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Director – Strategic Policy  
Department of Justice and Attorney-General  
GPO Box 149  
Brisbane QLD 4001

***Re: Queensland Government Model for the Decriminalisation of Altruistic Surrogacy and the Transfer of Legal Parentage***

Thank you for the opportunity to comment on the draft model for surrogacy reform in Queensland. Comment will be restricted to specific aspects of the proposed model.

The Australian Christian Lobby (ACL) is opposed to surrogacy because it is fraught with legal and relational complexities. It results in blurred family relationships and disrupts relationship links between marriage, conception, gestation, birth and motherhood, which are important to human identity. ACL sympathises with the pain of infertile couples, but believes the benefits of surrogacy for some parents are outweighed by the negative impact surrogacy can have on children.

The Government has said it is determined to decriminalise altruistic surrogacy. By effectively endorsing the practice of surrogacy and making it more available, the Government must establish adequate safeguards to protect the people most likely to be adversely impacted by the new legal regime. In this, the Government's model falls short of offering protection for the best interests of the child.

**'Best interests of the child'**

According to the surrogacy model document, the best interests of the child is at the centre of the Government's policy:

*The Queensland model is underpinned by the main principle that the best interests of the child is the paramount consideration (p. 1).*

However, other than the few very short references to a child's 'best interests', there is little of substance in the document to suggest that any consideration has been given to the welfare of children. Consistent with the comments of the Premier, the Hon Anna Bligh, the proposed model clearly places the desires of adults to children above the rights of a child:

*[M]y government's ultimate aim is to ensure that all people who want to be parents have the opportunity to do so . . .<sup>1</sup>*

*[E]ach and every Queenslanders who wants to become a parent should be allowed the opportunity to do so. We will do this because anyone who is unable to conceive a baby but who wants to become a parent should know the joy of bringing a child into the world . . .<sup>2</sup>*

The proposed surrogacy model and the discussion paper do not even countenance whether it is in a child's best interests to be conceived through surrogacy in the first place. Surrogacy is a complex arrangement that is fraught with moral and ethical complexity, but this basic concern is not even addressed.

Article 7(1) of the United Nations Convention on the Rights of the Child says that a child has "the right to know and be cared for by his or her parents". Surrogacy deliberately confuses essential links between parents and children. It often denies children the opportunity to know their biological parents, in direct contravention of the Rights of the Child. Surrogacy is an extreme form of 'infertility' treatment that too easily ignores a child's best interests.

### **'Minimal intrusion'**

Apart from declared concern for 'the best interests of the child', the other guiding principle of the proposed Queensland surrogacy model is 'minimal intrusion':

*A further consideration of this Queensland model is that there should be minimal intrusion into individuals' private lives . . . (p. 2).*

Adherence to the principle of 'minimal intrusion' in the context of surrogacy is an abdication of the role of the state to protect its most vulnerable members, namely children. It also demonstrates a reluctance of the legislative and executive arms of government to engage in the contentious debate surrounding surrogacy. By handing its responsibility to critically examine this controversial issue to the courts, the Government fails its duty to its electors, and particularly its duty to protect children.

Governments in modern democracies intervene in a range of policy areas involving children on the basis that their interests are paramount. Governments regulate school attendance for minors, remove children from dysfunctional homes and protect children from harmful activities such as smoking and unsafe sex. 'Minimal intrusion' is not applied in these circumstances, and nor should it in the much more significant context of the Government's proposed surrogacy policy, where children are to deliberately conceived, born and raised in relationships which sever genetic bonds, and which can also deny a mother or a father to a child.

The Government has a mandate to protect children from the detrimental psychological and emotional consequences of surrogacy. The 'minimal intrusion' philosophy must not be adopted.

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<sup>1</sup> 2009, 23 April, House of Assembly Hansard, p. 148.

<sup>2</sup> 2009, 18 August, House of Assembly Hansard, p. 1593.

## **Genetic heritage**

According to the model discussion paper:

*There will be no requirement for any of the parties to have (or not have) a genetic connection to the child or with each other (p. 4).*

The absence of a requirement for there to be a genetic connection between the commissioning adults and the surrogate child adds additional unnecessary complexity to an already confusing situation. ACL believes that if surrogacy is to be legalised, commissioning parents must use their own gametes to create the child. The introduction of donor material further fractures essential links between genetic, gestational and social parenthood, to the detriment of the child.

The recent tragic case from the United Kingdom of a set of twins, who were separated at birth but later married,<sup>3</sup> is illustrative of the dangers of donor-conception. Such unfortunate cases will only become more common as parents continue to withhold essential information about biological heritage from donor-conceived children. Donor-conception adds an additional layer of complexity that is potentially damaging.

A child's best interest is not served if he or she has multiple 'parents'. This leads to confusion of identity and 'genetic bewilderment'. On the other hand, the child's best interest is served if brought up by his or her genetic parents wherever possible. It is the most uncomplicated arrangement, and involves the least fracturing of the normal relational connection between conception, birth and parenting. Surrogacy should not be allowed to rob children of their biological heritage and natural bonds of love. The state must play no part in bringing about such sub-optimal circumstances for children.

## **Method of conception**

The proposed model permits all forms of conception for the purposes of surrogacy:

*The parties entering into the arrangement may utilise any of the various methods for conception, such as in-vitro fertilisation, artificial insemination, self insemination, or natural conception (p. 4).*

Apart from the significant concerns with donor-conceived children being separated from their genetic heritage, this recommendation is fraught with potential problems. In particular, the use of natural conception in surrogacy subverts standard adoption policy and practice. Additionally, there is the added risk that the birth mother who conceives a child naturally will renege on her promise to relinquish the child, further complicating the surrogacy process.

## **Parenting eligibility**

The proposed surrogacy model ignores the best interests of the child by permitting any adult, in any relationship construct, to commission a surrogate child:

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<sup>3</sup> M. Dyer (2008, January 13). Married twins spark donor debate. *The Age*, <http://www.theage.com.au/articles/2008/01/12/1199988647876.html>

*Consistent with the Committee's recommendation, any person, regardless of relationship status, will potentially be able to enter into a surrogacy arrangement (p. 4).*

This recommendation, based on the surrogacy Committee's unsupported assertions in favour of same sex parenting, denies the very strong evidence that shows a child needs and deserves the complementary love, care and role-modelling of a mother and a father. And life with his or her biological parents is best. For example, David Popenoe, Professor of Sociology at Rutgers University argues:

*Based on accumulated social research, there can now be little doubt that successful and well-adjusted children in modern societies are most likely to come from two-parent families consisting of a biological mother and father.<sup>4</sup>*

Elsewhere, Popenoe disarms the claim that gender is not an important aspect of parenting:

*We should disavow the notion that 'mummies can make good daddies' just as we should disavow the notion of radical feminists that 'daddies can make good mummies' . . . The two sexes are different to the core and each is necessary – culturally and biologically – for the optimal development of a human being.<sup>5</sup>*

There is no evidentiary basis for supporting same sex parenting:

*[T]here is no substantial body of evidence supporting the claim that same-sex couples are just as effective as heterosexual couples with respect to a range of measures over a longer period of time. Same-sex parenting is a recent phenomenon. It is still untried and untested in all respects that are relevant to the care and nurture of children.<sup>6</sup>*

Certainly, there are children raised by single parents and by same sex couples, owing to death, desertion or the lifestyle choice of adults. However, the state is tasked to act in the best interests of the child. In deliberately allowing the creation of a child through surrogacy, the state must do its utmost to ensure that child has the most optimal start in life. This is with his or her biological mother and father. A surrogacy model that allows a child to be placed into a relationship that condemns the child to a life without the love of a mother and father fails to secure the best interests of children. This is a failure to uphold a most basic human right to the most vulnerable in our society.

The surrogacy model proposes that a same sex couple must prove to the court, in the process of transferring parentage, their 'social need' for surrogacy. Allowing couples who are 'socially infertile' to access forms of assisted reproductive technology is a radical departure from the intentions of such procedures, which were designed to assist medically infertile married couples. The state should not be complicit in placing children into the care of adults who eschew the natural order because of lifestyle choice. The state should have no interest in facilitating the lifestyle aspirations of adults when those wishes clash with the best interests of the child.

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<sup>4</sup> D. Popenoe, 'Can the nuclear family be revived?' *Society*, 36, pp. 28-30.

<sup>5</sup> D. Popenoe (1996). *Life without father*. Harvard University Press, p. 197.

<sup>6</sup> T. Frame (2008). *Children on Demand: The Ethics of Defying Nature*. Sydney: University of New South Wales Press, p. 101.

## **Disclosure of birth details**

ACL is concerned that under the proposed model it would appear that a child born of a surrogacy arrangement could be denied information about his or her birth. In particular, the clause which says that “Information about counselling services will be provided to the child” when receiving an addendum to the original birth certificate at age 18, suggests that adults will be able to withhold from the child details about his or her conception and birth. It means a child in a same sex arrangement could be lied to about his or her conception, leading the child to believe he or she was conceived through a biological impossibility.

A complex birth and upbringing requires the honesty and full disclosure of information of those in the more powerful, knowledgeable position to ensure the emotional and psychological wellbeing of the child. The Government, through its surrogacy model, should ensure this occurs.

## **Birth records**

The proposed surrogacy model permits the manipulation and falsification of a child’s birth record:

*The BDM register is to be updated so that parents can be recorded as: mother/father; mother/parent or father/parent of the child (p. 9).*

It is a biological fact that a child has both a mother and a father, and the state should not take part in removing this truth from law or its official records. As Tom Frame writes:

*[T]he state should neither encourage nor condone the creation of any situation in which a child does not have a known mother and a known or at least acknowledged father.<sup>7</sup>*

The removal of a mother or a father from official records not only denies the importance of male and female roles in parenting, but denies the very existence of a biological mother or father. Official birth records must continue to document the biological truth of conception and childbirth, and acknowledge the reality that it takes a man and a woman to bring about a child. Allowing a biological fiction of a man-man or woman-woman birth arrangement must be rejected. Perpetuating a lie to children about their origin will further amplify the confusion already inherent in surrogacy.

## **Conclusion**

The proposed Queensland surrogacy model does not consider the best interests of children, but instead places the desire of adults above society’s most vulnerable. The model fails to even canvass whether it is in a child’s best interests to be born into an arrangement with such legal, moral and ethical complexity as surrogacy. It also allows for children to be lied to about their biological origins.

If the Government is determined to legalise altruistic surrogacy, as its public comments indicate, then the model must respect surrogacy as a last resort infertility treatment for married couples unable to conceive or carry children naturally.

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<sup>7</sup> *Ibid*, p. 102.

ACL strongly recommends that the Queensland surrogacy model rejects surrogacy for single or homosexual people because this is against a child's best interests, deliberately denying them the love and care of a mother or father.

Thank you for your consideration of our views.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Lyle Shelton', with a stylized flourish at the end.

**Lyle Shelton**  
**National Chief of Staff**