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COMMITTEE SECRETARY
HOUSE OF REPRESENTATIVES STANDING COMMITTEE
ON SOCIAL POLICY AND LEGAL AFFAIRS
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CANBERRA ACT 2600

To the Committee Secretary of the Inquiry into Surrogacy.

NorMAC is an organisation directed by and for survivors of commercial sexual exploitation in Australia.

We see an analogy between the surrogacy industry and other unethical and exploitative industries, like the sex trade, that prey on vulnerable individuals

We are responding to your Inquiry into surrogacy from this perspective, and hope you will consider our concerns about the exploitation women face in commercial surrogacy arrangements.

1. The role and responsibility of states and territories to regulate surrogacy, both international and domestic, and differences in existing legislative arrangements

At present it is only illegal to travel internationally for the purposes of compensated surrogacy, or to commission a pregnancy in Queensland, New South Wales or the Australian Capital Territory.

NorMAC sees a need for consistency in the laws regulating surrogacy. Because of the exploitation of women in surrogacy in developing countries, we urge that legislation be enacted to prevent any person from an Australian state or territory contributing to that exploitation.

Many Australian states already have altruistic surrogacy laws that are only occasionally utilised. NorMAC believes it is essential that there is uniformity in altruistic surrogacy arrangements. As is the case in the UK, altruistic surrogacy contracts should be legally non-enforceable, ensuring the surrogate mother's retains all relevant legal rights with regard to



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the child, even if that child is genetically unrelated (see section 30 of the Human Fertilisation and Embryology Act 1990).¹

Many developed nations maintain a ban on all forms of surrogacy including Switzerland, Iceland and France, while other comparable nations to our own such as the United Kingdom, New Zealand and Canada have taken a clear stance against commercial surrogacy and only allow altruistic surrogacy.

2. Medical and welfare aspects for all parties involved, including regulatory requirements for intending parents and the role of health care providers, welfare services and other service providers

NorMAC has grave concerns that any attempt to legitimise a commercial surrogacy industry in Australia would unfairly target marginalised women.

Surrogacy as a form of exploitation is not confined to women in Third World countries. It has also proven to be exploitative, with racist origins, in the Western world.

When commercial surrogacy was introduced in the United States in the 1980s, it provided a test case for the problems arising from commercial exploitation of women's reproduction. It was a cruel system based on racist and classist suppositions that child bearing was a form of work to be undertaken mostly by vulnerable women.

Commercial surrogacy in the United States targeted socially disadvantaged women who were seen as financially vulnerable enough to be exploited as 'wombs for rent'.

The catalyst for a commercial surrogacy industry in the USA was the Supreme Court decision in *Roe v. Wade* in 1973- a landmark case that effectively legalised abortion in the USA. The number of babies available for adoption subsequently dropped dramatically. Many couples were unwilling to adopt a child of different ethnicity, and this led to the creation of surrogacy agencies connecting childless couples with young white women, mostly from lower socio-economic, working class backgrounds.

By the 1980s, this industry had ballooned and was using unethical strategies to coerce potential surrogates into signing surrogacy contracts. Susan Ince, an investigative journalist who went undercover as a potential surrogate exposed many such cases. Some surrogates changed their minds about relinquishing their babies after giving birth (e.g Mary Beth Whitehead and the famous Baby M case), and the courts determined domestic surrogacy contracts to be invalid.

¹ <http://www.legislation.gov.uk/ukpga/1990/37/contents>



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As a result, the surrogacy industry began to target women in developing countries, and so-called 'gestational surrogacy' became more popular. In these situations, a fertilised embryo from the commissioning couple's gametes is implanted into the surrogate. The surrogate has no genetic connection to the child, but has a biological connection to the infant she carries to term..

Irrespective of the jurisdiction in which surrogacy occurs, assisted reproductive methods- the drug treatments to ensure fertility and/or biological acceptance of a donor embryo – pose a huge health risk for surrogates. A number of complications are possible, not least of which is potential future infertility for the woman.

3. Issues arising regarding informed consent, exploitation, compensatory payments, rights and protections for all parties involved, including children

NorMAC believes the discussion of surrogacy needs to shift from a focus on individual choice and agency, and the financial benefits of surrogacy for women in poorer nations, or even poorer Australian women. Instead, we need to consider the unequal power dynamic and structures that underpin and promote the practice of surrogacy.

A recent documentary on ABC2, *House of Surrogates*, focused on surrogacy in India and highlighted the 'new caste system' inherent in first world couples demanding children from third world women. One story showed a surrogate mother weeping as a Canadian couple departed with her contracted baby. Not only did this couple use the Indian woman as a womb for hire, they also had her perform the duties of wet nurse and nanny while the couple was still in India. Another Indian surrogate said she would never wish the experience on her daughter.²

Surrogacy arrangements now primarily target poor women from developing countries. These women often have low literacy and are pressured by their families to act as surrogates for financial reasons. It is also claimed that the majority of these women do not receive independent legal or medical advice before agreeing to surrogacy contracts- rights over their bodies are dictated by the contracting surrogacy clinics or individuals.

This was evidenced in the case of baby Gammy where pressure was placed on the mother, Pattaramon Chanbua, by the surrogacy agency, David and Wendy Farrell (the contracting couple) and medical staff to have an abortion at seven months to terminate the infant, who had been diagnosed with Down Syndrome³

² <http://iview.abc.net.au/programs/house-of-surrogates>

³ <http://www.news.com.au/lifestyle/parenting/australian-couple-claim-they-are-not-the-parents-of-baby-gammy-born-to-a-thai-surrogate/story-fnet085v-1227012256324>



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Global opposition to all forms of surrogacy is steadily increasing, especially in Europe. The United States, particularly, has a record of poorly regulated surrogacy leading to broken contracts, broken families and broken lives.

Two recent documentaries from the US Centre for Bioethics and Culture highlighted some of the areas of concern-

The documentary, *Eggsploitation*, examined the dangers egg donation and surrogacy pose to the women involved including potential health risks from drugs associated with these procedures. It also addressed the numerous ethical dilemmas arising from surrogacy.⁴

The documentary, *Breeders: A Subclass of Women?*, interviewed four surrogate mothers and showed the negative and traumatic experiences associated with surrogacy.⁵

Unfortunately in Australia we have seen some lobbyists seeking to curb the protections currently in place for women entering altruistic surrogacy agreements.

In the state of Tasmania, the Surrogacy Act 2012 requires a potential surrogate to be 25 years of age or older. This protection is aimed at ensuring the mental, emotional and experiential maturity of participating in surrogacy. It is also required that the surrogate has at least one child of their own.

Attempts to promote the removal of safeguards in altruistic surrogacy legislation were seen recently when Tasmanian Gay and Lesbian Rights Group spokesman Rodney Croome was quoted in the media as questioning the requirements for surrogates to be aged at least 25 and have already given birth. Mr Croome said –

*The two hurdles a woman has to jump before she can give the gift of parenthood through altruistic surrogacy (she has to be 25 and she has to have had a child already) are unnecessary limits on her right to choose what to do with her own body. We do not say to a man who wants to donate sperm that he must be 25 and already a father. Imagine the outcry if a woman could only seek legal termination if she were 25 and already had a child. The surrogacy requirements reek of paternalism, the kind that says women aren't mature enough to know their own minds and have to be protected from themselves, at least until they reach maturity by fulfilling their natural destiny of becoming mothers."*⁶

⁴ <http://www.eggsploitation.com>

⁵ <http://breeders.cbc-network.org/>

⁶ <http://tasmaniantimes.com/index.php?/article/rodney-croome-oam-out-of-order-on-surrogacy/>



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Publicly, these comments were poorly received, but it is concerning that a high profile media personality equates the relationship a mother (biological or not) develops with a gestating child to donating sperm. Such a position reeks of patriarchy and shows a distinct lack of insight into the exploitation of women.

- 4. Relevant Commonwealth laws, policies and practices (including family law, immigration, citizenship, passports, child support and privacy) and improvements that could be made to enable the Commonwealth to respond appropriately to this issue (including consistency between laws where appropriate and desirable) to better protect children and others affected by such arrangements**

As noted below at question 5, NorMAC advocates for consideration of surrogacy as a form of human trafficking. Legitimising the surrogacy industry will likely increase the number of vulnerable persons who are trafficked, as has been the case with other exploitative industries such as prostitution. In jurisdictions where prostitution is legalised, there is an exponential increase in the number of persons – mostly women – trafficked for the purposes of sexual exploitation.

A recent article, *Does Legalized Prostitution Increase Human Trafficking?*, (a collaboration between the London School of Economics and Political Science (LSE), the German Institute for Economic Research, and Heidelberg University) described international human trafficking as “one of the dark sides of globalisation”, explaining that most victims of international human trafficking are women and girls, the vast majority of whom end up being sexually exploited through prostitution. Domestic policy on prostitution in countries of destination, it says, has a marked effect. The researchers used a global sample of 116 countries and found that countries where prostitution is legal tended to experience a higher reported inflow of human trafficking than countries in which prostitution is prohibited.⁷

5. Australia's international obligations

Australia is nominally committed to anti-trafficking and signed the UN Trafficking Protocol in December 2002, indicating a commitment to ratify the Protocol when domestic legislation had been brought into line with the Protocol's requirements.

Any move towards legalising the commercial surrogacy industry is a move that legitimises a vast criminal network where numerous cases of exploitation have been exposed.

⁷ <http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article-for-World-Development-prostitution-anonymous-REVISED.pdf>



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A paper titled *Intercountry Surrogacy – A new form of trafficking?* was presented by Chief Magistrate Pascoe at the Annual International Family Law Conference Cambodia in 2012.

This paper referred to numerous human rights abuses and the commodification of children in the name of surrogacy, as follows -

In about 2006 on a visit to a remote Wat in Payao I first became aware of what might be called “baby trafficking” – more specifically the movement of pregnant women across national boundaries in order to sell the newly born child..... The sale of babies in various forms is a huge and highly profitable enterprise. The UN estimates this form of trafficking alone may be worth some \$10 billion.

In 2005, the UN Special Rapporteur on the Sale of Children related the following-

*In September 2003 a fishing boat from the Indonesian island of Tanjung Balai Karimun was allegedly intercepted heading towards Malaysia. According to information received, eight babies were found on this boat, packed in Styrofoam in fish boxes punctured in order to allow the babies to breath.*⁸

There have also been reports of babies being packed into vegetable crates and transported from Vietnam across China in carry bags for eventual sale. Not surprisingly there was a lot of ‘spoilage’ as some babies died in the process. Additional problems also arose if the babies were later found to be suffering from a serious illness. For example, a criminal gang that was broken up in Singapore was found to have been abandoning 18 month old babies, that they had originally intended to sell, once they discovered the babies were suffering from HIV.⁹

Given the inherent difficulty in moving children, many traffickers have discovered that it is easier to move the mother with the baby ‘in utero’. The mother can then give birth in a safe place from which the baby can be sold and moved.¹⁰

A recent article in the *Hindustan Times* also highlighted serious concerns regarding organised criminal gangs involved in trafficking women and young girls into surrogacy. It was quoted

⁸ UNCHR, “Report of the Special Rapporteur on the Sale of Children, child prostitution and child pornography, Juan Miguel Petit, Addendum, Communications sent to Governments and replies received”, 8 March 2005, UN Doc E/CN.4/2005/78/Add.3, at para 120; and UNCHR, “Report of the Special Rapporteur on Violence against women its causes and consequences, Yakin Erturk, Addendum, Communications to and from Governments”, 18 March 2005, UN Doc E/CN.4/2005/72/Add.1, [195].

⁹ S Powell, “HIV alert exposes baby trafficking” *The Australian* (Sydney) 15 June 2004.

¹⁰

<http://www.federalcircuitcourt.gov.au/pubs/docs/Speech%20-%20Pascoe%20-%20LegalWise%20-%202012.pdf>



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that around 10,000 children are trafficked from Jharkhand in Delhi every year to either work in domestic servitude, sexual slavery or forced surrogacy. Two cases concerned girls sold into surrogacy- one forced to deliver 6 children from the age of 13, the other trafficked at the age of 8 and forced to deliver 10 children. ¹¹

6. The adequacy of the information currently available to interested parties to surrogacy arrangements (including the child) on risks, rights and protections

One of NorMAC's main concerns about surrogacy is the right of children to safety. A recent paper by now Federal Court of Australia Chief Judge John Pascoe referred to surrogacy as *"the new 'front line' in the trafficking and commodification of women and newborn children."*

Pascoe's paper referred to the recent case of baby Gammy and the predatory nature of the related surrogacy arrangement – an arrangement in which a known paedophile travelled outside Australia (to Thailand) and negotiated a surrogacy agreement to effectively purchase a child, with no background checks being undertaken.. Adding to concerns about this surrogacy arrangement is the fact that Thailand is a known destination for men to sexually access children in prostitution via 'sex tourism'. Justices John Pascoe and Diana Bryant called for tightening of visa rules in response to baby Gammy's plight. ¹²

The paper also noted another disturbing case- the case of Australian man Peter Truong and his partner Mark Newton- that graphically illustrates the terrible consequences for some newborn babies in surrogacy. In this case, a newborn boy was trafficked into the custody of two men after paying a Russian surrogate \$6 000. The boy was then smuggled into America and legally adopted. From less than two weeks old up until the age of 6 the boy was a sexual slave and made to perform sex acts on his parents as well as scores of men around the world who belonged to a paedophile ring. ¹³

The commodification of babies is something that is largely ignored by the current surrogacy debate. Once it was an accepted fact that pregnancy presented a variety of risks including complications with the birth and children potentially being born with health defects or disabilities. Parents hoped for the best – perhaps even hoped for a particular sex of their baby – but nothing was guaranteed. The case of baby Gammy presents the ultimate extreme example of surrogacy as a consumerist tool of market driven economies, promoting an

¹¹ <http://www.hindustantimes.com/india-news/tribal-girls-forced-to-conceive-deliver-babies-for-sale/article1-1320239.aspx>

¹² http://www.theaustralian.com.au/business/legal-affairs/judicial-chiefs-call-for-lifting-of-domestic-ban-on-commercial-surrogacy/story-e6frg97x-1227031288720?from=public_rss&utm_source=The%20Australian&utm_medium=email&utm_campaign=editorial&net_sub_uid=106582177&nk=e51ecef1027b5f747d1df0f089b11175#

¹³ http://www.abc.net.au/reslib/201409/r1332410_18536962.pdf



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exploitative global culture intent on turning humans into commodities where 'defective' children are discarded. It raises very serious questions about surrogacy and discrimination on the basis of disability.

Outspoken academic Professor Richard Dawkins recently devalued the lives of people with Down Syndrome when responding to a woman who said she would face a real ethical dilemma if she became pregnant with a baby with Down Syndrome. He said –

Abort it and try again. It would be immoral to bring it into the world if you have a choice.”¹⁴

Another Australian case recently came to the attention of Foreign Minister Julie Bishop. It related to an Australian couple who abandoned a baby born by surrogacy in India. The surrogate had twins but the couple only took home the girl. Freedom of Information documents obtained by the ABC's *Foreign Correspondent* program indicated the couple only wanted a daughter to 'complete their family' as they already had a son at home. The documents showed Australian officials raised concerns at the time that the baby boy could be left stateless and that the couple had 'misled' the Australian High Commission in New Delhi regarding arrangements for the boy.¹⁵

Surrogacy presents the extremes of a culture that believes in a right to children but with no concern for the fact that children may have special needs and require extra care.

The commodification of children through surrogacy has presented examples of commissioning parents wanting perfect children, including sex selection and racial origin. This is eugenics and the creation of 'designer babies'.

Kajsa Ekis Ekman, a Swedish journalist, author and activist visited Australia in 2014 for the Festival of Dangerous Ideas and to promote her book *Being and Being Bought: Prostitution, Surrogacy and the Split Self*, which was recently translated into English and published by Spinifex Press in Melbourne.

In response to the burgeoning commodification of babies, Ms Ekman said-

We are dealing with an industry that, if we don't stop it, will grow as big as the prostitution industry. In both cases, capitalism is expanding into the most basic structures of what it means to be human. What is being

¹⁴ <http://www.telegraph.co.uk/health/healthnews/11047072/Richard-Dawkins-immoral-to-allow-Downs-syndrome-babies-to-be-born.html>

¹⁵ <http://www.abc.net.au/news/2015-04-15/bishop-confident-staff-acted-appropriately-india-surrogacy/6393082>



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*commercialised are our origins themselves. The surrogate sells not a 'thing' she produces, but her own body and her child. In another unfortunate mirroring of prostitution, we are seeing reports of women being trafficked into Thailand and China for the purposes of surrogacy.*¹⁶

7. information sharing between the Commonwealth and states and territories, and

All states and territories should have consistent laws deterring persons seeking to enter commercial surrogacy agreements outside of Australia. This can only happen with effective communication and collaboration between border control, the Department of Immigration and state and territory governments.

8. The laws, policies and practices of other countries that impact upon international surrogacy, particularly those relating to immigration and citizenship.

Rejection of a commercial surrogacy Industry in Australia will ensure that Australia maintains and honours its commitment to the UN Convention for the Suppression of the Traffic in Persons and would also bring Australia's position in line with other global human rights and women's rights groups including the European Women's Lobby, the Swedish Women's Lobby, the French Assemblée des Femmes and the US Centre for Bioethics and Culture.

NorMAC encourages the committee to endorse an official position against commercial surrogacy on the grounds that it is a form of reproductive slavery that unfairly targets women in poverty and has already been clearly exposed as targeting marginalised women in developing countries.

We would also encourage the committee to remind the Australian Government of its recent commitment to ending violence against women and advocate for the recognition of surrogacy as a form of violence against women. Ending the practice of surrogacy is the best way to ensure protection of individuals at risk of this form of exploitation and sends a clear signal about our commitment to protecting all women's rights to be free from exploitation and violence.

Do not hesitate to contact if you wish to discuss our concerns further.

Yours Sincerely

Simone Watson,
Director for NorMAC

¹⁶ <https://medium.com/festival-of-dangerous-ideas/stop-surrogacy-before-it-is-too-late-9910035a63f0>