genetic parentage? Who should hold this information?

It is currently well accepted that children born through ART with donor gametes and surrogacy arrangements should be able to access information concerning their genetic parentage and/or birth parent. In fact this is a far less significant policy issue for surrogacy than ART generally as it appears that most children born into surrogacy are informed of their method of birth and adjust to this information early in life.[17]

Should the Assisted Reproductive Technology Act 2007 (NSW) come into effect it anticipates a compulsory register for all ART births in NSW using donor gametes. Children born through surrogacy would thus be absorbed into that regime. Should that regime be re-considered prior to proclamation, or in the process of implementation we suggest there are a range of issues which need to be addressed such as:

[17] One of the most recent studies in this area is by Polly Casey from the Centre for Family Research at Cambridge University see http://www.sps.cam.ac.uk/CFR/news/index.php (accessed 27 August 2008).

(1) Should the register contain, as anticipated by Part 3 contain non-identifying details of children born into other relationships and the possibility of disclosure of information supplied by a donor such as their spouse? This appears to us to be unduly intrusive.

(2) Should access to information be mandatory? Should genetic parents in addition to off-spring be able to 'opt-out' when a request for indentifying information is made, given that this will be 18 years or more after the event.

(3) Where should the information be held? Is the general state based register of Births Deaths and Marriages more appropriate than a register specific to ART births?

g. The efficacy of surrogacy legislation in other jurisdictions and the possibility and desirability of working towards national consistency in legislation dealing with surrogacy

A national approach is desirable and a consistent approach to transfer of parentage regimes is particularly important. As we note above, we regard the ACT legislation (with the proviso that it ought not be restricted to genetically linked intended parents and a non-genetic birth mother) as providing a positive model for other jurisdictions.

h. The interplay between existing State and Federal legislation as it affects all individuals involved in and affected by surrogacy

The issue of parental status of ART children under state and federal law is a vexed and complex one. While states determine who is a parent and maintain the register of births, the *Family Law Act 1975* (Cth) (FLA) accords 'parental responsibility' to parents and provides a framework for the resolution of child-related disputes. Numerous Federal Acts accord rights and responsibilities to parents, frequently without defining them.

There has been considerable dispute as to the status of intended parents in surrogacy arrangements being 'parents' under the FLA because while, on the one hand there is no overarching definition of 'parent' in the FLA and the court has therefore interpreted 'parent' to mean biological parent (*Tobin*), on the other hand children born through ART are covered by s60H of the FLA which recognises the birth mother and partner, not gamete donors, as parents. Some judges have disregarded s60H in finding that the male

intended parent/genetic parent in a surrogacy arrangement is a parent under the FLA.[18] With respect we view this result as a misreading of the FLA and a troubling, unprincipled departure from parentage presumptions that govern ART births.

Ad hoc reforms to federal law such as those contemplated by the Same-Sex relationships (Equal Treatment in Commonwealth Laws - Superannuation) Bill 2008 (Cth) recognising an intended parent-child relationship only for certain purposes is undesirable because it is confusing, inconsistent and does not resolve parental status in a holistic manner. This lack of clarity may have very serious consequences in terms of access to justice. If parents are recognised in an ad hoc way in some areas of law but not others the resulting confusion – both in the minds of the community and in the clarity of professional knowledge of those who advise them such as lawyers, accountants etc – will mean a dramatic under-utilisation of rights. Quite simply, rights that people don't know they have may be just as useless as having no rights at all.

We believe that a logical framework for surrogacy is for states and territories to put in place regimes for the formal transfer of parental status, which is then recognised in federal legislation.

Federal reform should involve:
Amending the definition of "parent" in the *Family Law Act 1975* (Cth) section 4 to state that it means:

1. the biological parents of a child conceived through intercourse,
2. the parents of a child lawfully adopted by them,
3. parents recognised under s60H (amended to be gender-neutral regarding the mother's partner) and
4. parents recognised under state laws prescribed by the FLA (such that state laws granting transfer of parental status in surrogacy arrangements can also be picked up as they occur).

[18] *King & Tamsin* [2008] FamCA 309.

Amending all other federal legislation to state that 'parent' has the meaning as defined by the FLA.

Conclusion

We would like to thank the Inquiry for the invitation to contribute into the brief for law reform with respect to altruistic surrogacy.