

INQUIRY INTO LEGISLATION ON ALTRUISTIC SURROGACY IN NSW

Organisation: The Law Society of NSW

Name: Mr Hugh Macken

Position: President

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**The Law Society
of New South Wales**

170 Phillip Street, Sydney NSW 2000
Australia; DX 362 Sydney
Tel (02) 9926 0333 Fax (02) 9231 5809
ACN 000 000 699 ABN 98 696 304 966
www.lawsociety.com.au

2 October 2008

The Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

Att: Rachel Callinan
fax: 9230 3416

Dear Ms  Robertson

Re: Inquiry into legislation on altruistic surrogacy in NSW

Thank you for the opportunity to provide comment to the Inquiry into the legislation on altruistic surrogacy in NSW. I appreciate the extension of time within which to respond.

The members of the Law Society's Family Issues Committee have examined the issues and have concluded that this area of law requires the attention of the Federal Government.

In addition, the Committee recommends that there should be a consistent national approach with respect to surrogacy, parentage presumptions and adoptions.

In response to the terms of reference, the Committee submits the following:

- a. **The role if any that the NSW Government should play in regulating Altruistic Surrogacy arrangements in NSW.**

The NSW government should consider introducing legislation similar to the Australia Capital Territory's *Parentage Act 2004*.

- b. **The criteria, if any, that the intended parent/s and/or birth parent/s should have to meet before entering into an Altruistic Surrogacy arrangement.**



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Altruistic surrogacy will usually involve family members or close friends. Just as there can be complex emotional issues which arise when consideration is given to using a known sperm donor, these types of issues can be of even greater impact in a surrogacy arrangement. The Family law case of *R: Evelyn* (1998) is a classic case in point. It is impossible to know how, for example, a person who has given birth is going to feel about that child regardless of whether or not the child contains any of that person's genetic material. It would therefore be important that the parties considering entering into a surrogacy arrangement receive expert counselling before making a decision.

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

Parentage presumptions are important here. It is the Committee's view that the child should be presumed to be the child of both commissioning parents.

- d. The role that a genetic relationship between the child and the intended parent/s and/or intended birth parent/s should play in any Altruistic Surrogacy arrangement.**

The Committee noted that research on adoptions show that it is very important for children to have the opportunity to access genetic information and medical histories. It is suggested that there should be some form of register for that type of information.

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

It will be important to ensure that the parentage presumptions are consistent at the State and Federal level.

- f. The rights that a child born through an Altruistic Surrogacy arrangement should have to access the information regarding his or her genetic parentage, and who should hold this information.**

A child born through such arrangement should have access to this information. It is assumed that this information would need to be controlled by a Government agency.

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

The Australian Capital Territory appears to be the most progressive in this regard.

- h. The interplay between existing State and Federal legislation as it effects all individuals involved in, and affected by, surrogacy.**

This should be governed by Federal legislation. Currently Queensland has legislation that makes any form of surrogacy, including Altruistic Surrogacy, illegal.

I trust that these comments are of assistance in determining the issues to be examined in your current review.

For any queries, please contact Maryanne Plastiras, Responsible Legal Officer for the Family Issues Committee by phone on 02 9926 0212 or email map@lawsocnsw.asn.au.

Yours sincerely



**Hugh Macken
President**