Submission to the Commission's Report to the

Committee on the Rights of the Child.

Australian Adoptee Rights Action Group

[redacted]

The *Australian Adoptee Rights Action Group* wishes to submit its views on how Australia is progressing in terms of implementing the *Convention on the Rights of the Child,* especially in reference to **children's rights in the immediate post-natal period.**

We refer to **paragraphs 53 and 54 of the *2012 Concluding Observations,* under the heading of "Adoption," and wish to comment on the absence of "Surrogacy" which involves a similar transfer of parental responsibility and rights between adults.**

Articles 3, 7, 8, 9, 10, 20, 21, 24 can and should work together to protect babies from unnecessary maternal-neonatal separation that *can* occur for the purposes of adoption and *always* occurs for the purposes of surrogacy.

In this respect our concerns with Australian adoption and surrogacy laws impact clusters 3, 4, 5, 6 and 7.

Human rights kick in at birth – a neonate is entitled to human rights protection as much as any adult, and, even more than adults, due to it's inability to speak and defend those rights.

It is of urgent importance that the Commission report on children's rights in regards to Australia's surrogacy laws which allow a women to gestate and birth a child for a third party and "hand over" the baby to that third-party.

As adoptees we testify to the life-long and intergenerational trauma of being separated from our mothers so young – denied the security and comfort of her body and her breast and the natural continuance of the embodied pre-natal relationship, the very first relationship every human being has with a human adult and the foundational relationships of all other future relationships.

Survivors from the Stolen Generations, likewise, testify to the devastating impact of mother-loss so early in life. But there is no need to rely on testimony alone when considering the trauma of maternal-neonatal separation. The importance of gestational mother-infant interactions in mammals is proved by over half a century of converging clinical and animal research. **For the information of the Commission, we have included, as an appendix, a short survey of the scientific studies done on the impacts of maternal-neonatal separation.**

<u>A baby that has been gestated from an implanted "donated" embryo, for example under a surrogacy contract, will suffer no differently to a naturally conceived child when removed from the only mother it knows.*</u>**

In view of both the comprehensive testimony and science, the ONLY conclusion that a reasonable person can come to when considering maternal-neonatal separation is that it should *only be done when necessary*, for example, in the case of medical emergency or child protection. To traumatise a baby by removing it from its gestational mother, *for any other reason,* is a violation of the rights of the child and is just plain cruel. Even if people refuse to accept, against all available evidence, that the loss of the gestational mother creates a lasting trauma for neonates, is it really not generally agreed upon that unnecessarily stressing one is unacceptable?

Following is an analysis of the number of child rights listed in the UNCRC that are violated by Australian surrogacy laws, which currently permit what is misleadingly termed "altruistic" surrogacy (no surrogacy is ever altruistic towards neonates) and the procurement of children through overseas surrogacy (in some States only). Please note in those States in Australia where procurement of children from overseas surrogacy is illegal there have been no prosecutions under those laws despite the many documented cases.

Articles 3, 7, 8, 9, 10, 20, 21, 24 are all violated by the unnecessary maternal-neonate separation intrinsic to all forms of surrogacy:

Article 3 makes the best interests of children a PRIMARY consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. **This right applies to ALL children, which includes newborn babies;**

Articles 7, 8, 9 and 10 expressly protect against separation. Because the gestational mother is included in the definition of "parent," children have an explicit right to be known and cared for by their gestational mother as far as is possible (Art. 7); a right to preserve his or her identity, including nationality, name and family relations (Art. 8); a right to NOT be separated from their gestational mother (Art. 9); a right to maintain personal relations and direct contact with the gestational mother on a regular basis (Art. 9); a right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both their parents including their gestational mothers (Art. 10);

Articles 20 and 21 make the best interests of children a PARAMOUNT consideration for those children who are separated from their parents and families – this includes being separated from gestational mothers. **It applies, especially, to adoptees: but what about surro-people?** Like some adoptees, they are removed at birth and so should be offered the same priority of their interests. **The interests of surro-people should be PARAMOUNT**

considerations and the most important thing for any child – above and beyond their interests in being raised by their genetic parents – is their interest in being placed on the body of their gestational mother at birth and obtain comfort, connection and the continuity of their pre-natal relationship with her, ensuring they have the best start in life and allowing optimal well-being. To destroy this relationship by removal is to smash down on the emotional, psychological, and physiological "Self" of the baby, who does not yet perceive itself as "separate" to its mother, and destroy its very first relationship with an adult human being, or at least severely damage that relationship, formed, as it is, in utero;

Article 24 provides that States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and that they shall pursue full implementation of this right and, in particular, shall take appropriate measures, to diminish infant and child mortality and ensure appropriate pre-natal and post-natal health care for mothers. **Removing a baby from its mother, when unnecessary, deprives the baby of the highest attainable standard of heath,** increases its risk of negative health outcomes and mortality and likewise deprives the mother of the most appropriate post-natal health care which, in the vast majority of cases, includes the holding and nursing of her baby. The Mothers of Loss from both the Stolen Generations and Victims of Forced Adoption have both testified to the life-long trauma of having their babies removed from them. That trauma is also felt by mothers who, with all good intentions, allow their babies to be taken under surrogacy contracts.

Maternal-neonatal separation causes babies to suffer. It is inexcusable that this be imposed on them for any other reason than medical necessity or child protection. The Australian Adoptee Rights Action Group look forward to a time when the global movement against surrogacy has established a *Hague Convention on the Abolition of Surrogacy.* This issue MUST be addressed in our report to the UN on child rights in Australia because of its violation of numerous rights enshrined in the UNCRC.

Appendix

Research Proving Maternal Separation is Distressing for Neonates

Babies react in a unique way to the gestational mother while in utero as well as post-partum and the importance of gestational mother-infant interactions in mammals is proved by "[o]ver half a century of converging clinical and animal research."[i] During the last phase of gestation a baby can recognize her or his mother's voice and heartbeat[ii] and the smell of her placenta[iii] and both fetuses and newborns react preferentially to their mother's voice over that of other females.[iv] Postpartum, babies respond to maternal odours beginning shortly after birth[v] and search for eye contact with the gestational mother.[vi] A whole range of other interactions indicate skin-on-skin contact with her secures neonatal wellbeing.[vii] Skin-to-skin contact for 25 to 120 minutes after birth, early suckling, or both, positively influences mother-infant interaction one year later when compared with routines involving separation of mother and infant.[viii] Breastfeeding gives babies the best possible start in life[ix] and the World Health Organization provides a comprehensive list of studies proving its benefits,[x] recommending colostrum "as the perfect food for the newborn" with feeding to be "initiated within the first hour after birth," exclusive breastfeeding "up to six months of age, and continued breastfeeding along with appropriate complementary foods up to two years of age or beyond".[xi]

Both primate and human studies show that maternal separation isn't only stressful to babies[xii] but "may be a stressor the human neonate is not well evolved to cope with."[xiii] Human studies have shown that even short-term maternal-neonate separation is stressful to babies, associating it "with a dramatic increase in heart rate variability" as well as "a profoundly negative impact on quiet sleep duration" with an 86% decrease compared to when skin-to-skin with mother.[xiv] Preterm babies kept separate from their gestational mothers in humidity cribs have been shown to have bonding difficulties regardless of subsequent parental sensitivity.[xv] The research highlights a contradiction: "In animal research, separation from mother is a common way of creating stress in order to study its damaging effects on the developing newborn brain. At the same time, separation of human newborns is common practice, particularly when specialized medical care is required (e.g. incubator care)."[xvi] Dr. Barak Morgan, the author of a 2011 study, claims his research is a step "towards understanding exactly why babies do better when nursed in skin-to-skin contact with mother"[xvii] and Dr. John Krystal, editor of *Biological Psychiatry*, claims that Dr. Morgan's paper "highlights the profound impact of maternal separation on the infant. We knew that this was stressful, but the current study suggests that this is major physiologic stressor for the infant".[xviii]

Early childhood stress has been shown to have long-term neurodevelopmental effects.[xix] The National Child Traumatic Stress Network, established by the US

Congress, warns that many people wrongly assume that young age protects children from the impact of traumatic experiences.[xx] They claim a "growing body of research has established that… infants - may be affected by events that threaten their safety or the safety of their parents/caregivers, and their symptoms have been well documented" and they note that traumatic stress may be a response to "the sudden loss of a parent/caregiver."[xxi] The National Scientific Council on the Developing Child at Harvard University agrees that "[s]cience does not support the claim that infants and young children are too young to be affected by significant stresses,"[xxii] noting that "[h]uman studies with infants and children as well as animal studies have shown that adverse early infant experiences… can lead to short-term neurobehavioral and neurohormonal changes in offspring that may have long-term adverse effects on memory, learning, and behaviour throughout life."[xxiii] In this way, early separation trauma is biologically embedded, influencing learning, behavior and health for decades to come[xxiv] and perhaps beyond, as research in epigenetics has shown that stress in infancy can have intergenerational impacts on gene transcription.[xxv]

To suggest that in these many and various scientific studies performed over decades, that the provision of a caregiver as a substitute for the gestational mother, related by DNA to the neonate or not, would completely prevent the impacts of separation on the neonate, is both unsubstantiated and unreasonable. To this date there are no studies that prove that separation from the gestational mother doesn't affect the neonate adversely. And yet this must be the premise upon which any ethical acceptance of child removal for the purposes of surrogacy is based. A substitute mother, a donor, or a father, may perform damage control, the relationship formed perhaps minimizing some of the impacts of mother-loss, but it cannot *prevent* them as the impacts occur because of the loss of the gestational mother.

---

[i] Millie Rincón-Cortés and Regina Sullivan, "Early Life Trauma and Attachment: Immediate and Enduring Effects on Neurobehavioral and Stress Axis Development," *Frontiers in Endocrinology* 5 (2014): 33, https://doi.org/10.3389/fendo.2014.00033.

[ii] Anthony DeCasper and William Fifer, "Of Human Bonding: Newborns Prefer Their Mothers' Voices," *Science* 208 (1980): 1174-76; Maude Beauchemin et al., "Mother and Stranger: An Electrophysiological Study of Voice Processing in Newborns," *Cerebral Cortex* 21 (2011): 1705-11.

[iii] H. Varendi, R. Porter, and J. Winberg, "Attractiveness of amniotic fluid odor: evidence of prenatal olfactory learning?" *Acta Paediatrica* 85, no. 10 (1996): 1223-27, https://www.ncbi.nlm.nih.gov/pubmed/8922088.

[iv] Barbara Kisilevsky et al., "Effects of experience on fetal voice recognition," *Psychological Science* 14, no. 3 (2003): 220-24, https://doi.org/10.1111/1467-9280.02435; DeCasper and Fifer, "Of Human Bonding," 1174-76; Beauchemin et al., "Mother and Stranger," 1705-11; D. Querleu et al. "Reaction of the newborn infant less than 2 hours after birth to the maternal voice," *Journal de Gynécologie Obstétrique et Biologie de la Reproduction* 13, no. 2 (1984): 125-34; E. Ockleford et al., "Responses of neonates to parents' and others' voices," *Early Human Development* 18, no. 1 (1988): 27-36.

[v] Varendi, Porter, and Winberg, "Attractiveness of amniotic fluid odor," 1223-27.

[vi] Noboru Kobayashi, “Eye-to-eye Confirmation of the Mother-infant Love Bond - Part 1,” *Child Research Net*, last modified January 1, 2002, http://www.childresearch.net/aboutCS/mediscience/19.html.
[vii] Sandra Pipp and Robert Harmon, “Attachment As Regulation: A Commentary,” *Child Development* 58, no. 3 (1987): 648-52, http://links.jstor.org/sici?sici=0009-3920%28198706%2958%3A3%3C648%3AAARAC%3E2.0.CO%3B2-H; J.ay Rosenblatt, “Behavioral development during the mother-young interaction in placental mammals,” in *Handbook of Developmental Science, Behavior and Genetics*, ed. Kathryn Hood et al. (Hoboken: Wiley Blackwell, 2010), 212-13, https://doi.org/10.1002/9781444327632.ch8; J. Winberg, "Mother and newborn baby: mutual regulation of physiology and behavior-a selective review," *Developmental Psychobiology* 47 (2005): 217–22; Stephen Brake, Harry Shair, and Myron Hofer, “Exploiting the Nursing Niche: Infant's sucking and feeding behavior in the context of the mother-infant interaction,” in *Developmental Psychobiology and Behavioral Ecology Vol 9*, ed. E. Blass, (New York: Plenum Publishing Corp, 1988), 347-88.
[viii] K. Bystrov et al., “Early contact versus separation: effects on mother-infant interaction one year later,” *Birth* 36, no.2 (2009): 97-109, https://doi.org/10.1111/j.1523-536X.2009.00307.x.
[ix] “Breastfeeding in the First Hours After Birth – Breastfeeding Series,” Global Health Media Project, last modified July 31, 2015, https://www.youtube.com/watch?v=uMcgJR8ESRc&feature=youtu.be.
[x] Bernardo Horta and Cesar Victora, “Long-term effects of breastfeeding: a systematic review,” World Health Organization, last modified 2013, http://apps.who.int/iris/bitstream/10665/79198/1/9789241505307_eng.pdf?ua=1.
[xi] World Health Organization, “Breastfeeding,” last modified 2017, http://www.who.int/topics/breastfeeding/en/.
[xii] Xiaoli Fenga et al., “Maternal separation produces lasting changes in cortisol and behavior in rhesus monkeys,” in *Proceedings of the National Academy of Sciences of the United States of America*, ed. Charles Gross, 108, no. 34 (2011): 14312-17, https://doi.org/10.1073/pnas.1010943108; A. Dettling, J. Feldon, and C. Pryce, “Repeated parental deprivation in the infant common marmoset (*Callithrix jacchus*, primates) and analysis of its effects on early development,” *Biological Psychiatry* 52 (2002): 1037–46, https://doi.org/10.1016/S0006-3223(02)01460-9; Seymour Levine, “Developmental determinants of sensitivity and resistance to stress,” *Psychoneuroendocrinology* 30, no. 10 (2005): 939–46, https://doi.org/10.1016/j.psyneuen.2005.03.013; Luisa Diehl et al., “Long-lasting effects of maternal separation on an animal model of post-traumatic stress disorder: effects on memory and hippocampal oxidative stress,” *Neurochemical Research* 37, no. 4 (2012): 700-707, https://doi.org/10.1007/s11064-011-0660-6.
[xiii] Barak Morgan, Alan Horn, and Nils Bergman, “Should Neonates Sleep Alone?” *Biological Psychiatry* 70, no. 9 (2011): 817-25, https://doi.org/10.1016/j.biopsych.2011.06.018.
[xiv] Morgan, Horn, and Bergman, 817.
[xv] Dieta Wolke, Suna Eryigit-Madzwamuse, and Tina Gutbrod, “Very preterm/very low birthweight infants’ attachment: infant and maternal characteristics,” *Archives of Disease in Childhood - Fetal and Neonatal Edition* 99 (2014): F70-75, https://doi.org/10.1136/archdischild-2013-303788.

[xvi] Elsevier, "Maternal separation stresses the baby, research finds," *ScienceDaily*, last modified 2 November, 2011, www.sciencedaily.com/releases/2011/11/111102124955.htm.
[xvii] Elsevier.
[xviii] Elsevier.
[xix] Jack Shonkoff et al., "The lifelong effects of early childhood adversity and toxic stress," *Pediatrics* 129, no.1 (2012): e232-46, http://pediatrics.aappublications.org/content/early/2011/12/21/peds.2011-2663.
[xx] Zero to Six Collaborative Group, National Child Traumatic Stress Network, *Early Childhood Trauma*, (Los Angeles, CA & Durham: National Center for Child Traumatic Stress, 2010), 2, http://nctsn.org/nccts/nav.do?pid=typ_early1.
[xxi] Zero to Six, 2.
[xxii] National Scientific Council on the Developing Child, *Excessive Stress Disrupts the Architecture of the Developing Brain: Working Paper 3*, (Harvard University: Centre on the Developing Child, 2014), 5, http://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf.
[xxiii] National Scientific Council, 5; Megan Gunnar, "Integrating Neuroscience and Psychological Approaches in the Study of Early Experiences," *Annals of the New York Academy of Sciences* 1008 (2003): 238–47, https://doi.org/10.1196/annals.1301.024.
[xxiv] American Academy of Paediatrics, *Helping Foster and Adoptive Families Cope With Trauma*, American Academy of Pediatrics and Dave Thomas Foundation for Adoption, 2015, 1, https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Documents/Guide.pdf.
[xxv] Tamara Franklin et al., "Epigenetic Transmission of the Impact of Early Stress Across Generations," *Biological Psychiatry* 68, no.5 (2010): 408-15, https://doi.org/10.1016/j.biopsych.2010.05.036.