

Notes of ACART Consultation 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*

17 August 2012

Dunedin- Bioethics Centre, University of Otago

Present:

Dr John Angus, Chair, ACART

Alison Douglass, member, ACART

Associate Professor Michael Legge, member, ACART

Bioethics Centre staff and students – Professor Gareth Jones, Dr Lynley Anderson,

Associate Professor Jing-Bao Nie, Professor Grant Gillett, Dr Mike King, Dr Neil Pickering,

Albany Lucas, Rob Cole

In attendance

Chris Wilson, ACART Secretariat

The points below reflect comments by one or more attendees, and do not reflect formal agreement by the meeting as a whole.

General feedback

- These amendments broaden the range of people covered by the guidelines.

Feedback on the proposed amendments to the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*

“Matter of convenience”

- A considerable amount of discussion revolved around the use of the term “matter of convenience”. Is it needed or does it introduce a term that is itself open to confusion? While no one view was expressed, the contributions all pointed to its ambivalence and possible misinterpretation.
- If “matter of convenience” covers all cases that do not fall under other criteria - male or “eligible woman” - then the clause about “convenience” is not necessary and is confusing. It does not fit well in the proposed guidelines and should be moved elsewhere in the guidelines.
- The phrase “matter of convenience” requires definition. There is no detailed argument set out as to why a “matter of convenience” is excluded.
- The guidelines define “medical condition”, but not what is meant by a “matter of convenience”.
- Perhaps the term “eligible woman” could be deleted, leaving “matter of convenience”. There appears to be no need to refer to both medical eligibility and convenience. However, if both terms are needed to clarify the policy intention, then both can be used.
- Both “eligible woman” and “matter of convenience” are positive criteria.
- Australian State legislation does not include any requirements that surrogacy should not be used as a “matter of convenience”.

“Eligible woman”

- An “eligible woman” is one who meets one of five criteria.
- The guidelines could simply say that an “eligible woman” is one who has a medical condition.

ACART’s stance

- These guidelines reinforce ACART’s position that surrogacy should be used only where needed.
- Surrogacy arrangements are a significant public policy issue, with safeguards included in the regulatory framework. Any reduction in the safeguards would need to be justified in light of the current position that surrogacy arrangements involve risk, and therefore should only be used if there is a need.
- There appear to be two camps within ECART. One wants guidelines to be more prescriptive, whereas the other would prefer guidelines to give ECART more discretion.
- ACART guidelines are soft requirements in the regulatory framework

Other considerations

- Is it equitable that two gay men do not have to meet any medical criteria for surrogacy, whereas two gay women must? There could be a case where one woman in a lesbian couple cannot get pregnant and the other woman does not want to get pregnant yet must carry a child. This could be seen as discriminatory.
- In 2010 ECART wrote to the Chair of ACART suggesting a change of wording of the guidelines for Clinic Assisted Surrogacy from:

ECART must determine that:

The intending mother has:

- *A medical condition that prevents pregnancy or makes pregnancy potentially damaging to her and/or any resulting child; or*
- *A medical diagnosis of unexplained fertility that has not responded to other treatments*

To be replaced by:

ECART must determine that:

The intending mother

- *is unlikely to become pregnant, or be able to carry a pregnancy, or*
- *was likely to place her life or health, or the of that of the baby at risk if she was to become pregnant, carry a pregnancy or give birth*

- This formulation could be considered.
- The term “disability” has not been used in the guidelines, yet infertility is seen as a disability.
- Would there be changes to the 1955 adoption legislation? There is currently a private member’s bill before Parliament that proposes enabling gay couples to marry. If gay people were allowed to marry to this would contribute to resolving the problem that gay couples cannot jointly adopt a child.

Feedback on the proposed *Guidelines on Donation of Eggs or Sperm between Certain Family Members*

- The current guidelines exclude gay men who want to use an egg from a family member.
- ECART determines “risk” and “unsuitability” on the basis of information provided in application forms by clinicians and counsellors.
- It is important that the guidelines are not too prescriptive.
- It is helpful for ACART to do some unpacking in relationships and principles.
- What is the view of the Māori member of ACART? (The proposals are those of ACART as a whole. It was noted that ACART is holding a hui to discuss the proposals and other aspects of ACART’s work.)
- The HART Act includes the principle that donor offspring should be made aware of their genetic origins. There is a risk that regulation becomes excessively normative.
- ART procedures are referred to as treatments. This implies disorder or disease which is not the case in same sex couples. ART should be called a procedure and the term ‘treatment’ excluded.

