

## **International surrogacy: A report from the roundtable**

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# International Surrogacy

A report from the UK Round Table

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***Almost twenty-five years after the United Nations Convention on the Rights of the Child came into force in 1990, social workers are identifying new challenges to the rights and needs of children in surrogacy arrangements. Commissioning parents in Australia and the UK are the largest groups accessing clinics in Asia, particularly India. Commercial surrogacy is illegal within Australia and overseas surrogacy is illegal in three Australian states.***

There are health, social and/or legal risks to surrogates, commissioning parents and children. Jurisdictions including Australia are challenged to respond appropriately especially where commissioning parents are either unclear about the law or are determined to circumvent it. Add into the mix commercial brokers and doctors with financial interests, and pressure from within the consumer lobby and the fertility industry to loosen international and domestic restraints on surrogacy arrangements. This all means that new responses are needed for these new challenges to ensure the best interests of the children involved are adequately catered for.

In January this year, the British Association of Social Workers' (BASW) Project Group on Assisted Reproduction (PROGAR) convened a high level roundtable meeting on international surrogacy attended by the authors. Present were representatives from the UK government (Department of Health, Home Office, Foreign and Commonwealth Office (FCO), Department for Education); the Human Fertilisation & Embryology Authority (the UK fertility treatment regulator); Children and Family Court Advisory and Support Service; Children and Families Across Borders; International Social Service (ISS); National Association for Guardians Ad Litem and Reporting Officers; College of Social Work (UK); International Federation of Social Workers (IFSW); legal representatives; academics; and consumer groups.

Although more than one thousand babies are reportedly brought into the UK every year only a small number of commissioning parents go on to apply to the courts for Parental Orders to ensure they both have full legal parental status. Anecdotal reports indicate there are similar numbers of children coming into Australia with similar concerns about Parenting Orders. In a separate procedure, applications for citizenship by descent are

processed by the Australian Department of Immigration and Border Protection. Anecdotally, increasing numbers of cases are coming before UK family courts when commissioning parents separate. The situation in Australia is not known.

The meeting highlighted the challenges of incomplete data on Parental Orders, the number of children brought into the country, and the lack of inter-agency and interdepartmental collaboration on policy and practice development. There is little research (particularly social work research) on surrogacy arrangements practised by UK and Australian citizens. Although we lack long-term supporting data, we might assume that many arrangements will have positive outcomes but others may not.

Three key issues were identified: risks to surrogates; suitability of commissioning parents; and the right of the child to have access to birth information. Social workers have long understood the importance to children of having access to information about their biological origins and their biographical story as set down in the UN Convention on the Rights of the Child. And yet countries where surrogacy operates do not usually require clinics to maintain robust and transparent records for future access. Some parties involved in international commercial surrogacy do support the rights of the child to access surrogacy and donor information.

Social work's long history of commitment to human rights is also important when considering the potential for exploitation of all the parties involved: the child; the surrogate and her family; and the commissioning parents. Recent examples highlighted show how unregulated surrogacy can go terribly wrong for children. An Australian man and his partner claimed to have become parents through international commercial surrogacy

(though it is now alleged they purchased the child) and then abused the child and made him available to an international paedophile network. A UK woman 'desperate for another child' added to her family of three adopted children by procuring sperm through the internet and impregnating her teenage daughter. A baby with neonatal health problems and commissioned by Australian parents was stranded stateless in India when the intended father refused to sign the paperwork.

Internationally recognised human rights conventions for both children and adults set out the right to be free of exploitation. Thus the ISS and the IFSW have declared surrogacy as a particular focus of interest. It is also an issue for current deliberations of the Hague Conference on Private International Law on whether to develop an international convention on surrogacy similar to that for inter-country adoption. At their April meeting, the Hague Council on General Affairs and Policy deferred for one year the decision to establish an Experts' Group that would consider the feasibility of drawing up a new treaty on surrogacy because some Members, while considering the project important, required more time to consider the issues. Thus far, the practical *need* for an instrument has been demonstrated. The remaining questions concern the shape such an instrument should take and whether international consensus is possible.

Emerging evidence suggests that outcomes are best for surrogate children when good relationships are built between surrogates and commissioning parents. Opportunities for contact are more difficult to achieve across borders. There is the potential for secrecy and for false or misleading information to be provided about birth circumstances. There are risks to a child's health and wellbeing, including the physical health of the pregnant woman and the quality of the medical care available during pregnancy and delivery. Other concerns for overseas surrogates have also been raised. The history of

adoptions has taught us that parenting desires alone are not always sufficient for raising happy, healthy children. It is also important to address issues peculiar to adoption. It is possible that the same may be found of surrogacy as research on families and children is conducted.

In terms of protecting the rights of commissioning parents, the UK FCO has recently reissued a statement warning prospective commissioning parents to seek legal advice prior to entering arrangements, and similar information is available on the Australian Attorney General's website. 'Solutions' promoted by some interest groups of relaxing domestic requirements – lifting the commercial ban, allowing advertising; transferring legal parentage earlier and making contracts enforceable to encourage more couples to stay at home – are premature, lacking in evidence and not without their own problems. More needs to be understood about why people go overseas for surrogacy and why so few apply for legal parenting status. In the UK, it is suggested that it is time for stronger incentives for Parental Orders such as making passport applications dependent on them being in place.

New family formations and new technologies that require the use of another person's body (including DNA) warrant the attention of researchers to better understand the prevalence and the implications of the practice for all parties. Social workers are the professionals with arguably the greatest experience in child welfare matters. It is vital that social workers engage in surrogacy as an emerging area of practice.

To date, the dominant voices in surrogacy debates are from lawyers, doctors, ethicists and brokers. The social work profession in Australia also needs to assert its expertise and contribute to research, policy, legislation and practice to ensure a better understanding and management of the risks and benefits as they relate to the interests of children and families.



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