



LGBT
IRELAND

For Inclusion
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For Everyone

Statement to Joint Committee on Health: 27th February 2019

Introduction

Good morning, Chairperson and Committee Members I would like to thank you for inviting LGBT Ireland to attend your meeting today. I am joined by our legal adviser Dr Lydia Bracken, who authored our recent submission and we will split our opening statement between us.

Our aim today is to give the committee an understanding of the specific challenges facing same sex parents and their children in the absence of a clear legislative framework in Ireland in relation to Donor Assisted Human Reproduction and Surrogacy.

By way of introduction I should explain that LGBT Ireland is a national charitable organisation which provides support and advocacy services to Lesbian, Gay, Bi, and Transgender people and their family members. We provide a confidential helpline service as well as face to face supports through our peer support groups.

The issues raised through our frontline services informs our advocacy work. In 2017, calls and emails requesting information on parenting rights was the most frequent advocacy enquiry to our organisation. This led us to hold a series of public meetings and events in Dublin, Cork and Galway in 2018, where we met with hundreds of families and same sex couples planning parenthood. It is their experiences that inform our submission and input to you today.

Protecting the best interest of the child

The proposals we put forward are based on protecting the best interests of the child and are informed by reference to the rights of the child under the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and Article 42A of the Irish Constitution. It is argued that the best interests of the child are met through laws that recognise the reality of life for the child and that ensure that the child can be fully cared for by the adults whom he or she regards as parents. For children raised in families headed by same sex parents, this means that they should have the opportunity of acquiring a legal relationship with both intended parents and those parents should have all the legal tools necessary to care for the child.

The reality for children being raised by same sex parents in Ireland today, is that they have no way of establishing a legal parental relationship to both parents who care for them. This

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disproportionately affects donor conceived children with same sex parents, as their relationship to both parents is often questioned causing significant stress and uncertainty for these families. This is particularly so where medical consent is required or when obtaining legal documents but also arises in everyday situations (e.g.) providing consent for school trips. Several families we spoke to have children with serious health conditions that require ongoing medical attention, for these parents the stress caused by the lack of legal rights puts a huge additional strain on them.

While we acknowledge this is a complex piece of legislation and support the thorough consideration of all issues involved, we ask that you progress your deliberations urgently. This is a time sensitive issue, families, and couples planning parenthood cannot wait indefinitely. The lack of clear regulations leaves couples making decisions about DAHR pathways based on what they think the legislation will be, which may have far reaching implications for their future family life. As each day passes the number of families living in legal limbo is increasing and this will continue until legislation in this area is fully commenced and widely communicated. It is imperative that this proposed legislation includes retrospective provisions to cover families that already exist.

I will hand over now to Dr Bracken to go through our specific recommendations in relation to surrogacy.

Surrogacy

Our submission concentrates on the proposed regulation of surrogacy as set out in the AHR Bill, with a particular focus on how the proposed regulation would affect male couples who have already become parents through surrogacy and those who may seek to do so in the future. In our view, the proposed regulation of surrogacy would not adequately protect the best interests of children born through surrogacy and amendments are required.

A major issue that we see in the proposed regulation is that there is no provision in the Bill to recognise children who have already been born through surrogacy. For male couples, this means that there is no facility to retrospectively recognise both men as joint legal parents of that child. The only option is for the couple to apply for second-parent adoption which we do not believe to be an adequate solution. By contrast, where a child has been born through donor-assisted human reproduction, once Parts 2&3 of the Children and Family Relationships Act 2015 are commenced, the intended parents will be able to retrospectively apply to be jointly registered as legal parents (sections 20, 21 and 22 of the CFR Act). A similar process should be recognised for cases of surrogacy.

International surrogacy is currently excluded from the AHR Bill, meaning that the Bill will only apply to domestic arrangements. This is problematic because the exclusion of

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international surrogacy from the Bill will not prevent couples from accessing services abroad; it simply creates significant difficulties for the family when they return to Ireland. The child has no control over the circumstances of conception and so should not be disadvantaged by virtue of the fact that he or she was conceived by surrogacy abroad. We argue that it is in the best interests of the child for his or her relationship with the intended parents to be legally recognised in Ireland following the international surrogacy arrangement.

We also believe that the model of parentage that is proposed in the Bill, whereby the surrogate is recognised as the legal mother at birth and parentage is later transferred to the intended parents by way of a parental order, is inappropriate. A major difficulty that arises with this delayed model of parentage is that, at the time of the child's birth, the non-genetic father is not recognised as a legal parent and cannot be recognised until the time that the parental order is granted. The application for the parental order cannot be made earlier than six weeks and not more than six months after the child's birth. This approach leaves the child in a vulnerable position as he or she is cared for from birth by the intended parents, one of whom will not have any legal parental responsibility or decision-making powers for at least six weeks. Instead, the surrogate, as the legal mother, retains decision-making responsibility for the child until the time that the parental order is granted.

We argue that a pre-conception model of parentage would better protect the rights of all stakeholders in the surrogacy process. Pre-conception court orders would provide approval of the surrogacy arrangement *and* determine the parentage of the child before conception takes place. This would ensure that both of the intended parents have full legal powers to care for the child and ensure that the child is legally integrated into his or her family from the moment of birth.

[Additional issues relating to AHR](#)

Certain additional issues relating to assisted human reproduction are of particular concern to LGBT Ireland members, such as non-clinical DAHR procedures and international DAHR. While we acknowledge that these issues are not addressed in the Bill and perhaps outside of scope of today's hearing, we believe that they are in need of attention and the Bill could be used as a way to amend the Children and Family Relationships Act 2015 to ensure that it accommodates the widest range of families possible. These areas, and our recommendations for reform, are discussed in detail in our submission and we are happy to speak to them today should any member wish to do so.

Thank You.

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