

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

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## **Inquiry into legislation on altruistic surrogacy in NSW**

### **SUBMISSION**

*Closing date 16 April 2009*

**By Jack and Nanette Blair**

**(a) The role, if any, the NSW Government should play in regulating altruistic surrogacy arrangements in NSW.**

(a) 1.0 The NSW Law Reform Commission (1994-7) stated that the outcome of a surrogacy inquiry is not under an obligation to legislate in favour of surrogacy any more than to prohibit surrogacy, contingent upon inherent difficulties involved.

1.1 We note that the Terms of Reference ignore ethical aspects of the issue since every statement takes for granted that citizens agree with surrogacy.

1.2 Publicly responsible politicians and citizens have previously balked at the overwhelming difficulties and problems involved in surrogacy for women, children, those directly involved as well as for governments and society.

1.3 Committees in other countries (e.g., the UK)) appointed by governments to inquire into surrogacy have discovered a Pandora's Box, a nightmare of difficulties such that negative recommendations have been made.

1.4 Surrogacy pushes the boundaries to reject children's rights and discriminates children from their biological parentage. It also discriminates women's wombs as leasable artifacts for breeding children in an attempt to rectify marital misfortune – infertility. adult interests and wishes receive primary consideration in surrogacy issues.

1.5 Because surrogacy involves such an enormous level of care and counseling, including psychological, physical and psychic assessment of everyone involved, we believe it would be inevitable that social and political pressures would escalate a transition from 'altruistic' to 'commercial' surrogacy in a very short time. Altruistic surrogacy is unrealistic and anomalous.

1.6 Legislated surrogacy would increase demand in the community from individuals and minorities, which in turn would stimulate costs, conditioning public familiarity with 'rent a womb' politics and activism. Altruistic surrogacy probably only exists when a woman becomes a surrogate mother for a close family member.

*1.7 The paradigm is simple: A controversial social issue is legislated under some "noble benefit". Lobbyists gradually move the goalposts until boundaries disappear. Vide abortion to save the life of the mother and divorce for irreconcilable differences, but now available 'on demand' for virtually any reason. Euthanasia is following the same pattern, soft at first, until the 'goal posts' ultimately disappear. 'A crack in a dam eventually gives way and drowns the valley'. Surrogacy will follow this historic pattern of socially controversial legislation.*

1.8 The NSW Government should be made fully aware of the nightmare of difficulties involved in surrogacy and its role should be to ensure that every child is the subject of human rights and *not an object of someone else's desires*. It should also prohibit 'rent a womb' politics resulting from minority pressures.

**(b) The criteria, if any, the intended parent/or birth parent should have to meet before entering into an altruistic arrangement.**

See (i).

**(c) The legal rights and responsibilities that should be imposed upon the intended parent/s and/or birth parents/s.**

(c) 1.0 A surrogacy child may have up to six parents: the genetic mother, the gestating mother, the parent who raises the child, the genetic father who provides the sperm, the legal father (husband of the gestating mother) and the social father who raises the child. No child should be a victim of such confusion.

1.1 Intended parents and the birth parent face complex emotional and psychological issues over the relinquishing of a child. The recipient couple experience suspense and anxiety during the waiting period over issues of safety, legal complications, the ethics of taking someone else's child and whether the surrogate mother will change her mind, since no agreement made with a surrogate mother can be enforced without attracting harm. Ante-natal tests may be a further difficulty for both parties as well as how to manage the pregnancy, labour and delivery.

1.2 In the above scenario, surrogacy represents an attempt to *socially engineer* artificial families for infertile couples in an effort to resolve a particular human misfortune.

1.3 How can the breeding of a child for an infertile couple be a spontaneous gift (altruism), when the surrogate mother is the subject of "imposed" regulations (as the Terms of Reference puts it.) Analogously, a business may offer a 'free gift' to consumers, but it comes with 'conditions apply', thus rendering the 'gift' a commercial transaction. There is no such thing as a free lunch, which raises a serious doubt as to whether a surrogate child could ever be an 'altruistic gift'.

1.4 It is difficult to know how surrogacy 'rights and responsibilities' could be satisfactorily legislated in the face of associated problems and conflicts, e.g.,:

- ❖ Paternity and maternity rights
- ❖ Guardianship
- ❖ Custody access issues

- ❖ Maintenance and financial support
- ❖ The rights of the child
- ❖ Economic costs involved for all parties
- ❖ Parenting training for the intending parents
- ❖ Miscarriage

(See also under (i).)

1.5 While the outcome of surrogacy is intended to be benevolent it may also result in psychological harm from the relinquishing of a child by a surrogate mother. Surrogacy tends to regard the surrogate mother as an emotional vessel – a breeding machine (Stuhmcke, 1996, 135-137).

1.6. Mothers develop both physical and emotional bonding to a child carried in the womb and studies in the literature report that separation causes psychological harm and trauma to both mother and child. Many women experience an overwhelming sense of loss and/or guilt of up to 30 years according to Stuhmcke,(1996,138).

1.7 Thus, surrogacy can represent an exploitation of the surrogate mother and suggests that a form of exploitation arises when one party to the arrangement is oriented towards the exchange of a "gift" while the other party operates in accordance with the norms of the market exchange of commodities. This objection by Stuhmcke (1996, 141) to surrogacy applies to both altruistic and commercial surrogacy.

1.8 Any 'rights or responsibilities' imposed on the surrogate mother and the intended parents can only state what they can and cannot do during an 'arrangement'. The law cannot guide or control what emotional experiences they will or will not experience. Thus, no legislation can alleviate any psychological, mental or psychic harm and pain that arises from any 'arrangements'. Arbitrary legislation spelling out 'shall and shall not' rules is one thing, but no legislation can repair any harm and damage arising from breaking the bonding between a mother and child.

1.9 A surrogate child is not the only “gift” a surrogate mother gives. She also gives the intending couple motherhood status and the status of family, one important reason why same sex partners campaign for a ‘right’ to access children by surrogacy, adoption, fostering and assisted reproductive technologies occurs because children are seen as legitimizing their partnerships like a ‘family’ , making their relationships appear more ‘normal’ and more importantly, using the law to silence their critics.

1.10 An ambivalent problem for which there appears to be no satisfactory solution arises when a surrogate mother and child are separated and the mother feels ‘obliged’ to take a proprietary interest in the life of ‘her’ donated child and the recipient parents reject the surrogate mother’s altruism. Legislation could not ‘switch off’ such a reaction – the parturition pain of a surrogate mother.

1.11 Australian Health Ministers (1999), after much debate and examination of studies agreed unanimously on a position *against* surrogacy, yet surrogacy problems have not gone away over the past 10 years.

1.12 The Terms of Reference focus on regulations and legislation to control and direct psychological emotions of parties involved in surrogacy. Previous inquiries into surrogacy (Australia and the United Kingdom) *acknowledged that such a task was impossible*.

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

(d) 1.0 Surrogacy is adult, rather than child-centred. It re-enforces the presumed “best interests of adults” as the primary focus, rather than “the best interests of the child”.

1.1 Surrogacy transforms the “best interests of the child” into a mantra-like platitude or slogan that, with constant chanting by Government and Non-Government welfare bodies loses its impact and credibility to convince the public that responsible welfare bodies are genuinely promoting ‘best practice’ in child-care issues. (vide the W.A. welfare department giving a surrogate child to be raised by two males). The public is conditioned to believe that *child- protection is being pursued* while the media constantly report cases where welfare bodies have repeatedly failed children in their care. We believe surrogacy would continue the pattern of welfare confusion.

1.2 We believe the woman is very rare who breeds a child for another woman without desiring some compensation (monetary or otherwise).

1.3 If nature tells us anything about genetics, it tells us convincingly that a child is blood-related to its biological parents who play a primary role in the child’s inheritance biologically, physiologically and psychologically as well as its nurturance. The birth-right of the child is terminated by surrogacy as the recipient parents socially construct an engineered identity for ‘their’ child. The construction of a socially engineered identity may be a ‘best outcome’ for *orphaned children* but for a child with living biological parent(s), it means the child, at the very least, is robbed of his/her heritage – surrogacy sabotages biological identity.

(e). **The legislative amendments that should be made to clarify the legal situation of any child born of such an arrangement.**

(e) 1.0 Legislation should prescribe that no child should knowingly or intentionally be separated from his/her biological parents as a means to an end to satisfy the wishes of adults – excepting only if the child is orphaned.

- (f). **The rights of that child born of an altruistic surrogacy arrangement should have to access information relating to his or her genetic parentage, and who should hold this information.**

(f) 1.0 All children separated from their biological parents for whatever reasons, should be given unrestricted access to information about their biological heritage.

1.1 Non-biological parents raising a child should discharge their responsibility of informing the child before adolescence (probably no later than age 12), of his/her genetic heritage and notify the welfare body in writing.

1.2 The appropriate State Government welfare body should hold complete information about the child in a database and at an appropriate time *confirm that the child has been given biological-identity information* and, if necessary, discharge this responsibility directly with the child.

1.3 Since the revelation of biological-parentage is capable of upsetting, confusing or traumatizing a child, the welfare body should provide appropriate counseling support for emotionally affected children.

1.4 If Standing Committee members doubt the potential damage that can be caused by child-separation from biological parents they could view the current TV 7, 8.30 pm documentary by Jack Thompson, *"Find my family"* which depicts the reality, the pain, suffering and guilt that can be experienced by people separated from their biological parents as infants or young children.

1.5 We don't believe anyone viewing this documentary of people searching for their biological parents and siblings could reach any other conclusion of psychological harm and pain. The documentary leaves not a shred of doubt that 'blood is much thicker than water'

1.6 The tragedy and trauma of child separation is the legacy surrogacy and adoption imposes on many children of misfortune.

1.7 One painful experience of surrogate and adopted children, often overlooked, occurs when issues of genealogy arise among friends or at school. The surrogate child can experience a painful crisis of identity.

1.8 Do childless adults – from whatever motivation is experienced – have a *genuine 'right'* to commission someone else's child for themselves? If they do not have a *natural* right, what kind of 'right' do they have? Who gives them such a right, how and why? Too many government Inquiries take their own assumptions for granted without serious examination because they **sound** plausible.

1.9 If a surrogate mother already has children, they will know their mother is pregnant. What psychological harm will these children experience when they realize their anticipated little brother or sister is to be given away? Will they worry too that they may be given away? Does a surrogate mother have a right to transform an infertile couple into a family while disturbing, even destabilizing, her own? This is a problem beyond the reach of law. This does not provide justice for children.

1.10 The Standing Committee should distinguish between genuine rights and the assumed rights of individuals and minorities in a community constantly 'manufacturing rights' in order to serve private and personal agendas.

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

(g) 1.0 We support the view expressed by the NSW Law Reform Commission that there is no compulsion or obligation upon the State government to affirm any type of surrogacy. We would urge Standing Committee members to honour the child's natural right to their biological heritage, the equality of women (that they are not breeding machines), that surrogacy undermines marriage and family by opening the way for atypical partners to access children in order to satisfy adult wishes.

1.1 The efficacy of welfare legislation in Western Australia is deeply suspect in the case of a boy given to two male partners to raise. The biological mother wished the male pair to raise the boy and the government welfare body stated that, 'it could not disregard the mother's wishes'. In this case the wishes of an adult superseded the right of the child to child-protection. The child's best interests were ignored.

1.2 In the debate over same sex marriage in California, Dr. Michelle Cretella, Board of the American College of Pediatrics (2004), argued that "legislation favoured the individual *rights of adults* in the same sex parenting issue, not children's rights and removed any concept of family from the definition of marriage". Relationships were seen as being based on sex and economic benefits as human rights (for adults).

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

(h) 1.0 The Federal Government should exercise overall legislative responsibility for the protection of children's rights and insist at the policy level on the primacy of the child's rights and welfare interests. The Federal Government should articulate a monitoring policy to establish in practice that this policy is carried out.

1.1 Surrogacy is fraught with too many operational difficulties with potential for psychological problems damaging adults and children involved. State welfare bodies have a poor track record in handling child-adoption, child-fostering and child-protection. Surrogacy, we believe should be prohibited by legislation.

(i) **Any other relevant matter.**

(i) 1.0 A multitude of negative variables associated with surrogacy prompt a number of objections.

1.1 It can be argued that the concept of "altruistic" surrogacy is an unrealistic effort to focus sympathy upon infertility, especially infertile couples in order to fulfill their natural desire to be a family. Yet it can also be argued that the commissioning of one woman to breed for another woman is humanly and, from the biological view, *unnatural*'. Infertility can be a tragic misfortune for those who anticipated having children of their own, yet it is important to hold a balanced perspective since many parents and families experience varying degrees of misfortune and suffering not amenable to resolution (disability, intellectual handicap, terminal illness, death etc...).

1.2 Infertile couples, however, do have an option to seek to be adopting parents. There is no such thing as an unwanted child and no shortage of children. Millions of orphaned and rejected children are imprisoned in orphanages or live by their wits on urban city streets around the world – *not because they are unwanted, but because nobody cares ENOUGH to see that their interests are paramount.*

1.3 Compassion for infertile couples who desire a child is natural as it is for all human misfortune. Surrogacy, regardless of any altruism involved treats the child as a commodity. We believe this is too high a risk to pay for a solution that raises unresolvable ethical, psychological, philosophical and social difficulties for all parties involved.

1.4 Of 125 women applying to be surrogate mothers, 89% stated that *payment was a necessary condition* though not necessarily the only condition (Stuhmcke, 1996).

1.5 A surrogacy arrangement, has to be paid for by someone, either the recipient couple or the taxpayers. When we adopted a son, there was no charge. Today the cost charged has become prohibitive for all but the well-off. Commercial adoption has replaced the initial altruism.

1.6 It is unrealistic to imagine surrogacy would be reserved only for infertile couples when lobby groups constantly use political pressure and propaganda to benefit from surrogacy, adoption and assisted reproductive technology. Although homosexual partnerships are sterile by definition, partners are, generally, fertile and biologically capable of procreation. Is it ethical to deny one's own reproductive capacity and demand other people's children?

1.7 Few cases of surrogate children exist to be able to investigate the developing impact and effect of surrogacy on their lives. Yet, surrogacy outcomes could well reflect a pattern similar to adoption – some adopted children display a neutral attitude (real or simulated), most express gratitude for their adopting parents, but many are shattered and experience considerable pain and suffering from being disconnected from their biological parents and siblings.

1.8 The NSW Law Reform Commission refers to difficulties inherent in surrogacy for the law:

- Custody disputes.
- Mother-child bonding
- Child commodification
- Child rejection by a recipient couple
- Unanticipated birth impairment of a child
- Emotional and other problems as a child grows older
- Miscarriage

1.9 The 'leasing' of her womb by a surrogate mother to another party is inconsistent with human dignity. It would seem unethical for an infertile couple to use a person as a means to further their own ends?

1.10 Derelict and orphaned children could live in loving homes if world governments and politicians did not hide behind *national pride as their justifying prejudice* and welfare bodies did not *prioritize 'administrative convenience'* as more important than a 'child's best interests'.

1.11 Surrogacy threatens the traditional family structure and its values because it disconnects sex from procreation and introduces a third party (the surrogate mother) donating or gestating a child. This occurs when the surrogate mother's pre-conceived intention is to abandon the child to a social mother. It is ethically questionable whether the furthering of one family by this method, justifies the means of destroying another – the child's right to its own biological parentage.

1.12 Surrogacy, Satz (1992) points out, reinforces inequality for women because it exercises control over female sexuality and reproduction and historically reinforces women's second-class position in society. India permits commercial surrogacy because it provides monetary opportunities for the poor, burdened with too many children; the child is commodified as a marketable product.

1.13 Surrogacy cancels the right of a child to biological parenting. A child without such a right becomes a potentially transferable 'right' of others, a status confirmed by the media when it stated that, "such a right automatically turns a child into a commodity", (*The Australian*, 3 June, 2007).

1.14 Surrogacy shifts the goal-posts when it allows women to become breeders for others, treats children as commodities and opens the way for atypical relationships to demand children for their own purposes.

1.15 To downgrade the status of a woman to a 'breeder machine' is repugnant and to cancel the biological right of a child simply because it is a child is deeply offensive to many.

(i) Surrogacy and eugenics.

A. Surrogacy has the potential to develop the concept of 'designer babies' since intending parents want 'unblemished' children of their imagination. Surrogacy as an established practice could prescribe desirable qualities for children. No level of altruism would prevent surrogate children being sought with preferential properties such as gender, skin colour, hair colour, IQ and healthiness – characteristic qualities recipient parents desire which turn children into commodities. *Altruism as a description of children is hypocritical in a society that aborts children as objects of disposable convenience.*

B. Surrogate mothers also would be selected for their intelligence, attractiveness and absence of any impaired genealogical history. An existing child could confirm the 'qualities' desired.

C. Legislation could not prevent surrogacy developing eugenically regardless of preferential qualities desired by the parties involved. And to enforce surrogacy arrangements would be risky and harmful for the child.

D. We doubt that society in a democracy would tolerate coercive legislation. Where does this leave the law – and the child

E. A rejected surrogate child, could be seen as 'inferior' in not having characteristics desired by intending parents. This could have disturbing effects on the surrogate mother and her own family.

F. When babies are selectively bred, as in surrogacy, the 'designer babies' concept soon develops and ultimately emphasizes 'purity breeding' similar to that, so repugantly practiced in the Nazi era.

G. The above scenario may appear impossible, but it should be kept firmly in mind that no socially controversial legislation introduced under the guise of 'benevolence' ever remains static. Boundaries soon begin disappearing under minority pressures, bullying political lobbyists and political naivety – *'a small crack in a dam may appear harmless or insignificant, but it is not long before the whole valley is flooded as a consequence of social ennui'*.

(i) Surrogacy and same sex households.

H. Surrogacy is seen by homosexual activists as one method by which they can publicly validate homosexual households by using children. Some same sex activists (e.g., Signorile, 1994; Sullivan, 1995; Croome, 2002; Cerise, 2003; Pitman, 2003, *et alia*), campaign for the "right" to marriage and children by adoption, fostering, assisted reproductive technologies or surrogacy in order to publicly sanitize their same gender relationships as 'family'. *(In Australia same sex households represent approximately 0.25 (or a quarter of one per cent) of the population (ABS 1996).*

I. The continued bullying of society by activists in the homosexual sub-culture for the 'right' to have children by socially-engineering instead of their own biological capacity would, if

granted, move the goal posts so as to divorce children from their biological parentage as a natural right.

J. Opposite gender parenting has been the historic pattern for stabilizing society for millennia. It also maximizes the protection, nurturance and best interests of children. This traditional paradigm is supported by biological, genetic and physiological science. Same gender cohabiting has no such support.

K. Apart from important ethical issues involved, the fundamental question for surrogacy hinges upon whether same sex households are suitable and desirable environments in which children can be raised successfully; whether their needs can be fully met and what direct or indirect impact children would experience from same gender parenting.

L. Surrogacy threatens to destabilize marriage and family as nature's social paradigm for the reproduction and procreation of human life. Same sex relationships are based on emotional attachment. Same sex parenting violates both the right for children to remain with their biological parents and the biological and physiological compatibility of the two gender.

M. Homosexual activists insist they can love children as much as heterosexuals can. Of course they can – and so can pedophiles who, according to a large study by homosexual researchers Jay and Young (1979), strongly influence male homosexuality. (*They reported that 27% of their male subjects stated a sexual preference for boys under the age of consent*). The nurturance of a child requires a great deal more than love alone to fulfill a child's primary and secondary needs.

N. Any affirmation of surrogacy for same sex relationships would signify that homosexual households are safe, secure and healthy environments for raising children, an assumption contradicted by much social science research (e.g., Knight, 1992;

Reisman, 1995; Law et al., 1996; Ferguson et al., 1999; Valleroy, 2000; Cochrane, 2003; Shea et al., 2005; Nicolosi, 2007 et al.)

*O. The environment in which children are raised is absolutely critical for their development.* Given the current body of research, the American College of Pediatricians (22<sup>nd</sup> January, 2004) (ACP) believes, 'It is inappropriate and potentially hazardous to change the age old prohibition on homosexual parenting, whether by adoption, foster care, reproductive technologies or surrogacy'. This position, the ACP argues, is rooted in the best available science.

P. Self-identified homosexual and Canadian academic, Nathanson (2003) of McGill University, Toronto, agrees that children not only need biological parenting, but is opposed to same sex marriage and parenting, pointing to homosexually-raised children experiencing significant negative problems such as:

- Boys cannot learn to be healthy men from even the most loving mother alone, or pair of mothers.
- Nor can girls learn to be healthy women from even the most loving father alone, or pair of fathers.
- The need for a father is particularly acute for the healthy development of boys. Boys, like girls, must separate from their mothers, *but unlike girls, must switch the focus of their gender identity from one gender to the other.*

*(This critical and potentially disruptive process is strongly emphasized by Moberly (1993) because the child's development can result in gender-identity confusion, particularly in boys).*

Q. Many researchers endorse the ACP position. A fundamental reason for the inadequacy of same sex parenting is associated with the sub-culture's rejection of the importance and necessity of the two gender for the stability of human relationships. Biogner and Jacobsen (1992) state the obvious:

- No man can successfully fulfill the role of a mother
- No woman can successfully fulfill the role of a father

R. Gallagher and Baker (2006) emphasize that adult-centred, "same sex households involving children, *fall apart more rapidly than those without children*".

S. Homosexuals are not discriminated against marriage and children – they discriminate themselves from the legal requirements applicable to every adult Australian. Individuals and minorities cannot always have what they want for themselves. Minorities are not always right and majorities are not always wrong, yet some politicians are constantly manipulated by minorities. It is unrealistic to change marital rules that have stood the test of time, by yielding to the self-serving demands of 0.25% of the population.

T. American lesbian academic and literary figure, Camille Paglia (1994) is more realistic and colourfully states the obvious:

*"Nature exists whether we like it or not. And in nature, procreation is the single, relentless norm. Our sexual beings were designed for reproduction. Penis fits vagina; no fancy linguistic game-playing can change that biologic fact". (Vamps and Tramps, p. 71.).*

Surprisingly, Paglia insists gay men should marry - but to a *heterosexual woman*. She scorns their 'born that way' propaganda.

U. The concept of surrogacy needs to be examined, not merely in terms of compassion for infertile couples, but by its impact on society and the community, upon children, marriage and family in

realistic, rather than emotionally altruistic terms since it incorporates a minefield of conflict and problems.

V. Almond (2006) makes a chilling observation:

*"Every legislative change involving marriage, family and civil rights over the past 50 years to give minorities what they claim to want, has the potential to incite more damage to more people than expected by its intended beneficiaries".*

*She points to 'legislation failing to confer the liberty, harmony and happiness anticipated by gay and lesbian activists who focus predominantly on what they want for themselves regardless of whether it is good for the social order or the needs of children'.*

W. Apart from polarizing community and national values, Toffler (1975) warned in *Future Shock*, that the social diversification destabilizes and fragments a society by bringing about the disintegration of social consensus and national unity; that a mindless toleration breeds a society indifferent to fundamental values which bind and hold it together.

X. Has Australia lost its grip on fundamental values concerning the rights of women and children? The Terms of Reference concern for altruism seems misguided when Australian society already treats human lives as selectively disposable commodities. Surrogacy is one more issue, as Tofler claims, that will polarize Australia.

Y. If infants were capable of understanding when asked their preference for being raised by biological or surrogate parents, the answer, we believe, would be obvious.

We hope the Standing Committee will not view surrogacy as a quick fix for one human misfortune. There is nothing dignified or compassionate about separating a child from its birth mother.

The ramifications of surrogacy are enormously complicated as our submission has shown and its problems are not confined to two women – they can reverberate through society in a rippling effect.

We trust the Standing Committee on Law and Justice will, in view of the potentially negative, harmful inadequacies associated with surrogacy issues, recommend that surrogacy be prohibited.

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