

(Dr) Erica Cervini

Before I outline my submission ideas, I need to write the following to avoid people thinking, ‘She doesn’t know what it’s like not to be able to have children. She shouldn’t write about this.’ I wanted children but was unable to. I do not have direct involvement in surrogacy but as woman who could not have children I did consider the options.

After conducting much research, I found I had grave ethical concerns about surrogacy and, in particular, about commercial surrogacy. These relate to the dignity and exploitation of surrogates and babies.

Commercial surrogacy is banned in Australia because of concerns about the exploitation of surrogates. Victoria, South Australia and Western Australia people are allowed to commission overseas surrogates, which wildly contradicts Australia’s stance on domestic commercial surrogacy. These states should come into line with other states and territories that ban intended parents accessing overseas surrogates.

I note that countries such as France, Italy and Spain ban all surrogacy because of the grave risks of the surrogate mother being exploited whether in a commercial or altruistic context. India and Thailand have cracked down on commercial surrogacy after high profile cases of baby trafficking and the exploitation of the birth mothers - the surrogates.

I also note that questions about commercial surrogacy are listed on the review’s website to help people write their submissions. One question asks, ‘If Australia was to allow for compensated or ‘commercial’ surrogacy, how could this be implemented?’

Surrogacy lawyer Sarah Jefford, one of the review’s advisory committee members, favours commercial surrogacy in Australia and recently aired her views on [ABC radio](#). Jefford believes that few Australian women want to be surrogates because they are unpaid. ‘It’s a big ask for someone to carry a baby for no compensation,’ she explains in a YouTube video.

Jefford isn’t the only person on the 11-person advisory committee to support commercial surrogacy in Australia. One of the founders of Rainbow Families, Ashley Scott, also supports domestic commercial surrogacy and is an advisor to the ALRC review.

I can understand the ache infertile heterosexual couples and gay couples feel when they can’t have children. But this longing for a baby can’t supersede the human needs, emotions and dignity of surrogates and babies.

From reading a cornucopia of sites devoted to surrogacy advocacy in Australia and overseas, and literature from overseas companies that organise surrogacies, you could be forgiven for thinking surrogacy is mainly focused on intended parents’ needs and that the surrogate is merely seen as a ‘commodity’.

And herein lies a major problem I have about surrogacy – it erases and dehumanises the birth mother/woman. Even in the ALRC issues paper the word ‘woman’ is erased in its definition of surrogacy. ‘Surrogacy is the practice of a person carrying and giving birth to a child for another person or couple.’

Anna McKie, from Surrogacy Australia, describes surrogates as ‘extreme babysitters’ on TikTok and Instagram posts while cradling a doll. This dehumanising descriptor underplays the medical risks surrogates face. These include women having to be on medication before the transfer of embryos and some clinics implanting women with multiple embryos. Research suggests that women implanted with embryos using other women’s eggs are at higher risk of the body rejecting them. Some surrogate mothers also suffer complications from IVF such as ectopic pregnancy, psychological stress and ovarian hyper stimulation syndrome.

The ‘extreme babysitter’ quip also underplays the extent to which contracts take away the surrogate’s agency. [Inside Business](#) recently reported that many surrogates can’t leave Georgia, a popular destination for intended parents from Western countries seeking surrogates, while they are pregnant.

[The Atlantic](#) has reported on the issue of surrogates and commissioning parents disagreeing on abortion. A common reason commissioning parents may want an abortion is when there is a multiple pregnancy, and they want to abort one of the foetuses.

Behind the good news stories about surrogacy and happy families (‘Labour of Love’; ‘Magic Happens’; ‘The Greatest Gift’. These are just some of the recent Australian news headlines about surrogacy) is the stark reality that surrogates are usually poor. For example, [Georgia](#), has 15 surrogacy clinics and is a popular destination for intending parents wishing to commission surrogates. [Ukraine](#) used to be until the war. It is invariably women needing money to survive who sign up for surrogacy.

It's also a reality that Australian intended parents often shop for the cheapest overseas surrogates. This is highlighted in documentaries such as *Made in India*. There is no reason to think this wouldn't happen in Australia if commercial surrogacy was legalised. Intended parents would still shop for the cheapest way to access a surrogate.

This raises the question of impoverished women’s consent. When women need money for housing or to feed other children, they may see no alternative but to enter a surrogate contract that promises money they could only dream about. There is no reason to suggest that it would be any different in Australia.

And, then there are questions about how surrogates fare after the babies they have given birth are taken away. [Business Insider](#) has reported on how some surrogates struggle after giving birth. ‘I carried a baby for nine months, and then they took him from me. It’s excruciatingly painful,’ one surrogate told *Business Insider*.

We will never know about the trauma countless Indian and Thai surrogates may have experienced after being separated from the babies they gave birth to.

Intended parents and surrogates must attend counselling sessions in Australia. But legislation and counselling can’t always ameliorate emotions and psychological damage.

This also raises concerns about the impact on babies being removed from their surrogate and the access to information about their surrogate when the babies are older. There have been

some messy cases in Australia, Britain and the US where intended parents have said the surrogate can have contact with the baby but then renege on the agreement.

What all this boils down to is that the pretty advertising images about surrogacy and joyful surrogacy stories cannot hide the fact that surrogacy is built on the commodification of women and babies whether altruistic or commercial. The babies are produced as a result of a contract and a money transaction whether commercial or altruistic.

Surrogacy is big business. Estimates suggest that the worldwide surrogacy industry was worth [\\$US22 billion in 2022 and will grow to \\$US129 billion by 2032](#). There are the lawyers, fertility clinics, surrogacy agencies, doctors, counsellors and payments to surrogates. In this commercial world, you have to wonder the extent to which the human rights of surrogates and babies are considered.

Bans on Australian commercial surrogacy should remain and laws about people accessing overseas surrogates should be unified. Therefore Victoria, South Australia and Western Australia should ban people engaging in commercial surrogacy overseas.

Often the question of surrogacy is framed as a contest between conservatives and progressives. It shouldn't be. It's about the dignity and human rights of the surrogate and baby: there is no right to have a child.