

FINRRAGE (Australia)

**Feminist International Network of Resistance to
Reproductive and Genetic Engineering
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To the
Project Manager
Dr Maureen Harris
Reproductive Technology Unit
Patient Safety and Clinical Quality
Clinical Excellence Division
Department of Health
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Dear Dr Harris

Thank you for inviting us to contribute a Submission to the Review of the Surrogacy Act 2008 as well as the Human Reproductive Technology Act 1991 by Professor Sonia Allan. As we sent a Submission in 2014 in response to a Review of the same Surrogacy Act 2008, we have kept most of that Submission but updated it with a Summary of some of the changes in surrogacy matters since 2014 (Part A). We also provide some brief comments on the HRT ACT 1991 (Part B).

The Feminist International Network of Resistance to Reproductive and Genetic Engineering (*FINRRAGE* Australia) has been in existence since 1985 and regularly comments on Australian and overseas governments' regulations in relation to surrogacy and other reproductive technologies.

Please do not hesitate to contact us if you would like further information.

Yours sincerely,

Dr Renate Klein
Coordinator
FINRRAGE (Australia)

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PART A REVIEW OF SURROGACY ACT 2008

Summary of new developments in surrogacy matters since 2014.

- In May 2014, Western Australians and the world learnt of the sorry tale of Baby Gammy, a child born with Down Syndrome to a Thai birthmother, Pattharamon Chanbua. Gammy, as well as his twin sister Pipah, had been commissioned by convicted paedophile David Farnell living in WA. On 14 April 2016, Family Court Judge, Justice Stephen Thackray, rejected an application by Pattharamon Chanbua to have her daughter returned to her in Thailand. This decision means that a convicted paedophile has more rights than a birth mother. Judge Thackray also decreed that Pipah was never to be left alone with Farnell and that every three months she has to be told (in an age appropriate way) how to look out for inappropriate behavior from Farnell: a deeply problematic way for a girl to grow up.

<https://www.theguardian.com/lifeandstyle/2016/apr/14/baby-gammys-twin-sister-stays-with-western-australian-couple-court-orders>

However, it should be noted that Judge Thackray was highly critical of surrogacy. As he put it in his judgment (No 757-759, pp. 176-177 [2016] FCWA 17):

“This case should also draw attention to the fact that surrogate mothers are not baby-growing machines, or “gestational carriers”. They are flesh and blood women who can develop bonds with their unborn children. It is noteworthy that no evidence was provided about the long-term impact on mothers of giving up children they carried, and there was no evidence of the impact on the children themselves. Nor was there any expert evidence of the impact on the other children of birth mothers who would have seen their mother pregnant, and perhaps felt the baby move in her belly, only to find that the baby never came home from hospital. Did those children wonder who would be the next to be given away? And what of their feelings of grief and loss if they were misled into believing the baby had died?”

FINRRAGE (Australia) concurs with Judge Thackray’s words. Surrogacy, whether commercial or so-called altruistic, a) treats women as ‘breeders’; b) so-called egg donors who contribute half the genes to the child remain anonymous most of the time (meaning the child will never be able to find out about her/his full genetic heritage) and have to undergo dangerous medical treatments; and c) children are treated as ‘take-away babies’: they never consented to be removed from their birth mother. We also agree with his comments on the impact of surrogacy on the birth mother’s other children.

In other words, surrogacy consists of a human rights violation of birth mothers, egg ‘donors’ and their children and breaches all existing UN Conventions:

- The Convention on Intercountry Adoption
- The United States Slavery Convention
- The International Convention on the Rights of the Child

The Optional Protocol to the Convention of the Child on the sale of children, child prostitution and child pornography
 The Protocol to Prevent, Suppress and Punish Trafficking in Persons. Especially Women and Children, supplementing the United Nations.
 The Convention against Transnational Organized Crime
 Regional Instruments such as the Orviedo Convention which stipulates that “The human body and its parts shall not, as such, give rise to financial gains.”

- Between 2015 and 2016 the Federal Government conducted an Inquiry into surrogacy. The Report by the House of Representatives Social Policy and Legal Affairs Committee was handed to the government on 4 May 2016. ‘Surrogacy Matters’, as the Report was called, recommended the continued prohibition of commercial surrogacy throughout Australia. With regard to so-called altruistic surrogacy, the report recommended the development of national laws including ‘best practice’ regulation. For unknown reasons, so far none of this report has been actioned on by the Attorney General and Australia continues with its diverse state and territory based laws. (*FINRRAGE* contributed Submission No. 70;
[http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social Policy and Legal Affairs/Inquiry into surrogacy/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Inquiry_into_surrogacy/Submissions))

FINRRAGE welcomed the Report’s Recommendation to continue the prohibition of commercial surrogacy throughout Australia and we hope that the WA Government will continue this prohibition. As to the recommended ‘best practice’ law regarding ‘altruistic’ surrogacy, we suggest that regulation will never be the answer to surrogacy. Regulation does not go to the root and does not scrutinise the practice for what it is: unacceptable selling or at least trading in human misery (the inability of infertile people to have their own biological children), and the exploitation of vulnerable birth mothers, egg ‘donors’ and resulting children. We should have learnt our lessons from the Stolen Generations and babies taken from unmarried women in the 20th century.

FINRRAGE suggests that surrogacy is worse than forced adoption. Here babies are knowingly created to be given away – surely a reprehensible violation of their human rights and those of their birth mothers.

No doubt this Inquiry will receive Submissions from organisations that stand up for the rights of adoptees and their birthparents such as VANISH, ARMS and the Australian Adoptee Rights Action Group and also oppose surrogacy.

FINRRAGE contends that there is only one answer to the problem that is surrogacy: ABOLITION.

- In 2015, India closed its borders to surrogacy by foreigners as did Nepal and Thailand. However, new destinations were shamelessly promoted by the pro-surrogacy advocacy group ‘Families through Surrogacy’ in their increasingly frequent conferences throughout Australia. Amongst them are poor nations such as Ukraine, Georgia, Mexico. It must be noted that ‘Families through Surrogacy’

holds their meetings even in Australian territories and states in which going overseas for surrogacy is a criminal act, punishable by 1-3 years in prison (ACT, NSW, QLD). They feel free to do so, presumably, because there have been no convictions recorded in any of these locations which is a serious breach of these state and territory laws.

FINRRAGE recommends that the WA Government enact legislation that makes going overseas for surrogacy a criminal act. Importantly such legislation needs to be enforced. As a consequence, groups like Families through Surrogacy should not be permitted to hold marketing conferences in WA in which they showcase overseas speakers and promote international surrogacy tourism.

- In 2016-2017, a new scandal involving international surrogacy came to light in Cambodia. Australian nurse and owner of Fertility Solutions, Tammy Davis Charles, was sentenced and jailed for human trafficking and falsifying birth certificates. We do not know what happened to the poor Khmer women who had been recruited as surrogates for a significant number of Australian couples. Rumour has it that they were relocated to Laos which appears to be the next destination for overseas surrogacy for Australians. Once the next scandal breaks in Laos and surrogacy is made illegal there as it now is in Cambodia, another impoverished country with poor women will be found to take its place. And so the exploitation will roll on.

FINRRAGE believes it is crucial to stymie demand for surrogacy by pointing out the human rights violation of this practice to would-be commissioning parents. Surely no one, however intense their desire for a child with their own genes, would agree to reprehensible slave-like exploitation of (poor) women whether at home or overseas. As a society we were able to greatly reduce smoking, to greatly reduce slavery – to use just two examples. We must believe in the good will of people who will refrain from being part of a practice that is nothing but shameless baby trade and reduces women to breeders: ‘gestational surrogates’ as the IVF industry calls birth mothers!

Unfortunately, the pro-surrogacy lobby is very successful in not only promoting surrogacy but increasingly normalising it: “Try IVF a few times and when it does not work, there is always surrogacy.”

- *FINRRAGE* (Australia) is increasingly contacted by Australian women who tell us their heartbreaking experiences with so-called altruistic surrogacy in Australia. Their stories share many similarities: a family member is infertile or becomes infertile through illness. She, her partner and their families are devastated that they cannot have their own children. IVF does not work, but they may have frozen embryos. A female relative is approached – or offers herself – and out of sheer naivety and the strong desire to do good, agrees to bear a baby for the couple. Problems become already apparent during the pregnancy when, quite frequently, the so-called commissioning mother (these days called, nicely, ‘intended mother’, IM) cannot deal with her relative being pregnant, when she herself is infertile. The hurt and malice bestowed on the pregnant woman can be

considerable, leading to tension, stress and ill health of her and the developing baby.

Often, promises for payments for medical expenses are not upheld. This can even include not paying for the hospital at which the birth takes place. Some of these cases end up in the Family Court with both parties then prohibited from speaking publicly about their ordeal. The babies remain the casualties of the warring parties. While the mothers remain birth mothers on the birth certificates, they may not be allowed to see their children at all. This can lead to a severely destabilised mental health status of the birthmother with dire consequences for her relationship/marriage, work, and her other children.

FINRRAGE believes it is crucial that the public (and governments) begin to understand that the danger of harm and exploitation in so-called altruistic surrogacy is no less than in commercial surrogacy. In some ways it might even be worse as the surrogacy process deeply divides families and causes lasting grief and anger for all parties. It is thus crucial that ALL forms of surrogacy are prohibited.

- Since our 2014 Submission regarding the 2008 Surrogacy Act, international resistance to surrogacy has grown significantly. Since May 2015, Stop Surrogacy Now (www.stopsurrogacynow.com/) – of which FINRRAGE is part – has acted as an international clearinghouse to assist so-called surrogate mothers and egg ‘donors’ who have been harmed by this practice. To date, there are over 8000 signatories to Stop Surrogacy Now’s petition. European feminists also offer strong resistance and, in 2015, drafted an International Convention to Abolish all Surrogacy which they sent to the Hague Conference on Private International Law, HCCH (<https://collectif-corp.com/2015/03/24/hague-conference-feminists-for-the-abolition-of-surrogacy/>). This document was resent in February 2018 as the HCCH has a working group on ‘parentage’ that has held yearly meetings in February since 2015 (<https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>). This group of experts labours under the ill-founded assumption that once you regulate ‘parentage’, international surrogacy will be acceptable. The point is that surrogacy has to be stopped *before* there are babies born who were already allocated ‘parents’ by pre-birth orders – in which the birth mother and egg provider entirely disappear! (This happens in some US States such as Oregon.)

FINRRAGE, together with Stop Surrogacy Now, CoRPS in France and their sister organisations in Italy and Sweden, and Stoppt Leihmutterchaft in Austria (<https://www.stoppt-leihmutterchaft.at>) wants no less than the global abolition of all kinds of surrogacy.

The European Parliament has also condemned all surrogacy in 2011 and 2015 (see *FINRRAGE* member, Renate Klein’s 2017 book *Surrogacy. A Human Rights Violation*, pp. 143-144, for details on the global resistance movement to surrogacy; <http://www.spinifexpress.com.au/Bookstore/book/id=301/>).

To summarise developments since our 2014 Submission:

FINRRAGE suggests that Western Australia should become the first Australian state to prohibit ALL forms of surrogacy. Our suggestion is based on the fact that surrogacy is a human rights violation of the birth mothers, the egg 'donors' and the resulting children. It contravenes all current UN conventions and instruments. It is a sordid business – even in its 'altruistic' form – and no regulation will be able to prevent harm and exploitation. It needs to be stated again and again that there is no 'right' to a child for anyone: female, male, heterosexual, homosexual.

The prohibition of all surrogacy needs to come with an information campaign aimed at those groups who are the current drivers of this practice: infertile people and gay men as well as the IVF industry, surrogacy lawyers and consumer groups such as Families through Surrogacy who make money from the exploitation of the desire for a child. Overseas Australian Consulates/Embassies and immigration officials have to be informed that going overseas for surrogacy is prohibited for WA citizens (as well as those from NSW, QLD and the ACT) and that they cannot issue passports to children born from surrogacy arrangements.

Some people believe that surrogacy cannot be stopped, that it has already become too normalised. We disagree. There are only about ten countries (among them Ukraine, Russia, Georgia) and some Mexican and US states which permit commercial surrogacy. Most countries in Europe prohibit all surrogacy. Some, such as Belgium, the UK, Austria, and Greece, allow so-called altruistic surrogacy. Professor Allan is very aware of which countries allow what types of surrogacies and will concur with us that the majority of countries in the world do not allow surrogacy.

In spite of international scandals, in which the media tells us that 'hundreds' of Australian couples were implicated, surrogacy, for Australians, is not a very big business. This is even more evident in the case of 'altruistic' surrogacy in Australia. We are not talking about thousands of clients flocking to an IVF clinic for surrogacy, but at best 200 to 300 a year. However, groups like Families through Surrogacy pretend that there is a huge demand for surrogacy and in their seminars around Australia shamelessly promote their services for finding a 'surrogate' or egg 'donor' overseas or here in Australia.

Should the WA government opt to continue with its prohibition of commercial surrogacy but continue to allow 'altruistic' surrogacy – which we would find very disappointing – then at least it should implement the same provisions as NSW, QLD and the ACT: that going overseas for commercial surrogacy constitutes a criminal act. Then these prohibitions need to be enforced.

Advertising for both so-called surrogate mothers and egg 'donors' must remain prohibited.

The sale of egg cells in WA must also remain prohibited.

Care must also be taken that the birth mother will remain on the birth certificate for life and that her name cannot be exchanged with that of the commissioning mother. Also, since the Family Court's rejection of an appeal in the matter of *Bernieres vs Dhopal* on 1 September 2017, a sperm donor should not be declared the 'father', although he and his partner might be able to apply for a parentage order and/or adoption if the birthmother agrees (http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCAFC/2017/180.html?context=1;query=Bernieres%20and%20Dhopal;mask_path=au/cases/cth/FamCAFC+au/cases/cth/FamCA).

What follows is our 2014 Submission about the 2008 Surrogacy Act. After that, in Part B of this Submission, please find some comments on the 1991 Human Reproductive Technology Act 1991.

***FINRRAGE* is pleased that the Western Australia Surrogacy Act 2008 does not permit commercial surrogacy and we urge the WA government to keep this prohibition.**

No other state or territory in Australia allows for commercial surrogacy and we sincerely hope the laws will stay this way. However, we are currently experiencing a 'softening up' phase in Australia (and internationally) as commercial pro-surrogacy groups are intent on convincing lawmakers as well as the general public with sentimental 'heartbreak' stories, that commercial surrogacy is in the interest of infertile couples who cannot otherwise obtain a child.

FINRRAGE has conducted research on the difficult issue of infertility. We do not wish to diminish the pain that comes with unwanted childlessness. However, we believe that there is no 'right' to a child and certainly not one that (ab)uses another woman as a mere 'incubator' for the wanted child. (We have called this *the exploitation of a desire* – for *desire* is what involuntary childlessness is; it is not a need.) Indeed, we posit that the abuses of so-called surrogate mothers as mere 'objects' to produce the 'product baby' amount to a violation of their human rights.

It might be interesting for the Surrogacy Review Committee to have a look at the Program for a Pro-Surrogacy Conference that will be held in Melbourne on 24 to 25 May 2014. It exemplifies the concerns we have about the infiltration of Australian common sense (and laws) by US-style commercial surrogacy proponents, supported by a very strong Australian lobby of pro-surrogacy supporters, such as conference convenor Sam Everingham, founder of Surrogacy Australia, and himself father (with his partner) of two children borne by two Indian so-called surrogate mothers.

The website of Surrogacy Australia (<http://www.surrogacyaustralia.org/>) advertises the event as ‘The largest event globally for intended parents, parents and surrogates’ and says: ‘Speakers include

- 16 parents who have used [surrogates in] Australia, US, India, Thailand & Eastern Europe
- 8 reproductive medicine experts from Australia, US & India
- 5 surrogates and their partners
- 6 lawyers & migration agents from India & Australia
- Surrogacy facilitators & agencies from the US, Thailand, India, Mexico and Eastern Europe
- Researchers, counsellors & young adults via surrogacy¹

It is crucial to note that surrogacy has become international business. US critics Jennifer Lahl, Director of the Center for Bioethics Culture, and Kathy Sloan, public advocate and board member of the National Organization for Women and the International Coalition for Reproductive Justice, put it succinctly when they write²

A woman signs away custody for money, and an industry (brokers, lawyers, clinics, fertility doctors) profits from trafficking in babies and women’s bodies. **They say that blood is thicker than water but in the case of surrogacy, money is thicker than blood** (our emphasis).

Swedish author of *Being and Being Bought*³, Kajsa Ekis Ekman, calls surrogacy reproductive prostitution and writes (2013, p. 145):

The product of surrogacy is absolutely tangible – it is a newborn baby. ... The woman bears and births a child and hands the product over. At the same moment she gives up the child, she receives payment. The first thing we wonder is: **Why should this not be considered human trafficking?** (our emphasis).

FINRRAGE objects to surrogacy because we believe this practice causes irreversible harm to:

¹ Please note this UPDATE: some observations on this meeting are now included in Klein, *Surrogacy. A Human Rights Violation*, 2017, p. 47, Note 39. Since 2014, these conferences have been held yearly in Australia in one capital city. In 2017, additional one-day workshops started to be offered in Perth, Brisbane, Canberra, Sydney and Melbourne. They are continuing in 2018.

² ‘Sloan, Lahl: Inconvenient truths about commercial surrogacy’ 1 April 2014, <http://www.twincities.com/columnists/ci_25470963/sloan-lahl-inconvenient-truths-about-commercial-surrogacy#>

³ Ekis Ekman, Kajsa (2013) *Being and Being Bought; Prostitution, Surrogacy and the Split Self* (<<http://www.spinifexpress.com.au/Bookstore/>>)

1. The so-called surrogate who is stripped of her human rights and declared a 'gestational' carrier only. She is perceived as a living baby factory and can be physically harmed by drugs to synchronise her menstrual cycle so that the 'commissioning couple's' embryo can be implanted. She might suffer complications during pregnancy, may be forced to undergo embryo reduction or an abortion if the developing baby/ies show(s) foetal abnormalities. She may also experience birth complications (and become infertile herself).

She is expected to develop no bonds with the developing baby as the transferred embryo contains none of her genes. This flies in the face of every pregnant woman's experience of carrying a baby and feeling its movements 24/7 for nine months. It also flies in the face of the science of *epigenetics* which shows that the (foetal) environment may significantly alter gene expression.

The sexism, racism, classism and xenophobia in commercial surrogacy arrangements is well documented, in particular in countries such as India (where often the husband acts as the pimp of his wife), and Thailand.

In the case of most overseas surrogacies, the resulting child(ren) will be unable to have contact with her/his birth mother, thus creating another generation of 'stolen' (=bought) children and grieving relinquishing mothers: have we learnt nothing from history, especially in Australia? **In the light of these appalling human rights violations it is crucial that no state in Australia should ever allow commercial surrogacy.**

Surrogacy is far from a successful procedure. Despite the fact that the women carrying the embryo are fertile, the 2011 figures from the Perinatal Statistics Unit⁴ for (non-commercial) surrogacies performed in Australia show that (p. 44):

There were 177 gestational surrogacy cycles in 2011, including 131 gestational carrier cycles and 46 cycles undertaken by intended parents. Among the 131 gestational carrier cycles, 34 (26.0%) resulted in a clinical pregnancy and 21 (**16.0%**) resulted in a delivery. Of all 23 babies born to gestational carriers (21 singletons and one set of twins), 22 were live born and one singleton's outcome was unknown (our emphasis).

A sixteen per cent 'success' rate means that 84% of these so-called surrogate mothers had to endure disappointment after failed embryo transfer or miscarriages at any time during the pregnancy which might have impacted on

⁴ Macaldowie A, Wang YA, Chambers GM & Sullivan EA 2013. Assisted reproductive technology in Australia and New Zealand 2011. Sydney: National Perinatal Epidemiology and Statistics Unit, the University of New South Wales. <<http://www.npesu.unsw.edu.au/sites/default/files/npesu/surveillances/Assisted%20reproductive%20technology%20in%20Australia%20and%20New%20Zealand%202011.pdf>>

their health as well as on their emotional wellbeing. (It is important to note that in general the 'success rate' for IVF in Australia continues to be at a low 17.5% live births; see p. vi in Macaldowie *et al.* 2011, not something that the general public is aware of.)

Recognition of so-called surrogate mothers in law: **In most jurisdictions, on the original birth certificate the name of the birth mother appears. We are pleased that the WA Surrogacy Act 2008 follows this practice and hope this will not change after the Review.** Unfortunately, since 2010, Victoria now inserts the name of the commissioning mother in the birth certificate, thus robbing the birth mother of any legal connection to her child – and the child of knowing who their birth mother is until s/he is 18 years of age and asks to see their original birth certificate. This will lead to the same problems and trauma we have long seen with adopted people (see *Adoption Deception* by Penny Mackieson, 2015 (<http://www.spinifexpress.com.au/Bookstore/book/id=283/>)).

2. The Egg 'Donor'. In the case of two men who are the 'commissioning couple' – an increasingly frequent practice in Australia and overseas – or the female partner of a heterosexual couple who is unable to produce viable egg cells to be fertilised, an egg 'donor' is needed. This woman has to submit to the full gamut of IVF procedures: being put into artificial menopause first, then stimulated with fertility hormones, than having the egg cells 'harvested'. This can result in the serious emergency of ovarian hyperstimulation syndrome which has cost women their health (and even lives).

The US documentary 'Eggsplotation' (www.eggsplotation.com) brilliantly shows the exploitation of 'donor' women which often results in damage to their health and emotional well being. As in the case of so-called surrogate mothers, it is poor women (in both developed and developing countries) who risk losing their health (or lives) in order to make money (often to survive).

There are moves afoot in Australia to pay women for their egg 'donation' (as is the case in the US) which should be strongly discouraged precisely for the dangers these procedures hold for women and because it further commercialises and commodifies women's bodies.

3. The Resulting Child. Children too are victims in both commercial and altruistic surrogacy arrangements. As the documentary 'Breeders' <http://breeders.cbc-network.org/> shows, even children who are able to stay in touch with their birth mother may be deeply hurt by being 'given' away at birth.

For others, who are never able to connect with their birth mother, this brings with it the full gamut of emotions from anger to depression and sorrow we have come to know from painful discussions on adoption. Furthermore, a new generation of 'donor' children are already searching for their birth parents (often fathers) and talk of their grief, anger and confusion. As the Action Group 'Tangled Webs' which challenges the practice of donor conception in Australia and internationally, states: "No-one has the right to a child. To claim the right to a child is to treat that child, another human being, as an end to satisfying one's

own desires, as an object and not as a person,” see
<http://tangledwebsorg.wordpress.com/>. Similar sad and upsetting stories
 can be read on
<http://www.anonymousus.org/stories/index.php?cid=2#.U1XUSVdWlc>.

4. The So-Called Surrogate Mother’s Family. Elizabeth Kane, the US’ first surrogate mother, had come to regret the surrogacy and called it reproductive prostitution. Her own son began screaming “Mama’s baby all gone ... Mama’s baby all gone” and at thirteen years’ of age attended a special school for children with learning disabilities. And when another ‘surrogate’ mother, Nancy Barass, came home from hospital without a baby, her daughter, aged eight, asked her: “Mummy if I ‘m bad, will you give me away too?”⁵

In sum, FINRRAGE (Australia) urges the Government of Western Australia to uphold its current prohibition of commercial surrogacy. In addition, we suggest that the WA Government follow Queensland, NSW and the ACT and also prohibit overseas surrogacy as it leads to human rights violations of poor women in poor countries whose bodies are turned into cheap factories for rich Westerners’ desires for a made-to-order child.

It has to be noted that the parliamentarian who brought in the 2011 law against overseas surrogacy in NSW was none other than the Hon Linda Burney MP. No doubt she was drawing on the heartbreak caused by forced adoption amongst the Indigenous population in Australia (Stolen Generations).

In the 21st century we cannot give in to the new culture of greed that sees a child as a necessary ‘accessoire’ to a relationship (whether hetero- or homosexual) – aided and abetted by a growing empire of surrogacy ‘consumer groups’ who abuse women’s human rights by turning them into baby-making machines, thereby causing tremendous suffering to so-called surrogate mothers, egg ‘donors’, and their children.

[End of 2014 Submission]

PART B: REVIEW OF Human Reproductive Technology ACT 1991

We will not comment on matters of establishing the Council and Licensing etc up to Part 4A Prohibited Practices.

Looking at Prohibited Practices, we are quite impressed with the way the 1991 Human Reproductive Technology Act was already anticipating developments in IVF/cloning technology over the next two decades.

⁵ Kane, Elizabeth (1988/1990) *Birth Mother: The Story of America’s First Legal Surrogate Mother*. Houghton Mifflin Harcourt, Boston/Sun Books, Macmillan, South Melbourne, with a Foreword by Robyn Rowland; and Klein, Renate (2017) *Surrogacy. A Human Rights Violation*, p. 42.

We strongly suggest the WA Government keep the *prohibition* on Human Cloning (pp. 94-97), as well as ALL 'Other prohibited Practices (pp. 97-102).

In particular, we strongly believe that creating 'three person babies' through mitochondrial replacement therapy (MRT) must remain prohibited in WA (and the rest of Australia).

The same is true for inserting foreign genetic material into an embryo as has been done so far in China and the USA (Oregon) with CRISPR-Cas9 technology. Both these practices mean that the resulting children (should there be any; not yet the case in the CRISPR experiments) will pass on their changed genomes to their own children and all generations of children thereafter. We consider such experiments deeply unethical – no scientist should have the right to change people's genetic make-up – however laudable the arguments for deleting 'bad' genes and inserting 'good' genes to prevent incurable diseases may be.

It is too risky, could lead to a host of new diseases, and it could be abused to eradicate human beings that do not fit the 'norm', whatever the norm is meant to be. We consider these technologies to be a form of eugenics and fervently hope they will remain prohibited in Australia.

As we believe the 1991 ACT has been updated to be in line with the Commonwealth of Australia's 'The Prohibition of Human Cloning and the Regulation of Human Embryo Research Amendment Bill 2006', we will therefore not comment on any of the sections to do with the Licensing System for using 'excess' ART embryos (pp. 111-116) as well as Monitoring Powers, Enforcement and Administration.

We understand the References in the updated version of the 1991 HRT Act to be in line with the Surrogacy 2008 Act and believe that we have commented on relevant issues in Part A of this Submission.

We note, however, that advertising for a so-called surrogate mother or egg 'donor' is not covered by the Act. Prohibition against both these practices should be inserted into the revised Act.

We also note that Surrogacy is restricted to heterosexual couples. We believe this is discriminatory to gay men (and lesbians although they very rarely need surrogacy). However, as we wish to see ALL forms of surrogacy prohibited in Western Australia (and all other parts of Australia), we cannot in good faith suggest the inclusion of homosexual couples in the Act. The same holds true for making surrogacy available for single individuals (male or female).

Lastly, we believe that much more information needs to be added to the revised HRT Act on the rights of donor conceived people to know about their origins (transferrable to the rights of babies conceived through surrogacies).

As this Review concerns an Act that is called *Human Reproductive Technology Act*, there are of course many other issues that could – and indeed should – be

incorporated.

The IVF industry is regulated in a most unsatisfactory way in Australia. The reporting of live births varies from clinic to clinic. The Perinatal Statistics Unit used to release Annual Reports with figures about live births, but they have stopped. This leaves the public with no official information on how to obtain objective information on clinics' performances. In 2017, Australian IVF clinics listed on the stock exchange reported loss of income or stagnation, so business is not booming. Perhaps it is for this reason, that they offer all sorts of unproven 'add-ons' to basic IVF procedures from which they make a lot of money.

In her book *Avalanche* (2016, Hamish Hamilton Melbourne) Julia Leigh details her experiences with unsuccessful IVF treatments. The 'add-ons' she was offered included 'embryo glue', 'assisted hatching', treatments for high Natural Killer Cells, testosterone treatment and 'DHEA Supplementation' (in Klein, 2017, p. 167). Two years, two Intrauterine Inseminations and six ICSI IVF treatments cost her thousands of dollars – with no baby at the end.

FINRRAGE strongly believes that such 'cowboy practices' need to be scrutinised and tightly regulated. With more older women accessing IVF clinics, we think this is urgent in order to prevent further exploitation. Since the federal government does not seem to be inclined to create a national authority such as HFEA in the UK (Human Fertilisation and Embryology Authority), the WA Government could found such an Authority to deal with state matters.

ICSI (Intra Cytoplasmic Sperm Injection) is a case in point. Initially, from 1991 onwards, ICSI was used for male infertility. Unfortunately, these days it is also used for idiopathic infertility and accounts for close to 50% of all IVF treatments. Needless to say that women bear the brunt of this trend as they have to undergo hormonal stimulation and egg retrieval (the dangers of which we explained earlier). Moreover, it now appears that the resulting sons have inherited their fathers' low sperm counts (only half of a 'normal' sperm count) and low sperm motility. Put differently, ICSI has led to the transferral of male infertility to the next generation of males whose parents underwent this treatment (see F Belva *et al.*, 'Semen quality of young adult ICSI offspring: the first results'. *Human Reproduction*, Vol 13, No 12, pp. 2811-2820, 2016).

For the IVF industry, this treatment failure – because surely it must be called out in this way – is another lucrative business opportunity: they have secured themselves the next generation of IVF users.

Similarly, IVF clinics have jumped on the surrogacy band wagon. Once women have gone through multiple failed IVF treatments (10-15 is no exception), they are then enticed to start with a 'surrogate' and egg 'donor'. Two more new clients for the depleted coffers of the IVF clinics; hence they join forces with groups such as Families through Surrogacy and sponsor their meetings and speak at them.

A further worldwide scandal is the lack of data on long-term effects of the many drugs women undergoing IVF are subjected to. In 1995, The National Health and Medical Research Council (NHMRC) committed themselves to doing research on

adverse effects as documented in their publication 'Long-term effects on women from assisted conception' (Commonwealth of Australia, Canberra).

Shamefully, they reneged on their promise and the study never eventuated. It is thus fair to say that IVF remains a big experiment despite the fact that it is 40 years since Louise Brown, the first child resulting from IVF treatment, was born. Many overseas studies link IVF treatments including egg donation to cancer of the breast and ovaries as well as to other serious adverse health effects. But the big studies are lacking and no one appears to be interested.

A lack of interest in the health of children and now adults born of IVF is similarly scandalous. In 2003, epidemiologist Carol Bower reported on research conducted in Western Australia. In her words "Heart defects are common, chromosomal abnormalities like Down Syndrome, spina bifida, gastro-intestinal abnormalities, muscular-skeletal, dislocated hips. Club feet, those sorts of things." (Carol Bower, 17 July 2003. 'IVF defects. Australia': Catalyst, ABC-TV).

Much more research is needed on the health of children conceived through IVF including information on possible infertility for both (now adults) women and men.

There are a host of other IVF procedures that demand to be scrutinised. Not least of them pre-implantation genetic diagnosis (PIGD) in which a cell of an early IVF embryo is removed and tested for chromosomal 'defects'. PIGD (also called PID) is expensive but it is becoming increasingly popular and will be even more so when genetic testing of women and men intending to embark on becoming parents becomes more commonplace. While *FINRRAGE* is seriously concerned with the rapid development of more and more tests to find out details of our genetic make-up, for the IVF industry, more people seeking PID after a 'bad' or even simply inconclusive test result is to be welcomed as it means more business.

To conclude, we suggest that the HRT Act 1991 could be greatly improved by incorporating IVF practices, some of which, but by no means all, we have just briefly mentioned.