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Surrogacy Bill 2010

Women's Legal Service Tasmania Inc
Position Paper

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What is the Surrogacy Bill about?

Surrogacy is where a woman carries a child from conception through to birth for another couple or individual usually due to problems with the conception or carriage of children on the part of that individual or couple.

In 2010 the Tasmanian Government introduced the *Surrogacy Bill 2010* so as to decriminalise altruistic or non-commercial surrogacy.

Apart from decriminalising altruistic surrogacy the aim of the Bill is to implement legislative rules or guidelines as to when and how a surrogacy agreement can be made.

If the Bill passes in its current form surrogacy would be legal in Tasmania and available to all Tasmanians regardless of their relationship or marital status.

Under this proposed legislation commercial surrogacy, or surrogacy for a fee would remain illegal in Tasmania.

Background

The Bill passed through the House of Assembly or Lower House of Parliament in April 2011.

When the Bill was being debated the Liberal Party proposed a number of amendments to the Bill including:

- That same sex couples be excluded from utilising surrogacy arrangements;
- That a surrogate be 25 years of age or older;
- That women who have not had children be excluded from entering an agreement to be a surrogate; and
- That women entering an agreement to be a surrogate have their spouse's consent for them to enter that agreement.

Ultimately these proposed amendments were defeated with the exception of the minimum age provision, which was reduced to 21.

Women's Legal Service Position

Should there be an exclusion of same sex couples from surrogacy agreements?

The Women's Legal Service Tasmania (WLS) believes that legislation should be free of discrimination and as such laws which exclude someone based on their sexuality or relationship / marital status to be an unacceptable proposition.

In Tasmania same sex relationships are legally recognised. They can be formalised by Deed of Relationship, with or without a civil ceremony. Children of same sex relationships are deemed to be children of those relationships.

Over the last decade Tasmania has passed a number of laws with the intent of removing discrimination against same sex couples and their families.

Most recently the *Status of Children Act* was amended so that lesbian mothers conceiving a child through IVF could both be deemed the parents of that child and as such, both could be included as parents on the child's birth certificate.

Should same sex couples be excluded from entering into surrogacy arrangements purely because of their sexuality, Tasmania would be taking a step back of more than a decade, legislatively speaking.

In passing laws that decriminalise and legally recognise same sex relationships and the families that arise from those relationships Tasmania has assumed a policy of recognition rather than judgment.

Tasmania, through its laws, does not judge what "family type" is the ideal or best, instead it quite properly recognises that families come in "all shapes and sizes" and as such the laws of the State should reflect this so as to afford protection to those families, especially the children born in to them.

To exclude same sex couples from entering surrogacy arrangements is, in the opinion of WLS both discriminatory and dangerous.

Legislation governing a woman's right to make decisions concerning her body

The proposed amendments that a woman who has not had a child may not agree to be a surrogate and that a woman who wishes to enter an agreement to become a surrogate must have the consent of her spouse are both unacceptable to WLS.

Whilst we acknowledge that the intention behind these proposed amendments was to afford protection to the emotional wellbeing of potential surrogates as well as to any existing relationship they might be in, the greater implications of having the State legislate what decisions a woman can make regarding her own body are deeply concerning.

We believe that with appropriate safeguards such as the need for a written surrogacy agreement and for the parties to have counselling and legal advice built in to the legislation women should be left to make the final decision concerning their body.

Some women make the choice not to have children of their own for many different reasons. We do not believe that this should preclude them from making a decision to carry a child for a family member or friend.

We accept that there is the potential for a surrogate to find it difficult to "hand a child over" after birth however it is our belief that the drafting of the legislation is the key to avoiding this situation, not a blanket exclusion based solely on previous child bearing experience.

Likewise, requiring a woman to secure her spouse's consent for her to enter a surrogacy agreement has an unfortunate hint of that a woman "needs permission" to make a decision concerning her body which is not an acceptable premise in today's society.

Any law that effectively takes away a woman's right to make a decision concerning her body has the potential to create a precedent which in our opinion would be a legislative step backwards of several decades.

The next step - the Legislative Council

The Bill is due to be debated by the Legislative Council in or around late May or the start of June 2011.

WLS is concerned that although the amendments proposed in the house of Assembly concerning the exclusion of same sex couples along with those concerning the exclusion of women who have not had children as surrogates and the requirement that a potential surrogate have her spouse's consent were defeated that they may be raised again in the Legislative Council.

As to other possible amendments - we have no issue with the Bill being amended to include for example more rigorous counselling requirements, a minimum age for a surrogate or that surrogacy agreements should be in writing as opposed to orally.

Conclusion

In our opinion surrogacy, much like IVF in Tasmania, should be accessible to all Tasmanians and there should be no exclusions based on sexuality or relationship status.

We do not support legislatively removing a woman's right to make decisions concerning her body.

Amendments that enhance the legislative protections for the surrogacy process and which work towards providing a more secure outcome for the child born of that arrangement should be encouraged.

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