

Submission  
No 7

**INQUIRY INTO LEGISLATION ON ALTRUISTIC  
SURROGACY IN NSW**

**Name:** Ms Christine Whipp

**Date received:** 25/09/2008

---



## **Submission to the inquiry into legislation on altruistic surrogacy**

In their attempt to inquire into and report on whether NSW legislation requires amendments to better deal with altruistic surrogacy, it is to be hoped that the Standing Committee will look beyond any and all of the existing State and Federal legislation, to examine all the known and potentially damaging consequences of Altruistic Surrogacy and in light of such knowledge to prevent as far as possible, any injustice or detrimental consequences for all the parties involved in such unconventional human reproductive agreements.

While "altruistic surrogacy" is not a new concept, having been recorded as a route to the circumvention of childlessness in the old Testament, it was not until more recent times that it has received public awareness and legislative endorsement as an acceptable method of relieving infertility. Kim Cotton became Britain's first commercial surrogate mother in 1985 when she was paid £6,500 to have a baby for an infertile foreign couple, in an arrangement brokered through an American agency. In a newspaper article of 14 February 2008 [*Daily Mail* ~ *Now I realise how hopelessly naive I was to become Britain's first surrogate mother...*] she now says the 'rent a womb' trade is fraught with dangers.

The legislation which has been enacted in various countries since that time in an attempt to provide a legal framework for what is effectively a form of baby farming, has concentrated on protecting the acting parties in a surrogacy agreement in much the same way as regulations have been made to cover business contracts. The one aspect which seems to have received the least attention is best interests of the person who is being deliberately created. The act of surrogacy, which can be defined as the manufacturing of babies to order for profit or personal gain (psychological and emotional rather than financial) has somehow been normalised in the process of trying to protect the interests of the providers and clinically infertile for whom society has genuine sympathy and also for the "socially infertile" who are demanding reproductive "rights" and gaining them under the canopy of anti-discrimination laws.

There are three distinct groups of people whose competing rights need to be considered in any future surrogacy legislation. Firstly, the surrogate and her family; secondly the commissioning parent/s along with any affected members of their family and thirdly the resulting child. Each group is subject to a number of potentially damaging consequences but highest considerations should go to the best interests of the resulting child, who has not been a party to any surrogacy agreement but is the person who will be affected by it for their entire lifetime. Legislation should ensure that nobody is exploited.

### **Potential consequences for the surrogate mother**

There is little research data to indicate what drives a woman to agree to have a baby (most usually for a heterosexual couple, using her own egg and the sperm of the male partner of the commissioning couple) and then to hand it over to them. Where the surrogate is a family member or close friend of the couple concerned there is likely to be a strong element of compassion, but where this reproductive arrangement takes place with strangers the motivations of the surrogate mother may be two-fold, with psychological factors being mixed with those of financial considerations, even where only "expenses" are paid.

Kim Cotton says of her decision to become a surrogate, "I thought I was a nobody, but through surrogacy I thought I could become a somebody. When you are helping someone else have a baby, you feel so good about yourself, and with the money I received I could improve the quality of my children's lives." One of the UK's most prolific surrogate mothers, 43-year-old Jill Hawkins, lost the twins she was carrying in her eighth surrogate pregnancy, which she undertook despite a nine-year history of depression and having undergone a gastric band operation to help her lose six stones. Even her own family strongly opposed her continued involvement in surrogacy on the grounds of age and health. Cotton says of Jill Hawkins that she may have become addicted to the 'feel-good' factor of helping an infertile couple have a child. The surrogate becomes the centre of the commissioning couple's world, making the surrogate feel special, and the bond created with them - rather than the child - is what becomes so addictive.

There is anecdotal evidence that many altruistic (rather than financially motivated) egg donors for IVF have a previous history of an aborted pregnancy and it has been suggested that the wish to help other women to have a baby may be an act of atonement.

There can be no doubt, given the body of evidence from the world of adoption, that the act of gestating and giving away a baby can have a profound and lasting psychological affect on women. Kim Cotton stated at the time that her first surrogate child was born: "You can cut off all maternal feeling if you try hard enough." In her most recent 2008 interview it appears that "she has learned to her cost that you can't cut off all feeling - maternal or not." Kim now believes "... the ideal situation for the surrogate involves her carrying an embryo conceived by IVF, using the commissioning father's sperm and the commissioning mother's egg or donor egg, which is then implanted in the womb" as the surrogate mother would find it "easier to hand over a baby which is not biologically hers and be more reluctant to renege on an agreement."

Pregnancy and childbirth does not come without serious risks even for women who are generally considered physically healthy. In 2005 in the UK, 29 year old surrogate mother Natasha Caltabiano developed high blood pressure and suffered a ruptured aorta shortly after the baby she was carrying for a British couple was delivered. In a newspaper interview [*Daily Mail ~ Surrogate mum dies giving birth*] her mother Marilyn told the Daily Mail: "Surrogacy caused Natasha's death. People must realise that childbirth isn't something you enter into lightly. It's still dangerous but that is something surrogate agencies don't go into." The surrogate mother's existing young children paid a high price for the birth of this baby. They were deprived of their mother and the surrogate baby itself will have no opportunity later in life to meet the woman who fulfilled the reproductive ambitions of it's commissioning parents and who was it's biological mother.

There is no research data to show how the children of women who become surrogates assimilate the concept of their mother's actions and address the issue of their own fractured relationship with any baby produced, which, if the surrogate conceived with her own egg, is their biological half sibling. Kim Cotton's now adult daughter Anouska has never publicly commented on her own opinion of surrogacy or spoken of how she felt in the knowledge that the relinquishment of her half siblings had enabled her to enjoy a comfortable and more financially secure childhood, but she is known to have told her mother, shortly after the birth of her own child: "I could never, ever do what you did." Some anecdotal evidence from the children of former sperm donors suggests that the relinquishment by their father of gametes, as much as a live child, can cause emotional distress. From private correspondence I am aware that the twelve year old daughter of one former sperm donor feared that retrospective removal of donor anonymity might lead to her having to share her Daddy with his donor conceived children. Another former sperm donor explained to his three year old daughter in simple terms that she had older brothers and sisters living somewhere because he had helped other "mummies and daddies who couldn't have children to have babies." Her reaction was to ask her father if he was going to keep her. There is certainly potential for psychological harm and distress to existing children, whenever they are told.

### **Potential consequences for the commissioning couple**

A 2002 study by the Family and Psychology Research Centre at City University in London found that infertile couples who use a surrogate mother to start a family showed exceptional levels of love and parenting skills. It also found that babies born to surrogates show no differences in temperament or behaviour from those who are conceived naturally, and that the overwhelming majority of surrogate mothers experienced no doubts or emotional problems when handing over children to the families who commissioned them. Similar studies have been carried out with families who have born through donor insemination and while these too have similar findings, it is known that what parents report about themselves and their small children (who have no idea of the true nature of their origins) may not be a true reflection of the family dynamic or how those children may regard their situation when they are old enough to form autonomous opinions. Published academic literature does not currently indicate the high level of divorce in donor conceived families that adult offspring themselves are now

reporting, or the complex problems that such families have had in dealing with the issues that invariably arise for all parties when one parent is biologically related to the children and another is not.

It is inevitable that when extreme measures and last options are sought to remedy childlessness, those who are desperate to achieve the goal of a child may not be in the best position to review the wider implications of the course they are embarking on. It is doubtful if counselling prior to surrogacy, however good, can prepare people for the realities.

Speaking of her experience of running the surrogacy agency COTS, Kim Cotton says, "There are some surrogates who have unfortunately behaved badly; but there are also some couples who try to use and exploit the surrogate. All they are interested in is the baby." The relationship, such as it is between the surrogate and commissioning parents (being one which involves the embodiment of one side's reproductive hopes and the other side's contract to fulfil them, despite the fact that probably neither side would ever have had a social relationship except for the particular circumstances of the surrogacy agreement) can go sour, particularly if the surrogate feels neglected through little contact and insufficient communication, or simply, in Kim Cotton's words, that "they are not made to feel special .." The surrogate may begin to have second thoughts about handing the baby over. Once conception is under way neither the commissioning couple nor the surrogate are supposed to give way to any misgivings they may have about the other party's suitability to meet the agreed contract.

Unlike basic donor conception and IVF when a donor egg and/or sperm is used but the recipient mother herself gestates the child, the commissioning couple in a surrogacy arrangement are less able to hide behind the pretence that the child they eventually receive is actually theirs. This at least means that they are more likely to be honest with both the child and themselves about the reality of it's origins. Secrecy within donor conception families is now generally accepted as being unhelpful in terms of the close family dynamic. Wider family members are also more likely to be aware of the truth about the child's biological parentage but there is no recorded data to establish how that might affect relationships with the child's grandparents, of whom one pair will be biologically related while the other will have only a social connection.

### **Potential consequences for the surrogate child**

Any surrogate child produced from the biological egg of the surrogate will undoubtedly experience many of the issues which are currently being brought to the attention of society by growing numbers of donor conceived adults. It has taken 70 years for such individuals to gain a voice and be heard against the strident assertions of those who have long promoted donor assisted conception as a total success. Testimony from donor offspring strongly suggests that however exceptional the care lavished by the commissioning parents, those born through surrogacy will grow up realising that they were only a second best choice. The adults who, in their desperation to become parents, or in their willingness to assuage the involuntary childlessness of the would-be parents, will have set up the surrogacy arrangement in the knowledge that the child created by this contract would be deliberately parted from it's biological mother and wider maternal family, including other surrogate conceived siblings, at birth. Depending on the quantity and quality of the contact that the commissioning parents maintain with the surrogate, the child may suffer from genealogical bewilderment or from conflicting feelings of loyalty and belonging. Having more than one mother is a complication for any child that needs careful management, as does the situation of having two gay fathers and no visible nurturing mother. The deliberate separation of a child from it's kinfolk, except in circumstances which are recognisably for that child's protection and best interests, runs contrary to the United Nations Charter on the Rights of the Child.

### **A justifiable reaction to the known and potential consequences of surrogacy**

Adoption, which has fulfilled the parenting ambitions of childless couples over generations, is now regarded as an option of last resort, carried out primarily for the benefit of a child who would be at risk if left in the care of biological parents. Likewise and with hindsight, it has

been recognised that however good the intentions of the policies which enabled the Stolen Generation to be deliberately removed from their natural environment and reassigned to different parents, those actions were misguided and caused considerable pain to families where the biological bonds of kinship were broken. It needs to be understood that surrogacy is merely another variation on the same theme, allowing a child's basic human right to be nurtured by its birth mother to be sacrificed in the interests of adults reproductive and parenting ambitions.

Legislation which has been enacted in order to protect the adults who indulge in surrogacy arrangements, does not respect the dignity of the individual who is thus created. Nobody would wish themselves to be conceived as the result of a contract in the knowledge that such a contract was necessary because the preferred option of conception was not physically possible. Nobody would wish to find that their existence had been commissioned, their gestation had been the subject of financial recompense or "expenses" and that once born they had been deliberately relinquished.

It is evident that surrogacy can be exploitative of the surrogates, whose motivations make them vulnerable, just as it is of the commissioning couples whose desperation for a child renders them vulnerable in their quest for the surrogate child, who is the means to an end. In terms of the positives for all concerned, the surrogates get to enjoy the feel-good factor from their act of benevolence, the parents get the baby they ordered but the child gets a life time to work out how to deal with all the complex emotional consequences that other people's choices have produced.

For all the surrogacy success stories where childless couples achieve their dream of becoming parents, there are many with less happy outcomes that the public never hear. Deals go wrong before, during and after conception. Some surrogates refuse to relinquish their child; unhealthy babies have been rejected; some have become the subject of paternity disputes where it has been found that the surrogate's partner is (unintentionally) the father of the child and surrogate mothers have even died in childbirth. As Kim Cotton herself has stated, the 'rent a womb' trade is fraught with dangers and even her concept of the "ideal situation", in terms of brokering surrogacy agreements, which involves a surrogate carrying an embryo conceived by IVF, using the father's sperm and the mother's egg, and merely acting as an incubator for the couples biological child, is open to problems. No woman should risk death, simply in order to give another woman a much wanted child.

It can be argued that it is necessary to make legislation to enable surrogacy to happen within a framework designed to protect the participants because otherwise people would take a DIY approach without any advice or counselling. It can also be argued that surrogacy is potentially so problematic and beset with serious long term consequences that it should not be encouraged and indeed, should be outlawed to protect participants from exploitation, breach of human rights and risk of serious physical and psychological harm.

I urge the standing committee to review all that is known about the long term outcomes of surrogacy, all that can be presumed, given the accumulation of knowledge gained from adoption practice and the experiences of The Stolen Generation and the Child Migrants and what really needs to be done to prevent injustice and harm.

References:

<http://www.dailymail.co.uk/femail/article-514230/Now-I-realise-hopelessly-naive-I-Britains-surrogate-mother-admits-Kim-Cotton.html>

<http://www.dailymail.co.uk/news/article-335871/Surrogate-mum-dies-giving-birth.html>

Yours sincerely,

Mrs Christine Whipp, a donor conceived person