



**Canberra  
Fertility Centre**  
*Excellence from referral to delivery*

21 January 2016

House of Representatives Standing Committee  
On Social Policy and Legal Affairs.

Dear Sir/Madam,

**Re: Inquiry into Surrogacy**

Thank you for the opportunity to provide a submission to the enquiry. We would be happy to attend and answer any questions you may have. We note the terms of reference; however, if we deal with each separately, there will be much repetition. We will therefore provide a submission during which all the terms of reference will be addressed.

**Preamble:**

There are those who, we believe from vested interests, attempt to equate surrogacy with adoption in terms of maternal emotion. The two situations are so disparate that one cannot and must not attempt to equate them. There is no comparison between the woman who becomes unintentionally pregnant with her own child and one who, with careful forethought and counselling, deliberately become pregnant with another woman's child. The former is related to the child she carries and has had no considered or psychological preparation for adoption. The surrogate is completely the opposite; no comparison can or should be made.

**Uncompensated Surrogacy:**

This is legal in Australia and the laws work well with the two following exceptions:

1. Laws vary from state to state so that some patients must still travel interstate for treatment for which they are not eligible in their own state.
2. In some states surrogacy is possible without going through an ART unit. In these circumstances counselling may, under the law, be given by a social worker who may have no experience of infertility or surrogacy counselling. We are aware of cases where major distress has arisen because of this type of counselling.

It is ridiculous that there should be multiple laws on the subject in a country of 23 million people. Good will is required to address the above simple matters in order to achieve consistent legislation.

There is very little uncompensated surrogacy undertaken overseas and most of that seems to be in Canada.

**Compensated Surrogacy:**

Australia's first responsibility is to its citizens. Since compensated surrogacy is illegal in Australia those patients unable to find a surrogate travel overseas for surrogacy. Declaring this illegal in Queensland, ACT and NSW has not reduced this travel (Everingham et al, 2014) which is around 250 couples per annum. Those who consider overseas treatment must, of course, be able to afford to pay for it and therefore, in forcing patients to travel overseas for a treatment we can provide much better here, Australia discriminates against its citizens in the matter of health care access based on the ability to pay. This is something we loudly claim not to do (indeed, we loudly espouse equity of access for all) and for which we criticise other countries. This hypocrisy is not lost on our colleagues overseas who see our patients.

We make a great deal of noise in this country on the need to limit the number of embryos transferred in order to keep the multiple pregnancy rate (and its associated risks and complications) below 10% and RTAC has the power to enforce severe penalties against ART units who do not comply. In overseas surrogacy units, multiple embryo transfer is the norm. The multiple pregnancy rate in USA is 30% and, before access was closed, was 50% in Thailand, 55% in India (Stafford-Bell et al 2014) and 64% in Nepal. There is no clear evidence that the situation is any different in the new countries "on the block", Greece, Cambodia and Ukraine.

Multiple pregnancy, as you will be aware, is associated with significantly increased risks, complications, morbidity and mortality. Many of the survivors require ongoing medical care on return to Australia, sometimes for life. The cost of this will be borne by the Australian tax payer.

Another "essential" which is loudly proclaimed is children's right to know the circumstances of their birth, the identity of the surrogate and any gamete donor involved. With the exception of the USA the majority of surrogates and gamete donors overseas are, and remain, anonymous.

It appears, therefore, that those aspects, risks and complications of reproductive medicine which, Australia claims, are completely unacceptable are, in fact, considered perfectly acceptable as long as they happen to our citizens and their children overseas and not here. This dangerous hypocrisy is totally unethical and Australia is clearly not meeting its responsibilities to its citizens.

As well as the claims of the commodification of the reproductive process (see above), the only other criticism regularly raised against compensated surrogacy is the risk of exploitation of women. We believe this probably happens in third world and developing countries (which exploitation Australian policy continues to support) but we have to consider western women

and particularly Australian women. The suggestion of exploitation relies entirely on two fallacies. The first (which we reject) is that Australian women are unable to make carefully considered decisions and are thus easy to exploit. The second is that we, in this country, are too stupid to promulgate a figure which, while providing some compensation to the surrogate for her generosity, is in no way an escape from poverty. We reject this also but perhaps we should look for advice to the USA which manages surrogacy well. With the exception of a few clinics in New York and California, clinics pay the surrogate around US\$30-35,000. Surrogates are rarely used more than twice with an appropriate wait between delivering one child and attempting another. In any case, post surrogacy studies on those leaving the programme show that the financial aspect features low on the reasons why women volunteered to be surrogates in the USA. Those for whom money is of major importance are detected on the psychological testing and counselling and are usually rejected as would be the case in ART clinics here. Money should be merely a compensation allied to an already present desire to help. A nationally agreed compensation, available for inspection by RTAC) would prevent competitive offers.

There is therefore a clear need for compensated surrogacy in Australia but, in our opinion, with over 200 couples (Everingham et al 2014) requiring compensated surrogacy annually, Australia's population could not meet this annual requirement for surrogates. Some patients will still have to travel overseas and the submission now divides into the process Australia should reasonably require for a) domestic compensated and b) overseas compensated surrogacy.

**Domestic Compensated Surrogacy:**

1. There should be uniform legislation.
2. Would there be a central government registry for surrogates? Who would staff it and who would pay for it? It should certainly not be the clinics or the patients.
3. Would there be a registry in each state, increasing the cost by a factor of eight?
4. If there was a central registry/registries who would advertise for surrogates?
5. Who would pay the surrogate? Would it be the registry, subsequently being reimbursed by the intending parents?
6. Who would screen the patients and the surrogates as is now being well managed under the uncompensated laws by the clinics? How would a central registry in e.g. Sydney deal with a surrogate in Perth or a surrogate in Perth with intending parents in Melbourne? Would the registry contract the work out to the ART clinic the attending parents have attended and use the local medical, legal and counselling expertise with the results going to the central registry? Who would "match" surrogates with like-minded intending parents as happens in the USA?

Apart from the need for uniform legislation, the rest of the above makes things unnecessarily complicated and we suggest the answer is to remove the prohibition on advertising for surrogates and allow the ART clinics to add compensated surrogacy to their armamentarium under enabling legislation. The question of the surrogate's compensation we have already addressed.

**Overseas Compensated Surrogacy:**

Australia has an obligation to ensure its citizens and their children receive as good care overseas as could be obtained in Australia. We consider the following necessary:

1. No-one should be allowed to travel overseas for surrogacy without being screened by an ART including a police check. You will be aware of events, some reported in the news media, which make this necessary. The unit should report to a government agency or the courts who would issue a permit to travel overseas for surrogacy. Without this pursuit no Australian consulate would issue a passport or visa for a child.

Surrogacy in the USA apart from the current (and reducing) multiple pregnancy rate, generally fulfils the requirements set out below, which have more relevance to other countries providing surrogacy services to overseas patients.

2. There must be clear evidence to our consulate of properly constructed signed contracts between clinic and intending parents, clinic and surrogate and intending parents and surrogate, including coverage of the planned treatment protocol, number of embryos to be transferred and the agreed circumstances under which this plan may be altered. The contracts should include documented legal advice and documented counselling to all parties together with the planned management of the pregnancy, labour and delivery. (For example, elective caesarean simply to allow the parents to be present is not acceptable.) The contracts must include (agreed by all parties) testing for foetal abnormality, the tests to be carried out and the plans for dealing with any detected abnormality. They must also include an agreement by the parents to accept any child/children born. The surrogate's contract with the clinic must include her remuneration and her contract with the intending parents must include her agreement to ongoing contact with them and the child/children if so desired in the future.
3. Ultimately the consulate must view an agreement to relinquish the child/children signed by the surrogate.

Without the above, no passport or visa must be issued.

Obviously the consulate can only satisfy itself as to the genuine nature of the arrangements by personal interview of the intending parents and surrogate both before starting treatment and before issuing a passport or visa.

4. Before issuing a passport or visa the consulate must view the birth certificate and confirm, by DNA testing, that at least one of the intending parents is genetically related to the child/children. In some countries the intending parents' names go on the birth certificate and, in some, the name of the surrogate. The latter IP's will subsequently need to claim parentage through the courts in Australia in the same way as currently available for uncompensated surrogacy.
5. In the case of egg donors the contract between clinic and donor must include the legal advice and counselling reports referred to above, the donor's reimbursement, the stimulation protocol to be used ( to guard against deliberate over-stimulation) and the donor's agreement to ongoing contact with the parents and child/children if so desired. Again, the consulate will have to interview the donor.

**Current Information Available to the Public:**

This is totally inadequate. Full, proper and accurate information must be available on a government website.

We would be happy to address any questions you may have.

Yours sincerely

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**References:**

- Everingham S G et al. Australians' Use of Surrogacy, MJA 201(5) 1 Sept 2014: 270-273.  
Stafford-Bell M A et al. Outcomes of Surrogacy Undertaken by Australians Overseas. MJA 201(6) 15 Sept 2014: 1-4.