coerced choice to donate her eggs’. In other words, as it stands, like Dianne Yates concludes in her commentary, we are unsatisfied that a more liberalised approach to the movement of reproductive materials across borders will promote reproductive justice at this time, and are cautious of a discourse that tends towards highlighting the benefits of liberalisation while downplaying the risks and costs.

In regards to the question of increased expenses payable to donors, we agree that this holds the potential to increase the appeal of gamete donation in New Zealand but recommend that remuneration of donor expenses is actually consistent with expenses incurred by donors to ensure that it doesn’t end up operating as a proxy for commercial payment. We also suggested that there may be other ways to increase the supply of locally sourced gametes, through for example, education and social marketing about egg donation. However, while we continue to advocate for altruistic gamete and embryo donation, and surrogacy, in New Zealand as a way to address the exploitative potential of commercialisation, we do acknowledge its limitations. These include the gendered connotations of privileging ‘altruism’ which assumes that the immense caring and bodily labour, and health risks, involved in egg donation and surrogacy can be unpaid because it is ‘women’s work’ (Persad, 2012). There is also an inherent inequality in the ‘gift relationship’ in altruistic donation where the giving can never really be mutual (Van Zyl & Walker, 2012). We anticipate, and support, further examination of the issue of paying New Zealand egg donors and surrogates in the future.

Finally, a guiding principle of our submissions was that allowing a different set of standards and rules to apply to the import and export of gametes and embryos than those that govern the use of gametes and embryos sourced in New Zealand risks undermining New Zealand’s governance of ARTs through the HART Act. We believe that any significant changes to New Zealand’s regulatory framework for assisted reproductive technologies must be done via amendments to the HART Act rather than circumventing it, and must be informed by a national conversation to ensure New Zealand’s regulation of assisted reproductive technologies is consistent with the different ethical, spiritual, and cultural perspectives held within the New Zealand population, including specifically the needs, values, and beliefs of Māori (HART Act, 2004). Indeed, research on ‘public’ perceptions of the practice of gamete (egg and sperm) donation suggests that the value of ‘public’ opinion has been underestimated (Hudson et al., 2008). Yet, despite regular consultations on the manner with which infertility treatments should be regulated, consultation processes tend to be dominated by a small number of interested parties rather than accessing wider public perspectives. We agree with Hudson et al. (2008, p. 2) that such consultations need to be ‘opened up’ to include a range of views, including those of disabled, minority ethnic, and diverse religious groups, supported by social scientific research to attempt to capture the perceptions of a wider range of people, especially those groups rarely included in formal public consultations. This will help ensure that the future, whatever it holds, belongs with the people.

Response to George Parker
LIEZL VAN ZYL and RUTH WALKER, UNIVERSITY OF WAIKATO

George Parker quite rightly claims that the focus of the debate about ARTs needs to be on women’s health, rather than on abstract philosophical questions regarding for instance the personhood of embryos, as this is a central moral concern that is not always taken as seriously as it should be when it comes to surrogate motherhood and egg donation. We also think reproductive justice is a helpful framework for evaluating current practices in these matters. In particular, we share Parker’s concerns about the import of gametes from less regulated
jurisdictions. The risk that the gametes have been gained in coercive or exploitative situations is a real one. The right of any child born of donated gametes to know his or her genetic origins also precludes sourcing anonymous gametes. Willing, registered donors are required regardless of whether gametes are imported or donated locally. It may be possible to extend the range of potential donors beyond New Zealand borders if a similarly regulated system was willing to export gametes.

However, on the matter of payment and exploitation we differ from Parker with respect to both gametes and surrogacy. We have argued elsewhere that altruistic surrogacy is also exploitative and risks commodification of the woman and the baby (Van Zyl & Walker, 2013). Whether or not surrogacy amounts to commodification of babies depends on what is being donated or given: the baby or the committed service of the woman who carries it. If the baby is the gift, then commodification occurs whether she is paid or not. If it is her time and service that she is giving, then commodification is avoided whether she is paid or not. Similarly, in egg donation the worry is that if she is paid it will be for the eggs. However, in each case the women involved undergo significantly risky and unpleasant procedures over an extended period of time. If we paid them for time and service then we would avoid commodification. There are good reasons for thinking that the women should be paid.

A surrogate mother gives a large amount of time to the project, and egg donation also requires more than popping into the clinic to have the eggs harvested. In altruistic surrogacy and donation these women receive no compensation for the risks they run or the time they spend. Taking Stephen Wilkinson’s (2003) view of exploitation – the unjust distribution of harms and benefits without valid consent – we argue that altruistic surrogacy and egg donation are exploitative. It is often argued that women do give consent to be donors or surrogates and so are not being exploited. However, we argue that it is questionable whether this consent is valid. If these women strongly desire to help people whose infertility prevents them forming a family they have to consent to an altruistic arrangement or not donate at all. It may be a technically valid consent in that they understand the risks and are fully informed, but it is not an entirely free consent given the conditions of participation. The unjust distribution is very clear: all the harms accrue to the donor and all the benefits to the recipient. The only way to redress the balance is to compensate the donors.

It is important to understand that compensation for surrogates and egg donors does not equate to a market in wombs and eggs as so many commentators fear. A robust regulatory framework would control the fees and the way the services are delivered in order to protect women’s rights and health.

The future of surrogacy in New Zealand – Beyond the adoption model

LIEZL VAN ZYL and RUTH WALKER, UNIVERSITY OF WAIKATO

Surrogacy in New Zealand is treated as a form of adoption. ACART (2014) proposes that the Health Minister consider compensating women who act as surrogate mothers. We think this is a step in the right direction, but until the adoption model is abandoned surrogacy will not be a safe practice for New Zealanders. ACART’s consultation document does not address the issue of legal parenthood, but it is one that is intimately linked to the issue of compensation to surrogates because the Adoption Act (Section 25) prohibits payments in consideration of adoption. If, as we will argue below, surrogates deserve to be compensated for their labour, it is imperative that we acknowledge that the adoption framework is inappropriate in surrogacy.