



## **SARAH JEFFORD OAM**

Family & Surrogacy Lawyer  
Wurundjeri Country  
PO Box 366  
BATMAN 3058

Phone: 0400 481 703

[www.sarahjefford.com](http://www.sarahjefford.com)  
[sarah@sarahjefford.com](mailto:sarah@sarahjefford.com)

Surrogacy & Donor Legal Services Pty Ltd  
ABN: 11 651 169 809

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### **International Surrogacy Forum**

**Cape Town, 24-25 March 2025**

#### **Sarah Jefford: Surrogacy & Financial Compensation**

My name is Sarah Jefford. I was an IVF mum and I have two children. I have also donated my eggs, and 7 years ago, I delivered a baby as a surrogate for two dads in Melbourne.

I am a lawyer and I practice in surrogacy and donor law across Australia. I also produced the Australian Surrogacy Podcast, sharing stories from intended parents and surrogates, and have written a book about surrogacy.

I have an ongoing relationship with the family I assisted as a surrogate, and their child calls me Aunty Sarah. Ours was a traditional surrogacy arrangement, so I can take credit for all her good qualities.

#### **My surrogacy experience**

My surrogacy pregnancy was relatively smooth and easy. I had terrible back pain in the first trimester, could no longer tolerate coffee, put on 15 kilos, and had a baby jumping on my bladder at all hours of the day. I underwent three external cephalic versions for a child that refused to stay head-down, a traumatic and ultimately failed induction of labour, a caesarean-section and, thankfully, a healthy full-term baby.

The reward and fulfilment I felt for delivering a baby for her dads continues to this day, but there was no financial compensation for the physical and emotional symptoms or consequences that my family and I endured.

#### **Churchill Fellowship**

Last year I was awarded a Churchill Fellowship. After his death, the Winston Churchill Memorial Trust was established in Australia, to honour his legacy. The Trust awards Fellowships to individuals to travel overseas and research something that they are passionate about, to benefit Australia and our communities.

There are only 130 surrogacy births across Australia each year, and well over 300 babies born overseas for Australian intended parents. We know that many of those children are born in places where surrogacy is poorly regulated and there are risks for the children, the surrogate and the intended parents.

My Churchill project aims to research best practice surrogacy, to inform law reform in Australia. I hope that my research might assist in making surrogacy more accessible within our own country, to reduce the need for Australians to travel overseas.

My research will consider whether compensating surrogates is a way to increase the accessibility of surrogacy in Australia, and if so, how to ensure compensation does not compromise the surrogate's autonomy and the best interests of the children born.

After this conference, I will be travelling to Ireland, England, the USA and Canada. If I haven't already connected with you, I would love to meet you along the way.

### **Surrogacy in Australia**

Altruistic surrogacy is legal in Australia, with only prescribed expenses allowed to be covered by the intended parents.

Commercial surrogacy is illegal across the country, and in several states it is illegal for Australians to engage in commercial surrogacy abroad. Despite this, as I mentioned, there are more than double the number of Australian babies born via surrogacy overseas than there are in Australia. The laws banning international commercial surrogacy are ineffective.

I am often asked why Australians travel overseas for surrogacy, and the short answer is that it can be very difficult to find a surrogate in Australia. 80% of Australian surrogacy arrangements are between friends and family, and the remaining 20% are found on social media. There are prohibitions on advertising for a surrogate, and a general lack of awareness that surrogacy is legal in Australia.

### **International Context**

The United Nations Special Rapporteur Report on the sale and sexual exploitation of children was published in 2018.

The Verona Principles for the protection of the rights of the child born through surrogacy was published in 2021.

Both documents recommend that in commercial surrogacy, payments to surrogates should be for gestational services and specifically not for the relinquishment of the child or transfer of parentage.

### **Surrogate Motivations**

We know that surrogates are often motivated by empathy and altruism. I know that I was motivated to be a surrogate because I enjoyed pregnancy and wanted to help someone experience parenthood. I was not motivated by money nor did I want her to think she had been bought and sold.

A 2024 study found that American surrogates are motivated by empathy and altruism, even in commercial surrogacy arrangements.

A 2023 study by Vanessa Brown Calder also found that commercially paid surrogates are motivated by a desire to help people.

I am aware that many agencies in the United States in particular, recruit surrogates who are not primarily motivated or focused on financial compensation, and that the language used in contracts refers to gestational services, rather than payment in exchange for the relinquishment of the child.

### **Surrogacy: Big Business**

Many of us work in the field of surrogacy and fertility. In Australia alone, the fertility industry is worth over \$700 million a year. Globally, the fertility industry is worth over \$62 billion US dollars a year and growing exponentially.

Most Australian intended parents spend between \$40,000 and \$80,000 on an Australian altruistic surrogacy arrangement.

### **Pregnancy as labour**

Pregnancy and birth come with significant risks, including illness and injury.

Pregnancy can include the usual troubles like nausea and insomnia, as well as serious illness including hyperemesis gravidarum, pre-eclampsia, gestational diabetes, high blood pressure, pregnancy loss, placental abruption and preterm labour.

In Australia, we record about 8 maternal deaths during childbirth for every 100,000 births each year. In Ukraine, it is 17 deaths and in Mexico, that figure is 59 deaths per 100,000 births. In Uganda, 336 women die during or as a result of childbirth for every 100,000 births – that's over 6,000 women every year.

At least one in three birthing people will experience birth trauma.

Pregnancy and time off work to give birth result in wage penalties and loss of employment opportunities and promotion.

### **Brant and Todd: the Beaconsfield Mining Disaster.**

In 1996, three Australian miners were trapped in the Beaconsfield gold mine in Tasmania, when an earthquake triggered a rockfall. Larry Knight died, while two other miners Brant Webb and Todd Russell were trapped for 14 days before finally being rescued. This photograph was taken as they reached ground level after their rescue.

Both Brant and Todd suffered physical injuries during their ordeal, including to their knees and backs, and from post-traumatic stress disorder. Todd has had ongoing psychological treatment for PTSD for 17 years.

In Australia, we record 2 and a half deaths per 100,000 workers from mining accidents each year and 6 serious injuries per million hours worked by miners.

Miners are, as you would expect, paid for their work. The average salary of an Australian miner is between \$110,000 and \$140,000 per year. Miners receive hazard pay for performing duties which involve physical hardship.

I think you know where I am heading with this and why I am talking about the job of mining in a discussion about surrogacy compensation.

A woman is four times more likely to die in childbirth in Australia than down a mine. And yet she would only be compensated for the doing the work of the latter.

Many miners, I am sure, enjoy their jobs. I cannot imagine any of them consider doing it for free. If their employers asked them to work for free, we would consider it exploitative.

I expect many of you love your jobs, as I do, and consider yourselves to be motivated by empathy, altruism, or a desire to help people. But no one would suggest that we work for free.

We can find any number of jobs that are physically arduous and risky. We, as a society, consider that people can perform jobs that might risk their health and safety, and we expect they should be compensated accordingly. This includes emergency service workers, pilots, deep sea divers and sex workers.

I wonder why then, when we know that surrogates can be motivated by empathy and altruism and a desire to help people, we consider that this should mean they are not paid for the time, effort and risks they take when becoming surrogates. Is it not exploitative to expect someone who loves being pregnant to only do it for love?

I cannot think of any job in the world that we expect men to do for free.

It is only reproductive labour that we think should be performed for free. And by far the greatest amount of reproductive labour is performed by women.

### **Compensated surrogacy**

Most arguments against commercial surrogacy centre around the exploitation of women and the children born.

The definition of Exploitation, according to the Oxford Dictionary, is the act of treating someone unfairly in order to benefit from their work. Or, it is the action of making use of and benefitting from resources.

The difference is who is doing the exploiting, and who is benefitting.

What if we considered that compensated surrogacy was in fact the action of the surrogate making use and benefitting from the resources available to her, including her own body?

### **News headlines**

There have been many news headlines about surrogacy scandals around the world in the last decade. The concerns of exploitation are generally directed at the industry. And that the victims of the exploitation are the surrogates, and the intended parents, and the children born.

Rather than prohibiting commercial surrogacy to protect women, we should regulate the industry to protect everyone and empower women to exploit their reproductive labour as they wish.

Any argument that women must be exploited by entering commercial surrogacy arrangements presumes that women are not capable of making educated and informed reproductive decisions. We do not make the same assumptions about men going down the mines.

It also assumes that altruistic surrogacy is not exploitative.

And yet, as I mentioned earlier, the fertility industry makes huge profits each year. The surrogacy industry exploits the unpaid labour of altruistic surrogates, for profit. The \$40 to \$80,000 that intended parents spend on altruistic surrogacy in Australia is at the expense of the surrogate's free reproductive labour.

The one person doing most of the labour, and taking most of the risks, is considered to be exploited, but only if she is paid for her work. Why are our bodies subsidising surrogacy while the industry profits from us?

I have seen surrogates referred to as unicorns, goddesses, angels... and cattle. We are not objects of desire, we are autonomous adults who should reap the benefits of our reproductive labour. If you believe only altruistic surrogacy is ethical, I would ask you why you think you should be paid, but that the women in the industry who are doing the bulk of the work, should not be paid.

Commercial surrogacy is not inherently exploitative. In the many cases where we see exploitation, it is not the fact that surrogates were paid that was the problem. It was the conduct of the industry and third-party brokers that was exploitative.

The surrogate being paid should be the least of our concerns, if we are not willing to regulate the industry around them.

### **Empowering surrogates**

We can protect surrogates from exploitation and empower them to exploit their reproductive abilities by ensuring they have access to legal advice, counselling, and education. To ensure a surrogate maintains her autonomy, compensation and payments should be for gestational services and expenses.

We can ensure that the rights of the child are paramount and that their parentage, citizenship and access to adequate healthcare are guaranteed and protected.

We can better regulate the industry and require proper financial management and accounting for compensation payments.

### **Pregnancy is work**

If we consider that surrogacy pregnancy is work, how do we compensate surrogates fairly without risking their autonomy or creating a free market where it becomes financially out of reach for the majority of intended parents?

We need to regulate payments for gestational services such that they are not connected with adherence to contracts or the relinquishment of the child and transfer of parentage.

To ensure the market is controlled, any compensation should be determined and capped by the state and indexed annually.

Capped and regulated compensated surrogacy removes the competitive market for surrogates and makes it more accessible for intended parents.

### **Global responsibilities**

Critics speak of the risks of human trafficking and exploitation as the reasons why we should not allow commercial surrogacy in Australia. But do we not have a global responsibility to the women in other countries, who may be exploited by our citizens? Do we not owe the children born overseas, all the rights that our own citizens enjoy?

I mentioned before maternal death rates in several countries. Australia has a low maternal death rate compared to several countries which are promoted as surrogacy destinations for Australian intended parents. It is not enough to denounce commercial surrogacy in our own country, while taking no responsibility for the industry that sells surrogacy to our citizens, in countries where women and children are at risk.

We have a global responsibility to make surrogacy more accessible in our own countries because that is the easiest way to guarantee the rights of everyone involved.

It is right and appropriate that women are paid for our labour. Pregnancy is work, and surrogacy pregnancy should be paid. Well-regulated surrogacy with capped compensation payments, in exchange for the work of pregnancy and birth and where third-parties are regulated by the state, protects the autonomy and rights of the surrogate and the interests of the children born.

### **Where to from here?**

Thank you for listening today. I have a few parting thoughts for you:

I see the program for this forum includes many reputable and interesting speakers – lawyers, researchers and politicians, and many people I respect and whose work I have found informative. I hazard a guess, that I might be the only person speaking at this forum who has been a surrogate. And that very few people in this room have been surrogates.

We are often sidelined from decisions about our own reproductive labour and objectified by people who claim to speak for us and in our interests. The profit-making industry does not speak for us.

Surrogates should be in every room where decisions are made about our reproductive labour including at the highest level of policy and government.

It is established fact that surrogates can be motivated by altruism even when they are paid for their labour. The two are not mutually exclusive. Being paid does not take away from the empathy and care that motivates us to become surrogates.

We have a responsibility to all women and children across the globe. Prohibiting commercial surrogacy in our own countries while failing to regulate the industry, only serves to compel our citizens to exploit the reproductive labour of women in other countries.

I do know that Australia, at least, cannot continue to criticise our own citizens for engaging in international surrogacy in poorly-regulated countries unless we are willing to address the issues of accessibility within Australia. I hope that the current Australia-wide review of our surrogacy laws might address this issue.

### **Find me and follow along**

I wanted to take this opportunity to thank everyone here including the speakers and conference organisers. I have benefitted from learning from many of you and really appreciate the contributions you've made to the field and to my work.

As I mentioned, my Churchill Fellowship continues from here. I am keen to meet with people and continue the discussion and hear your ideas for how we as a global community can make surrogacy better regulated and more accessible for the betterment of everyone involved. My Fellowship report will be published on my website.

You are welcome to contact me via my website or email.