

INQUIRY INTO LEGISLATION ON ALTRUISTIC SURROGACY IN NSW

Organisation: Australian and New Zealand Infertility Counsellors' Association
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Date received: 31/10/2008

ANZICA

Australian and New Zealand Infertility Counsellors' Association

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30th October 2008

Rachel Callinan
Director
Inquiry into legislation on Altruistic Surrogacy in NSW
New South Wales Parliament, Macquarie Street, Sydney

RE: Call for Public Submissions

Dear Ms Callinan

Thank you for the opportunity to provide a submission to the Inquiry into legislation on Altruistic Surrogacy in NSW.

I am pleased to provide the following responses to your issues questions, as a representative of the Australia and New Zealand Infertility Counsellors Association (ANZICA). The submission has been circulated for approval and input from the executive of ANZICA.

Should you require any further comment or assistance, I would be most happy to be contacted

Yours faithfully

Evelyn Zwahlen

Counselling Services Manager

a. Should the Government play a role in regulating altruistic surrogacy arrangements in NSW?

It is appropriate for Government to play a regulatory role in instances of altruistic surrogacy. By legislating that certain requirements be met prior to commencement or finalisation of the surrogacy arrangement, an increased potential exists to minimise any negative outcomes of the surrogacy arrangement.

These requirements may include:

- Ensuring that no financial or material inducement is exchanged in return for carrying a child for someone else.
- Ensuring all parties (including partners) receive legal assistance in the development of a surrogacy contract/agreement and are able to make informed consent to the arrangement.
- Ensuring all parties (including partners) receive proper and independent biosocial and psychological assessment and counselling prior to commencement of the surrogacy arrangement. This assessment should not be provided by the persons who are providing the psychosocial counselling to either the surrogate or the recipient couple
- Awareness and acceptance of legal ramifications.
- Ensuring all children born of surrogacy arrangements have access to counselling about the arrangement.
- Ensuring that children have access to the circumstances of their gestation and birth.
- Ensuring any potential surrogate gains access to proper and independent obstetric review prior to embarking on a surrogacy arrangement to ensure that she is medically fit to undertake a surrogacy, for the wellbeing of all parties.
- To ensure that only gestational surrogacy is supported, not traditional surrogacy.

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

Commissioning Couples/Intending Parents:

- It is appropriate for commissioning couples to use a surrogate only in instances of unresolvable infertility or serious health risk.
- A minimum age of 25 is appropriate, and Government could consider the implementation of an upper age limit for commissioning parents, in the interests of the resultant child.
- A restriction on family type is inappropriate for reasons of discrimination on the basis of relationship or marital status. For couples using a surrogate it would be appropriate to ensure the relationship has been sustained for a period of at least 2 years, but not necessarily with a marital requirement.
- It is appropriate for at least one commissioning parent to be biologically related to the child.

Surrogates:

- Minimum age of 25, and suitability to surrogate assessed by an independent gynaecological specialist. She should have had at least one child but preferably completed her family.
- The surrogate should engage in gestational surrogacy only

- It would not be appropriate for a woman to delay commencing or continuing her own family in order to undertake a surrogacy arrangement.
- The surrogate should have a clear and demonstrable ongoing and close relationship with the commissioning parents (family, close friend, etc). This ensures that the true altruistic nature of the surrogacy.

Common Criteria:

- Legal and psychological counselling.
- Surrogacy arrangements should be agreed prior to conception.
- Any parties convicted of sexual or violent offences, or subject to a child protection order should be excluded.

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

It is appropriate for the commissioning couple to have responsibility for all reasonable costs associated with ART and the preparation for and care of the pregnancy. Costs associated with the delivery and postnatal care should be responsibility of the commissioning couple. These costs may include payment of any necessary postnatal mental health expenses for the surrogate for up to one year.

Any other reasonable expenses that result from the surrogacy agreement should also be responsibility of the commissioning couple. As a method of calculating reasonable expenses it may be appropriate to consider what expenses would be incurred by the couple to undertake the same treatment, if they were not required to use a surrogate

As much as is reasonable, the surrogate should have the right to request her preferred doctor/hospital for all treatment/antenatal/delivery services.

It is appropriate for transfer of legal parentage to occur as soon as reasonably possible after birth of the child, and for all parties to be in agreement of this, prior to commencement of the surrogacy arrangement.

d. What role should a genetic relationship between the child and the commissioning parents and/or surrogate play in an altruistic surrogacy arrangement?

It is inappropriate for the surrogate to also be an egg donor. In the instance of a commissioning mother being unable to use her own eggs, a third party should be sourced to act as egg donor. Where an egg donor is involved the resultant child must have access to the identity of, and information about the donor and this access must be legally protected.

At least 1 commissioning parent should have a biological relationship to the child. The complexity of the familial arrangements should be minimised while attempting to ensure a link between the child and the family in which they are raised.

The transfer of legal parentage should occur at the earliest possible opportunity after the birth of the child to ensure minimum disruption to all parties. A key difference in the commencement of a surrogacy arrangement is the deliberate intention of the pregnancy by a surrogate is the birth of a child for another person/couple. Therefore, normal processes for adoption after the birth of the child may be redundant or in fact inappropriate.

e. What are the legislative amendments required to clarify the legal status of a child born of such an arrangement?

The mechanism for transfer of legal parentage should be clearly decided prior to commencement of the surrogacy arrangement with only review following the birth of the child. There are examples in Australian law, namely the ACT, of how this could happen.

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

The same rights to knowledge about genetic parentage should be available as is permitted of all children born through ART. The proposed register to manage information relating to gamete donation could be used to hold the information related to surrogacy.

g. Surrogacy legislation in other jurisdictions, how effective is it. Should there be national consistency.

The legislation in the ACT appears effective and efficient and compassionate. It is a useful model for Australia. National consistency would mean the Australians would not have to become reproductive tourists in their own country.

i. Any other relevant matters.

There are many Australians struggling to fulfil their desire to create or complete their families as a result of medical infertility or health problems. For some of them surrogacy offers a solution, albeit a complex and invasive one. Our laws can help ensure that this service is available to those who need it and have been assessed to be able to appreciate and manage its unique demands. The laws can also ensure that the legal situation of such families is finalised within a short period of time. The financial strain of such an undertaking also needs to be acknowledged and Medicare funding in line with all other fertility treatment needs should be made available.