Submission to the Inquiry into Surrogacy- The House of Representatives Standing Committee on Social Policy and Legal Affairs

Report authors

Professor Kelton Tremellen MB BS (Hons) PhD FRANZCOG CREI
Professor of Reproductive Medicine, Flinders University
Gynaecologist and Certified Sub-specialist in Reproductive Endocrinology and Infertility

Mr Sam Everingham BSc, MA, MPH
Director, Families Through Surrogacy
Immediate past-President, Surrogacy Australia.

Executive Summary

An online survey of 500 Australian men and women of reproductive age (18-49 years) was undertaken to gauge their views on gestational surrogacy. There was overwhelming support for the use of surrogacy for both married and de facto couples, irrespective of their sexual orientation, but only limited support for its use by single individuals. More than half of the individuals surveyed who held a well-defined position on the payment of surrogates felt that the current Australian ban on compensation beyond direct medical costs was unjustified. Furthermore, of those respondents not totally opposed to compensation, nearly half felt that the Government should place no restrictions on the quantum of compensation, with this being best determined by negotiation between the surrogate and commissioning parents. Finally, there was significant support for the legalisation of professional surrogacy agencies to help recruit, screen and manage the surrogacy process.

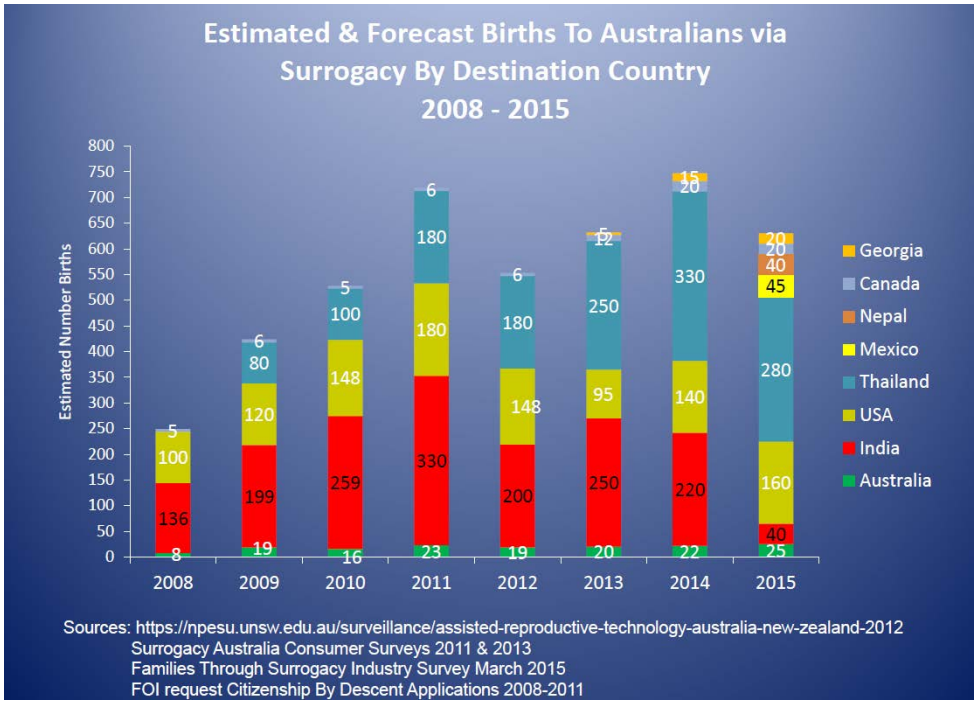
Background to the submission

Surrogacy is a means of forming a family in which a woman (surrogate) carries a pregnancy for a third party, with the express intention of giving up all parental rights to the resulting child to the commissioning (intended) parent(s). Traditional surrogacy encompassing the use of a surrogates own eggs in combination with artificial insemination has been used as an effective treatment for female infertility for many years, but is now less widely performed due to reduced effectiveness compared to modern fertility treatment; as well as concerns relating to potential exposure of the surrogate to infectious disease and difficulties with relinquishing the child because of a shared biological genetic link with the child. Therefore, in today's setting the vast majority of surrogacy is performed as gestational surrogacy, where an embryo is created by in vitro fertilisation (IVF) using eggs and sperm from any combination of the intended mother and father, or third party gamete donors, before transfer into the surrogate's uterus. The overwhelming body of evidence suggests that surrogacy results in positive psychological outcomes for the child, commissioning parents and the surrogate (Jadva 2012 and 2014, Soderstrom-Anttila 2015), making surrogacy a very useful treatment.

Two recent online surveys of Australian's considering or engaging in surrogacy revealed that the majority of surrogacy participants were in *de facto* (47%) or married relationships (43%), with approximately half of the respondents being heterosexual and the remaining in male same sex relationships (Everingham 2013, Everingham, Stafford-Bell & Hammarberg 2014). The average age of these prospective parents was 40 years, with their mean income being significantly higher than the Australian average (28% of respondents had a combined income exceeding $208,000 per annum) (Everingham 2013). While the reason for males requiring surrogacy to have a family are self-evident, the underlying reasons for heterosexual couples requiring surrogacy range from previous hysterectomy due to cancer (17%), severe uterine pathology (endometriosis 10%, fibroids 3%), bleeding complications in prior childbirth (14%), congenital absence of a uterus (17%), risk of death of the mother or baby during pregnancy (17%), trauma (3%) or previously failed IVF treatment due to implantation disorders (7%)(Delaware 2014).

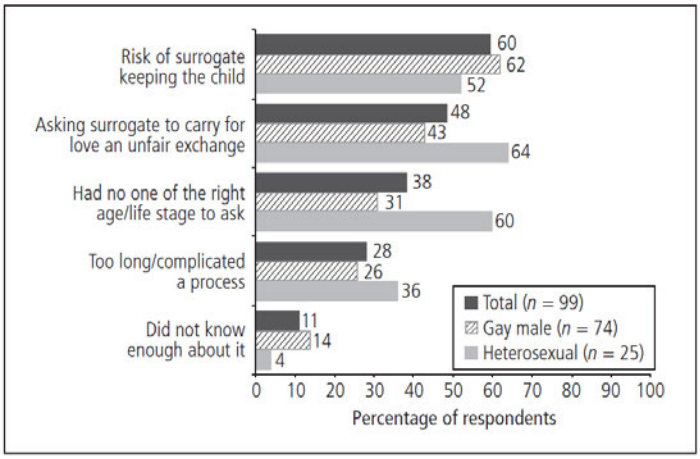
Evidence to date suggests that while the demand for surrogacy services is rising due to increased awareness and uptake of assisted reproductive technology treatment, and an increase in the number of single men and same sex male couples desiring to raise a family, this demand has not been matched by a comparable increase in the number of births using surrogacy services in Australia. On average, less than 25 births per year are achieved using gestational surrogacy in Australia, with a further 500 plus births being recorded for Australian residents using overseas surrogacy (Figure 1).

Figure 1.



Travel overseas to access gestational surrogacy is expensive and also fraught with legal concerns over the legal status of the child on returning to Australia, plus possible threats of criminal prosecution of couples engaging in commercial surrogacy if they reside in jurisdictions where these practices are illegal. Despite this the overwhelming majority of gay male (97%) and heterosexual couples (88%) researching surrogacy do not seriously consider altruistic surrogacy within Australia, as outlined in Figure 2 (Everingham 2013).

Figure 2.



Reasons why uncompensated surrogacy was not considered, by sexuality

Of those who did consider Australian altruistic surrogacy, 59% ultimately did not proceed down that path as they were unable to find an appropriate surrogate who would commit to carry altruistically.

As it presently stands, Australian law severely limits recruitment of suitable surrogates as it prohibits paid advertisements for surrogates, the use of third party professional recruitment agencies for screening and locating surrogates, plus the payment of surrogates beyond reasonable medical expenses. Therefore the current legal situation means that Australians can only access altruistic surrogacy from within their own circle of family and friends or via social media forums. Many commissioning parents are either unable to find such a volunteer, or are unwilling to ask a family member or friend to carry their child as they feel that this poses an overly onerous burden on that individual which could potentially harm their future relationship. The fact that the vast majority of these individuals are willing to travel overseas at great expense to access compensated surrogacy highlights that Australian law is the primary impediment to accessing surrogacy within Australia.

It has been suggested that allowing compensated surrogacy, properly regulated and facilitated by professional recruitment agencies that can help screen potential surrogates and place the surrogate with a compatible commissioning parent or couple, will not only increase the supply of surrogates in Australia, but also improve the quality of medical care as it allows patients to undertake IVF treatment in Australia and births to occur within the Australian healthcare system (Millbank 2014). Furthermore, by facilitating access to surrogacy in Australia the government will remove legal concerns related to the legal status of children born overseas, while also allowing strict enforcement of clinical codes of practice which ensures adequate pre-treatment counselling and protects the legal rights of all parties. None of this is possible if the current overseas dominance of commercial surrogacy is allowed to continue.

Before advocating change to Australian law relating to compensated surrogacy, it was felt prudent to survey the Australian public's views on three key issues:

1. Determine the level of support for surrogacy under various social (married, single, sexual orientation) and clinical settings (underlying reason for initiating surrogacy).

2. Quantify levels of support for legalising compensated surrogacy in Australia, and if so, how much compensation should be offered.

3. Assess views on whether appropriately qualified professionals should be allowed to recruit and screen surrogates in Australia.

By better understanding the publics existing views on surrogacy, it is hoped that the Standing Committee on Social Policy and Legal affairs inquiry into surrogacy will be in a

better position to formulate changes to the law that are in step with these views and the wishes of the Australian public that they represent.

Research methodology

This research study was commissioned by Professor Kelton Tremellen, Flinders University, South Australia, in collaboration with Mr Sam Everingham (Director, Families Through Surrogacy). The study consisted of a 20 item multiple-stem response online survey conducted by Q and A market research between December 28th 2015 and January 15th 2016. All participants were aged between 18 and 49 years of age, as we wished to only target the views of this reproductive age group who could potentially require surrogacy in the future, or who could act as surrogates themselves. Those individuals who had past experience with surrogacy (either themselves personally or close family member or friend) were excluded from the survey in order to avoid bias. All participants received remuneration for their involvement in this survey in the form of a redeemable gift voucher ($10). Recruitment was targeted to ensure that the study sample distribution accurately reflected the gender and socioeconomic background seen in the general Australian population. A total of 500 individuals completed the online survey.

Potential participants were initially emailed an introduction outlining a brief explanation of what surrogacy consisted of, as well as the existing legal framework within Australia (participant information sheet, appendix 1), before being asked to complete the online anonymous survey (appendix 2). Aside from questions assessing their age, social and socioeconomic status, participants were also asked their views on who they felt should be able to access surrogacy and under what clinical circumstances. Secondly they were asked if they supported financial compensation of surrogates, and if so what quantum did they feel were warranted and appropriate. Furthermore they were asked to outline any potential concerns they may have with compensation of the surrogate, and their views on the use of professional agencies to assist recruitment, screening and placement of surrogates with appropriate commissioning parents.

Principal findings

The background demographics of the study participants are summarized below.

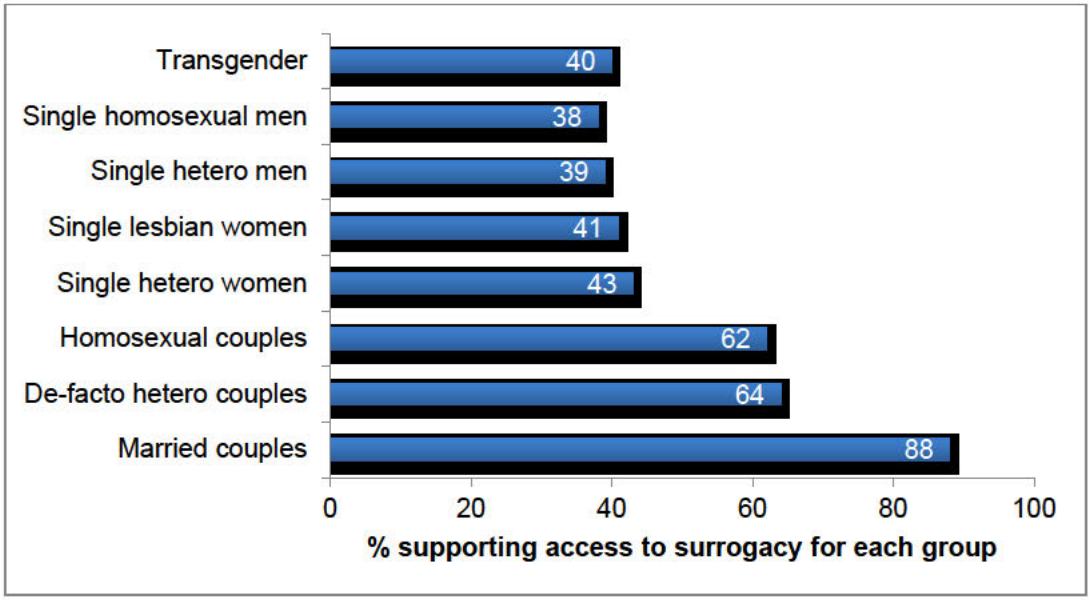
Demographic	%
Gender	
Male	49
Female	51
Age Group	
18-25	29
26-30	13
31-39	27
40-49	32
State of Residence	
NSW	32
VIC	25
QLD	20
WA	11
SA	7
TAS	2
ACT	2
NT	1
Highest level Education	
Pre-Primary/primary	1
Year 10	8
Year 12	21
Trade Cert or Diploma	26
Undergrad degree	28
Grad Diploma	7
Post grad degree	10

Household type	%
Live alone	19
Share household	23
With partner, no children	18
With partner and !+ child	34
Single with 1+ child	5
Parental status	
Never had children	59
One child	15
Two or more children	26
Household income	
<$31.200	13
$31,200-$51,999	14
$52,000 - $64,999	9
$65,000 - $77,999	8
$78,000-103,999	17
$104,000- $129,999	9
$130,000- $155,999	10
$156,000+	9
Declined to say	12
Religion	
No religion	54
Catholic	17
Other Christian	22
Buddhism	3
Hinduism	2
Islam	1
Other	<1

1. Right of access to gestational surrogacy.

In relation to access to surrogacy, the majority supported access by heterosexual married couples (88%), and close to two thirds supported access by de facto heterosexual and homosexual couples (64% and 62% respectively). When single commissioning parents were considered, there was markedly less support for allowing access, regardless of sexuality or gender (38-43% support). Support for surrogacy amongst singles was significantly less amongst respondents who identified as following a religion. Conversely, just 9% of respondents believed that under no circumstances should gestational surrogacy be available.

Figure 3 – Levels of Support for Different Groups Accessing Surrogacy



Those respondents who did not advocate access to surrogacy for all groups outlined a variety of reasons for denying access. Amongst the 36% who thought heterosexual de facto couples should be denied access, the overwhelming justification was a preference for prospective parents in a married/committed relationship. Many (17-25%) could not provide a justification for their exclusion of certain groups. In relation to the three key unmarried groups who access surrogacy commonly, other reasons for denying access are summarised in Table 1.

Table 1: Reasons for Denying Access To Certain Groups

	Hetero defacto (n=181)	Gay couples (n=190)	Single gay men (n=312)
	%	%	%
Should be married/ committed/ stable	46	7	7
Child should have two parents/ single parent may be incapable	-	-	35
Child needs traditional family	5	20	11
Should adopt instead	4	4	3
Religious reasons	3	5	3
It's not right	4	11	8
If cant conceive naturally, shouldn't use IVF	3	7	4
Anti-surrogacy	3	2	1
Negative impact from gay parenting	-	5	3
Anti-homosexual	-	8	3
Don't Know	25	25	17

The vast majority of respondents were supportive of surrogacy's role in the setting where a woman was born without a uterus (92%) or who underwent a hysterectomy due to cancer or another medical reason (91%). Most respondents were also supportive of the use of surrogacy for the treatment of implantation related infertility (91%) or where the pregnancy posed a significant risk to the mother or child's health (88%). However, there was more limited support for the use of surrogacy for older woman (41%), women with a psychological fear of carrying a child (42%) or those women wishing to avoid the inconvenience and symptoms of pregnancy (25%). A surprisingly high proportion of respondents felt that surrogacy should be available to men whose partners had died but who had stored embryos from IVF treatment (59%), or for any indication (24%). Respondents with household incomes of more than $130,000 were significantly less likely to support complete open access to surrogacy compared to households which earned less than $65,000 (17% vs 29%). Respondents who followed a religion were significantly less likely to support surrogacy for those with a psychological fear of pregnancy, where a widower had stored embryos or for single/homosexual men. Women were significantly more likely than men to support access to surrogacy for women with medical issues preventing them carrying and for males without a female partner.

Older respondents (40-49 years) were also significantly less likely than younger respondents to support surrogacy for women with a psychological fear of carrying, for women over 45 years, for widowers with frozen embryos from past treatments, and for men without a female partner.

In relation to overseas compensated surrogacy, over one third of respondents (37%) believed that Australians should have the right to access this service if they so choose and that the child should be able to be legally recognised as the commissioning parents own child on return to Australia. However, only 24% were opposed to overseas compensated surrogacy with many (39%) uncertain about their view on this matter. If we only include those respondents with clearly formed views on the topic, the majority (62%) do support access to overseas compensated surrogacy, although at lower levels than noted earlier for gestational surrogacy in general (88%). There were no differences by state of residence.

2. Compensation of surrogates

Of those respondents (72%) who held a view regarding the current ban on compensated surrogacy in Australia, over half (58%) felt the ban was unjustified. There were no differences in response by gender, but younger respondents (18-25 years) were significantly less likely to feel a ban on payment is justified compared to older (40-49

year old) respondents. The continuation of the ban on compensated surrogacy was more commonly supported by those with religious beliefs compared to those with none. For those individuals who felt that a ban on compensated surrogacy should continue, the main reasons given are outlined in Table 2.

Table 2: Concerns Regarding Payment of Surrogates (n=148)

Reason	**%**
Surrogates would consider the potential to make money	20
Surrogacy would become a business	13
Unfit surrogates would volunteer	13
Surrogates should volunteer for altruistic reasons	12
System would favour commissioning parents with more money	8
Payment for gestation is immoral	6
Money could cloud judgement on physical/mental health risks	5
Exploitation of surrogates body	4
Surrogates could extort money/withhold child	3
Don't Know	16

Similarly, the most commonly outlined potential harms that could occur from compensation of surrogates are summarised in Table 3.

Table 3: Possible Harms from Compensating Surrogates (n=500)

Reason	**%**
No issues foreseen	30
Surrogates would consider the potential to make money/abuse system	13
Surrogates could extort money/withhold child	6
Unfit surrogates would volunteer	6
Women could make a career from surrogacy	6
System would favour commissioning parents with more money	6
Surrogacy could become an unregulated business	4
Money could cloud judgement on physical/mental health risks	4
Don't Know	19

Those respondents open to compensation (70%) were asked what amount should be offered to surrogates. Only 11% believed the current status quo of paying only expenses should continue. Most commonly (45%) respondents felt payment should be determined by negotiation between surrogate and commissioning parent(s) with no fixed maximum. Of those who felt a standard quantum for financial compensation should be set, the most common response (21%) was at the level of the minimum adult wage ($640 week, $33,280 per year). The remainder believed that either the adult unemployment benefit - $250 week - was appropriate (9%) or a fixed sum per pregnancy should be awarded (11%). Over half of this latter group suggested a payment of over $15,000.

While the issue of compensation is a complex one, drawing high levels of 'Don't Know' response, in general there was support for paying surrogates greater compensation under particular circumstances (See Table 4).

Table 4: Should Additional Compensation Be Paid Under Certain Circumstances?

	Yes %	No %	Not sure %
Major complication that produces a chronic health issue post-delivery (>6 mths duration)	58	13	27
Major complication in pregnancy or delivery requiring > 1 week off work	54	17	28
Surrogate is carrying twins	45	23	30
Caesarean delivery (ie surgical rather than vaginal)	32	32	35
Pregnancy termination due to foetal abnormality	29	30	40
Admission to hospital for more than 1 day before delivery	29	35	35

3. Legalisation of professional surrogacy agencies

The final question posed to the surveyed cohort was whether they supported the legalisation of professional surrogacy agencies to manage the surrogacy process. Only 17% of respondents were opposed to this concept, with the remainder either supporting legalisation of professional agencies (50%), or were uncertain of their views (33%). The most commonly volunteered reasons for believing that it is inappropriate to use professional surrogacy agencies are provided in Table 5 below. The main reasons given centred on “commercialisation” of the process, and the risk that this could lead to unethical or exploitive practices.

Table 5: Reasons Professional Surrogacy Agencies Are Inappropriate (n=84)

Reason	**%**
Surrogacy is wrong	18
High risk of becoming unethical	13
Commercial business may/would take advantage	12
Issues surrounding lack of guidelines/ boundaries	11
Alternative options are the better path	8
Potential to exploit people	8
Negative consequences for child	5
Religious reasons	4
Don’t Know	23

Discussion

Overall the results of this survey suggest that the majority of the Australian public are supportive of gestational surrogacy for married or committed de facto couples, irrespective of the commissioning parent's sexuality. Significantly fewer Australians support surrogacy for single individuals, regardless of the gender or sexual orientation of that individual. This view is consistent with the most common reason given for blocking access to surrogacy - that a child should have two parents. This was linked to the perception that a single parent may be incapable of providing optimal parenting. Amongst those who did object to de facto heterosexual couples accessing surrogacy, the most common justification was that the couple should be married or at least in a long term stable relationship. Therefore it would appear that the majority of the Australian public feel that the welfare of the child born from surrogacy arrangements is best protected by limiting surrogacy access to heterosexual and gay couples who are married or in a long term stable de facto relationship.

In relation to acceptable clinical indications that should allow access to surrogacy, the results were equally clear that there is overwhelming support for the use of surrogacy where there is a medical indication. However, the public generally did not support the use of gestational surrogacy as a means for older women to have children, nor for those women who simply did not wish to carry a pregnancy due to its perceived inconvenience or psychological concerns relating to being pregnant. Interestingly, a relatively high proportion of the public did support allowing access to surrogacy for widowed men if they had embryos in storage created by IVF treatment before their partner had died. This is somewhat surprising given that the majority of respondents did not support surrogacy for single individuals. However, we suggest that this finding probably reflects the public's view that the man had been in a committed relationship and therefore is likely to also be committed to parenting of a child; together with a possible belief that this action would have been the wish of the dying woman, while also allowing the stored embryos a chance at life.

Despite or perhaps because of, significant recent media discussion of the pitfalls and merits of overseas surrogacy triggered by the "Baby Gammy" case (Ireland 2015), over a third of respondents remained uncertain on access to overseas compensated surrogacy. So while many Australians are supportive and sympathetic to couples travelling overseas to access surrogacy, it is possible that many others have significant reservations. The study design did not allow for an in-depth analysis of the rationale for opposing or uncertainty regarding overseas compensated surrogacy. However it is likely that issues identified in recent media (inadequate screening of commissioning parents fitness to parent, lower perceived standards of medical care overseas, legal and citizenship difficulties and the perception that Australian's may be taking advantage of vulnerable surrogates in

underdeveloped countries) are significant concerns with overseas compensated surrogacy (Kirby 2014).

We believe that if access to overseas surrogacy was decriminalised for prospective parents engaging in surrogacy in countries with excellent medical care, high standards for screening and protection of the surrogate, and a similar standard of living to Australia (e.g. USA, Canada), it is likely that a greater proportion of Australians would support overseas compensated surrogacy. However, experience from other western countries shows that even if compensated surrogacy were to be made legal in Australia, cost differentials in some overseas markets will lead to continued use of cross-border surrogacy.

Of those who supported the ban on compensated surrogacy, the most common reason given was that offering compensation may entice surrogates into offering their services as a means of making money, rather than a purely altruistic expression of support for a third person. While this is of course true, it is also the intended aim, as this is likely to more appropriately acknowledge the value and hence increase the supply of Australian surrogates. Previous experience has shown that while financial compensation is not the primary motivation for women to act as surrogates, the lack of financial compensation is a demotivating factor. Many women who have previously acted as surrogates have expressed concerns about the hypocrisy that all the parties involved in the surrogacy arrangement (IVF clinic, lawyers drawing up the contracts, obstetrician) are able to be paid, yet the surrogate who endures the IVF treatment, carries the baby for 9 months and then undergoes the discomfort and risks of childbirth cannot be compensated beyond her direct medical costs (Millibank 2014). Such an arrangement is surely demotivating at best, and an unfair exploitation of the primary "worker" at its worst.

Opponents of compensated surrogacy such as Professor Denise Cuthbert (RMIT University, Melbourne) believe that no woman would agree to undergo pregnancy and deliver a child for another couple, except if they were in the a state of economic desperation. She states, "*The kind of women who will line up for commercial (compensated) surrogacy will be women with no choices, who are ripe for exploitation. They will be poor, they will be uneducated, and in some cases they will be forced into it by partners or other male relatives who will pimp them*" (The Weekend Australian, p17 Inquirer, 9/8/14). Such views are simply not supported by the overseas experience of compensated surrogacy in comparable liberal democracies (Ciccarelli and Beckman 2005, Teman 2010).

In the United States and Canada there are strict criteria used for assessing the suitability of surrogates, with impoverished women, and those with drug dependency, mental illness, and a myriad other contraindications being screened out from becoming a surrogate (Ciccarelli and Beckman 2005). Professor Cuthbert's concerns can be mitigated by clinical codes of practice which stipulate strict screening criteria and counselling to assess

psychological and emotional suitability. Furthermore, research has already shown that denying Australian's access to local compensated surrogacy causes sufficient discomfort to drive many offshore (Everingham, Stafford-Bell & Hammarberg 2014). Allowing compensated surrogacy domestically gives Australian Governments the ability to better control the process for a greater proportion of cases (mandated counselling, safeguards protecting the surrogate, clear legal framework); clearly an improvement on the current overseas surrogacy situation where the Government has no regulatory capacity until the commissioning parents apply for citizenship and passports for their child(ren).

A relatively small number of respondents had concerns that compensation may lead to women making a career out of surrogacy. While evidence from overseas suggests that this is unlikely to occur, it is acknowledged that undergoing multiple pregnancies is a drain on a woman's body and does increase her risk of obstetric complications (Babinszki 1999). As such, we support the development of guidelines on the maximal number of pregnancies a woman should be allowed to carry as a surrogate, with our preferred position being a maximum of two term deliveries.

Other respondents were concerned that compensated surrogacy would unfairly favour wealthy commissioning parents. However, making compensation legal in Australia does not prevent surrogates, especially family and friends, from refusing compensation (altruistic surrogacy). It just gives more people more choice within Australia. Finally, it should be noted that the average couple currently pay between $10,000 and $15,000 to have lawyers for each party draw up contracts between the surrogate and commissioning parents. It is suggested that Government assist in developing a standard surrogacy agreement/ contract with an associated information booklet written in easy to understand terms outlining to both the surrogates and commissioning parents their legal rights and responsibilities. This action alone would make the process simpler and remove significant legal costs, thereby improving affordability.

It is significant that not a single respondent mentioned the possibility that payment of a surrogate could psychologically harm the resulting child due to concerns of "commodification" of the conception process.

In relation to payment amounts deemed most appropriate, the most popular response was by negotiation between surrogate and commissioning parents, with no fixed maximum. The advocacy group Surrogacy Australia have consulted with Australian altruistic surrogates on what they perceive as fair compensation. Many Australian surrogates who have carried altruistically feel that the constant anxiety over what they can and cannot claim as an expense from intended parents, while juggling their own family needs, spoilt or unnecessarily marred what was supposed to be a joyous process. Many agreed that the journey (often including several miscarriages prior to a successful birth) would have been far

easier to bear if they had been compensated around $15,000 as a minimum for the risk and potential unexpected burden.

Our own personal view is that compensation should be left to market forces, in agreement with the majority of respondents. However, we can see the merits in setting an upper maximum limit so as to avoid excessive monetary incentivisation, and stop the wealthy from dominating the market for available surrogates. An appropriate maximum payment could be the average Australian full time wage before tax for the duration of pregnancy (presently equivalent to $56,000). In addition it should be noted that there was widespread community support for extending that compensation if the surrogate were to experience medical complications as a result of the pregnancy or delivery.

Experience from the United States where professional agencies are allowed to recruit, screen and manage the surrogacy process has shown that this can work very well, provided clear guidelines are followed on who cannot act as a surrogate, and the required psychological and medical screening and counselling. These guidelines already exist for altruistic gestational surrogacy in Australia, where both prospective surrogates and commissioning parents must receive independent counselling and legal advice, and the surrogate must be assessed by an obstetrician independent of the treating IVF specialist for her fitness to carry a pregnancy safely. As such, initiating these types of safeguards for compensated surrogacy would be a relative simple process of adding them to the relevant clinical codes of practice and local legislation.

Furthermore, United States law forbids commercial surrogacy agencies from being owned by IVF providers, thereby removing this perceive conflict of interest. Similar restrictions should be considered in Australia.

If the ban on compensated surrogacy in Australia is lifted, it is suggested that Government engages with the relevant stakeholders (Fertility Society of Australia, RANZCOG, ANZICA, NHMRC, Family Court, Surrogacy Australia) to develop codes of practice that clearly outline the mandatory pathways that surrogates and commissioning parents must undertake. Furthermore, the legal framework that currently governs surrogacy in Australia is inconsistent and must be harmonised between States. The existing legal bans on overseas commercial surrogacy in States such as Queensland, NSW and the ACT, and the banning of surrogacy for gay couples in other States such as South Australia and Western Australia is confusing and unwarranted. These State-based laws are both ineffective and discriminatory. The banning of overseas surrogacy has not stopped hundreds of parents from these jurisdictions accessing overseas compensated surrogacy (Surrogacy Australia data summarised in Figure 1), nor has there been a single prosecution of a commissioning parent for this “offence”. Similarly, banning gay couples from accessing

surrogacy is discriminatory and is certainly not supported by the majority of respondents to this survey.

One final comment, a cautionary warning of sorts, is contained in the Native American proverb “don’t judge a man until you have walked a mile in his shoes”. None of the respondents to this survey had any personal experience of surrogacy and therefore are not in the best position to judge the merits or risks of the process. This would explain the high number of uncertain responses to several questions, reflecting insufficient prior opportunity to consider the issues at hand. Similarly we believe that many respondents who did not support surrogacy may actually reconsider their objections if they or a close family member or friend were to require surrogacy. As such, we see this survey’s outcomes as being a conservative estimate of the level of support for compensated surrogacy by the Australian public.

Suggestions changes to existing regulatory and legal framework covering surrogacy in Australia

- Legalise compensated surrogacy for married couples, or those in long term established relationships, irrespective of the sexual orientation of the commissioning parents.
- Remove all State based law prohibiting parents from accessing overseas compensated surrogacy.
- Harmonize State surrogacy law by removing restrictions based on gender or sexuality of the commissioning parents.
- Develop clear codes of practice and guidelines governing surrogacy that should make reference to:
    - Allowable clinical & social indications for surrogacy
    - Criteria for assessing the psychological and physical health of prospective surrogates, and the criteria for excluding women from acting as surrogates.
    - Nature of the mandated counselling process and legal advice.
    - Allowable compensation limits for surrogacy
    - Stipulate protections for the surrogate (legal protections and mandated life / disability insurance covering the surrogate and her family if she were to die or be incapacitated as a result of the surrogate pregnancy).
    - Limits to the number of times an individual can act as a surrogate.
- Government (Attorney General's Department in collaboration with the Family Court) to develop a standard legal contract for surrogacy and an easy to understand information document explaining the legal process and each parties rights and responsibilities.
- Authorise professional surrogacy agencies to help facilitate recruitment and screening of surrogates, according to strict guidelines. These agencies should be licenced by government, their activities and outcomes intermittently audited by government, and the agencies should not be owned by an IVF unit or person with a perceived conflict of interest (e.g. obstetrician). Furthermore, a limit on the amount of financial compensation per case should be considered.

Appendix 1- participant information sheet

Professor Kelton Tremellen

Department of Obstetrics Gynaecology and Reproductive Medicine
School of Medicine
Faculty of Health Sciences

Level 4D, Flinders Medical Centre
Flinders Drive, Bedford Park SA 5042

GPO Box 2100
Adelaide SA 5001

Tel: +61 8 82046676
Kelton.tremellen@flinders.edu.au

CRICOS Provider No. 00114A

INFORMATION SHEET
FOR POTENTIAL PARTICIPANTS

Title: Community Attitudes to Surrogacy Survey

Researchers:

1. Professor Kelton Tremellen
Department of Obstetrics Gynaecology and Reproductive Medicine
School of Medicine
Flinders University

2. **Mr Sam Everingham**
Global Director, Families Through Surrogacy
Milsons Point, NSW

Description of the study:
This study is part of the project entitled '*Community attitudes to surrogacy*'. This project will investigate the Australian public's views on surrogacy and the current related legal restrictions in Australia. This research is being conducted by two individuals with extensive experience in surrogacy. Dr Kelton Tremellen is an IVF gynaecologist and Professor of Reproductive Medicine at *Flinders University* in South Australia. Mr Sam Everingham is Director of the surrogacy advocacy and education organisation *Families Through Surrogacy,* and is also the immediate past president of *Surrogacy Australia*.

Background information on surrogacy

Surrogacy is the process where one women (the surrogate) carries a pregnancy for another person or couple (the commissioning parents) wanting to build a family because they cannot carry a pregnancy themselves. In Australia, the vast majority of surrogacy involves the creation of embryos using the commissioning parents own eggs and sperm in IVF treatment and then transferring these embryos into the surrogate's uterus (womb). This is often referred to as gestational surrogacy since the surrogate is only carrying (gestating) the pregnancy, not supplying the eggs. As such, the gestational surrogate has no genetic link with the child. Alternatively, the surrogate may provide both her eggs and

womb. This is often referred to as traditional surrogacy. Here the baby is genetically related to the surrogate. *For the purposes of this survey, we are only seeking your views on gestational surrogacy, not traditional surrogacy*, as gestation surrogacy is by far the most common type of surrogacy used in Australia.

Currently there are significant legal restraints on surrogacy in Australia. Australian law prohibits advertising for a surrogate and the compensation of surrogates beyond expenses. Furthermore, Medicare does not currently provide any financial rebates for IVF treatment related to surrogacy arrangements and Australian law also bans the use of professional surrogacy agents that are commonly used to screen and match surrogates with commissioning parents in other comparable countries (e.g. USA, Canada).

Purpose of the study:

This project aims to explore the following three issues relating to surrogacy in Australia:

- Determine the Australian public's level of support for surrogacy under various social and clinical settings.
- Determine the Australian public's views on whether compensated surrogacy should be legal in Australia, and if so, how much compensation should be offered.
- Assess the Australian public's views on whether professional surrogacy agencies should be allowed to recruit and screen surrogates in Australia.

What will I be asked to do?

You are invited to complete an on online survey containing questions relating to your views on surrogacy, plus a few questions outlining your own personal background (age, gender, family status, occupation). The survey will take about 10 minutes. Your responses will are anonymous as all data is coded and de-identified by the survey company (Q and A Market Research) before transmission to the research team. Your participation is entirely voluntary and of course you are free to withdraw at any time by not submitting your responses.

What benefit will I gain from being involved in this study?

The sharing of your experiences will potentially help shape future government policy on access and compensation of surrogates. Therefore this survey gives you the potential to influence important health policy. Furthermore, you will receive financial compensation in the form of rewards points to a value of $10 per 10 minutes survey time which can later be redeem for gift vouchers at major retailers.

Will I be identifiable by being involved in this study?

We do not need your name and you responses will be anonymous. The data from this survey will be stored in a password-protected database at Flinders University for a period of 5 years after completion of the study and then erased. While we do anticipate publishing the results of this survey, but this will be done in a manner that cannot identify any individual's response.

Are there any risks or discomforts if I am involved?

There are absolutely no known or anticipated risks from participating.

How do I agree to participate?

Participation is voluntary. You may refuse to answer any questions and you are free to withdraw from the survey at any time without effect or consequences. If you do complete the survey and submit it online, this will be taken as evidence of voluntary consent to participate in the study.

How will I receive feedback?

Outcomes from the project will be summarised and given to you by the investigator if you would like to see them. Please contact Professor Tremellen if you wish to receive a summary of the study outcomes.

Thank you for taking the time to read this information sheet and we hope that you will accept our invitation to be involved

This research project has been approved by the Flinders University Social and Behavioural Research Ethics Committee (Project number 7145). For more information regarding ethical approval of the project the Executive Officer of the Committee can be contacted by telephone on (08) 8201 3116, by fax on (08) 8201 2035 or by email human.researchethics@flinders.edu.au

Appendix 2- Online Survey

1. **Have you or a close family member or friend undertaken or seriously considered surrogacy as a means to have a child?**

Yes	Screen out
No	Continue
Don't Know	Continue

2. **In general terms, which, if any, of the following *groups* should be allowed access to gestational surrogacy in Australia? (*multiple responses possible*)**

- Heterosexual married couples ☐
- All Heterosexual couples (irrespective of marital status) ☐
- Single men ☐
- Single women ☐
- Trans-gender (e.g. person born male but now female)
- None of the above ☐

3. **If in Q3 you answered "none of the above," or you support excluding a particular group from access to surrogacy, what makes you feel that this group (s) should not be allowed access surrogacy in Australia?**

_____

_____

4. **If you do believe that surrogacy should be available to some groups (Q2), in which of the following *situations* should access to surrogacy be legal in Australia? (*multiple responses possible*)**

- For women born without a uterus (womb) ☐
- For women whose uterus has been removed (hysterectomy) due to cancer or other disease ☐
- For women unable to conceive due to a problem with her womb ☐
- For women for whom pregnancy or delivery poses a significant risk to their life or that of their baby. ☐
- For women wishing to avoid the inconvenience and negative symptoms (morning sickness, tiredness) associated with pregnancy. ☐
- For women with a psychological fear of carrying a child ☐
- For women older than 45 years ☐
- For any individual wishing to engage a surrogate (i.e. absolutely no restrictions). ☐
- For a man who's wife/ partner died but has stored embryos from past IVF treatment

5. **Currently in Australia it is illegal to provide a professional service which recruits potential surrogates, screens them and matches them with commissioning parents. Do you feel that this ban is justified?**

Yes	☐	go to Q6
No	☐	skip to Q7
Don't Know	☐	skip to Q7

6. **If you answered yes to question 5, why do you feel that it is *inappropriate* for a professional agency to help facilitate matching commissioning parents with a suitably screened surrogate?**

_____

_____

Currently it is only legal to engage a surrogate in Australia if she is not compensated (beyond payment of her medical expenses, legal and travel costs). *Surrogacy for no financial compensation is called altruistic surrogacy, where payment beyond direct expenses is termed compensated surrogacy.*

With this in mind:

7. **Do you believe that this ban on compensated surrogacy in Australia is justified?**

Yes	go to Q8
No	skip to Q9
Don't Know	skip to Q9

8. **Why is a ban on compensating a surrogate appropriate in Australia? What are your concerns regarding payment of surrogates beyond reimbursement of their medical and incidental costs?**

_____

_____

9. **In your opinion, how much is reasonable compensation for the entire surrogacy process (assisted fertility treatment, pregnancy, delivery and post-pregnancy recovery)? (*single response only*)**
   a. Payment at the same rate as the Australian adult unemployment benefit (approximately $250 per week) while pregnant and recovering postnatally.
   b. Payment at the minimum Australian wage (approximately $640 per week) while pregnant and recovering postnatally.
   c. Fixed sum per pregnancy (*tick appropriate sum*):

<$5,000	☐
$5,000 - $9,999	☐
$10,000 - $14,999	☐
$15,000 - $19,999	☐
$20,000 - $29,999	☐
$30,000 - $39,999	☐
$40,000 - $49,999	☐
$50,000 +	☐

   d. Payment should be determined by negotiation between the surrogate and commissioning parents with no fixed maximum (i.e. left to market forces).
   e. Payment of direct expenses only (i.e. continuation of the current arrangements permissible by law).

10. **Should any of the following pregnancy-related issues result in a surrogate being compensated a greater amount than what you outlined in question 9?**

	Yes	No	Not sure
Surrogate is carrying twins	☐	☐	☐
Caesarean delivery	☐	☐	☐
Pregnancy termination due to foetal abnormality.....	☐	☐	☐
Admission to hospital for greater than 1 day before delivery..	☐	☐	☐
Major complication in pregnancy or delivery requiring > 1 week off work	☐	☐	☐
Major complication that produces a chronic health issue post delivery (greater 6 months duration)	☐	☐	☐

11. **Can you think of any possible harm that may occur from compensating surrogates beyond their direct expenses?**

_____

_____

12. **Do you feel that Australians should have the right to engage in overseas commercial (compensated) surrogacy and then be able to have that child legally recognised as their own when they return to Australia?**
    a. Yes
    b. No
    c. Uncertain
    d.

Finally, we would like to ask you some questions to ensure that we have surveyed a broad range of the Australian population.

13. **Which of the following age groups are you in?**

18- 25 years	☐
26 – 30	☐
31 -39	☐
40 -49	☐

14. **What is your gender?**

Male

Female

Transgender

15. **Which of the following best describes you**

Never had children	☐
Have one child	☐
Have two or more children	☐

16. **Which of the following best describes your household type?**

a)	Live alone	☐
b)	Share household	☐
c)	Live with partner, no children	☐
d)	Live with partner and one or more children at home	☐
e)	Single with one or more children at home	☐

17. **What is your residential postcode?**

18. Which of the ranges below best describes your house-holds annual income?

<$30,000	☐
$30,000 - $51,999	☐
$52,000 - $64,999	☐
$65,000 - $77,999	☐
$78,000 - $103,999	☐
$104,000 - $129,999	☐
$130,000 - $155,999	☐
$156,000 +	☐
Prefer not to say	☐

19. Which of the following best describes your occupation?

Manager
Professional
Technician or tradesperson
Clerical & administrative
Sales
Machinery operator/driver
Labourer
Other

20. Which of the following best describes your religious belief?

No religion
Buddhism
Christian – Anglican
Christian – Catholic
Christian – other
Hinduism
Islam
Judaism
Other religion (specify)

Thanks for completing our survey.

References

Babinszki A, Kerenyi T, Torok O, Grazi V, Lapinski RH, Berkowitz RL. Perinatal outcome in grand and great-grand multiparity: effects of parity on obstetric risk factors. Am J Obstet Gynecol. 1999 Sep;181(3):669-74.

Ciccarelli JC, Beckman LJ. Navigating rough waters: an overview of psychological aspects of surrogacy. J Soc Issues. 2005 Mar;61(1):21-43.

Delaware. IVF services for the purposes of surrogacy and its exclusion from Medicare benefits. 2014 https://medicareless.files.wordpress.com/2013/02/surrogacy-submission2.pdf Accessed 2.2.16

Everingham SG. Use of surrogacy by Australians. Implications for policy and law reform. Families, policy and the law, 2013. https://aifs.gov.au/publications/families-policy-and-law/8-use-surrogacy-australians-implications-policy-and-law-reform Accessed 2.2.16

Everingham SG, Stafford-Bell MA, Hammarberg K. Australians Use of surrogacy MJA, 2014: 201 (5):1-4

Ireland J. Fresh concerns over boy abandoned in india. Sydney Morning Herald 2015; 14th April. http://www.smh.com.au/federal-politics/political-news/fresh-surrogacy-concerns-over-boy-abandoned-in-india-20150413-1mjyj3.html Accessed 2.2.16

Jadva, V. Imrie, S. and Golombok S. Surrogate mothers 10 years on: A longitudinal study of psychological well-being and relationships with the parents and child. Human Reproduction, 2014 doi:10.1093/humrep/deu339

Jadva, V. Blake L., Casey, P, Imrie, S. and Golombok, S, Surrogacy families 10 years on: relationship with the surrogate, decisions over disclosure and children's understanding of their surrogacy origins. Human Reproduction, 2012: 27 (10), 3008-3014

Jadva V, Imrie S, Golombok S. Surrogate mothers 10 years on: a longitudinal study of psychological well-being and relationships with the parents and child. Hum Reprod. 2015 Feb;30(2):373-9.

Kirby J. Transnational gestational surrogacy: does it have to be exploitative?

Am J Bioeth. 2014;14(5):24-32.

Kunde R Australian Altruistic Surrogacy: Still a Way to go. Griffith Journal of Law & Human Dignity. 2015 Vol 3(2) pp227 – 245

Newson AJ. Compensated transnational surrogacy in Australia: time for a comprehensive review. Med J Aust. 2016 Jan 18;204(1):33-5.

Stafford-Bell MA, Everingham SG, Hammarberg K. Outcomes of surrogacy undertaken by Australians overseas. MJA 2014: 201(6): 1-4

Millbank J. Rethinking “Commercial” Surrogacy in Australia. Bioethical Enquiry July 2014

Söderström-Anttila V, Wennerholm UB, Loft A, Pinborg A, Aittomäki K, Romundstad LB, Bergh C. Surrogacy: outcomes for surrogate mothers, children and the resulting families-a systematic review. Hum Reprod Update. 2015 Oct 9. pii: dmv046. [Epub ahead of print]

Teman E. Birthing a mother: the surrogate body and the pregnant self. University of California Press (2010).

Authors Contact Details

1. Professor Kelton Tremellen, Flinders University, South Australia.

2. Mr Sam Everingham,