A response to issues paper **Judy McHutchison**

Review of Surrogacy Laws **Social Scientist.**

Issues paper 82.

Surrogacy is an area of great concern to me yet this review has only come to my attention at the last minute so I wonder if the greater Australian community are informed of this document and its contents that have such serious implications for the well-being of our Australian citizens and our egalitarian, largely harmonious society.

I am a social scientist with vast 'lived experience" in the area of mother child separation which includes 50 years involvement in supporting mothers and their children separated to meet the demand of the adoption market. Additionally, my own child was abducted and later adopted in 1968. I have, over many decades been privy to the suffering, sometimes life long, of adoptees and mothers. In past years I have helped and supported distressed surrogate mothers keen to keep their children.

Preamble

Our government does not owe anyone a child. The government has a responsibility to protect and promote the well-being of all its constituents, not to as this issues paper suggests, establish mechanisms that facilitate the predation by a small section over another, particularly when there may be significant disparities in status and access to resources. We do not want a slave class In Australia bearing children for others. We want our daughters our granddaughters to be engineers, doctors, nurses, teachers, financiers etc. We do not want their potential cut short by being lured into arrangements that may have a profound effect on their long-term mental health. The government subsidizes a variety of treatment for the infertile. Its' sad if these treatments don't work but they should not then be given access to the bodies of young Australian women. None of us can have everything we want in life and we learn to accept it.

Paramountcy of the child

The paper refers to the paramountcy of the best interests of the child. Well, if the Committee intend to abide by that principle there is no need to progress further. No child would wish to be born under most surrogacy arrangements.

What baby would want to be separated from their mother at birth. Babies bond with their mothers in utero. They are familiar with their mother in numerous ways, they know her voice, her heartbeat etc. Evolution has programed babies to be with their mother as this has

been their only means of survival. Separating babies from their mothers causes great trauma not only do they mourn her loss but they fear annihilation.

I remember in the early days of the adoption reform movements (circa 1982) adoptive mothers approaching me and sharing the phenomenon of their adoptive baby screaming for weeks even months. We tended to believe babies were blank slates but, thanks to scientific research we know a lot more now.

> Babies know more than they are supposed to know. Minutes after birth, a baby can pick out his mother's face – which he has never seen – from a gallery of photos ... The newly discovered truth is that newborn babies have all their senses and make use of them just as the rest of us do. Their cries of pain are authentic. Babies are not unfeeling; it is *we* who have been unfeeling.[1]

In the case of gay male couples the child does not even get a substitute mother. The child in these cases has no **identifiable mother.** What a harrowing alienating experience for any human being. Yet there appears to be many gay couples who consider the mother an unnecessary inconvenience. This is a new era in human history and Australia did not vote for this.

Adopted children have long been over represented in mental health statistics. Even when they went to good homes they can still struggle with the trauma of separation from their mother, their feelings of abandonment and identity issues. It's not unusual to see posts on face book of adoptees wishing they were never born or even that they would have preferred abortion to their adoptive life. To actually **create** children to be put through a similar or worse experience is beyond incomprehensible.

Some adoptees are now claiming they were a slave class taken from their families and countries to be in a state of servitude to strangers they are supposed to be thankful too. Australian state and federal governments collectively are pending millions to support those labelled 'forced adoption'. The adoptive parents benefited but the child and mother and their other family members paid the price as do the Australian tax payers and the same will be the case in surrogacy.

[1] David Chamberlain, *Babies Remember Birth* Ballantine Books New York 1988.

The mother

Whether the egg is the mothers or from a donor the pregnancy largely progresses in the same way as any pregnancy. The mother has made a decision to become pregnant for another but what does she know unless she's been through this process before? How can she be adequately informed? It's a very unusual women who can give birth without becoming a mother.

In adoption it is understandable that those of us who's babies were abducted would suffer significant psychological harm. We were engulfed and incapacitated by shock and grief. Our mental health would be debilitated for a lifetime. Yet mothers who were not subject to such overt pressure and those left to make their own decision regarding adoption are also at risk of long-term mental health consequences. What do any of us know until we have been through something personally. You don't get to choose your level of grief. It can overwhelm you and you have no control. What are you going to do if a mother responds to her surrogacy experience with long term major depressive disorder that does not respond to treatment leaving her disabled? Are you going to return her child to her?

The paper refers to a "shortage" of surrogates. What a telling value judgement this is. The fact that these arrangements are few in number is a good thing as surrogacy arrangements place the children and the mothers at serious risk. There is not a shortage of surrogates there is an oversupply of individuals who seek to ensure their own desires are met irrespective of the harm they are doing to others.

Commercial surrogacy.

So commercial surrogacy is on the agenda because those seeking increased access to women's reproductive potential want it. Those seeking financial gain want it. It is not being driven by women seeking to be commercial surrogates! It is not coming from the Australian community generally who overall would not want to live in a country which treats women as live stock.

The offer of financial reward will lure disadvantage women, i.e. indigenous women, refugee women, women fleeing domestic violence all naïve about the possible consequences for their well-being. Disadvantaged women will be further disadvantaged by engaging in surrogacy and how can they complain? They agreed to it, they took the money. In a country in which so many young people are struggling financially the offer of significant financial rewards can also lure some of our brightest and place them at risk and the subsequent loss to our society and economy.

A financial reward can also result in women being pressured by partners, or other family members, to participate in surrogacy. Some women may be subject to violence by their partners in order to force them to cooperate.

In the years ahead we are going to have enough challenges addressing the harm caused through altruistic surrogacy and the ultimate court cases let alone increase the numbers through commercial surrogacy.

The United Nations Convention on the Rights of the Child which Australia has ratified would seem to preclude most surrogacy arrangements. Most commonly, the child's rights that are considered to be placed at risk by commercial surrogacy are as follows (2):

(1) the right to a nationality and to know one's parents/origin (Article 7) and (2)
(2) the right to preserve one's identity (Article 8), and
(3) not to be sold or trafficked (Article 35)

Additionally, Article 21 with its right that the adoption of a child is authorized only by competent authorities is violated since the parents do not undergo the preparation processes of ethical adoptions to include a home study. This particular point was made clear by the Baby Gammy case, which resulted in worldwide outrage when an Australian couple was believed to have left their surrogate-born son behind in Thailand because he was born with Down syndrome while they returned home with his healthy twin sister (though the court subsequently ruled that this was not the case, that the surrogate mother chose to keep him). The case gained further attention when it was learned that the commissioning father had a child sex offense history. This case was a catalyst for a moratorium on Commercial Global Surrogacy in Thailand where the surrogacy was contracted (3).

Making surrogacy contracts enforceable

Certainly not against the surrogate. What are you going to do snatch the baby at birth and stick a pillow in her face or a sheet over the head? Drug her with mind altering drugs and have her transported away to an unknown location and never mention the baby again? Lie to her that the baby died only for it to knock on her door 25 years later? I think we went down this road before, I thought it was promised in the apology to the 'forced adoptions' that it would never happen again. Surely in the 21st century nobody would want to be involved in treating their fellow human beings like an unfeeling incubator and subject them to such anguish.

Reduce barriers?

Why would you want to reduce barriers to surrogacy? This is a process that has the potential to cause harm to mothers and children, and society generally. To meet the needs of who? There needs to be more safeguards for mothers as there is a lot of pressures/undue influencing occurring to keep altruistic surrogates on the path to relinquishment.

Child trafficking

Of course, surrogacy is child trafficking, particularly when the trafficking occurs beyond family members. It is the worst form of child trafficking imaginable. The children are created to be trafficked. There can be no lower form of child trafficking than surrogacy arrangements.

The future

Due to the significant risk of harm to mothers and children surrogacy arrangements should only be permitted within family groups or relationships that approximate family groups such as long- term close friendships. The child needs to remain with its mother for a considerable period after birth and hopefully breast fed. Over an extended time period the child can be transitioned to a new primary carer always knowing the identity of its mother and having reasonable access to her.

The existing laws criminalizing those who engage in surrogacy arrangements should be rigorously enforced. We don't allow the sexual abuse by Australians occurring in other countries to go unpunished due to the harm that is caused to the victims. Surrogacy has the capacity to course similar or worse harm and these perpetrators should be punished. There appears to have been no charges laid. How can these individuals be suitable parents when they disregard the potential harm to others and deliberately flout Australian law. They are law breakers and should be treated as such.

Other comments

The title of the review suggests that the review is of existing laws yet sections of the paper make clear that there is a push to expand surrogacy. This is deceptive.

THANK YOU

Judy McHutchison

Social Scientist.

B.Soc.Sc Hons; MA; B.Econ Hons.

Notes

1. David Chamberlain, *Babies Remember Birth* Ballantine Books New York 1988.
2. Karen Smith Rotabi; Susan Mapp; Kristen Cheney; Rowena Fong; Ruth McRoy. Regulating Commercial Global Surrogacy: The Best Interests of the Child J. Hum. Rights Soc. Work (2017)
3. Ibid.