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SURROGACY & FINANCIAL COMPENSATION

Sarah Jefford OAM
Surrogacy lawyer
Naarm, Melbourne, Australia

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Sarah Jefford OAM

- Mum of two children, Archie and Raf
- Egg donor
- Traditional surrogate, birthed a baby for two dads in 2018
- Family Creation Lawyer
- Producer, the **Australian Surrogacy Podcast**
- Author, *More Than Just a Baby: A Guide To Surrogacy for Intended Parents and Surrogates*
- Awarded the Medal of the Order of Australia in 2023

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Churchill Fellowship

- Awarded by the Winston Churchill Memorial Trust, *to learn globally and inspire locally.*
- The Project: To research best practice surrogacy frameworks, to inform law reform in Australia, improve accessibility and reduce the need for Australians to travel overseas.
- Travelling to Ireland, England, USA and Canada.

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Surrogacy in Australia

- Altruistic surrogacy is permitted, commercial surrogacy is prohibited.
- For every child born via Australian surrogacy, more than 2 are born overseas for Australian intended parents.
- 80% of arrangements are between friends and family, and 20% are found on social media.
- Lack of awareness, prohibitions on advertising and no compensation = low domestic surrogacy.

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International Context

- United Nations Special Rapporteur Report on the sale and sexual exploitation of children (2018) Recommendation 1(c).
- Verona Principles for the protection of the rights of the child born through surrogacy (2021) Principles 14 and 15.
- Payments to surrogate should be for *gestational services* and separate from payment for *transfer of parentage*.

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Surrogate Motivations

- Surrogates are motivated by empathy and altruism.
- Surrogacy in the United States: analysis of sociodemographic profiles and motivations of surrogates (Martinez-Lopez & Gomez, 2024).
- Defending Gestational Surrogacy: Addressing Misconceptions and Criticisms (Calder, 2023).

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Surrogacy: big business

- Australia's fertility industry generates revenue over AUD\$765 million a year.
- Globally, the industry is estimated to be worth USD\$62 billion and growing.
- Fertility specialists in Australia earn an average of AUD\$368,000 per annum.
- Altruistic surrogacy costs between AUD\$40,000 and \$80,000

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Pregnancy as labour

- Risks of pregnancy and birth, including physical injury, psychological harm and death.
- Maternal death rates for every 100,000 births:
 - **Australia: 8**
 - **Ukraine: 17**
 - **Mexico: 59**
 - **Uganda: 336**
- Impact on employment, income and career progression.

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Compensated Surrogacy

Exploitation, defined in the Oxford Dictionary as:

- The act of treating someone unfairly, in order to benefit from their work.

OR

- The action of making use of and benefitting from resources.

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Australian woman fears Greek surrogacy scandal jeopardises her dream of motherhood

Cambodia jails 13 pregnant Filipino surrogates

India's baby farm

Would-be parents fleeced, surrogates abandoned by Mexican surrogacy operation Planet Hospital

Ukraine's 'baby factories': The human cost of surrogacy
Ukrainian, Nigerian and Thailand banned surrogacy, Chinese seeks up demand. But comes on both sides report exploitation.

A Surrogacy Agency That Delivered Heartache

Australians hit by Thai surrogacy ban are 'pawns in a disastrous game'

Surrogacy boom in Mexico brings tales of missing money and stolen eggs

Surrogacy ring accused of exploiting vulnerable women in Argentina
Prosecutors say criminal entrepreneur charged foreign couples \$20,000 and denied payments for nine arranges

Gestational mothers and new parents tell of dark side of industry that operates in legal grey area

Investigation launched into human egg trafficking ring targeting Thai women

Australian parents warn reality of Ukrainian surrogacy doesn't always match the dream

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Empowering Surrogates

- Regulate the industry, including escrow and financial management.
- Educate and empower surrogates to give informed consent
- Enshrine the surrogate's right to autonomy.
- Ensure independent legal advice.
- Provide psychological support.
- Compensation for gestational services and expenses

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Pregnancy is work

- Payments that are capped, indexed, regulated and for 'gestational services' not tied to compliance with contractual terms or transfer of parentage.
- Regular payments for the period of pregnancy and post-natal recovery period.
 - **Example:** \$X,000 per month of pregnancy, plus 3 months' post-birth
 - Additional to prescribed expenses.

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Global Responsibilities

- **Declaration of Human Rights, Article 23:** Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- **Convention on the Rights of the Child, Articles 7 & 8:** Each child has a right to have their birth registered and to acquire nationality and identity.
- **Convention on the Elimination of All Forms of Discrimination against Women, Article 11:** Everyone has an inalienable right to work and free choice of profession and employment.
- **International Covenant on Economic, Social and Cultural Rights, Articles 6 & 7:** Everyone has a right to work, the opportunity to gain a living as they freely choose, fair wages, safe and healthy work conditions.

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Where to from here?

- Include surrogates in the conversation. Do not presume to speak for them.
- Surrogates can be altruistically motivated and still paid for the work they do.
- Reproductive labour should be paid.
- Commercial surrogacy does not have to compromise the rights of the women and children involved.
- Our responsibility to women and children extends beyond our own borders.

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Find me and follow along

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Fertility Law & Ethics Conference, 9-10 October in Melbourne for Australia and New Zealand

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