

The Program Manager Reproductive
Technology Unit Patient Safety &
Clinical Quality Clinical Excellence Division
Department of Health
189 Royal Street
PERTH WA 6004

11th March 2018

**Submissions, Surrogacy Act 2008 and the Human Reproductive Technology Act 1991 (HRT Act)
Review**

Dear Sir / Madam,

We are writing to you today to make a submission regarding the above mentioned legislative review relating to Assisted Human Reproduction and also Surrogacy within Western Australia.

Myself and my husband John are a same sex married couple who have three wonderful children who have been created via IVF and surrogacy in Toronto Ontario, Canada. I wanted to write to you today to express our gratitude that the WA Government is finally reviewing the legislation, and to consider the lives and families of the broader community.

John and I have lived in Western Australia together since 2011, John is from Saskatoon, Saskatchewan in Canada which has made our choice to go overseas and back to his home country to start our family and easy one. We were going to follow the pathway that several of our friends travelled when they went to India in 2012 / 2013 to undertake commercial surrogacy. Each one of them brought back either 2 or 3 babies and were subject to scrupulous and somewhat risky and questionable practices, including operators undertaking business illegally here in Perth.

We were lucky enough to hear of a couple who were friends of the family who utilised the services of Surrogacy in Canada Online, an agency facilitating altruistic surrogacy for both Canadian and international couples. We began our journey in October 2012, being pregnant with a surrogacy in Saskatchewan some 6 months later. John and I got married in Saskatchewan in July of 2013, it wasn't even nearly a possibility to get married in WA nor was it even conceivable that we could start a family here given the discriminatory nature of both the Marriage Act and the Surrogacy Act. We announced the birth of our baby at our wedding in Canada. We went on our honeymoon and within a week of being in Europe we were getting late night phone calls, our surrogate has gone into premature labour, baby being just shy of 24 weeks gestation. We got a call one mid-afternoon, baby had been born and was on life support, get back to Canada quickly. We were told that we had to choose to keep baby Louie on life support or to let him take his course with nature, he was too small and had a very hard delivery. We let baby boy pass away over night as we jetted back to Canada from Croatia.

From this traumatic experience we most certainly had more of an understanding of helplessness, how pregnancy can be compromised and how we had little to no control over what was to happen,

other than the choice to keep baby alive, likely seriously disabled and all of our lives changed for ever or to take this as a sign that this wasn't meant to be and that baby was too sick.

Many couples have placed themselves in risky situations. I don't believe we have. We went on to have three babies after this traumatic experience albeit with two different surrogate mothers. The whole experience even in a first world country environment was tricky and emotional, I couldn't imagine doing the same in Thailand, Mexico or India where there is also likely a communication barrier.

At the end of the day Western Australian deserve the rights to undertaken surrogacy legally at home and to do so with locally familiar support and environment, support of family and friends and known medical practitioners. The system as it stands now unfairly discriminates families like my own. Its just illegal for same sex couples to undertake surrogacy and to access the IVF for two men would be impossible. This just is not good enough and it forces couples like us to go overseas and spend over \$100,000 to have a baby, this is not fair it's not equitable and it's just not right.

What I also believe should be decriminalised are the aspects of the Surrogacy Act which criminalise consultants who wish to help people navigate the surrogacy process. I would understand this where surrogacy was banned. I don't believe that consultants would take advantage of families, and there could be a series of regulatory and auditory roles established to ensure that a surrogacy consultant does not breach those rules and regulations. For example, in Canada surrogacy consultants exist, some are more boutique and there are others which are commercial type operations with large teams of staff and support workers. I believe that boutique consultancy operations should not be banned or illegal as they provide a critical service component to the wider community who are wishing to receive support and guidance, and to be informed in terms of process and procedures in relation to IVF and surrogacy.

If we are wanting to model our legislation against another jurisdiction, Canadas Assisted Human Reproduction Act AHRA is a good model for policy and legislators to look at, to contact Health Canada and ask them what their current shortfalls and pitfalls are. They recently provided detailed guidelines relating to reimbursement expenses to surrogate mothers. In Canada the issue is that it is Altruistic and its cheaper than the USA. A surrogate mother is covered under provincial health care and in Canada your baby is able to have two Dads on the birth certificate. Surrogates are only compensated for out of pocket expenses, lost wages when on bed rest, pregnancy related assistance services such as cleaners and child care. WA needs a similar set of rule and regulations to guide those wishing to want to help a couple in need.

What we want to see is freer and easier access to surrogates domestically and to reduce the need for couples to look elsewhere because there is too much red tape here in WA. It would be great to see a consistency across the states of Australia in terms of recognition of parentage for example, and for two fathers to be registered on birth certificates. Although this is the case for us as children are born in Canada, we are still for example treated poorly by the Australian Passports Office who demand that the Surrogate still signs the passport application. Even though she is not recognised as a legal parent and who has no biological linkage to the children.

For us personally we wish to help other couples who need access to the services we were provided. Whether that is domestically or in Canada (both being altruistic environments) for surrogacy, currently if we established a service which helped Canadians and we lived in Perth and did this remotely, technically we would not be complying with the law. That is completely ridiculous and

unreasonable in 2018. I don't understand how me, helping Canadian intended parents undertaking Canadian surrogacy, which has no effect on any Western Australia can be technically illegal just because my laptop and I are located in Perth. Ultimately, I would love to do this for Western Australia couples because I know and understand Canadian surrogacy very well, but ultimately it would be even better if they didn't have to look to a progressive country like Canada who mind you have generously not shut the door on international couples accessing their citizens for surrogacy purposes thus far. There will be a point though where the burden on the tax payer will become evident and the door will close, leaving one less option for Western Australians to fulfil their dreams of being parents.

Both surrogacy and IVF need to be accessible to all who need it. Yes, it needs to remain somewhat highly regulated but we also need those regulators to be open to progress, to change with the times and to be inclusive for same sex couples particularly the men who have zero opportunity to have children without an egg donor and without a surrogate mother.

Looking at the specific clauses which give me cause for concern are as follows:

Surrogacy Act 2008 Division 1 Section 6 6. Meaning of "surrogacy arrangement that is for reward"

I believe that this needs review. Please review the most recent review from Health Canada which sought specific feedback from the surrogacy community over there.

<https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/feedback-toward-strengthening-assisted-human-reproduction-act.html>

In this 2017 feedback the following was summarised:

In terms of the proposed process for reimbursement, the majority of stakeholders stressed the importance of a system that is not overly onerous or bureaucratic, and one which allows for the timely reimbursement of expenditures with real protection for donors and surrogates to ensure that they are not left vulnerable to exploitation through the reimbursement process.

Some stakeholders saw value in the proposal to require signed declaration forms from a compliance enforcement perspective, but suggested that Health Canada should also develop a template for donors and surrogates to use.

With respect to creating and maintaining records, a few stakeholders expressed concern that receipts were not always easily obtainable or available, which would pose an additional burden on donors, surrogates, agencies, and clinics.

Some stakeholder groups, including academics and women's rights organizations, suggested that altruistic donation and surrogacy should continue to be the guiding principle informing the Department's regulatory framework. These groups argued that any compensation beyond reimbursement for expenditures related directly to the donation or surrogacy could undermine the importance of informed decision making and meaningful consent and could lead to the exploitation of women.

However, many stakeholders advocated for a model that would allow for reasonable compensation, suggesting that a definitive itemized list of reimbursable expenses could be too rigid to account for the individual circumstances of each donation and surrogacy arrangement. Despite holding this view, many of the same stakeholders also took the opportunity to propose additional categories of expenditures.

Other comments provided by some stakeholders included:

- *Opposition to any form of reimbursement as it was perceived to be equated to “commercial surrogacy”.*
- *The need for the Department to adopt policies regarding reimbursement, such as not to restrict the “generosity and gratitude” displayed by surrogates, donors, and intended parents.*
- *“Expense neutral” approach for donors and surrogates, meaning that surrogates and donors should neither profit nor lose out financially as a result of their surrogacy or donation.*
- *Concerns with regards to the difficulty of being able to reimburse for “non-tangible” costs such as time, effort, risk, and commitment.*
- *Support for all reasonable donor and surrogate compensation or the creation of one generally-worded category that covers any reasonable expense related to surrogacy.*
- *The need for a complaint mechanism to help resolve any compliance issues*

Surrogacy Act 2008 Section 9. Reward for introducing parties for surrogacy arrangement

9. Reward for introducing parties for surrogacy arrangement

- (1) A person who receives, or seeks to receive, valuable consideration for introducing or agreeing to introduce persons

page 4

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As at 01 Mar 2009

Extract from www.slp.wa.gov.au, see that website for further information

with the intention that they might enter into a surrogacy arrangement commits an offence.

Penalty: a fine of \$12 000 or imprisonment for one year.

- (2) Subsection (1) applies whether or not it is intended that the surrogacy arrangement be one that is for reward.

10. Publishing willingness to make surrogacy arrangement that is for reward

A person commits an offence if the person publishes or causes to be published —

- anything that is intended to, or likely to, induce a person to enter into a surrogacy arrangement that is for reward; or
- anything to the effect that a person who is willing to enter into a surrogacy arrangement that is for reward is sought; or
- anything to the effect that a person is or might be willing to enter into a surrogacy arrangement that is for reward.

Penalty: a fine of \$6 000.

This section of the Act needs to be either repealed or revised. It does not provide any framework for couples like mine and people who are in need of a surrogate to be able to access such a person. Why should someone who facilitates the opportunity for two parties to self-match constitute a criminal act?

I do not believe that there should be “agents” paid to match surrogate with intended parents, however, this clause currently does not allow anyone to be paid to provide services for these parties to be able to be introduced. It’s not fair or reasonable that this service be undertaken for free and it’s not a productive approach to potentially force this type of service underground.

It makes perfect sense in a non-commercial and altruistic legislative environment to prohibit advertising of requests for a surrogate or a surrogate who is seeking to be “Paid”, however, I don’t think it is reasonable to prohibit consultant firms from establishing and that they are not allowed to advertise for intended parents to utilise their services, nor surrogates wanting to seek intended parents. I think a little more thought needs to go into this, considering that surrogacy is maintained as reimbursement based, Surrogacy Consultants are able to exist in harmony with the law in Canada and the same should be able to take place here in Western Australia.

I also believe that Section 17 of the Act is overly onerous. I understand the need for medical approval but for the “Council” to have to approve a surrogacy agreement, it seems a to be too much red tape, this should be something that forms part of the IVF practices and requirements for clinics to administer. I am not opposed to the prerequisite criteria of age and given birth prior, what bothers me is the highly regulatory nature of that process and the possible time delays incurred in administrating that process and the time it takes to achieve such an approval.

Thank you for consideration of my submission.

If you have any questions relating to this submission please feel free to contact me:



Ross Jutras-Minett

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