

Submission to the Review of the Surrogacy Act 2008

Women's Bioethics Alliance

Dr Caroline Norma

womens.bioethics.alliance@gmail.com

Dr Maureen Harris
Reproductive Technology Unit
Department of Health
189 Royal St
PERTH WA 6004
HRTSR@health.wa.gov.au

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Submission to Review of *Surrogacy Act 2008*

Dear Dr Harris,

We thank you for this opportunity to contribute to this important review.

We are a group of women who are concerned with the exploitation and abuse of women's bodies through medical practice. Our submission is underpinned by a fundamental message: all forms of surrogacy must be abolished. We also make some specific recommendations with regard to current laws.

We agree that current laws are outdated, but we argue this is because they do not reflect current knowledge about outcomes for mothers and babies in surrogacy, about the abuses of women through surrogacy, and about the violation of human rights through surrogacy. A truly modern, evidence-based and human rights focused law would make all forms of surrogacy unlawful.

It is noteworthy that the European Parliament has condemned surrogacy in all its forms. There are very few countries that allow commercial surrogacy. As the exploitation of women and children becomes increasingly evident, global acceptability is diminishing. Yet in Australia we are led to believe, indoctrinated by a powerful pro-surrogacy lobby and an acquiescent media (publicising celebrities like Nicole Kidman, Elton John and Kim Kardashian who have bought children via surrogacy), that surrogacy is normal and well-accepted.

We do not believe that the "best interests of the child" can ever be achieved in surrogacy. It is never about the child. It is about the adults who want to obtain a child of their own. Surrogacy is deeply harmful to both mother and child. Pretending that regulation of surrogacy is about legal and citizenship security for the child ("parentage") is dishonest. Pro-surrogacy laws are about establishing legal ownership of children by adults, and the legal erasure of the children's natural mothers and egg 'donors'.

We reject the idea that 'regulation' can protect the women who become involved in surrogacy. It is by nature an exploitation of their bodies and regulation will serve only to further cement and promote the practice.

It is of concern to us that many submissions are likely to be made by those hoping to profit from an expansion of surrogacy: surrogacy lawyers, brokers, IVF clinics, and surrogacy advocacy groups like Families Through Surrogacy. They speak neither for women nor children, but rather for those who benefit financially from the commodification of women and their children.

We urge you to abolish all forms of surrogacy in Western Australia and to strengthen laws that protect women and children from this exploitative practice.

- 1. Surrogacy is an invasion and exploitation of a woman's body.** It also does not alleviate infertility. As Elizabeth Kane, the USA's first commercial surrogate, put it succinctly:

“Surrogate motherhood is nothing more than the transference of pain from one woman to another. One woman is in anguish because she cannot become a mother, and another woman – such as myself – may suffer for the rest of her life because she cannot know the child she bore for someone else.” (Kane 1988, cited in Klein 2017).

1.1 Pregnancy is not a 'job' or a form of 'work'. It is a whole-body, round-the-clock, permanently transformational experience and the development of a unique intimate relationship between the woman and her child. There are no days off. There is no possibility of professional development, industrial negotiation, unionisation or any other activity associated with the labour market.

In commercial as well as 'altruistic' surrogacy, invasive prenatal testing and possibly abortion can be requested by the commissioning parents. They may dictate through contract what the woman can eat, where she goes, whether she can have sex with her husband. In poorer countries, a clinic may keep a woman in prison-like conditions for the duration of her pregnancy. Caesarean sections are often mandatory, and the baby taken away upon delivery. These are the conditions of slavery.

1.2 It is harmful for a woman to give away a baby she has just delivered. From the Families Through Surrogacy website, which promotes and facilitates surrogacy in Australia and internationally, comes this comment that we perceive as misogynistic for claiming essential female 'types':

“Most women of childbearing age do not have the psychological capacity to carry a child for someone else without experiencing psychological distress. However there is a type of woman who has the ability to do this without experiencing such stress.” (Families Through Surrogacy 2018)

Here the organisation acknowledges that it is abnormal to abandon to others one's newly delivered baby. It could be interpreted to mean that most women are psychologically weak. They strongly recommend counselling, which is not necessarily to help the mother cope with the process or indeed make her decide not to begin the surrogacy, but rather to ensure a process of psychological dissociation begins so that the mother can try to believe that the baby is not hers and therefore is more likely to hand it over.

1.3 Surrogacy exploits poor women. It is significant that country after country is closing its doors to commercial surrogacy – India, Nepal, Thailand, Cambodia – to protect resident women and children from exploitation. We note with frustration that the rich-world surrogacy industry simply moves to new locations wherever there are plenty of women desperate to earn money. On the other hand, due to countries in the global south closing their doors to the industry, the pool of women available for exploitation is globally shrinking. This should not be seen as reason to legalise commercial surrogacy in Australia.

We emphasise that, rather than regulation of the global surrogacy market which will only reinforce existing gender, class and race inequalities, we must address:

“the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children” (United Nations 2000).

2. There is no such thing as a ‘surrogate’ mother. The woman who gestates a child is the mother. By the time of birth, an intimate and essential bond has already developed between mother and baby.

2.1 A woman grows a baby literally from her own flesh and blood. Cells from the baby remain in her blood and brain for the rest of her life. When that baby is born, the only person it knows and recognises is its mother. *The baby is not a blank slate.* As all mothers know, a baby recognises and craves the mother’s voice, skin, scent, and breastmilk. The mother’s family and social circle are the only familiar sounds. Surrogacy removes the child immediately after birth and this is an intensely traumatic experience of loss for the mother and the baby. In the case of the child, this occurs without consent.

2.2 Surrogacy, as in adoption, is founded on loss. The child loses its mother at birth, and the mother loses her child. Surrogacy is frequently referred to as a modern method of making a family, but this is incorrect: the concept of family is social fact, and so ‘modern methods’ require the social destruction of existing forms of the family to create new imitations.

The definition of motherhood is founded on the biological reality of women’s bodies. Women gestate and give birth to their own babies. This unique, irreplaceable biological relationship continues for the duration of our lives. This is what motherhood is. Surrogacy attempts to sever this bond using legal means and financial incentives. We strongly oppose this denial of women’s biological reality.

2.3 Surrogacy contradicts Australian best practice obstetrics and midwifery. In Australia, pregnant women are well educated about the many ways they can optimise their own health, their baby's health, and the mother-child relationship. Talking and singing to the foetus during pregnancy, playing music, exercising, healthy eating, preparing for labour, and learning about breastfeeding and skin-to-skin contact are just some examples.

A surrogate mother, however, receives counselling and reinforcement of the idea that the baby is not hers. This is an intensely maladaptive cognitive dissonance. Her whole body is growing and nurturing the baby and is preparing for delivery and breastfeeding, but psychologically she is being trained to reject the unborn child and distance herself from it and the potential for future human bonding.

3. It is a violation of human rights to separate a mother and her baby, regardless of any arrangements made by adults.

3.1 Children have a right to be raised by both biological parents wherever possible, according to the United Nation's Convention on the Rights of the Child. Surrogacy intentionally violates this right. We see, from the high rates of mental illness, suicide and homelessness among the adoptee community, that children suffer immensely and for life from this traumatic loss at birth.

There is some empirical evidence to question claims that children subjected to surrogacy arrangements enjoy good social and health outcomes. One longitudinal study reveals behavioural and emotional problems sustained by children given away to the commissioning parents at birth (Golombok *et al* 2013; most studies about children from surrogacy seem to be published by this researcher). As children of surrogacy become adults, they may well join the ranks of adoptee and donor-conceived activists in opposing the commodification of women and children.

3.2 It is difficult to see how surrogacy does not constitute trafficking in persons, especially in the case of commercial surrogacy: a baby is born and legal parentage is transferred away from the natural mother after money changes hands. The baby is often taken to another country. Transnational surrogacy therefore violates The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (United Nations, 2000).

The sale of children – even with the best intentions, and even if prostitution or pornography are not involved – is opposed in the strongest terms by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography (United Nations 2000).

3.3 Children have a right to be breastfed, according to United Nations experts (England 2016). Surrogacy arrangements deny a baby breastmilk and the crucial attachment that results from breastfeeding. The mother also loses the benefits of breastfeeding; breastfeeding helps postpartum recovery and lowers risks of breast cancer and ovarian cancer. We presume that many babies do not even receive colostrum, given the tendency of intending parents to take the baby as soon as possible. Many commercial surrogacy arrangements prevent the mother from seeing or holding the baby.

The Australian Breastfeeding Association writes this in their Position Statement on Breastfeeding:

“Mothers and babies form an inseparable biological and social unit. The close physical relationship between a breastfeeding baby and the mother contributes to the formation of close emotional ties.” (ABA 2013).

Surrogacy deliberately severs this biological and social unit. Surrogacy denies both mother and baby the essential health benefits and the emotional bonding of breastfeeding. This alone should be sufficient to end surrogacy.

3.4 The demands of adults for a child will increasingly clash with the rights of the children they have commissioned. Adults who were adopted as children or who were donor conceived are connecting, organising and becoming activists for the rights of children to be raised within their own natural families and cultures, and for the rights of everyone to have full access to their biological heritage. The Australian Adoptee Rights Action Group, Origin, and VANISH are all Australian groups who are developing strong grassroots activism in this area.

3.5 Australians must never forget their past mistakes of removing babies from their mothers. On 21 March 2013, Prime Minister Julia Gillard gave this National Apology Speech for Forced Adoptions:

“Too often they did not see their baby’s face. They could not soothe their baby’s first cries, never felt their baby’s warmth or smelt their baby’s skin. They could not give their own baby a name. These babies grew up with other names and in other homes, creating a sense of abandonment and loss that sometimes could never be made whole.

Today, this parliament, on behalf of the Australian people, takes responsibility and apologises for the policies and practices that forced the separation of mothers from their babies, which created a lifelong legacy of pain and suffering.

And we recognise the hurt these actions caused to brothers and sisters, grandparents, partners and extended family members.

We deplore the shameful practices that denied you, them others, your fundamental rights and responsibilities to love and care for

your children. You were not legally or socially acknowledged as their mothers. And you were yourselves deprived of care and support.

We resolve, as a nation, to do all in our power to make sure these practices are never repeated. In facing future challenges, we will remember the lessons of family separation. Our focus will be on protecting the fundamental rights of children and on the importance of the child's right to know and be cared for by his or her parents."

Dr Klein, in her book *Surrogacy: A Human Rights Violation*, discusses this National Apology and the close relationship between surrogacy and forced adoption. She details harm done to the mothers, the babies, and even the other children of the mothers, and asks why we are repeating these mistakes:

Why are we not even talking about it but instead pretend that surrogacy is just a modern way of making babies and there is nothing wrong with it? Why do we not concede that the 'product child' as a tradable commodity has never consented to being a 'take-away baby': removed from their birth mother and given to strangers, aka 'intended parents'? Why, in fact, do we not officially call surrogacy 'child trafficking' and 'child buying' because this is precisely what we do to these babies (Klein 2017, p44).

3.2 The birth mother must appear as the mother on the birth certificate. We urge the Western Australian government to continue to ensure that the name of the birth mother appears on the original birth certificate of any children born through surrogacy, and we do not support current practice in Victoria of using the name of the commissioning mother rather than the birth mother.

To this day, it is a shameful legacy of adoption in Australia that so many adult adoptees are unable to access their original birth certificates, and many are fighting to have their natural parents recorded as such on their birth certificate. Surrogacy operates on similarly non-factual principles and we hope Western Australia does not continue this practice.

4 Surrogacy presents substantial risks to both mothers and children.

A retrospective cohort study of women who achieved pregnancies both spontaneously and through surrogacy arrangements gives fresh insight into the risks of surrogacy (Woo, Hindoyan, Landay *et al*, 2017). Compared to the women's spontaneous pregnancies, the surrogate pregnancies had significantly worse outcomes: higher preterm birth rates (10.7% vs. 3.1%), higher rates of low birth weight (7.8% vs. 2.4%), lower mean gestational age (38.8 vs. 39.7 weeks), more obstetrical complications, gestational diabetes, hypertension, amniocentesis uptake, placenta previa, antibiotics during labour, and caesarean sections. This is the first such study of its kind and the comparison groups are ideal, being surrogate children versus natural children born to the same women.

The results appear to be unhelpful for the surrogacy industry, and even more so in the context of the current global epidemic of preterm birth and associated morbidity and mortality (The Lancet 2016). Several global initiatives tackle this problem worldwide, and their work would be undermined by any moves towards escalated surrogacy births (World Health Organisation, LittleBigSouls, March of Dimes, and the Australian National Premmie Foundation, for example).

Donor eggs also result in adverse outcomes for babies born. According to a recent meta-analysis, donor egg babies are at higher risk of low and very low birthweight, preterm birth, and lower gestational age, even when controlling for multiple births (Adams, Clark, Davies & de Lacey 2015). The boys born of IVF are at risk of experiencing the same infertility as their fathers, thanks to intracytoplasmic sperm injection (ICSI), which now constitutes up to half of all IVF procedures even when not specifically indicated (Belva 2016).

We are concerned that the health of women and babies is considered less important than the desire of an infertile couple to obtain a child.

5 Laws against commercial surrogacy must be strengthened and enforced.

We oppose the changing of laws to accommodate people undertaking unethical practices. No couples are 'forced' to buy a baby overseas. Nobody is 'forced' to take another woman's baby. There is no right to a child for anyone. Rather, it remains fundamentally cruel and barbaric to separate a woman from the child she has just birthed.

We wish to draw attention to the unethical practices of surrogacy advocacy groups and others who stand to profit from surrogacy in Australia. Families Through Surrogacy, for example, holds conferences around Australia, showcasing international clinics and brokers, and promoting overseas commercial surrogacy. We wonder why this kind of promotion is tolerated in Australian states where commercial surrogacy is prohibited – NSW, Qld and the ACT?

We ask that the Western Australian government establish and then enforce laws against commercial surrogacy both locally and overseas. Advertising and incentives for surrogacy as well as egg 'donation' must remain illegal. Legal parentage orders should not be granted to people who return from overseas with a child born of a surrogacy arrangement, even if the child has been in their care.

Yours sincerely

Dr Caroline Norma

Senior Research Fellow, RMIT University

womens.bioethics.alliance@gmail.com

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