

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

**Notes of meeting at Auckland University of Technology**

**9 August 2012**

**Present**

Dr John Angus, Chair, ACART

Associate Professor Andrew Shelling, Deputy Chair, ACART

AUT Faculty of Health and Environmental Sciences – Debbie Payne, Sonja Goedeke, Ruth De Souza, Amanda Lees, Rosemary Godbold.

**In attendance**

Stella Li, 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**

- Attendees appeared to be in consensus about all proposed amendments to the surrogacy guidelines and family eggs or sperm donation guidelines.
- Agreed with ACART's conclusion that the current surrogacy guidelines discriminate on the basis of sex and sexual orientation, and the discrimination was not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004 (HART Act).
- Endorsed the view that surrogacy should not be used for reasons of convenience.
- Agreed 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.
- Agreed 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 medical justification.
- Agreed with ACART's view that the use of eggs or sperm donated by a family member should be possible where intending parents do not have their own eggs or sperm, or if they do, that there is a medical reason for them not using their own eggs or sperm.
- An attendee noted that the intensity of the decision to donate eggs or sperm, or to create embryos, is often not contemplated at the time of donation or creation. Thorough counselling, particularly in regards to what happens to unused embryos, should address this. Intending parents are often completely focused on achieving the outcome of having a baby. Given the emotional and financial investment, this is an extremely traumatic and difficult decision regardless of someone's religious or moral positioning.

## **Surrogacy guidelines**

- One attendee agreed there had been discrimination on grounds of sexuality in regards to current surrogacy guidelines, but also found there was still an additional level of discrimination based on medical criteria. She proposed a scenario where a female couple are applying for a surrogacy arrangement. Both women would need to demonstrate a medical condition to fulfil the eligibility criteria. The attendees expressed some concern that women in this scenario faced a uniquely multi-layered discrimination.
- ACART's response was that given the risks involved, surrogacy is to be used only when there is a medical need. However, the attendees were of the view that there is an assumption both women would want to carry the child: the onus falls on one of the women to carry the child, even if she does not want to do so. In light of this view, it was further discussed that such a situation may be tantamount to surrogacy for convenience. The analogy was given of a woman in a heterosexual relationship who may not want to carry a child but her male partner wants to have children. In this situation, the couple would not be able to apply for approval to enter a surrogacy arrangement.
- Some attendees acknowledged the psychosocial benefits to the child of having these guidelines in place. In the case of the female couple, the guidelines manage the risks associated with third party involvement (since the surrogate is the legal parent until the adoption process is completed). The guidelines also minimise the complexity of relationships for the child.
- There has been an attitudinal shift towards surrogacy for gay couples. Surrogacy in particular has been highlighted in the media through high-profile stories such as about Elton John.
- The 'medical condition' criterion was discussed by the attendees. The primary issue for them was how this term is defined.
- One attendee said some women who have been through post natal depression will be interested in placing safeguards to prevent a repeat experience for their next child. For particularly traumatic cases of post natal depression, surrogacy would be suitable. It was suggested a case-by-case assessment may be necessary given the variance in post natal depression, and in some cases it would clearly be identifiable as a medical condition.
- Evidence has shown young boys may develop behavioural disorders from mothers with post natal depression. Therefore, there may be benefits for the future child if mothers with a history of post natal depression could use a surrogate.
- The attendees also considered whether the impacts of age fell within the definition of a medical condition. Age is often measured as a risk factor. The discussion here was about whether a line could be drawn, or whether setting age parameters could lead to misuse by individuals for reasons of convenience (for example, women potentially delaying having children until they are too old to carry the baby themselves).

- One attendee raised the question of how the refugee or migrant communities may be affected by the proposals, and suggested this may be a group ACART could take into account.

#### **Family eggs or sperm donation guidelines**

- Attendees appeared to be in agreement with proposed amendments to the family eggs or sperm donation guidelines.
- The attendees looked at the case of a single man wanting to have a baby. There is no evidence indicating single men make worse parents in comparison to other parenting arrangements.
- There is also concern about the risk a paedophile would create a child. However, it was agreed amongst the attendees that this risk should be picked up during counselling.
- The attendees agreed that the proposed guidelines provide new and different opportunities, but with new opportunity comes the potential for new and different forms of harm.