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If this submission is made on behalf of an organisation, please name the organisation:	The Nathaniel Centre – the New Zealand Catholic Bioethics Centre
Please provide a brief description of the organisation if applicable:	
Address/email:	PO Box 12243 Wellington 6144 email: administrator@nathaniel.org.nz
Interest in this topic (eg, user of fertility services, health professional, member of the public):	The Nathaniel Centre is an agency of the New Zealand Catholic Bishops' Conference. Its role is to address bioethical and biotechnology issues on behalf of the Catholic Church in New Zealand.

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

Introduction:

The broadening of the eligibility criteria for intending parents who wish to enter a surrogacy arrangement using a fertility services provider and/or use eggs or sperm donated by a family member poses critical ethical questions regarding the welfare of any children born as a result of these procedures.

As noted in previous submissions, we are opposed to all forms of **surrogacy** because we believe that the overall well-being of children is compromised by arrangements under which a woman agrees to become pregnant with the explicit intention of surrendering custody of the child to be born. We also believe that the practice of surrogacy can place the health and welfare of women at risk.

We have also laid out our concerns about the **creation of embryos using donated eggs and donated sperm** in earlier submissions to ACART and we reiterate the view we have previously stated which sets out our opposition to this procedure. Catholic teaching on the transmission of human life reflects a commitment to holding together the genetic, gestational and social dimensions of family and parenting. We would argue that one's sense of personal well-being is fundamentally linked with a healthy self-identity, which in turn is intimately and inextricably tied in with a lived knowledge of our biological ties - whakapapa. This knowledge is put seriously at risk by arrangements that exclude children from growing up within the families of their biological origins or, worse, deny them knowledge of their biological origins.¹ It is for this reason we believe that children have the right to grow up within the family networks that are generated by their biological ties. *This right should only ever be compromised in situations where it is clearly in the interests of the child involved.*

Key Issues:

What is at stake in the debate about using surrogacy in conjunction with donated eggs and sperm is the recognition of the significance of being raised by those to whom we are immediately biologically related. The importance of genetic origins in securing a healthy self-identity and the role biological relations play in establishing enduring human relationships cannot be ignored. To approve of embryos being created from donated eggs and/or donated sperm is to set aside the critical importance of affective relations with one's genetic parents and extended family and to create what one author has referred to as

¹ While New Zealand law prohibits anonymous donation of gametes, we note that, in practice, many children may not gain access to identifying information about their biological origins until they are 18 years of age or older. They are, in other words, effectively denied knowledge of their connections during their formative years.

“existential challenges of novel dimensions.” This is no less the case when the donation comes from a family member of one of the partners.

We note, approvingly, in the proposed amendments to the Surrogacy guidelines, that where there are two intending parents, at least one must be a genetic parent. We also note the stipulation that where there is one intending parent he or she must be a genetic parent of any resulting child. We see these requirements as a clear affirmation of the importance of holding the genetic, gestational and social dimensions of family and parenting together – a position that we believe reflects the principle, upheld in the HART Act, to promote the health and wellbeing of the children who are born. Our own considered view is that when this principle is given the concrete recognition it deserves, it would rule out the use of donated gametes (and multiple parents) in any and all circumstances.

The critical importance of the relationship between parents and their biological family is well documented. Even in situations where adopted children and adoptive parents form close and strong attachments, the personal emotional difficulties for both are often still significant. The experiences of adoption have taught us that strong attachments between adopted children and their adoptive parents do nothing to displace their sense of loss of, and yearning for, meaningful and close connection with their families of biological origin.

The fostering or adoption of children reflects the fact that there are sometimes occasions when, for the good of a child’s welfare, it is judged best that they not be brought up within their family of origin or by one of their biological parents. In these situations the decision to adopt represents an act of outstanding generosity premised on the wellbeing of the child. To accept that there are circumstances when we need to remove a child from their genetic family of origin is one thing. *To set out to deliberately deprive children of this link for reasons related primarily to the needs of the adults involved is quite another.* It is inconsistent with the guidelines outlined in the International Convention on the Rights of the Child where the rights of the child to be raised in their birth families is clearly spelled out.² We would also argue that it undermines the ideal of the family which, we would contend, is based on what is optimal for children.

Similarly, there are many situations where, for often tragic reasons, a parent finds him or herself as a sole care-giver. While, in such circumstances, parents cope admirably and children may not appear to have been harmed to any great extent, there are few people who regard this as an ‘ideal’ situation. Once again, it is one thing to accept that some children are, out of necessity, brought up in single-parent families but quite another to set out to deliberately create situations that would deprive children of one or both genetic parents and be cared for by a single parent as will be the case when there is only one intending parent.

We also believe that any moves to broaden the eligibility criteria for surrogacy and/or the donation of gametes will, even if unwittingly, contribute to people regarding children as a ‘positive’ right for adults who so choose. This would represent a significant change. It could all too easily generate an expectation that the state has an absolute obligation to

² See <http://www2.ohchr.org/english/law/crc.htm>

provide for all and any adults the *necessary* means to procreate. This would have significant resource implications in the future. It would also, potentially, have implications for the way in which we come to view the parent-child relationship, including a greater propensity to see children as commodities rather than gifts to be received. We would argue that there is no 'positive' right to a child. Rather, we regard procreation as a 'negative' right by which we mean that the State has an obligation not to interfere in the choice of couples to have a child.

Assessing the Health and Well-being of Children:

We note the extensive review of information about outcomes for children raised by single people and same-sex couples that forms part of the consultation document. We also note the considered conclusion "that there is no large body of robust evidence that children are harmed if raised by male couples or by single men" (page 10) as well as female couples or single women. In response we offer the following brief comments.

In the first instance, the comment that there is "no large body of robust evidence" ignores the fact that there is *some* evidence which suggests otherwise. Secondly, we would suggest that the studies referred to do not adequately account for the fact that there may well be a difference in outcomes between children born to parents in heterosexual relationships, one of whom then 'migrates' into a gay partnership, and children born to same-sex couples by way of assisted reproductive technologies involving third-parties. Thirdly, we would make the point that when advocating policy changes that affect the make-up of a long-standing social institution such as the family, the burden of proof is surely on those advocating for such changes to prove beyond reasonable doubt that children will *not* be harmed.

Furthermore, with respect to the idea that it is "family functioning, *rather than* family structure, [which] is crucial for children" (p. 10, emphasis added) we would stress that the notions of "family functioning" and "family structure" are very closely related. In support of this we note research which shows men and women parent differently and a growing body of contemporary research which has established that certain genes in young mammals have been shown to be activated by parental behaviour.³ The exploration of the complex relationships between paternal, maternal and offspring phenotypes and the effect of the environment on this dynamic, represent a new and challenging field of research that is still very much in its infancy. We should, therefore, be wary of concluding that the question of likely harm to children conceived and reared outside of the traditional heterosexual family structures is a closed one. That being so, we should be wary of writing what some have referred to as "a blank cheque in the name of non-discrimination" that will allow for more children to be routinely created outside of the two-parent heterosexual family structure.

Lastly we would make the point that the project of parenting is about the *flourishing* of children rather than simply securing for them an absence of harm or an 'acceptable' degree of risk of harm. In which case, what is surely required is that research show that single

³ See, for example, the findings of Weaver et al in Nature Neuroscience which provide the first evidence that maternal behavior produces stable alterations of DNA methylation and chromatin structure in rat offspring: http://academic.reed.edu/biology/courses/BIO342/2010_syllabus/2010_readings/Weaver_etal_2004.pdf

parent and same sex parent families are capable of providing the same *optimal* conditions for flourishing as heterosexual couples, rather than simply avoiding harm; the former test calls for a much higher threshold than the latter. We note with interest that ACART believes that “surrogacy arrangements carry substantial risks for the adults involved and potential children” (p. 9). This assessment, which we agree with, would seem to support the argument that such procedures are, at best, less than optimal and, at worst, introduce very real risks likely to lead to harm to women and children. Yet, there is absolutely no evidence in the consultation document of the grounds used for establishing how such “substantial risks” could be judged to be outweighed by the inequity involved in restricting access to surrogacy to (some) same-sex couples or to (some) single intending parents.

Granting single-intending parents or same-sex couples access to fertility services for the purposes of having a child will, through biological necessity, inevitably require the use of third-party gametes. In the case of a single intending male parent, male couples and some female couples, it will also require a surrogacy arrangement. We anticipate that the proposed changes will lead to a greater demand for gametes from family members (and others) as well as a greater demand for the provision of surrogacy with all the “substantial risks” that this will involve.

Conclusions:

Our opposition to granting single intending parents and same-sex couples access to fertility services for the purposes of having a child follows from, and is consistent with, our overall and long-standing opposition to the introduction of third parties as part of human reproduction. It is also consistent with our belief that a family made up of two parents of opposite gender represents the optimal context for human flourishing. More specifically, because the proposed changes involve the intentional separation of the genetic, gestational and social dimensions of parenting, our concern is that they thereby frustrate the sense of identity and kinship that we maintain is a crucial dimension of human well-being. Put another way, no matter how we look at the practices of surrogacy and the donation of gametes, it cannot be denied that they knowingly and intentionally involve adults and society in the deliberate creation of fragmented families, complicating the most fundamental and vulnerable of human relationships – that of a child with its parents.

We wish to emphasise that, for us, it is not a matter of concluding that surrogacy and the use of third parties in human procreation “is not in the best interests of children because it is unnatural and/or immoral” (page 12). Rather, it is a case of arguing that it is ‘immoral’ *because* it is not in the best interests of children and because of the risks it introduces. Ultimately, the position we are taking flows out of, and reflects an absolute commitment to, the well-being and dignity of the children involved. *Conversely, we cannot help but conclude that the changes being proposed in this consultation document are being driven first and foremost by the needs and desires of adults.*

In summary, it is our contention that the move to give single intending parents and same-sex couples access to surrogacy, relying as it does on the deliberate unlinking of parenthood from biology, undermines the fundamental right of a child to have both a

mother and a father (as opposed to multiple parents or only one parent). We understand that in light of current practices (that we already consider problematical) our position may appear to some as discriminatory towards single intending parents and/or same-sex couples, in particular male couples. To those who might level this criticism against us we would reply that to argue otherwise is to let the general nature of human rights act as a barrier to the proper recognition of children's human rights. To reiterate, our considered position represents a *positive commitment to the health and wellbeing of children* born as a result of the performance of an assisted reproductive procedure; the sort of commitment that we believe is called for by the HART Act. In light of this we think it is inaccurate to frame the argument in favour of maintaining the status quo as an act of unjustifiable discrimination.

It is a general principle of social justice that one does not address the discrimination of one group by way of acts which have the real potential to cause harm to others, in this case women and children. Because the proposed changes pose real risks for women and children, and because they will lead to a greater demand for surrogacy and third party gametes, something that has significant resource implications, we urge ACART to revisit its conclusion that there is not a justifiable basis for at least maintaining the status quo.

We also urge that, in its analysis of the effects of broadening the eligibility criteria for surrogacy to include single parents and same-sex couples, the threshold used needs to be based on the 'flourishing' of children rather than the much lower, and to our minds inadequate, test of 'no evidence of harm'. Only the former test, we believe, will satisfactorily meet the criteria set out in the HART Bill – in particular the requirement to uphold the health and wellbeing of any children born.

A summary of the key points made in this submission

- It is our view that personal well-being is linked with healthy self-identity which is, in turn, inextricably linked to a lived knowledge of our whakapapa or biological ties. This knowledge is put at risk by arrangements that exclude children from growing up within the families of their biological origins or, worse, deny them knowledge of these origins. We believe children have a right to grow up within the family networks that are generated by biological ties.
- When all is said and done, the practices of surrogacy and the donation of gametes result in the deliberate creation of fragmented families as well as complicating the most fundamental and vulnerable of human relationships – the parent-child relationship. We note ACART's own expressed view that these practices carry "considerable risks".
- We do not believe that the question of 'outcomes' for children in single parent or same-sex parent families has been settled despite the evidence provided to date. We think the research is incomplete, particularly given the new insights being generated by the emerging discipline of epigenetics.
- When advocating policy changes that affect the make-up of a long standing social institution such as the family, it should be noted that the HART Act identifies the health and well-being of children as the first principle. In our minds the test that should be used needs to be based on the 'flourishing' of children rather than simply an 'absence of harm'. The key question *from the perspective of a child* is whether or not single parent and same sex parent families are capable of providing the same optimal conditions for flourishing as heterosexual couples.
- In our considered opinion the suggested changes to the Guidelines are being driven first and foremost by the needs and desires of adults rather than what is best for children.
- One does not address the discrimination of one group by way of acts which have the real potential to cause harm to others, in this case women and children.
- The proposed changes to broaden the eligibility criteria for surrogacy and/or the donation of gametes will contribute to people regarding human procreation as a 'positive' right. This could all too easily generate an expectation that the state has an absolute obligation to provide for all and any adults the *necessary* means to procreate. This would have significant resource implications in the future as well as implications for the way in which we come to view the parent-child relationship.