

Dear Sonia

I apologise for not getting in touch with you sooner but I have been away from home for a few days and have not had much time in which to collect my thoughts.

Firstly, thank you so much for allowing me to attend the meeting on Friday, last. Thank you, also, for your conduct of proceedings. I have no doubt that all present felt heard and that their heart-rending stories were taken on board. It is a very difficult and challenging area.

The people I know who have international experience now feel more comfortable about matters of privacy and confidentiality, etc. Hopefully, they will send submissions to you as the international process of commercial surrogacy works well in countries such as the USA and I am sure that you would like to hear those good news stories.

I have collected my thoughts into a draft which I am attaching for your information.

Best wishes

David

SURROGACY ACT 2008 RESPONSE

Rights and responsibilities [S22]:

The rights and responsibilities of the parties must be adequately balanced.

It is difficult to see how the rights of the arranged parent[s] are properly protected if they surrender their embryo to a gestational mother who then has a right to choose to keep the baby. For many, this may be a significant barrier to a local surrogacy experience.

Problems with definitions [S3]:

The Act refers to surrogacy arrangement, birth mother, pregnancy, child and arranged parent[s]. However, it is much more complicated than those terms suggest.

There is an embryo. To whom does this belong? Presumably, to the arranged parent[s] who want, ultimately, to have a child.

The birth mother is also the gestational mother. Does carrying someone else's embryo through the process of pregnancy necessarily give ownership rights?

The embryo should not carry any genetic material derived from the gestational mother. A genetic relationship between the embryo and gestational mother immediately generates a perceived conflict of interest.

The arranged parent[s] may be the genetic parents in whole or in part [donor conceived]. There is also the possibility that the embryo may bear no genetic relationship to any of the parties, if it is donated.

Parents and families:

In this modern world with rapidly developing technology we also have modern families. Some families may have a sole parent. Heterosexual and homosexual couples may live in de-facto relationships or be married [recent commonwealth legislation]. There is a growing community of people under the LGBTI umbrella.

Is there a requirement for assessment as to suitability to parent? Probably not. There is no such requirement for those couples able to have children naturally. Accordingly, any counselling, psychological, or legal intervention to assist preparation for surrogacy and contract management should focus on the process of surrogacy only.

Stages of surrogacy:

Availability

Access

Time frame of process

Cost

Co-ordinating agencies

Altruistic

Commercial

[Note: the development of relationships between parties should be determined by the parties and need not be excluded in commercial arrangements]

Altruistic surrogacy in WA:

Availability is limited

Access is limited

The time frame is long

There are significant counselling, psychological and legal costs

Co-ordinating agencies are limited in number, experience and effectiveness

Commercial surrogacy:

Readily available internationally

Easily accessed internationally

Time frame is short

Co-ordinating agencies are readily available but may have variable levels of expertise. Several highly experienced and competent agencies in North America provide quality service efficiently and effectively.

Cost is substantial.