

Submission to the  
Western Australian Review of the Human  
Reproductive Technology Act 1991  
(HRT Act) and the Surrogacy Act  
2008

An individual submission from:

Jo Fraser



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As indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"

**Article 7** gives every child the right to know and be cared for by his or her parents. **Article 8** respects the right of the child to preserve family relations and **Article 9** gives them the right (1) not to be separated from their parents and (2) if a child is separated from one or both parents s/he has the right to maintain personal relations and direct contact with them on a regular basis.

It has become increasingly recognised that a pregnant woman does more than just carry the baby in her womb. In any pregnancy there is cell transfer. These cells stay in baby and mother for decades, and the cell memory stays for their whole lives. Adopted people talk about their experience of the trauma of crying uncontrollably for their mothers when they were separated at birth, unable to be placated. (not to mention the mothers crying uncontrollably for their babies!) They have spent nine months in a safe, 'known' environment, only to have it ripped away from them at birth. This separation and bewilderment would also occur when a woman is carrying a baby for a commissioning couple, whether or not the genetic material includes hers. In a surrogacy arrangement it is expected that there will be no emotional attachment, but the gestational mother is the only person the child knows when it is born. Surrogacy ignores the welfare of the child because it treats the child as a commodity to be ordered and exchanged as an article of transfer. The effects of surrogacy are likely to be even more damaging than adoption because of the premeditated nature of the decision to deliberately create a child to be relinquished, carefully planned in fine detail, which, as discussed by some adults who were born to surrogates, has caused them great angst. Even in altruistic surrogacy we still look on the babies as products to be exchanged by contract: babies who are denied the right to be with the mother who has carried them for nine months.

Surrogacy exploits women and commodifies children. It involves a deliberate choice to set up circumstances in which a child is dispossessed of a relationship with his or her mother. Motherhood is a relationship not a status position. Children are not commodities to be bought and sold and then not be able to connect with their birth mothers. Surrogacy arrangements are analogous to trading in children. It demeans the status of children, re-asserting the idea of children as the property of the adult world. The child is used as a commodity on which there has been placed a monetary value. Therefore it is the buying and selling of children. The majority of countries prohibit the sale of people. Surely we should apply this law to the practice of surrogacy? We have, as a society, been convinced that buying a baby through surrogacy is somehow different.

And what of the mother? The 2008 Surrogacy Act in my opinion is extremely hostile towards the surrogate and in many clauses simply sidelines her. For example in Section 26, 1(b) it states that "the relationship between the child whose parentage is

transferred and each of the child's birth parents is to be treated as not being that of child and parent." In reality the birth mother does not cease to be the child's mother just because a parentage order is made. To keep this clause in the Act would, amongst other things, make it difficult for the surrogate to legally have an ongoing relationship with the child if the commissioning parents do not want this to happen.

It is important that mother and child have an ongoing relationship.

Women are not utensils to be used for baby-making and then discarded.

If surrogacy in any form is to be allowed, it is imperative that the surrogate have complete control over the number of babies she carries, and whether she carries them all to term. There have been terrible stories of women who have been forced to abort one or more embryos because the commissioning parents only wanted one child. And if multiple babies are born but the commissioning parents only want one, the surrogate should have the option of keeping both/all the babies. In the 2008 Surrogacy Act, Section 24 states that if there are multiple births the parenting order must include both or all children, however the commissioning parents of Baby Gammy & Pipah somehow managed to get around this.

More and more countries are choosing to ban surrogacy, including Sweden, where an official survey stated that surrogate motherhood poses too high a risk for women and children. These risks are physical as well as emotional. Surrogates are plied with drugs and hormones with who knows what long-term effects on them. An Indian surrogate quoted in Amrita Pande's book *Wombs in Labor: Transnational Commercial Surrogacy in India* says:

"Who would choose to do this? I have had a lifetime's worth of injections pumped into me. Some big ones in my hips hurt so much. In the beginning I had about 20–25 pills almost every day. I feel bloated all the time. But I know I have to do it for my children's future. This is not work, this is majboori (a compulsion). Where we are now, it can't possibly get any worse. In our village we don't have a hut to live in or crops in our farm. This work is not ethical—it's just something we have to do to survive. When we heard of this surrogacy business, we didn't have any clothes to wear after the rains—just one pair that used to get wet—and our house had fallen down. What were we to do?"

Akin to prostitution, surrogacy perpetuates the idea that women's bodies exist for purchase by others with the means to do so. We *never* read about poor women using wealthy women as surrogates. The rich buy, the poor sell. This is exceedingly apparent with international commercial surrogacy, and if we were to legalise commercial surrogacy in Australia, while the amounts of tens of thousands of dollars paid to surrogates would not perhaps be as life changing as it is to a very poor woman in India or Thailand, it is still the wealthy paying the poor for the use of their bodies and therefore the sale of a baby. Media articles quote parents bemoaning how much it cost them to acquire their baby. They claim they are not rich, but they somehow manage to come up with the huge amounts of money required. Other women use surrogates because they don't want to affect their own bodies with a pregnancy.

New South Wales, Queensland and the ACT have made it an offence for residents to enter into international commercial surrogacy arrangements with potential penalties extending to imprisonment for up to one in in ACT, up to two years in NSW and up to three years in Queensland.

Division 2, 11 of the WA 2008 Surrogacy Act states: “A person who provides a service knowing that the service is to facilitate a surrogacy arrangement that is for reward commits a crime”

However the threat of prosecution has not deterred thousands of Australian couples from going overseas to pay a surrogate mother, or Australian surrogacy businesses from facilitating commercial surrogacy between Australian couples and surrogates in other countries. If this is illegal why has there been no punishment? What is the point of having penalties within legislation if they are not implemented? Commissioning parents and some of the legal/medical fraternity are either thumbing their noses at Australian law, or are of the (obviously correct) opinion that nothing will be done when they do break the law. Perhaps the penalties need to increase dramatically. (Although one would assume the prospect of incarceration would be ample deterrent – maybe there need to be large financial penalties.)

Surrogacy is a very emotive issue, and however much those involved in the administrative side of it (those running the clinics, doctors, lawyers, etc.) say they are representing couples who are desperate to have a family of their own (and indeed they are) there can be no doubting that it is a goldmine for them. They earn a great deal of money pairing their clients with commercial surrogates overseas. Imagine the windfall if they were able to legally organise it within Australia. Many of these professionals are involved in the IVF industry, which has a relatively low success rate. If surrogacy were to be added into the mix this would increase that success rate. Unfortunately where there is a need, and where money is involved, there are always those who will seek to exploit those involved.

Becoming a parent is not a right. Many people talk about their “rights” but what they really mean is their “wants”. Surrogacy is the fulfilment of their own personal desire to have a family. The bottom line is that, wherever the surrogacy occurs—whether it is here or overseas—and however well or badly it is done, what we are doing is reasserting the idea that children are the property of adults and we are buying babies. Just because we want something desperately does not mean we have the right to have it.

If couples are desperate for a family then perhaps they could look at permanent care of children within Australia. There are thousands of children waiting for what celebrities call ‘forever families’. They are available right now; they don’t have to be adopted; it doesn’t cost tens of thousands of dollars.

The European Parliament “condemns the practice of surrogacy, which undermines the human dignity of women, since their bodies and reproductive functions are used as commodities.”

Are there some things in life that just should not be bought and sold?

*Jo Fraser*