

Introduction

- 1.1 The desire to be a parent is one that is felt by people of all backgrounds, genders and cultures, and particularly, the desire to be a biological parent. As society evolves, so too does the longstanding definition of what makes a family and how a family is formed. Unfortunately, there are many circumstances that can hinder a person's ability to fulfil this desire.
- 1.2 It is reported that one in six Australian couples have issues relating to infertility¹. With advances in modern science and Assisted Reproductive Technologies (ART), surrogacy is becoming an increasingly widespread means of family formation for those who wish to have children.
- 1.3 However in Australia, jurisdictional disparities and discrimination in surrogacy legislation, and the availability of information on surrogacy, can mean that many Australians choose to seek surrogacy arrangements overseas.
- 1.4 Recent high profile cases of surrogacy arrangements involving Australians have focused on the complexities, potential exploitation and abuse of these arrangements and the motivations of Australians to seek out surrogacy overseas.
- 1.5 In Australia, domestic surrogacy arrangements (excepting the Northern Territory²) are currently regulated through state and territory legislation.

1 Home, The Fertility Society of Australia, viewed 23 March 2015 <www.fertilitysociety.com.au/>.

2 The Northern Territory (NT) currently has no laws regarding surrogacy and clinics in the NT are required to abide by the Commonwealth's *Ethical Guidelines on the use of Assisted Reproductive Technology in Clinical Practice and Research* as set out by the National Health and Medical Research Council (NHMRC).

Arrangements are altruistic, with no financial compensation, other than for 'reasonable' medical expenses.³

- 1.6 Commercial surrogacy, sometimes referred to as compensated surrogacy, is an arrangement in which the surrogate, or birth mother, receives payment for taking part in the arrangement. Commercial surrogacy, prohibited in domestic jurisdictions, is prevalent overseas, particularly in developing countries in Asia. Australians are reported as the largest client market for international surrogacy arrangements.⁴
- 1.7 International surrogacy arrangements are not without controversy with many arguing that a lack of regulation means they have little protection of the rights and welfare of children, intending parents and other parties involved.
- 1.8 International arrangements often occur in countries where regulatory, legislative and health standards are not robust and may, in some circumstances, be exploitative. Once a child is born of such an arrangement the intention is for the parents to bring the child to Australia. These international surrogacy arrangements engage Australia's human rights obligations and domestic immigration and citizenship law. Issues have also been raised relating to the ongoing welfare of all parties, determining legal parentage, and the medical and ethical impacts of surrogacy.

Conduct of the inquiry

- 1.9 In early 2015, the Committee held two roundtables, which examined both the Australian Government's role in surrogacy matters and the views of experts and practitioners working in the field. The Committee did not seek submissions to the inquiry but instead focussed on engagement through discussion. Both roundtable sessions were held at Parliament House, Canberra.
- 1.10 The first roundtable session was held on 26 February 2015 and focussed on regulatory and legislative aspects of surrogacy. The Committee heard from representatives of the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Department of Immigration

3 Family Law Council (2013) *Report on Parentage and the Family Law Act*, viewed 23 March 2015 <<http://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/family-law-council-report-on-parentage-and-the-family-law-act-december2013.pdf>>.

4 Mr Sam Everingham, Committee Hansard, 5 March 2015, p. 5.

and Border Protection, the Department of Human Services, and the Australian Institute of Family Studies.

- 1.11 The second roundtable session was held on 5 March 2015 and looked more broadly at surrogacy and legal, social, economic, scientific and medical issues and practices. During this session the Committee heard from law and health professionals, academics and advocacy groups.
- 1.12 The roundtables revealed the diversity of views, the lack of regulatory clarity and a number of welfare and ethical issues relating to both domestic and international surrogacy practices. Key issues raised are summarised below. The full transcripts are available on the Committee's website at www.aph.gov.au/spla.

Terminology

- 1.13 The Committee recognises that the issue of terminology is central to the surrogacy debate and that there are many sensitivities surrounding the language used.
- 1.14 The Committee is also aware that the terminology used in surrogacy arrangements varies across Australian states and territories, adding to the confusion and the potential for different types of surrogacy to be confused within arguments.

Key issues raised

- 1.15 Throughout both roundtable sessions, the Committee was confronted with many current issues surrounding surrogacy and faced by those involved in surrogacy arrangements. Amongst the complex and varied questions raised were:
- What constitutes genuine informed consent and agreement to relinquishment and risks of exploitation;
 - What are the rights of a child to know biological parentage;
 - How is parentage determined for legal purposes;
 - Does the *Family Law Act 1975* (Cth) appropriately recognise parentage of children born as a result of surrogacy where state and territory acts do not apply;

- How are relationships between those involved in surrogacy arrangements impacted and are they properly supported throughout the entire process;
- What are Australia's international human rights obligations and how can the Australian Government ensure international surrogacy arrangements are conducted legally in overseas jurisdictions and ethically;
- What current international frameworks exist that allow Australian Government oversight of international surrogacy arrangements to ensure they are conducted ethically including progress made towards the Hague Convention on Surrogacy?
- How do Australian Government frameworks grant citizenship and documentation for children born overseas recognise legal parentage while scanning for prohibited and unethical behaviours; and
- Are Australian in vitro fertilisation (IVF) specialists and clinics adequately trained and resourced to provide appropriate advice and support to intending parents, surrogates, and children born through surrogacy arrangements. Can Australian regulatory frameworks be improved to assist in this?
- What are the rights of all parties, including when the surrogate mother has no genetic connection to the child born (because both egg and sperm have been donated)?

Committee comment

1.16 The Committee acknowledges that issues around surrogacy are broad and complex, with wide ranging effects on all parties concerned. The issues span significant legal and social concerns and involve the rights, responsibilities, values and protections of Australian citizens. In particular, given the numbers of Australians pursuing surrogacy options in overseas jurisdictions, the roundtables highlighted the inadequacy of Australia's domestic legislation and also the obligations of Australian's as an international citizen.

1.17 The roundtable highlighted the need for a more comprehensive examination of the issues raised and a more coordinated response to the growth of surrogacy arrangements. As a result, the Committee recommends that the Attorney-General refer an inquiry into the regulatory and legislative framework around surrogacy arrangements.

Recommendation 1

- 1.18 The Committee recommends that the Attorney-General refer to the House of Representatives Standing Committee on Social Policy and Legal Affairs an inquiry into the regulatory and legislative aspects of surrogacy arrangements, with a focus on:
- Domestic surrogacy arrangements including issues such as:
 - ⇒ medical and welfare guidelines,
 - ⇒ differences in domestic legislative arrangements,
 - ⇒ informed consent, compensatory payments, rights and protections for all parties involved, including the child born and
 - International surrogacy arrangements involving Australian nationals including issues such as:
 - ⇒ Australia's international obligations,
 - ⇒ difficulties in obtaining informed consent of surrogates, the potential exploitation, compensatory payments and protections for all parties involved,
 - ⇒ requirements for immigration, citizenship, determining parentage and ongoing welfare, and
 - ⇒ adequacy of current information on risks, rights and protections, including the child born.
- 1.19 In concluding this report, the Committee would like to emphasise its great appreciation for those who participated in the Committee's roundtable. It is acknowledged that those who participated gave up their valuable time to participate in the event.

George Christensen MP
Chair

