

Review of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008

Call for submissions

An independent review of the *Western Australian Human Reproductive Technology Act 1991 (HRT Act)* and the *Surrogacy Act 2008* is being conducted by Associate Professor Sonia Allan. Submissions and comments are invited from interested parties on matters including but not limited to:

- Access to information by donor conceived people
- Surrogacy
- Research on human embryos, eggs and sperm
- Pre-implantation genetic diagnosis/screening
- Posthumous use of sperm and eggs
- The oversight system, data management, research, new technologies, and more.

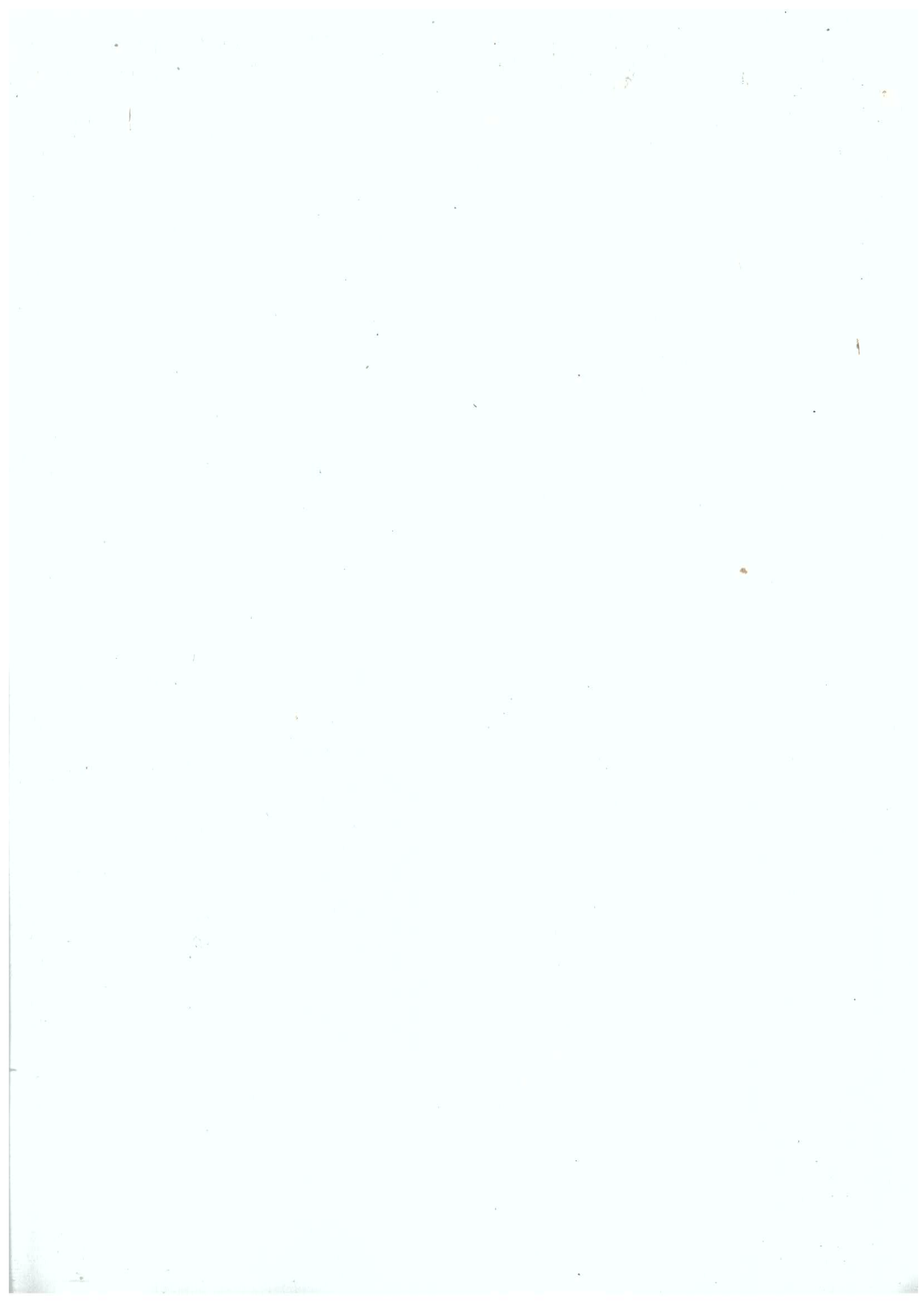
Community Consultations

As part of phase two of the review, A/Professor Allan will be conducting in person consultations from 9-20 April 2018. She would like to meet with consumers; donors; donor-conceived people; and other interested members of the public.

Community consultation sessions are being held at.

Monday 16 April 2018 10am to 12pm

Bunbury Library Small meeting room
1 Parkfield Street, Bunbury



We invite you to come along to share your experiences or views about assisted reproduction, surrogacy, donor conception, and/or related matters. No booking is necessary.

If you are unable to attend but would like to speak to A/Professor Allan in person or via telephone, please contact The Program Manager, Reproductive Technology Unit, Department of Health by e-mail HRTSR@health.wa.gov.au or by telephone (08) 9222 4334.

A/Professor Sonia Allan

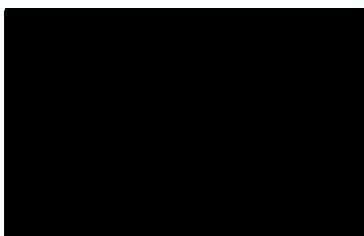
Re: Review of the Reproductive Technology Act 1991 and the Surrogacy act 2008

Thank you for providing my husband and I an opportunity to attend this hearing. A submission was prepared earlier, however an operation requiring a visit to Perth, subsequent infection prevented me from completing the task.

Therefore will you please accept the attachments which have been prepared for the hearing, whereby we have tried to demonstrate that neither State, Federal or International Human Rights Laws support a change in the eligibility criteria for the Western Australian Surrogacy Act 2008. How the Surrogacy Act was crafted in 2008, demonstrates a protection against excessive demand for these services. Whereas the laws related to police background checks as in Victoria, definitely needs to be introduced.

Yours truly,

Joan Smurthwaite (Bachelor Applied Science, Multidisciplinary Science).



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REFERENCES FOR OVERHEADS 1-6	
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1. Australian Treaty Series 1991 No 4 DEPARTMENT OF FOREIGN AFFAIRS AND TRADE CANBERRA **Convention on the Rights of the Child** (New York, 20 November 1989) Entry into force for Australia: 16th January 1991 AUSTRALIAN TREATY SERIES 1991 No. 4
2. Dr Gabriele Kuby **The Global Sexual Revolution-** Updated and Revised Edition Dec 2nd 2015.
3. **The National Perinatal Epidemiology and Statistics Unit (NPESDU)** Australia and New Zealand 2014.
4. Professor Same Everingham *The Debate Should Commercial Surrogacy be legal in Australia*, **Sydney Morning Herald**, 14th May 2015.
5. Puppennick G, Human Rights Council, European Centre for Law and Justice ECLJ, Injustice of Surrogacy A Debate on the Rights of Children. 5-6 March 2018
6. Dr Renate Klein, Can Surrogacy be Ethical? **ABC Religion and Ethics** May 2015
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13. Jennifer Lahl **Breeders The Centre for Bioethics and Culture Network** www.CBC-Network.org **Breeders.CBC-Network.org 2014**
14. International Center on Law, Life, Faith and Family **Surrogate Motherhood: A Violation of Human Rights** REPORT PRESENTED AT THE COUNCIL OF EUROPE, STRASBOURG, ON 26 APRIL 2012. European Centre for Law and Justice (EJLC) <http://www.eclj.org>
15. Stephen Page, **Australian Surrogacy and Adoption Blog**, *Remove discrimination in surrogacy and adoption: Human Rights Commissioner Tim Wilson* June 15th 2015.
16. www.familiesthrusurrogacy.com.
17. Renate Klein, *The Age Baby Gammy has shown the need for debate on surrogacy* **Sydney Morning Herald** 19th August 2014
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19. E.B. v. France, No. 43546/02, pp 8-9, ECHR 2008, p 41 24.
20. Id. at pp 42, 46.
21. **Hague Convention on the Legal Status of Children Born out of Wedlock art,2**, Oct. 15 1975, C.E.T.S. No 8
22. profesionalesetica.org/statement-of-the-women-of-the-world 08th March 2018
23. Olga van den Akker, *Psychological Aspects of Surrogate Motherhood*, **HUMAN REPROD. UPDATE** 53, 59 (2007)
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- 25. Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine** preamble, Apr.4, 1998, C.E.T.S. No. 164
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30. See supra Part 1.A cited in ECLJB (14.)
31. **NHMRC Ethical Guidelines on the use of reproductive technology in clinical practice and research** pp.65-68
32. **European Convention on the Adoption of Children (Revised) Article 17**, Nov. 27, 2008, C.E.T.S. No. 202. This includes: *Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin* art. 21, Jan. 24, 2002, C.E.T.S. No. 186 (stating a policy against monetary compensation for organ donations);
33. **Convention for the protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine** art. 14, Apr 4, 1997, C.E.T.S. No 164 (“The human body and its parts shall not, as such give rise to financial gain”)

Terms of Reference

The Review of the Human Reproductive Technology Act 1991 (HRT Act) to consider such matters as appear to be relevant to the operation and effectiveness of this Act including: Research and experimentation on gametes, eggs in the process of fertilisation and embryos. In particular consider the current disparity between the HRT Act and relevant Commonwealth legislation and need to adopt nationally consistent legislation regarding excess assisted reproductive technology (ART) embryo research and prohibited practices.

Genetic testing of embryos, saviour siblings, mitochondrial donation and gene editing technology.

The practice of PGD or pre-implantation diagnosis is not without risks to the embryo, but it also raises the question of how many embryos will be destroyed in the process:¹ the use of these tests for sex selection as well as the question of multiplex parenting. Professor Tonti-Fillipini¹(2014) and Michael Cook²

What you are failing to address in this review is the methods used for attaining the eggs in the first place. There have been too many young women deprived of their fertility, their health and well being not only to service the desires of those who are whose infertility is compromised, but to service the desires of laboratory workers to experiment on human tissue.³

Pre-implantation and reproductive discrimination

Commissioning couples frequently request expensive invasive pre-implantation genetic diagnostic (PGD) tests to determine the sex of the child and Medical abnormalities. Unwanted fetuses are then destroyed. Moral implications identified by Tonti-Fillipini (2014) include:

- *“Treatment of the human embryo as mere ‘laboratory material’ is subjecting the dignity of the developing child to discrimination by practice.”*
- *“Dignity belongs to every single human being, regardless of the parent’s desires, or the person’s social condition, educational formation or level of physical development.”*
- *“Today, the most serious and most unjust form of discrimination is a non-recognition of the ethical and legal status of human beings suffering from serious diseases or disabilities. They are not some separate category of humanity, rather sickness and disability are part of the human condition and affect most individuals at some stage in their life”*
- The success rate of fertilisation following PGD tests is very poor due to high rates of miscarriage and stillbirth that follow. The Victorian Assisted Reproductive Treatment Agency identified only 17 births occurred in the state, following over 400 expensive PGD tests being applied.¹
- *“In most Western countries, disability seen before birth is considered differently from disability seen after birth”.* According to Tonti-Fillipini, this creates cognitive dissonance that appears to be irresolvable, as birth, not maturity or gestational age determines the status of an infant.

Before birth, eugenic abortion which is applied to 90% of babies with medical defects is considered acceptable by many medical professionals; it involves early detection by screening and use of invasive testing to identify any form of genetic abnormality.¹

1. Professor Tonti-Fillipini, *The contradictions of baby Gammy: disability, discrimination and the true cost of surrogacy* in **The Thomas More Centre Bulletin** Volume 24, no 3 Spring 2014 p2.

2. *After three-parent babies, will there be “multiplex parenting”?* A debate over an IVF technique in Britain has serious social consequences. Michael Cook | 29 October 2014

http://www.mercatornet.com/articles/view/after_three_parent_babies_will_there_be_multiplex_parenting#sthash.XIn57f9y.dpuf

3. Jennifer Lahl *Breeders* **The Centre for Bioethics and Culture Network** www.CBC-Network.org Breeders.CBC-Network.org 2014

According to Professor Tonti-Filippini ¹(2014):

Intervention either involves injection of potassium chloride into the heart of an unborn child to cause death before inducing a stillbirth; or a partial birth abortion which involves inserting an instrument into the child's lower brain so he/she is born dead. "*Such intervention post-birth, whatever the maturity or gestational age of the baby would be considered a criminal offence*" (Tonti-Filippini) p2.¹

Although the mother is given the option to refuse medical intervention, anecdotally she is placed under pressure to do so, to prevent the birth of a baby with a disability. If a commissioning couple do not want the disabled baby they can apply both financial and contractual pressure to get the surrogate mother to concede to their wishes.¹ This is particularly enforced in the USA, Canada and Ukraine, where the commissioning couple are given rights overriding the rights of the surrogate mother, once she has signed the acceptance contract which absolves the commissioning parents of responsibility if a defect (including unwanted sex) is found, and she refuses to abort.^{3,4}

Countries where abortion on demand is not so freely available, the mother, as Gammy's mother did, can refuse to abort on religious or conscientious grounds.¹ Tonti-Filippini noted that Gammy's case highlighted the differences between the Australian community's conflicting response, outrage that a disabled baby should be abandoned by the commissioning couple yet would have been totally accepting if eugenic abortion had taken place, had the mother acquiesced.¹

Recommendation 1

All Eugenic practices should be banned as every child should have equal protection before birth. In no circumstances should the birth mother be forced to abort a child as this action involves coercion when both long term mental, emotional, physical and psychological consequences can result.

REFERENCES

1. Professor Tonti-Filippini, *The contradictions of baby Gammy: disability, discrimination and the true cost of surrogacy* in **The Thomas More Centre Bulletin** Volume 24, no 3 Spring 2014 p2.
2. *After three-parent babies, will there be "multiplex parenting"?* A debate over an IVF technique in Britain has serious social consequences. Michael Cook | 29 October 2014
http://www.mercatornet.com/articles/view/after_three_parent_babies_will_there_be_multiplex_parenting#sthash.Xln57f9y.dpuf
3. Jennifer Lahl **Breeders The Centre for Bioethics and Culture Network** www.CBC-Network.org Breeders.CBC-Network.org 2014

Posthumous collection, storage and use of gametes and embryos, including the consent required, conditions for use, and any impact on other legislation such as the *Human Tissue and Transplant Act 1982, Artificial Conception Act 1985, Births Deaths and Marriages Registration Act 1998, Administration Act 1903 and Family Provision Act 1972.*

What is conveniently overlooked by those involved with the infertility industry is the fact:

1. That it is the ovarian sacs that are the resource for a woman's oestrogen and progesterone supply and which are responsible for maintaining her health and fertility.
2. As a woman's eggs are laid down when she is five months in-vitro, and over two million eggs produced most will remain immature, it takes a healthy oestrogen and progesterone supply to assist with maturation of these eggs, her bone structure, her hair and her skin as well as maintenance of her gynaecological health.
3. As the genes contained in both a sperm and an egg are an important part of a child's identity, the process of separating a donor from the child that is produced, contravenes a number of United Nations Human Rights Conventions cited in ⁴ including:
 - Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption, Article 32; ⁵
 - European Convention on the Adoption of Children (Revised) Article 17, Nov. 27, 2008, C.E.T.S. No. 202. ⁶ This includes:
 - Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin art. 21, Jan. 24, 2002, C.E.T.S. No. 186 (stating a policy against monetary compensation for organ donations); ⁷
 - Convention for the protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine art. 14, Apr 4, 1997, C.E.T.S. No 164 ("The human body and its parts shall not, as such give rise to financial gain") ⁸

Use of data for research,

This should also include follow-up details on all Donors to identify what are the short-term and long-term impact of the drugs involved including hormonal blocking agents, steroids and fertility stimulating drugs where there has been evidence of clotting, ovarian hyperstimulation (mild, moderate and severe); infertility issues following egg donation including early menopause, and hormone related cancers such as ovarian, breast, or uterine cancer. ^{3,9,10}

- 1) Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine preamble, Apr. 4, 1997, C.E.T.S. No. 164 ("Convinced of the need to respect the human being both as a individual and as a member of the human species and recognizing the importance of ensuring the dignity of the human being."). Cited in ⁴

4. International Center on Law, Life, Faith and Family Surrogate Motherhood: *A Violation of Human Rights* REPORT PRESENTED AT THE COUNCIL OF EUROPE, STRASBOURG, ON 26 APRIL 2012. European Centre for Law and Justice (EJLC) <http://www.eclj.org>

9. Dr Renate Klein, *Surrogacy A Human Rights Violation Spinifex Press 01/11/2017*

10. A perspective from an American woman who donated eggs and later regretted it: <http://verilymag.com/2015/10/reproductive-health-fertility-donating-eggs>

- 2) Convention on Human Rights and Biomedicine Art. 14; also Parliamentary Assembly of the Council of Europe RES 1829(2011) and REC 1979(2011) on Prenatal Sex Selection.
- 3) Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings preamble, art. 1, Jan. 12, 1998, C.E.T.S. No. 168. Cited in ⁴
- 4) Contra Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine art. 5, Apr. 4, 1997, C.E.T.S. No. 164 ("The person concerned may freely withdraw consent at anytime."). Cited in ⁴
- 5) Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, as amended June 1, 2010, C.E.T.S. No. 5. Cited in ⁴

National data collection and;

Details of all donors, surrogates and intended parents should be registered on a database, with this confidential information shared by designated staff working in the fertility industry throughout Australia:

- a) To ensure standardisation of safety mandatory practices and reporting of egg donation throughout Australia and monitor the short and long term health of donors and surrogates.^{9,10,11}
- b) To ensure anyone involved in the egg harvesting industry is held accountable for reporting adverse effects and be held responsible for tracking the short term and long term health of donors, through utilisation of large scale research.^{10,11}
- c) To track how the donor eggs have been used, whether for fertilisation or Stem Cell Research^{10,11}
- d) To prevent any donor making excessive donations to a fertility clinic, or to more than one clinic. Western Australia's limit of five donations for males and three for females is very reasonable.^{9,10,11}
- e) To limit the supply of surrogate services to any one or pair of intended parents to counter excessive demand.^{9,10,11}
 - a) Place a strict quota of three on the number of times an egg donor can donate during their lifetime.^{10,11}
 - b) Limit the number of eggs that can be used for either Somatic Cell Nuclear Transfer (SCNT) or Stem Cell Research (SCR).^{10,11}

Once oestrogen levels and FSH count is determined, the stimulation process should focus on:

- c) Decreasing gonadotrophin dosage¹⁰
- d) Balance the use of OCP/Lupron/Low dose gonadotropins¹¹
- e) Reduce the ovulatory dose of hCG,¹⁰
- f) Delay or withhold administration of hCG: "Coast"¹⁰
- g) Identify the number of eggs matured, and inform the donor how they are to be used with a signed consent to be attained from the donor.^{10,11}

9. Dr Renate Klein, *Surrogacy A Human Rights Violation Spinifex Press 01/11/2017*

10. A perspective from an American woman who donated eggs and later regretted it: <http://verilymag.com/2015/10/reproductive-health-fertility-donating-eggs>

11. Norsigian 2005; Schneider 2008, STEMCELLS ,BIOLOGY, BIOETHICS AND APPLICATIONS, Ethical

- h) Severely restrict number of eggs per subject that can be used for third party use such as egg brokers. Currently at least seven eggs are required for each SCR and SCNT, this is placing each subject at considerable risk of developing moderate to severe OHSS.^{11,10,11}
- i) More research must be undertaken to identify potential **long-term consequences of the drugs used in egg donor procurement as there have been neither follow-up of donors, nor epidemiological surveys** (Norsigian 2005; Schneider 2008)^{11,12}
- j) Follow up for healthy young donors have not been established in America or Australia, therefore the true number of donors affected by OHSS is unknown. What is shown is the greater the number of eggs extracted the higher the number of cases with severe OHSS.¹² Also young women with a history of Ovarian Cystic Syndrome are more prone to developing OHSS.^{3,11}

Considerations of Donation

- k) Adoption of standardised treatment regimes according to the age, weight and follicle (FHS) count of each subject to avoid hyper-stimulation of the ovaries (OHSS) and/or risk the later development of ovarian, uterine or breast cancer:^{10,11,12}

Voluntary Register (donor-assisted conception).

This is vital to reduce the number of children facing identity and emotional issues as a result of anonymous donations. Access to information about donation, genetic parentage and donor conception is a vital part of a child's familial and cultural identity. This information should be made freely available in all states to donor children aged 13-14 years and over as this is their key identity phase. It should no longer be considered as voluntary but compulsive. There have been too many examples of children/adults whose conception was related to anonymous donors to know the harm this can do.^{3,4,13,}

Longitudinal studies done by Olga van Akker and Elizabeth Marquardt et al have identified that young adults of donor parents face a myriad of emotional issues including their origins and identities. 65% of agree that their sperm donor is half of who they are and close on 50% think of their donor conception at least once a week, and sometimes several times a day.^{13,14,}

On March 5th and 6th 2018 the Human Rights Council EUROPEAN CENTRE FOR LAW AND JUSTICE (ECLJ)¹⁵ conducted a workshop on the Injustices of Surrogacy debates were held on reports put forward relating to the rights of children:

To combat the link between gestation by others (GPA) and the sale of children, it has been recommended that a prohibition of this practice can be achieved through a declaration that the contract is related to the pregnancy not the child. It also should be declared within the GPA contracts that it is not the child that has been transferred but his/her legal filiation.¹⁵

12. Ovarian hyperstimulation syndrome, Assisted reproductive technology in Australia and New Zealand

13. Olga van den Akker, Psychological Aspects of Surrogate Motherhood, 13 HUMAN REPROD. UPDATE 53, 59 (2007) [hereinafter Psychological Aspects of Surrogate Motherhood].(30)

14. Elizabeth Marquardt, Norvald D. Glenn & Karan Clark, MY DADDY'S NAMES IS DONOR: A New Study of Young Adults Conceived through Sperm Donation (2010)

15. Pupperrick G Human Rights Council, European Center for Law and Justice, (ECLJ) March 5th and 6th, 2018. Injustice of Surrogacy A Debate on the Rights of Children.

GPA has contributed to a large group of women injured by the grave injustice of not knowing anything about their father other than he was an anonymous sperm donor, their potential brothers and sisters, their own family history and origin.

The ECLJ (2018) acknowledged the importance of guaranteeing the right of children conceived by artificial means, **to know their “biological parents”**. This right is the necessary link between nature and filiation and is needed to counter the impact of the dehumanisation of procreation that has emerged with surrogacy and IVF. A new report, texts and videos will soon be published on the rights of children conceived by LDC’s. (email received from Gregory Pupperrick ECLJ 07/03/2018).¹⁵

This statement by the ECLJ reinforces the message of that children do strongly identify with both their biological parents who have contributed to 50% each of their genetic makeup. Any country that adopts the Californian Surrogacy Arrangement Laws deliberately deprive children of their birthright. Laws that not only contravene several International ECLJ Human Rights Laws relating to filiation and cultural identity, but also fail to address intergenerational equity.

REFERENCES

1. Professor Tonti-Filippini, *The contradictions of baby Gammy: disability, discrimination and the true cost of surrogacy* in **The Thomas More Centre Bulletin** Volume 24, no 3 Spring 2014 p2.
2. *After three-parent babies, will there be “multiplex parenting”?* A debate over an IVF technique in Britain has serious social consequences. Michael Cook | 29 October 2014
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3. Jennifer Lahl *Breeders* **The Centre for Bioethics and Culture Network** www.CBC-Network.org Breeders.CBC-Network.org 2014
4. International Center on Law, Life, Faith and Family Surrogate Motherhood: *A Violation of Human Rights* REPORT PRESENTED AT THE COUNCIL OF EUROPE, STRASBOURG, ON 26 APRIL 2012. European Centre for Law and Justice (EJLC) <http://www.eclj.org>
9. Dr Renate Klein, **Surrogacy A Human Rights Violation Spinifex Press 01/11/2017**
10. A perspective from an American woman who donated eggs and later regretted it:
<http://verilymag.com/2015/10/reproductive-health-fertility-donating-eggs>
11. Norsigian 2005; Schneider 2008, STEMCELLS ,BIOLOGY, BIOETHICS AND APPLICATIONS, Ethical
12. Ovarian hyperstimulation syndrome, Assisted reproductive technology in Australia and New Zealand
13. Olga van den Akker, Psychological Aspects of Surrogate Motherhood, 13 HUMAN REPROD. UPDATE 53, 59 (2007) [hereinafter Psychological Aspects of Surrogate Motherhood].(30)
14. Elizabeth Marquardt , Norvald D. Glenn & Karan Clark, MY DADDY’S NAMES IS DONOR: A New Study of Young Adults Conceived through Sperm Donation (2010)
15. Pupperrick G Human Rights Council, European Center for Law and Justice, (ECLJ) March 5th and 6th, 2018. Injustice of Surrogacy
A Debate on the Rights of Children.

Act 2008 to include the effectiveness and operation of the Act with particular reference to:
 The effectiveness of powers of enforcement and disciplinary provisions under the Surrogacy Act, the
 adequacy of offences, penalties and timeframe for bringing proceedings;

Table 1 Overseas Commercial Surrogacy Laws Guided by Department of Immigration ^{16,17,18}

State	Overseas Commercial Surrogacy Arrangements ^{16,17,18}	Obtaining Citizenship with Overseas Surrogacy ³
Western Australia	Not specified, need to apply to the Australian Immigration Office to apply for either Australian citizen by descent, or a permanent visa for a child. Not specified, need to apply to the Australian Immigration Office.	Bars on Citizenship by descent. Citizenship by descent cannot be approved by the Department if: <ul style="list-style-type: none"> • the decision-maker is not satisfied of the identity of the person • the applicant is aged 18 years or older and the decision-maker is not satisfied that the person is of good character • the person does not meet national security requirements.
South Australia	Ditto	
Victoria	Ditto	
Tasmania	Ditto	
New South Wales	Strictly forbidden, subject to heaviest fines.2,500 penalty units in case of a corporation. Or 1000 penalty units and imprisonment for two years.	
Queensland	Strictly forbidden, subject to heavy fines. 100 Penalty Units or three years imprisonment.	
Australian Capital Territory	Strictly forbidden, subject to heavy fines. 100 Penalty Units, imprisonment for one year or both.	
Northern Territory	Unregulated.	
Obtaining Australian Visas with Overseas Surrogacy: ¹⁸ If an IP is a biological parent , Australian Citizen or eligible for NZ Citizenship- Child (subclass 101) visa will also require DNA tests for confirmation. If the IP is not a biological parent Adoption (subclass 102) visa is the relevant one to apply for. The IP would need to first formally adopt the child according to the country of usual residence, and must meet additional residency requirements outside Australia, before applying for an Australian Visa. It is rare for a child born of and international surrogacy arrangement to be able to meet the immigration requirements for an expatriate adoption and the subsequent grant of an Adoption visa.		

Table 1 demonstrates that the Surrogacy Act 2008 does not include fines or regulations for intended parents participating in either Altruistic or Commercial Surrogacy International Surrogacy Agreements. Thereby, allowing too many people to participate in activities through a range of agencies that contribute to the use and abuse of women in third world countries, a denial of Children's rights with regulations that mainly focus on their wants and desires not those of the surrogate or children.

Everingham's study identified that in 2011 the number of surrogacy arrangements occurring within Australia were greatly outnumbered by those parents involved with International Surrogacy Arrangements. ¹⁹

International Surrogacy arrangements are often preferred because of cheaper rates (India, Ukraine, Thailand and Mexico), ease of access to a surrogate, no preliminary assessment of parental suitability, reduced likelihood of prosecution and a perception that the surrogate mother is less likely to keep the baby^{17,18,19}

16. Everingham SG, Surrogacy Australia www.surrogacyaustralia.org

17. Millie Dale and Taylor Macdonald, *Regulating Surrogacy in Australia*, 17th April 2015

18. Australian Government Department of Immigration and Border Protection Fact Sheet on International Surrogacy Arrangements

19. Professor Sam Everingham Use of Surrogacy by Australians in Families, Implications for Policy and Law Reform Chapter 8 Policy and the Law, pp 67-79 (2014).

The Australian Government Department of Immigration and Border Protection¹⁸ define Responsible Parents as: *Person is a parent of the child except where because of orders made under the Family Law Act 1975 this person no longer has any responsibility for the child.*

Requirements of a parenting order includes:¹⁸

- the child is to live with the person.
- responsibility for the child's long-term or day-to-day care, welfare and development.¹⁸
- The person has guardianship or custody of the child, jointly or otherwise, under either an Australian law or a foreign law, whether because of adoption, operation of law, an order of the court or otherwise.¹⁸
- Although only one responsible parent is required to consent and sign the application, the Department encourages all responsible parents to reach an agreement whether or not to lodge a citizenship application on behalf of the child.¹⁸

We are also reminded by the Department of Immigration and Border Protection that as Australia is a party to the United Nations Convention on the Rights of the Child, and the Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption as well as certain other treaties;²⁰

*"Australia is committed to protecting the fundamental rights of children. These conventions include obligations to prevent the abduction, sale or trafficking of children."*²⁰

Unfortunately some of the assessments of people engaged in International Surrogacy Arrangements made by the Australian Government Department of Immigration and Border Protection have failed to provide Protection of Children and adhere to the Convention on the Rights of the Child in a number of cases:

1. Named: the Australian paedophile jailed for 40 years By Nick Ralston ABC News²¹

ABC News

"Standing before an American court convicted of the most heinous of child sex crimes, the double lives of Australian citizen Mark J. Newton and his long-term boyfriend Peter Truong were laid bare.

Newton was sentenced to 40 years in prison for sexually abusing the boy he and Truong, 36 from Queensland, had "adopted" after paying a Russian woman \$8000 to be their surrogate in 2005. Police believe the pair had adopted the boy "for the sole purpose of exploitation". The abuse began just days after his birth and over six years the couple travelled the world, offering him up for sex with at least eight men, recording the abuse and uploading the footage to an international syndicate known as the Boy Lovers Network."

Comment. This is a clear case of a child who knew nothing but exploitation and abuse from birth.

20. Australian Treaty Series 1991 No 4 DEPARTMENT OF FOREIGN AFFAIRS AND TRADE CANBERRA **Convention on the Rights of the Child** (New York, 20 November 1989) Entry into force for Australia: 16th January 1991 AUSTRALIAN TREATY SERIES 1991 No. 4

21. Nick Ralston ABC News 30 June 2013 *Named: the Australian paedophile jailed for 40 years* By Nick Ralston

Below are three examples which demonstrate that engagement with International Surrogacy Arrangements should be banned. If the practice continues, a full psychological, mental, and criminal history evaluation should be applied to all applicants for a child's citizenship or long term visa. Counselling from both lawyers and professional psychologists, psychiatrists, should be required to help these "parents" understand their rights and responsibilities.

1. Baby Gammy's father's past history of child sex abuse was not identified until well after the parental order had been issued. Baby Gammy was a twin rejected and abandoned by both parents with their Thai surrogate. Motive: Too costly -Down's syndrome and ? a hole in the heart – since been discounted. Originally wanted Pattaramon Chanbua, the Thai surrogate mother to abort the baby following ultrasound diagnosis, she refused due to her religious beliefs. Baby Gammy who now has Australian citizenship, remains with his mother in Thailand.²²
 - A charity 'Hands Across the Water' managed to raise \$235,000:00 in Australia to cover the baby's long term medical costs.²² Recently the Australian father who had abandoned the child, appealed to access these funds which fortunately was refused.²³
2. Baby Devi, the twin boy of two Australians (Indian heritage) who obtained twins through an Indian surrogate (Viablea Devi) 'given away' to a friend of a friend in India, despite being told he would be stateless. Motive: wrong sex. The parents only wanted a girl to complete their family. Yet despite being told the boy would be stateless, they abandoned him. Consular staff in India suggested he may have been sold. Department of Foreign Affairs and Trade (DFAT) travelled to India in search of this child to no avail, were told adoption papers were signed, but these have never been sighted.²⁴
3. An Australian was charged with sexually abusing twins he fathered with a Thai surrogate. The biological mother Aon Suthivarakom had agreed to be a traditional surrogate for these older parents for a minimal sum as they appeared to be desperate to have a baby. She felt reluctant to transfer the twins as they were not 'thriving'. She was then devastated to receive the news of the children's molestation. Court documents reveal, that some time after the 'commissioning parents' had returned to Australia, the father became unemployed, allegedly had a violent temper, and the marriage broke down. Signs of the young children having night tremors and wetting the bed; alerted authorities, who charged the father with indecent dealings. The children are now temporarily in the care of his ex-wife but the authorities are looking for a longer term solution: that is, to return the children to their surrogate biological mother in Thailand.²⁵

It is obvious from the examples above that neither the CEO's responsible for monitoring the Surrogacy Act 2008, nor the screening practices of the Department of Immigration and Border Protection were successful in assessing the suitability of these people as responsible parents.

In 2017, the UQ Human Trafficking Working Group conducted a comprehensive research project on the topic of child trafficking and inter-country adoptions in Australia. Included were a range of investigations, cases sited and reports written and which have now resulted in action, the proposal to form A Modern Slavery Act (2017)²⁵ built on the model of Britain's Modern Slavery Act 2015:²⁶

22. Sonia Van Wichelen, *The Drum* *What chance for international surrogacy laws?* 21st August 2014.

23. ABC News, 19th May 2015, Baby Gammy: *Biological father, David Farnell tries to access donations raised for child's medical costs.*

24. Samantha Hawley, ABC Foreign Correspondent, June 23rd 2015. "About the Boy: *The Search for Baby Devi in New Delhi India*".

25. Samantha Hawley, ABC South East Asia Correspondent 2nd Sept 2014 *Australian charged with sexually abusing twins he fathered with a Thai surrogate.*

26. PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA *Hidden in Plain Sight* An inquiry into establishing a Modern Slavery Act in Australia Joint Standing Committee on Foreign Affairs, Defence and Trade December 2017 CANBERRA

4.6 Recommendations for this Modern Slavery Act(2018) will provide that the Commissioner be truly independent from government or any other body, such as the Australian Human Rights Commission or the Commonwealth Ombudsman, and oversee their own properly resourced and independent office. The Commissioner should report to Parliament.²⁶

4.61 The Committee recommends that the Commissioner's role complement the existing roles of the Attorney-General's Department and the Ambassador for People Smuggling and Human Trafficking. In developing the Commissioner position, consideration should be given to ensuring complementarity with the Ambassador position and avoiding an overlap of roles and responsibilities.²⁶

If a close link is established with the Department of Immigration and Security with respect to adoption and surrogacy, once this proposed act is enacted, cases as cited above may be prevented. As signatory to the United Nations Social Justice committee on Conventions to the Rights of the Child, we need to be committed to this monitoring process.

One of the chief reasons identified by Professor Sam Everingham's research *Use of Surrogacy by Australians Implications for Policy and Law Reform* (2014)¹⁹ involving intended parents who go overseas for surrogacy agreements: Besides reduced costs, the aim was to **evade the regulations** that each Australian state has established on Surrogacy. These regulations have been designed to focus on the rights and responsibilities of both the Surrogates and Intended Parents and provide some measure of protection and acknowledgement for surrogates as mothers.

Recommendation 2.

To prevent the cases cited above or the Intended Parents should receive the same level of counselling, assessment procedures and lawyers advice, as those who develop a Surrogacy Agreement within Australia, once they apply for either a citizenship or long term visa for their child or children. This may serve to deter many of them travelling overseas with desires fed by the media and unrealistic expectations.

Effective deterrents including fines, full medical, law and psychiatric evaluation and/or psychological assessments of any Australian who has engaged in an International Surrogate Agreement before the child is granted Citizenship or a long term visa. The assessment should also require that they provide a full knowledge of the name of their surrogate and donor to be added to a database, where it can be accessed by their child, to assist in his/her 'sense of self', psychological and emotional health and well being.

Neither the Australian Anti-Discrimination Law nor the Western Australian Equal Opportunity Act (originally designed to protect the rights of women), do not include any reference to the *right of any person to have a child*. Our recently established Same Sex Marriage Law has *no reference linking marriage with the right to a child*. Gender difference (man and woman) has been removed from each law related to marriage and family. There is no visible reference to children, reproduction or marriage, within these laws.^{27, 28}

19. Professor Sam Everingham *Use of Surrogacy by Australians in Families, Implications for Policy and Law Reform Chapter 8 Policy and the Law, pp67-79 (2014).*(1)

27. **Marriage Amendment (Definition and Religious Freedoms) Act 2017 No. 129, 201** An Act to amend the law relating to the definition of marriage and protect religious freedoms, and for related purposes. This includes changes to the Family Law Act and the Sex Discrimination act.

28. Source **Australian Human Rights Website**, and the Western Australian Sex Discrimination Act 2004 and Equal Opportunity Act 2004 with amendments.

At the Madrid International Conference on Gender, Sex and Education held on the 23rd February 2018, the focus was a loss of freedom of speech due to anti-discrimination laws globally. The Madrid Declaration for Understanding, Respect and Freedom 2(b) states:²⁹

*“Laws euphemistically adjudged to be “against discrimination on the basis of sexual orientation, identity, or the expression of gender and sexual characteristics”, are, in reality, attempts to establish monolithic thinking on issues where freedom of opinion and debate should prevail”.*²⁹

Table 2. Surrogacy Laws in Australia Demonstrating lack of background checks for most states.

State	Altruistic + costs	International commercial allowed	B'ground checks	Counselling and legal advice required	Parentage order	Gay couples
Vic	Yes	Yes	Yes	Yes	Supreme Court	Yes
Qld	Yes	No	No	Yes	Children's Court	Yes
NSW	Yes	No	No	Yes	Court application	Yes
SA	Yes	Yes	No	Yes	Youth Court	No
WA	Yes	Yes	No	Yes. Committee approval	Family Court	No
Tas	Yes	Yes	No	Yes	Magistrates Court	Yes
NT	N/A	N/A	N/A	N/A	N/A	N/A
ACT	Yes	No	No	Counselling required. Committee approval	Court application	No

³⁰ Table 2. Surrogacy Laws in Australia – Demonstrating lack of background checks for most states. Health Law Central, <http://www.healthlawcentral.com/assistedreproduction/donorconception/access-information/>

Victoria is the only state that stipulates Intended Parents should have a background check before a parenting order is supplied. See Table 8¹¹

Recommendation 3

With police identifying increased numbers of paedophile rings, couples who engage in surrogacy arrangements overseas, should all be subject to the same regulations as those couples experiencing surrogacy within Australia. Each Australian State should follow in the example of Victoria and introduce police checks before a parenting order is applied.

According to Dr Renate Klein (2017):¹⁰

- *“Surrogacy is the act of treating a woman, her eggs and her uterus as a commodity which any man can access to produce his offspring. Once a baby is produced it is ripped out of the woman’s womb, through a caesarean into the waiting hands of two men who have exchanged money for this privilege.”*¹⁰

³⁰ Table 2. Surrogacy Laws in Australia – Demonstrating lack of background checks for most states. Health Law Central, <http://www.healthlawcentral.com/assistedreproduction/donorconception/access-information/>

- “Surrogacy is heavily promoted by the stagnating IVF industry which seeks new markets for women over 40, and gay men who believe they have a ‘right’ to their own children and ‘family foundation’. Pro-surrogacy groups in rich countries such as Australia and Western Europe lobby for the shift to commercial surrogacy. Their capitalist neo-liberal argument is that a well-regulated fertility industry would avoid the exploitative practices of poor countries.”¹⁰

CONCLUSION

I have clearly demonstrated by this research, that as there are no International, State or Federal Laws that provide anyone no matter what is their sexual orientation, or relationship status to have the right to have their own child. That the age chosen by N.S.W, Victoria, Queensland and Tasmania are not suitable as is the number of egg donations allowed. Western Australia has made the right choice. I strongly recommend that the board **do consider the impact on women’s health and well being and the number of children who will suffer with identity issues, and other profound feelings associated with being deprived of either a mother or a father, when you make a decision on retaining the eligibility categories to be included in the Western Australian Surrogacy Act.**

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28. Source **Australian Human Rights Website**, and the Western Australian Sex Discrimination Act 2004 and Equal Opportunity Act 2004 with amendments.
29. **Madrid Declaration** –International Conference on Gender, sex and Education 23th February 2018.
30. Table 2. Surrogacy Laws in Australia – Demonstrating lack of background checks for most states. Health Law Central, <http://www.healthlawcentral.com/assistedreproduction/donorconception/access-information/>

- *“Surrogacy is heavily promoted by the stagnating IVF industry which seeks new markets for women over 40, and gay men who believe they have a ‘right’ to their own children and ‘family foundation’. Pro-surrogacy groups in rich countries such as Australia and Western Europe lobby for the shift to commercial surrogacy. Their capitalist neo-liberal argument is that a well-regulated fertility industry would avoid the exploitative practices of poor countries.”¹⁰*

According to Dr Olga van den Akker ³¹ the UN Declaration of the Rights of a Child affirms that a child must not, “save in the most exceptional circumstances *“be separated from their mother”*.”²⁰ Yet a surrogacy agreement **deliberately does just this**: *“Firstly it separates sex from reproduction, secondly it separates motherhood from pregnancy, and thirdly it separates the unity of one couple in the involvement of a third person within the potential family relationship.”*

I would like to add, fourthly it fails to address intergenerational equity, as a surrogate child is denied access and knowledge of at least one half of their extended family. This includes grandparents, half brothers or sisters, aunties and uncles until they are 18 years of age.

According to Michael Cook (2018)³² this expensive government funded social experiment in solipsism³¹ not only contravenes *Article 8 of the Convention for the Protection of Human Rights⁸ and Fundamental Freedom to adoption* and the Council of European Recommendation 1443 (2000)³² but violates the natural order of things the natural law and as seen with International Surrogacy practices, increases the demand for IVF practices and creates a high levels of social injustice.³¹ How can anyone compare a man “renting a womb” with a lifelong commitment of another to be involved with the woman who will become the mother of his child?

Michael Cook (2018)³² also provides an important message with the following quote: *“The natural law is not a Christian concept, although Christians saw it as an expression of the Decalogue. One of the best definitions comes from Cicero (106BC-43BC)”*

“There is indeed a law, right reason, which is in accordance with nature; existing in all, unchangeable, eternal ... Neither the people or the senate can absolve from it. It is not one thing at Rome, and another thing at Athens: one thing to-day, and another thing tomorrow; but it is eternal and immutable for all nations and for all time.”

“Legislation which defies the natural law can flourish for a while, but eventually support for it will wither.”³¹ These words have definitely been echoed by the European Courts as they perceive the level of human injustice that has thrived in countries engaged with any form of Commercial Surrogacy.

CONCLUSION

I have clearly demonstrated by this research, that as there are no International, State or Federal Laws that provide anyone no matter what is their sexual orientation, or relationship status to have the right to have their own child. That the age chosen by N.S.W, Victoria, Queensland and Tasmania are not suitable as is the number of egg donations allowed. Western Australia has made the right choice. I strongly recommend that the board **do consider the impact on women’s health and well being and the number of children who will suffer with identity issues, and other profound feelings associated with being deprived of either a mother or a father, when you make a decision on retaining the eligibility categories to be included in the Western Australian Surrogacy Act.**

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COMPARISON BETWEEN BIOLOGICAL REPRODUCTION AND SURROGACY

GOAL TO PRODUCE A BABY(IES) WITH A BIOLOGICAL CONNECTION

BASED ON CASE LAW THE COUNCIL OF EUROPE (ECLJ) AFFIRMS THERE IS *NO RIGHT TO HAVE A CHILD WHATEVER ONE'S SEXUAL ORIENTATION OR SOCIAL STATUS.* (PACE RECOMMENDATION 1443 2000)

YET IT IS THE RIGHT OF A CHILD TO KNOW AND BE CARED FOR BY BOTH BIOLOGICAL PARENTS - CONVENTION ON THE RIGHTS OF A CHILD ARTICLES 7 AND 8 (AUSTRALIA 16TH JANUARY 1991)¹.

BIOLOGICAL REPRODUCTION =

1Male + 1 Female = Conjugal Sex

to produce a Child or Children OR, should there be either:

Gynaecological or Genetic abnormalities, will require IVF intervention, and **rarely** donation of an egg or sperm or use of a surrogate.

Male and female have the complementary genes attached to the male (XY) and female (XX) chromosomes that define the unique characteristics of Motherhood and Fatherhood. (Kuby 2017)²

The Birth Mother with few exceptions is the Biological Mother, is loved and held in high esteem and together with her husband guides and nurtures her children for life.

The extended family of Mother and Father are also included in the Child's character formation.

REPRODUCTION = SURROGACY AND/OR DONOR(S)

One Male to many Females (Average 6) OR, many Males to One Female (Surrogates and egg donor with multiple risks.)

Embryo Transfer (ET) with IVF - requires use hormone blocking agents, multiple fertility stimulating drugs (pre and post conception) including use of steroids that impact on the Surrogate's immune system at a time when her immune system is compromised anyway; and other potential long term health consequences;

OR, GIFT; OR, Donor Sperm Insemination, which includes self administration of a vial full of sperm from 1-2 donors. Involves sperm migration. And, a high risk of STD infections.

Success rates: ET with IVF 32.5%; GIFT 0%; DSI 11.8%³

Preference for Birth Mother to be referred to as a **Gestational Carrier** (Professor Sam Everingham 2015)⁴

OR, 1 Female + 1 Female requires IVF or ART with anonymous or known sperm donor.

The Child or Children are deliberately deprived of either a Mother or a Father in a relationship that involves step parenting, a one gender role model and exclusion of one set of the biological extended family. Children are denied Parental Role Diversity.

The Child or Children frequently suffer from origin and Identity Issues^{5,6}

1. Australian Treaty Series 1991 No 4 DEPARTMENT OF FOREIGN AFFAIRS AND TRADE CANBERRA **Convention on the Rights of the Child** (New York, 20 November 1989) Entry into force for Australia: 16th January 1991 AUSTRALIAN TREATY SERIES 1991 No. 4. 2. Dr Gabriele Kuby *The Global Sexual Revolution* - Updated and Revised Edition Dec 2nd 2015 3. The National Perinatal Epidemiology and Statistics Unit (NPESU) Australia and New Zealand 2015. 4. Professor Sam Everingham *The Debate Should Commercial Surrogacy be legal in Australia*, *Sydney Morning Herald*, 14th May 2015. 5. Puppennick G, *Human Rights Council, European Centre for Law and Justice ECLJ*, 5th-6th March 2018, *Injustice of Surrogacy A Debate on the Rights of Children*. 6. Dr R. Klein *Can Surrogacy be Ethical? ABC Religion and Ethics May 2015*.

COMMENTS ON ELIGIBILITY CRITERIA FOR SURROGACY USED BY DIFFERENT AUSTRALIAN STATES – AGE OF INTENDED PARENT AND AGE OF SURROGATE

In the Introduction to *Ethical Guidelines on the use of assisted reproductive technologies in clinical practice and research.2017*, the National Health and Medical Research Council (NHMRC) as the agent for the Commonwealth published the following statement p.13:⁷

“the guiding principles in this document are in line with community expectations that ART activities will be conducted in a manner that shows respect, minimises potential harm and supports the ongoing wellbeing of all parties, including persons born as a result of ART.”

An examination of the differences in eligibility criteria used by different Australian States highlights key elements that need to be addressed to honour this commitment:

1. Age of Intended Parent

>18 Years NSW, Qld,
Victoria, ACT, SA.
>21 Years Tas.

>25 Years WA

NT- Surrogacy is not regulated.

2. Age of Surrogate

>18 Years ACT, SA

>25 Years WA, Vic,
Tas, NSW, Qld

>18 years does not take into account the time >5 years from first ovulation, it takes to achieve full gynaecological development.⁸ Apart from obvious gynaecological abnormalities an accurate assessment of reproductive potential through use of Natural Family Planning, IVF or any form of ART could not be accurately assessed with the current rule of 12 months intercourse without use of contraception. >18 years OR, > 21 years does not take into consideration that human brain circuitry is not completed until 25 years. This particularly applies to the links between the prefrontal cortex (seat of judgement and problem solving) and the amygdala which is essential for decoding emotions.⁹ This age group should therefore be considered as emotionally immature, and not ready for responsible parenthood.

Recommendation 1: > 25 years chosen by WA is the most suitable age for IP as it allows for cognitive, emotional, social maturity and a more accurate assessment of a lack of reproductive potential.

➤ The majority of women > 18 years, will not have had a child beforehand, or have married. To expect a young woman of this age to carry a child for a complete stranger, when her gynaecological development may be incomplete⁸ and her immature neurological development, makes her more vulnerable to coercion,⁹ is totally unethical.

Recommendation2. >25 Years, definitely after she has produced a child of her own, has allowed more time for her physical, gynaecological, mental and social development, which should enable her to make a more objective evaluation of her decision.

7.https://www.nhmrc.gov.au/_files_nhmrc/file/guidelines/ethics/16506_nhmrc-ethical_guidelines_on_the_use_of_assisted_reproductive_technology-web.pdf. 8. College of Obstetrics and Gynaecology Conference Murdoch University 1984. 9. *Adolescent Brain Development*, ACT for Youth Upstate Centre of Excellence, Research Facts and Findings, A collaboration of Cornell University, University of Rochester, and the NYS Centre for School safety May 2002. www.actforyouth.net/resources/rf/rf_brain_0502.pdf.

COMMENTS ON ELIGIBILITY CRITERIA FOR SURROGACY USED BY DIFFERENT AUSTRALIAN STATES – EXPANDING THE CRITERIA INCREASES EXPECTATIONS AND DEMAND

An examination of the differences in eligibility criteria used by different Australian States highlights key elements that need to be addressed to honour the NHMRC commitment continued:

3. Eligibility Western Australian Surrogacy Act 2008 ¹⁰

“ A surrogacy arrangement means an arrangement where a woman (the birth mother) agrees to carry a child for another person or a couple (the arranged parent(s)) with the intention that the child will be raised by those arranged parents. The surrogacy arrangement must meet strict requirements set out in the Surrogacy Act 2008 and must be approved by the Reproductive Technology Council. A surrogacy arrangement can only be made before the birth mother becomes pregnant.”¹⁰

Eligible couple¹⁰ = Two people of opposite sexes who are married to, or in a de facto relationship with each other who as a couple are:

- a) Unable to conceive a child due to medical reasons not excluded by subsection (3)*
- b) Although able to conceive would be likely to conceive a child affected by a genetic abnormality or a disease.*

Eligible person¹⁰ = a woman who:

- a) Is unable to conceive a child affected by a genetic abnormality or a disease;*
- b) Although able to conceive a child, is unable for medical reasons to give birth to a child.*

4. Eligibility Criteria by State

Eligibility Criteria
Unexplained infertility -
Married or De facto Couples
of the opposite Sex, WA, SA
and ACT; or Single Women
WA.

Unexplained infertility and for
Social Reasons: Heterosexual
couples, singles, same sex
single, or couple in a same-sex
relationship – Vic, NSW, Tas,
QLD -Also includes genetic
connection to the birth
mother.

**NT Surrogacy is not
regulated.**

In 2017, a list of Surrogates by State by www.familiesthrusurrogacy.com,¹¹ provides data about supply and demand. WA 5%, SA 6%, ACT 0%. The ACT is the only State that requires gynaecological verification of Unexplained Infertility. This suggests that restricting the eligibility criteria to the original reason for surrogacy, reduces demand for surrogate services; which in turn markedly lessens the impact on the health and welfare of women and children impacted by Surrogacy Arrangements. Whereas, those States that have opened their criteria to include single men and same-sex couples have increased the demand for surrogacy services.

The highest proportion of Surrogate services provided were in QLD (39%)¹¹ that has the most liberal laws related to surrogacy arrangements.¹ NSW (28%) allows verification by a fertility specialist which strongly suggests a conflict of interest. VIC (17%)¹¹ also has a high demand for these services, which correlates with the recent flotation (2018) of Monash Fertility Services on the Stock exchange. The message clearly received, is Fertility Clinics are a commercial success story^{2,12}. In countries which allow for Commercial Surrogacy, billions of dollars have been made which have had a direct impact on the health and welfare of women and children.^{2,12} Both women and children are marketed as commodities.⁶

Addressing the issue of harmonising domestic services by expanding the criteria to match QLD, TAS, VIC and NSW you are suggesting that any fertile healthy woman's womb **can be colonised**, and/or her eggs distributed once she has produced a child with her husband, to service the desires for a baby of heterosexual and homosexual single men, homosexual men in an established relationship, and single women, most of whom have no empathy for pregnant women and will abandon her once the baby or babies have arrived. Not a single study to date has proven that a child benefits from **being denied** a mother's love.

2. Dr Gabriele Kuby IBID . 6. Dr Renate Klein IBID, 10. Western Australian Surrogacy Act 2008. 11. www.familiesthrusurrogacy.com/australian-intended-parent-conference. 12. Carmel Shalev *The Global Trade in Reproduction BioEdge*; Bioethics News from Around the World April, Wed 11th April 2018.

COMMENTS ON ELIGIBILITY CRITERIA FOR SURROGACY USED BY DIFFERENT AUSTRALIAN STATES – EXPANDING THE CRITERIA INCREASES ↑ EXPECTATIONS, DEMAND, INCREASED RISK AND LEADS TO → CHANGED ATTITUDES TO MOTHERHOOD

An examination of the differences in eligibility criteria used by different Australian States highlights key elements that need to be addressed to honour the NHMRC commitment continued:

4. Eligibility Criteria by State and Risks Associated with Increased Demand

Unexplained infertility and for Social Reasons: Heterosexual couples, singles, same sex single, or couple in a same-sex relationship – Vic, NSW, Tas, QLD -Also includes genetic connection to the birth

NT Surrogacy is not regulated.

Average Number of Egg Donors (= 2) and/or Surrogates (=6) required for Homosexual male (single or pair) or Single heterosexual males to achieve the birth of a healthy baby or babies.^{2,13,14} Higher failure rates, often means more than one surrogate will be carrying a separate foetus at one time. If all are successful, unwanted babies are aborted on the request of the Intended Parents. (Case Studies – Australia and the USA)^{4,13}

Increased Demand for Commercial Surrogacy to be introduced to Australia Reason Given: Prejudice^{4,15}

BIOLOGY IS NOT PREJUDICE

Surrogacy violates the gestational link between the child and natural mother.¹⁴

Women or Children should not be Commodified and/or Traumatized to meet the Desires of any Man who is not prepared to honour her as the mother of his children. To classify this statement as prejudice is an insult to the dignity and health status of women.

Consider it a **Right** for anyone who wants a child or children, no matter their gender or sexual orientation to attain this through surrogacy. Importantly there is not a single Universal Social Justice Law that can back this statement.¹⁴ Yet this concept is aided and abetted by surrogacy promotions such as the Annual Conventions run by Surrogacy Australia which use the same aggressive marketing model as conducted in many states of the USA, supporting both altruistic and commercial surrogacy.^{16,17} These practices contravene a number of international laws to which Australia is a signatory including **Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms to adoption** which is particularly relevant to surrogacy states: “Everyone has the right to respect for his private and family life, his home and his correspondence” and prohibits government interference.¹⁸

1. The Court has repeatedly declared that Article 8 does not guarantee the right to adoption. In E.B. v. France, the Court reiterate[d] . . . that the provisions of Article 8 do not guarantee either the right to found a family or the right to adopt. *The right to respect for “family life” does not safeguard the mere desire to found a family;*¹⁹
2. The purpose is to protect an existing family rather than a hypothetical or desired family. The Court recognised that the right to adopt is “not provided for by domestic law or by other international instruments.”²⁰
3. In Pini and others v. Romania “The Court considers that it is even more important that the child’s interests should prevail over those of the parents in the case of a relationship based on adoption, since, as adoption means “providing a child with a family, not a family with a child” (§ 156). (Cited in ECLJ 2012)¹⁴

“Consistent with case law, the Council of Europe must refuse to grant a fundamental right to obtain a child and strongly affirms that there can be no right to a child, as did the Parliamentary Assembly of the Council of Europe in Recommendation 1443(2000) on International Adoption: Respecting Children’s Rights.”(ECLJ 2012)¹² Having being a Commissioner in Human Rights, Senator Tim Wilson should have been well aware of this Law.

2. Dr Gabriele Kuby IBID; 4. Prof Sam Everyingham IBID 13. Jennifer Lahl *Breeders The Centre for Bioethics and Culture Network* www.CBC-Network.org Breeders.CBC-Network.org 2014 14. International Center on Law, Life, Faith and Family Surrogate Motherhood: A Violation of Human Rights REPORT PRESENTED AT THE COUNCIL OF EUROPE, STRASBOURG, ON 26 APRIL 2012. European Centre for Law and Justice (EJLC) <http://www.eclj.org> 15. Stephen Page, *Australian Surrogacy and Adoption Blog, Remove discrimination in surrogacy and adoption: Human Rights Commissioner Tim Wilson June 15th 2015.* 16. www.familiesthrusurrogacy.com . 17. Renate Klein, *The Age Baby Gammy has shown the need for debate on surrogacy Sydney Morning Herald* 19th August 2014 18. Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, as amended June 1, 2010, C.E.T.S. No. 5 19. E.B. v. France, No. 43546/02, pp 8-9, ECHR 2008, p 41 24. 20. Id. at pp 42, 46.

LEGAL / ETHICAL ISSUES ADOPTION VS SURROGACY – HUMAN RIGHTS AND THE INHERENT DIGNITY OF EACH HUMAN BEING

According to the United Nations Report on Surrogate Motherhood a Violation of Human Rights one needs to consider Existing Legal Parallels.

How COE protection of Human Dignity in Adoption informs Necessary Human Rights Boundaries in Surrogacy:¹⁴

ADOPTION = FULL ACCEPTANCE OF BIRTH MOTHER Globally, 'father', 'mother' refer to the lawful parents of the child.²¹ "Maternal affiliation of every child, is based solely on the fact of the birth of the child so the birth mother is presumed to be the legal mother of the child. Latin = "mater semper certa est"²²

The Aim of Adoption: Is to obtain a family, chosen by the birth mother, who is given sufficient time for thoughtful consideration, to make a decision on who she considers will provide a loving and secure home in the best interest for her baby or child.²³

Adoption confirms the Dignity of Birth Mother and Child²⁵

Full protections have been provided to preserve the human dignity for both mother and child:

1. It is contrary to established law to permit a mother to consent to adoption of her child prior to giving birth.²⁵
2. The mother must wait 6 weeks after birth "to allow her to recover from the effects of giving birth to the child" before she may consent to an adoption.²⁸
3. The mother must be counselled about the effects of her consent including the effect that adoption will have on terminating her legal relationship with her child.²⁸
4. The mother must consent freely in writing.²⁸
5. The timeline for adoption ensures that the mother is fully informed and has sufficient time after the birth of her child to make a thoughtful decision regarding the future of her child.²⁸ This provides her time to "freely withdraw consent at any time"²⁹

SURROGACY = DENIAL OF MOTHERHOOD ("GESTATIONAL CARRIER")^{3,4} Universal prohibition of surrogate motherhood. "Surrogacy is a violation of the dignity of both the surrogate mother and the child. It is a new form of exploitation of women and human trafficking, making the child the object of a contract." WOW (2015)²⁴ "As many countries, especially in Europe, make surrogacy illegal, the industry of surrogacy tourism is pushed in greater numbers to countries where surrogacy is not only legal, but also encouraged.²⁵ However, "the social, psychological, health and legal complications increase dramatically as the number of people necessary to conceive a child is increased from the traditional two" icolf.org/surrogate-motherhood-a-violation-of-human-rights/^{2,27}

Surrogacy and Parental Rights The parental rights issues that permeate surrogacy are inherent to an institution that does not exist for the best interests of the child, but fulfilling the desire of an individual or a couple to be parents. The aim is to obtain a pregnancy or baby for a medical or socially infertile parent. "The decision is made by potential parents whose primary motivating factor is their own desires. In pursuing their desire to become parents through surrogacy, the prospective parents create a scenario with as many as six people that could claim parental rights.^{2,30} This includes: the genetic mother (egg donor), the gestational mother(surrogate), the commissioning mother; the genetic father (sperm donor), the husband of the gestational mother(presumption of paternity) and the commissioning father. The gametes of one or both the commissioning parents may have been used. The gestational mother may be the genetic mother (traditional surrogacy) - artificial insemination.^{2,14,18}

Surrogacy Pre Conceptual Agreement or Parentage Law in Western Australia This is drawn up and signed by all parties three months prior to the conception of the child, are not enacted until 4 weeks to 6 months after the baby is born. This law binding the surrogate and commissioning parents deliberately excludes the donors, is not considered binding until the parenting order has been completed. The birth mother and her partner's name remain on the birth certificate until the parenting order has been completed when the birth mother signs over the baby to the intending parents.

Like most surrogacy agreements this is a manipulation of Family Law to produce an Act that is contrary to the genetic truth and violates the child's right to know his or her origin and identity as guaranteed under **Articles 7 and 8 of the Conventions of the Rights of the Child.**¹

1. Australian Treaty Series No 4. 1991. 2. Kuby IBID 2015 10. WA Surrogacy Act 2008 14. ECLJ IBID 18. Hague Convention Article 8 (2010) 21. Convention on the Adoption of Children (Rev) art. 5(6), Nov 27th 2008, C.E.T.S. No 202 22. Hague Convention on the Legal Status of Children Born out of Wedlock art, 2, Oct. 15 1975, C.E.T.S. No 8 23. Article 4 of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; Convention on the Adoption of Children (Revised) art. 5(5), Nov 27th, 2008, C.E.T.S. No.202 24. profesionalesetica.org/statement-of-the-women-of-the-world 08th March 2018 25. Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine preamble, Apr.4, 1998, C.E.T.S. No. 164 26. Janice C. Ciccarelli & Linda J. Beckman, *Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy*, 61 *J Soc Issues* 21 (22) (2005) 27. icolf.org/surrogate-motherhood-a-violation-of-human-rights/ 28. Id. at art. 5(2) 29. Contra Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, art. 5.Apr 4th 1997, C.E.T.S. No 164 . 30. See supra Part 1.A cited in ECLJB (14.)

LEGAL / ETHICAL ISSUES ADOPTION VS SURROGACY – REGULATION TO REIMBURSE COSTS AND FINANCIAL AGREEMENTS

According to the United Nations Report on Surrogate Motherhood a Violation of Human Rights one needs to consider Existing Legal Parallels.
How COE protection of Human Dignity in Adoption informs Necessary Human Rights Boundaries in Surrogacy:¹⁴

Regulations for Intending Parents to Reimburse Costs to Surrogate Medicare does not cover any expenses associated with ART or IVF for Surrogacy

Costs All States: An obligation under the surrogacy agreement to reimburse the birth mother's expenses is enforceable even if the arrangement does not end in a pregnancy or viable birth. This obligation does not hold if the surrogate fails to relinquish the child, does not consent to a parentage order; or terminates the pregnancy for any reason other than health risks to herself or the baby.^{10,31}

The reasonable costs for a surrogate include...a reasonable medical expense that is not recoverable under any health insurance or other scheme, premium payable for health, disability or life insurance that would not have been obtained by the birth mother if the surrogacy arrangement had not been entered into
all costs for counselling services needed for a surrogacy arrangement (before pregnancy and after)¹⁰

all costs for legal fees needed for a surrogacy arrangement (before pregnancy up until obtainment of a parentage order)

Any lost wages incurred as a result of the surrogacy arrangement and birth of the child. For the surrogate this includes 2 months of lost wages during which she is expected to give birth during that time; or for any other period during or after the pregnancy when the birth mother was unable to work on medical grounds associated with the pregnancy or the end of a pregnancy^{10 31}

Adoption - Financial Agreement "According to both the Hague Convention³² and the Council of Europe Convention on adoption,³³ no one including the birth mother should derive any improper financial or other gain from an activity relating to the adoption of a child. It would be considered contrary to the dignity of the child as adoption would become a market."³² Cited in ECLJ¹⁴
A firm Public Policy prohibits gain from activities related to adoption reinforces the message that no financial transactions should be performed involving a human body³³ Cited in ECLJ¹⁴
Costs related to normal pregnancy, pre and post partum monitoring and care are covered by Medicare.

Financial Agreements for Altruistic Surrogacy Western Australia

The birth mother will either receive sufficient compensation to cover for the costs involved with pregnancy. This contravenes Article 17 of the European Convention on the Adoption of Children;³² and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.³³

As no form of ART expenses are covered by Medicare, it is reasonable to expect the Intended Parents to cover the cost of treatment and counselling.¹⁰ However, it should be noted that according to both the Hague Convention³² and the Council of Europe Convention³³ these payments are considered as a contravention of both these laws. In the belief that Surrogacy represents a **right** for anyone to have a child, there is now a very active group of women who lost their infertility through reception of life saving medical interventions who are lobbying to have surrogacy costs covered by Medicare. What they overlook is the enormous expenses already contributed by the Government to enable them to survive.

10. WA Surrogacy Act 1991 14. ECLJ 2012 IBID. 31. NHMRC Ethical Guidelines on the use of reproductive technology in clinical practice and research pp.65-68 32. European Convention on the Adoption of Children (Revised) Article 17, Nov. 27, 2008, C.E.T.S. No. 202. This includes: Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin art. 21, Jan. 24, 2002, C.E.T.S. No. 186 (stating a policy against monetary compensation for organ donations); 33. Convention for the protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine art. 14, Apr 4, 1997, C.E.T.S. No 164 ("The human body and its parts shall not, as such give rise to financial gain")