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To: ACART Chair

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**Submission on Proposed Amendments to Guidelines on Surrogacy  
Arrangements involving Providers of Fertility Services and  
Guidelines on Donation of Eggs or Sperm between Certain Family  
Members**

Please find enclosed my submission on the above topic

Thank you for your consideration.

Regards

Dr Marewa Glover

Director, Centre for Tobacco Control Research

Question 1 : Do you agree with ACART's conclusions that :

- The surrogacy guidelines currently discriminate on the basis of sex and sexual orientation, and
- The discrimination is not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004?

Answer : Yes, I agree that the surrogacy guidelines currently discriminate on the basis of sex and sexual orientation and the discrimination is not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004.

All people regardless of gender or sexual orientation should have equal access to healthcare including to fertility services. Denial of access to AHR services leaves people to use Do-it-Yourself ways like self-insemination or having sexual intercourse just to get pregnant. Subsequently, the intending mother and child/ren are denied medical and legal safety as compared to those that have access to fertility services. Please see my attached paper on the issues for takataapui (non-heterosexual Māori). According to Human Assisted Reproductive Technology Act 2004, the donor information can be made available to the child at an age to gain information about genetic origin. For Māori, this is an important right. Children conceived by DIY methods could be denied information about their whakapapa.

Question 2 : Do you agree with ACART'S view that surrogacy should be used only where there is a need, and not for convenience?

Answer : The answer depends upon the definition of 'convenience'. For Māori, the important question is 'he aha te kaupapa?' What is the purpose? What is intended by a union, even of egg and sperm and thus the joining of two whakapapa? The mechanisms by which this occurs are not as important. See attached paper Glover & Rousseau.

ECART provides a process for considering on a case by case basis applications to enter into a surrogacy arrangement. It is hard to think of a situation in the contemporary world of Māori life where a person, whānau/hapu or iwi might want to arrange for a surrogate to carry another woman's child when she is, using the discussion document's term 'ineligible'. However, in times past there may have been arrangements that provide a precedent for the possibility that Māori, if they had sovereignty to practice Māori traditions, could want to arrange a surrogate to carry a woman's child for her. For example, a whānau/hapu or iwi may have arranged for another selected woman to have a child with a similarly selected man with the express purpose of providing the child by whangai to another woman for instance of rank/role or position in the tribe who for whatever reason had not conceived, carried and birthed her own child. To disallow this on the proposed grounds: a vague and undefined reference to 'convenience' or simply to say if a woman can conceive, carry and birth and she wants to have a child then she should do it – is not sufficient. It would be better to allow cases to be heard on a case by case basis.

Another example would be that of a lesbian couple in which one fulfils the requirements of 'eligible woman' for surrogacy according to ACART. The other woman never intended to get pregnant as she sees herself as the 'male' in the relationship. Such a couple cannot get into a surrogacy arrangement because one of them does not fulfil the criteria of 'eligible woman' and applying for surrogacy on behalf of them is labelled as 'convenience'. Forcing the 'ineligible' woman to have the child because of her physical appearance when she is not prepared mentally and emotionally to have one is again a sign of injustice.

Both the aforementioned examples depict women who are physically fit for having a child, but unable to because of different underlying 'valid' reasons. Depriving these women of surrogate arrangements and labelling their reasons as 'convenience' is both unwarranted as well as unjust.

Question 4 : Do you agree with ACART's proposal that single men and male couples applying to ECART to enter a surrogacy arrangement should also be able to apply to use eggs donated by a family member?

Answer: Yes, I agree with ECART's proposal that single men and male couples applying to ECART to enter a surrogacy arrangement should also be able to apply to use eggs donated by a family member. Māori people lay more emphasis on whakapapa/genealogy. Having known the whakapapa of each biological parent is always preferred.

'Our whakapapa's always based on you know your father, you know your mother, or you know your grandmother or you know your grandfather'.

This is also considered as one of the methods to ensure security in a relationship. For example, homosexual couples feared that if they got donation from a non-family member, they were at risk of losing the child as the donor's side might claim the child's custody and win it. This insecurity would not be there in the case of donation by a family member. And even if the relationship did not last, the child would still have whakapapa, which served as a protection.

Question 5 : Do you agree with ACART'S proposal that single women and lesbian couples should be able to apply to ECART to use sperm donated by a family member without needing a medical justification?

Answer: Yes, I agree with ACART'S proposal that single women and lesbian couples should be able to apply to ECART to use sperm donated by a family member without needing a medical justification. See my response to Question 4.

And yes, no medical justification should be required. If single men and gay couples are allowed to have eggs donated by a family member, so should be the case for lesbian couples. The lesbian couples need not have medical justification to have a surrogate

arrangement. If one member of the lesbian couple is 'ineligible' according to ECART for surrogacy, she should not be forced to carry a baby.

Allowing gay men to use surrogate arrangements but depriving lesbian couples the same on basis of medical 'ineligibility' is discriminatory. The current debate as presented in the discussion document is limiting identity to medically defined sex, and only recognising two sexes: male or female. There is no recognition of intersex people, nor is there any recognition or allowance for the diversity of genders: heterosexual/homosexual/bisexual/asexual x male, female, intersex, male-to-female, female-to-male.

Question 6: Do you agree with ACART's view that the use of eggs or sperm donated by a family member should be possible only where intending parents do not have their own eggs or sperm, or if they do, that there is a medical reason for them not to use their eggs or sperm?

Answer :

As above, where the intending parents are two women and the woman who had wished to conceive a child, be pregnant and carry a child is unable to, her female partner should not necessarily be looked to for either eggs or womb.

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