

Family and surrogacy



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‘ A surrogacy arrangement is an arrangement between a woman (the birth mother) and another person or couple (the intended parents) where the birth mother agrees to become pregnant with a child for the intended parents’ (Department of Justice and Attorney-General 2010). In Queensland, surrogacy should only be permitted to married couples or de-facto couples, including same-sex couples. There are two types of surrogacy, altruistic and commercial surrogacy. Altruistic Surrogacy is where an ‘ arrangement between a woman and a couple or individual to carry and deliver a baby for no financial benefit (Wise Geek, 2003).

The second type is commercial surrogacy where there is financial benefit for carrying the child. This is a controversial topic throughout Queensland as it involves the bearing of a child. Also, the controversy with surrogacy is the two types of surrogacy that are available, although altruistic surrogacy is the only surrogacy currently legal within Queensland. But other countries do allow for commercial surrogacy to be legal. Each section throughout this report will discuss different topics about surrogacy, the first section will discuss the current law in Queensland and if the same law applies throughout Australia.

The next section will talk about how effective the current law is or not and why this is. Also, this section will discuss the pros and cons of surrogacy within the current law. The next section will discuss whether changes to the current law need to be made. The last section in this report will discuss the relevance of the law and the overall effectiveness of the law present. ‘ The Surrogacy Act 2010 was passed by parliament on 11 February 2010 allowing altruistic surrogacy to occur in Queensland. Currently, the law allows any

person, regardless of relationship status, to be eligible to utilise surrogacy’ (Queensland Government, 2010).

Queensland has implemented this law to allow for de-facto couples, same-sex couples and a single person to have the opportunity of having a biological child. ‘ Commercial surrogacy is illegal in Australia, except for the Northern Territory. Although, the law allows for altruistic surrogacy to be legal, an amendment was made for it be illegal for New South Wales residents to participate in commercial surrogacy anywhere in the world (Evolution Publishing, 2010). Other countries such as the United States of America and India are favourable of commercial surrogacy and that is why overseas surrogacy is more common than altruistic surrogacy.

In the United States for example, amongst states as varied as California and Arkansas, commercial surrogacy has been an established practice for many years with careful scrutiny of those arrangements by their courts’ (Evolution Publishing, 2010). The Surrogacy Act 2010 bans Queensland, Northern Territory and Australian Capital Territory from having access to overseas commercial surrogacy anywhere in the world. But within the Act, it is different for other states such as Victoria, Tasmania and South Australia, where it does not ban anyone from having access to an overseas commercial surrogacy clinic (Evolution Publishing, 2010).

It is evident that within this Act, certain laws apply to each state and it is more common for anyone wanting to have access to commercial surrogacy to go live in a place where commercial surrogacy is not banned, to avoid a hefty fine or jail time. ‘ It is a criminal offence for any commercial surrogacy

arrangement to be entered into in Queensland. It is also a criminal offence for a resident in Queensland to enter into a commercial surrogacy arrangement anywhere in the world' (Evolution Publishing, 2010).

Currently, the Surrogacy Act 2010 gives access to altruistic surrogacy for any de-facto couples, same-sex couples and a single person (Department of Justice and Attorney-General, 2010). Altruistic surrogacy should only be allowed to same-sex couples and de-facto couples, eliminating any single person wishing to have access to this process, as all children have the right to grow up with two parents instead of one. " Surrogacy is an arrangement between a woman and a couple or individual to carry and deliver a baby" (Wise Geek, 2003).

Currently within the Surrogacy Act 2010, it is illegal for any Australian citizen to participate in any form of commercial surrogacy, although altruistic surrogacy is legal within the current Act. " The issue of surrogacy can cause great moral, ethical and legal debate within the community. However, with increasing demand for assisted reproductive treatment (ART) and a decline in the number of children available for adoption, it is possible that more Australians will start to consider surrogacy as an alternative" (Better Health Channel, 2010).

There s continuous controversy based around the current Surrogacy Act. " There are, tragically, literally hundreds of couples throughout Queensland who would dearly love to be parents but for one reason or another are unable to conceive and unable to have their own children," Ms Bligh said (The Age, 2009). The argument that is in favour of surrogacy is that it is a

personal decision if one or a couple wish to commission for a surrogate mother. People should be free to make any arrangements for a surrogate mother as long as it does not bring harm to others.

The main arguments that are against surrogacy is based on two issues the best interest of the child and the rights and feelings of the surrogate mother and whether they will be able to hand the child over, even though it is thought that the child and mother share a bond throughout the pregnancy (Better Health Channel, 2010). Francis has echoed the concern of many organisations including the Family Council of Queensland in calling this “ a piece of legislation that will destroy the meaning of the word ‘ parent’ and deprive children of their right to have a mother and father” (Australian Protectionist Party, 2010).

It is evident that in a case study in the United Kingdom (Appendix 1 and 2) a surrogate mother was meant to hand over a baby to a couple who she believed was the ‘ perfect couple’ to raise the baby. After a couple of admissions by the wife which led her to believe that she was being told lie after lie, she refused to hand the baby over after the birth of the child. The surrogate mother was inseminated with the husband’s sperm meaning that they both were biological parents, after a six-month court battle a senior Family Court judge ruled that the surrogate mother had legal right to keep the baby.

The surrogate mother said that she could not hand the baby over ‘ because she had formed a powerful bond with her baby’. The main argument with surrogacy is whether the surrogate mother would be able to hand the baby

over, and in this case it shows that the bond between the surrogate mother and baby was too strong for her to hand over the baby to the couple. Mr Justice Scott said ‘ In warning to other prospective parents considering surrogacy, he said they faced very considerable risks’. Surrogacy can be seen as a controversy topic and when entering into surrogacy the couple has to have full access to their life.

They also, need to know everything about their family history, cancer, male pattern baldness, whether the mum has any diseases such as aids or drug addiction which could be passed onto the child. Also in surrogacy the couple may like to help out the surrogate mother as much as possible even living with the surrogate, this means that the surrogate mother could feel like she has no privacy and this could cause her stress, especially if their strangers to her. The Surrogacy Act 2010 allows for same-sex couples to enter into surrogacy and it can be seen in (Appendix 3) that a gay couple commissioned for a surrogate mother.

Lura Stiller (surrogate mother) used her egg and the sperm from one of the gay partners to start the process of having their baby. ‘ Stiller became a part of the small yet growing movement around the United States that involves surrogate moms preferring male homosexual couples over typical or traditional families’. Once the baby was born Stiller handed the baby girl over to the grateful couple. Through the following case studies on surrogacy it can be seen that there is both pros and cons upon entering into the process of surrogacy.

The Surrogacy Act 2010 gives the opportunity for single parents both male and female to be able to commission for a surrogate mother and in the following case study (Appendix 4) it shows that a single father commissioned to be a single parent. The father donated his sperm to be placed into the surrogate mother while another woman donated her embryo which was then placed into the surrogate mother. ' In my 25 years of experience in IVF techniques, this is the first time a man has come forward with a wish to father a child. This is a trend-setting example of single fatherhood in the country, Ghosh Dastidar told PTI'.

This case study shows that with the law allowing for single males and females to enter into this process, it has the benefit of bringing joy to that person. Surrogacy gives couples and a single person the opportunity to have a child that is biologically theirs. In the next case study (Appendix 5) it shows that a senior labour politician and his wife entered into the processes of surrogacy. Due to his wife being unable to conceive the couple investigated about adoption and realised that they would have to wait five years before they would be considered for adoption.

The couple then decided they could not wait and asked a close friend to donate her egg and with the wife's husband's sperm it was then placed into the surrogate mother. Upon the arrival of the child the surrogate mother handed the child over to the couple and with this the couple said ' their generosity is an inspiration to us'. This case study shows that surrogacy has become a way for people who cannot conceive, to enjoy the process of being able to have a child that is biologically related to one of the parents.

The Surrogacy Act 2010 was passed by parliament on 11th February 2010.

This Act states that it is legal for altruistic surrogacy arrangements to be made in Queensland' (Department of Justice and Attorney-General, 2010).

Currently the Act allows same-sex couples, married couples, de-facto couples and a single person to have access to this arrangement. The Surrogacy Act needs to be readdressed as it is allowing a single person to have the right to surrogacy which is therefore encouraging a single person to raise a child.

The Surrogacy Act should be making it only legal for couples to have the benefit of accessing the surrogacy process. It is said that all children have the right to grow up in a loving family with two parents, how is this so if the Queensland Government is making it legal for those who are not couples to have access to this process? It is recommended that changes to the Surrogacy Act 2010 be addressed, making this process only available to same-sex couples, married couples and de-facto couples, eliminating single parents.

The consequences that have been proven to arise from children having no father figure is that " In mother-only families, children tend to experience short-and long-term economic and psychological disadvantages; higher absentee rates at school, lower levels of education, and higher dropout rates (with boys more negatively affected than girls); and more delinquent activity, including alcohol and drug addiction" (Single-Parent Families - The Effects On Children, 2011). In today's society single parenthood has become more apparent and this has a lasting effect on the children.

With single parenthood comes the disadvantages of it causing too much pressure, stress, financial pressure, lack of support, limited social life and also the balancing of children and work (all- about-motherhood, 2010). That is why the Surrogacy Act 2010 should only allow for same-sex couples, de-facto couples and married couples to have the option of surrogacy, eliminating a single person from entering into the process. The Surrogacy Act 2010 affects same-sex couples, married couples, de-facto couples and a single person wishing to take part in this process.

Surrogacy is a controversial topic as everyone has different opinions on whether it is a good thing or bad thing, it depends on how you look at it. Surrogacy gives the opportunity for couples who cannot conceive to have the option of having a surrogate mother carry a child that will be biologically the couples. ‘ The Bible does not forbid the use of a surrogate parent but raises questions as to whether or not it is ethical’ (Got Questions Ministries, 2011). The Surrogacy Act 2010 should only allow access to couples, eliminating any single person from having the option of a surrogate mother.

Queensland’s current law allows for surrogacy to be an option among a single person, but with all the disadvantages that come from a child being raised by a single parent this option should no longer be available in Queensland. Currently, the Surrogacy Act 2010 gives access to altruistic surrogacy for any de-facto couples, same-sex couples and a single person (Department of Justice and Attorney-General, 2010). The Surrogacy Act should be readdressed and changed so that only de-facto couples, sane-sex couples and married couples have the option to utilise this procedure, eliminating the birth of a child to a single person.

Currently, within society it is more common to see a single person male or female with a baby. As this is becoming a trend within society and with the Surrogacy Act 2010 giving the options for a single person to utilise this procedure it will in due course cause psychological problems for the child born into a single person family. Every child has the right to be born into a loving family with two parents not one, and that is why the Surrogacy Act 2010 needs to be readdressed and changed to meet the requirements of today's society.

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