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Inside the surrogacy industry.

Monday 22nd September 2014

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It took just one phone call from a Thai journalist to expose the plight of 'Baby Gammy' and to send shockwaves through the Thai surrogacy industry. But it wasn't just people in Thailand who felt the impact. Some Australians found themselves with newborn babies that they couldn't take home.

This week, Four Corners reporter Debbie Whitmont is there as one of these families tries desperately to find a way out of the situation. As she tells the story of this couple and their twins, she also takes us inside an industry that has grown with little effective regulation, leaving it exposed to unscrupulous agents.

She talks to the intending parents, the agents who act as go-betweens in this booming business and importantly she tells the stories of the women who carry the children in return for payment. For the first time, we hear the full story of 'Baby Gammy', told from his mother's point of view.

This report highlights the emotional impact the surrogacy business has on young women. As one agent concedes:

"This is not like any other business in the world. I just couldn't even call it a business. Because it is a lot of emotion. It's not only about money, it starts from emotion."

It's easy enough to pass judgement on surrogacy businesses in Thailand. However, it's also clear the industry there has developed for two very simple reasons. One involves the law. In Australia it is illegal to pay someone to be a surrogate parent. In effect, Australia has exported the problem and the ethical and moral dilemmas that go with it. The second is money. Even if surrogacy was allowed here, it could be done more cheaply in Thailand.

For many would-be parents, this is a major blessing. For human rights experts, this is an intolerable situation:

"I think it's probably wise for us to go back to the reasons why we have uniformly prohibited surrogacy on a **commercial** basis throughout Australia. My feeling is that exploitation is an almost inevitable side-effect of **commercial** surrogacy."

The case of 'Baby Gammy' might serve as a cautionary tale of the complications of treating babies as commodities, but it has also forced authorities to confront a major problem. For human rights experts, and a judge familiar with this area of law, there has to be change from the top:

"If **commercial** surrogacy is allowed with proper regulation in Australia to protect the rights of all parties, then we should simply have a law which prevents children born of surrogacy arrangements elsewhere being brought back to Australia."

That might help minimise the risks to children and surrogates, but it would be a major challenge for government.

Made in Thailand, reported by Debbie Whitmont and presented by Kerry O'Brien, goes to air on Monday 22nd September at 8.30pm on ABC. It is replayed on Tuesday 23rd September at 11.00am and 11.35pm. It can also be seen on on Saturday at 8.00pm, or abc.net.au/4corners.

Transcript

Made in Thailand - 22 September 2014

KERRY O'BRIEN, PRESENTER: The uncomfortable truths of unregulated surrogacy: welcome to the program.

When the story of baby Gammy broke in August, it shed new light on the growing use of imported **commercial** surrogacy by many Australian couples desperate for a baby.

In Australia **commercial** surrogacy is banned, except in the Northern Territory where it is unregulated. In New South Wales, Queensland and the Australian Capital Territory it's illegal to engage in overseas surrogacy arrangements. But so far there has not been a single prosecution and the number of overseas surrogacy arrangements has increased dramatically.

India is the biggest source of surrogate babies, but when India cracked down on providing babies for gay parents in early 2013 the **commercial** surrogacy trade in Thailand skyrocketed.

Now, after the revelations around baby Gammy and as the new Thai government moves to ban **commercial** surrogacy, ethical and legal issues about the rights of the child, the surrogate mother and the would-be parents are in the spotlight.

Reporter Debbie Whitmont travelled to Thailand to explore this compelling and very human drama.

DEBBIE WHITMONT, REPORTER: After more than a decade, David Markovich finally has the family that he and his wife have so desperately wanted. The only problem is: he can't take them home.

Instead, David, a 52-year-old lawyer from Perth, has spent the last five weeks in a serviced **apartment** in Bangkok with eight-week-old Liam and his twin brother, Joe. David's brother-in-law Brendan has flown in from England to lend a hand. It hasn't been easy.

David Markovich (comforting crying baby): I probably feel a bit like he does at the moment. I'm just a little less vocal about it.

DEBBIE WHITMONT: After years of unsuccessful IVF, David and his wife Lorraine were told they were too old to adopt children. Their last resort was paid surrogacy in Thailand.

Liam and Joe were born in Bangkok at the end of June. Lorraine went back to work in Australia, expecting David and the babies would soon follow. But they haven't been able to leave.

DAVID MARKOVICH: We are just over the moon. We are just entirely in love and my wife is waiting as patiently as she can in Perth for their return as soon as possible.

DEBBIE WHITMONT: Over the past few years, hundreds of surrogate babies have flown out of Thailand on Australian passports. But since July, the Thai military government has been stopping them at the airport.

DAVID MARKOVICH (comforting baby): And I think our tummy's eased off, which is lovely.

DEBBIE WHITMONT: Now David says he can't stay in Bangkok much longer. He's run out of leave from his job and he's running out of money.

DAVID MARKOVICH: If I don't return to Australia, we may lose our house.

(David Markovich comforts crying baby)

DAVID MARKOVICH: Come on, my baby. Come on. Come on, my baby. Come on. Come on. Shh, shh, shh. Come on, my baby. Come on.

DEBBIE WHITMONT: It's a nightmare, especially with two eight-week-old babies?

DAVID MARKOVICH: Yeah. Yeah. Yeah, no- nothing short of that, I'd have to say. I am... Yeah, I've had less than a handful of hours' sleep in the last few days and I'm... Yeah. (Cries as he comforts baby)

DEBBIE WHITMONT: Out of desperation, David's hired a lawyer to make an emergency application.

The application is in court tomorrow. But it has to be heard in a court near the surrogate mother's home town in the far north of Thailand - and that means taking the babies on an hour-long plane trip and a four-hour drive. And before that, it's an hour's drive to Bangkok Airport.

DAVID MARKOVICH (comforting crying baby en route): Not happy, are we?

DEBBIE WHITMONT: David's realised he doesn't have a suit to wear in court.

DAVID MARKOVICH: Brendan bought me a pair of trousers. I've got shorts and thongs. (Clears throat and laughs) I wasn't, I wasn't planning on appearing before a court whilst over here.

DEBBIE WHITMONT: David's brother-in-law Brendan thought he was only coming to Thailand to help David take the babies back on the plane.

(To Brendan) How are you finding looking after new-born twins?

BRENDAN MADDEN, DAVID'S BROTHER-IN-LAW: Oh, hectic. (Laughs) They cause an awful lot of chaos for the size of them.

DEBBIE WHITMONT: Up until now, Brendan had never changed a nappy.

(To Brendan) Are you enjoying it in some ways?

BRENDAN MADDEN: Um... I can think of a lot better things to do.

DEBBIE WHITMONT: Very good bonding experience for brothers-in-law, is it?

BRENDAN MADDEN: Well, we've stuck together anyway. We... oh, I think we bond better drinking. (Laughs)

DEBBIE WHITMONT: As David and Brendan arrive at the airport, there's good news: the Thai lawyer thinks the court will give David the order he needs. They could all be heading home to Australia tomorrow.

Back in Australia, James and Danny Carrington are thrilled and relieved to be home. Their new twins, Elijah and Hannah, were among the last to leave Thailand before the shutdown.

JAMES CARRINGTON (to baby): That's a big smile!

DEBBIE WHITMONT: Elijah and Hannah were born in Bangkok in May.

JAMES CARRINGTON (to baby): There you go. Now you won't fall out.

JAMES CARRINGTON: I think we both cried. We weren't allowed to actually hold them for 24 hours. And when we went back to the nursery the next day, we were actually allowed to hold them and feed them and it was the most beautiful thing.

DANNY CARRINGTON (to baby): Time to get your nappy changed. Here we go.

DEBBIE WHITMONT: Before James and Danny left Bangkok, the Thai surrogacy trade was booming.

DANNY CARRINGTON (to baby): How's that?

JAMES CARRINGTON: There were people from Canada, from America. There were people from...

DANNY CARRINGTON: **China** and South Korea...

JAMES CARRINGTON: **China**, Israel, Taiwan...

DANNY CARRINGTON: ... and Israel.

JAMES CARRINGTON: ...and it's, it was quite amazing. You know, like, we're talking eight or nine Australian surrogate children a day going through the Embassy, but it's, it's big.

JAMES CARRINGTON (to baby): Hey. What's the matter? Hey?

DEBBIE WHITMONT: James already has an adult family.

JAMES CARRINGTON (to baby): Oh, you look very tired.

DEBBIE WHITMONT: But growing up gay, Danny always thought he would never be able to be a father.

DANNY CARRINGTON: Growing up gay, you sort of feel like, "I'm not going to have kids." And you live with that during your teenage years and your 20s. The way the time has changed, though, people's attitudes have also changed. To now be able to do it: it's, um, you know, a miracle.

DEBBIE WHITMONT: What James and Danny and David have done in Thailand would be illegal in Australia. But with more and more Australians going overseas for **commercial** surrogacy, the international surrogacy trade is raising some difficult legal and moral questions for Australia.

DAVID MARKOVICH: I think you need to put yourself in the position of being someone who's denied or is unable to have children for whatever reason. You know, if you stop and think and put yourself in that place, um, what view would you take?

ANNE GALLAGHER, INTERNATIONAL HUMAN RIGHTS LAWYER: For better or worse, international law and Australian law doesn't give us a right to be a parent. We need to start looking at the other parties involved in this - the child - and look at the best interests of the child and the surrogate. And perhaps we should be asking questions about justice and ethics and morality.

DEBBIE WHITMONT: Until recently, Thailand's surrogacy trade had managed to stay under the radar. But a few months ago, the growing number of Thai women working as surrogate mothers attracted the interest of a Bangkok TV station, Thai Rath.

A young journalist called a phone number on a surrogacy website to ask how Thai women became surrogate mothers. The woman who answered told her it was easy.

NIMNAUN SUPHANNAYOT, REPORTER, THAI RATH TV (translation): She said there is nothing to it. All you need to do is to go have a physical check-up. If your uterus is strong enough, you can get pregnant. But if it's in regards to egg donation, you need to be fairly good looking and your skin should be white.

DEBBIE WHITMONT: Surprisingly, the woman - whose name was Pattaramon Janbua - then said she was a surrogate mother herself and that she had a Down syndrome baby who'd been abandoned by his Australian parents.

NIMNAUN SUPHANNAYOT (translation): So when I heard this, I realised it was a big issue. So I asked, "Is it possible for me to come and interview you? I would like to come and see you today."

DEBBIE WHITMONT: Pattaramon's nickname is Goy.

NIMNAUN SUPHANNAYOT (translation): It was only when I got to interview Goy that I understood her situation. Her family is very, very poor.

DEBBIE WHITMONT: Within days, Goy and baby Gammy brought the world's media to Thailand...

DAVID FARNELL, ADOPTIVE PARENT (60 Minutes, Ch. 9, Aug. 10): "I was convicted and I went to jail."

DEBBIE WHITMONT: ... and, before long, to Gammy's Australian parents, the Farnells.

DAVID FARNELL (60 Minutes, Ch. 9, Aug. 10): We need to be calm.

DEBBIE WHITMONT: It soon came out that not only had Gammy been abandoned but that his father, David Farnell, was a convicted sex offender.

Almost overnight, the Gammy case changed everything for Thai surrogacy.

ANNE GALLAGHER: I think if there is a, a bright side to the Gammy case, it is that it's shed a light on this practice that many people were actually unaware of. Australia is a, is a major source country for intending parents in, in surrogacy. So in that sense that's... Gammy, baby Gammy has perhaps done us, done us all a favour to at least force a conversation around these issues that were just not out in the open.

DEBBIE WHITMONT: But with all the focus on Gammy, there's been much less attention on the plight of his mother, Goy.

Gammy and Goy live in an industrial town about 90 kilometres south of Bangkok, where Goy and her grandmother run a food stall that makes about \$20 a day. Last year Goy found a website that said, as a surrogate, she could make \$12,000.

PATTARAMON "GOY" JANBUA, GAMMY'S SURROGATE MOTHER (translation): I wanted to pay off the debt owed by my grandmother. Somebody took advantage of her and she has to take the responsibility for it. I felt that doing it would make my family happier because we wouldn't have to worry every day about where we would get the money to pay off the debt.

DEBBIE WHITMONT: Goy was hired by a Thai agent, who in turn worked for a surrogacy **company** based in Los Angeles.

SUPERIOR A.R.T. PROMOTIONAL VIDEO (voiceover): The Superior ART infertility treatment and semen diagnostic centre is...

DEBBIE WHITMONT: The Thai agent sent Goy to a clinic in Bangkok called Superior ART.

SUPERIOR A.R.T. PROMOTIONAL VIDEO (voiceover): ... and the world-renowned Genea...

DEBBIE WHITMONT: Though **commercial** surrogacy is illegal in Australia, Superior ART is part-owned by one of Australia's biggest IVF companies, Genea.

Goy says the doctor didn't tell her he was implanting three embryos.

PATTARAMON "GOY" JANBUA (translation): Nobody told me anything. They put three embryos into me but they didn't say a thing. They didn't tell me it would be twins or tell me anything. I didn't know about the procedure. I didn't know anything. When they injected the embryo into me, I thought there was only going to be one child.

DEBBIE WHITMONT: After two weeks, Goy found out she was pregnant with twins and that an early blood test suggested there could be a problem. The agency asked the Australian clients whether they wanted Goy to have a further test, an amniocentesis, to find out for certain.

JOY, FORMER AGENT, THAI SURROGACY: We asked them, "If you want to do further test or not. But if you do it and if you receive this result - one is healthy and another one is not - what would you do?" So it's already... The situation is already, you know, stressful from that moment.

DEBBIE WHITMONT: They decided Goy should have the test. Four months into the pregnancy, it showed that one of the twins had Down syndrome. But no one told Goy.

PATTARAMON "GOY" JANBUA (translation): So after four months, the doctor, the agency and both the Australian parents knew that one of the babies had Down syndrome. But no one contacted me. No one told me anything about it.

DEBBIE WHITMONT: The doctor and the **company** discussed the problem with the Australian parents.

JOY: It's like when the result came out, then the doctor say, like, "OK, so what would be your option?" Like, if you want to keep only one baby: he doesn't think it's possible. He didn't think it's possible, but then what would you do? And then, if we let the surrogate carry until she give birth, then there could be a problem because the baby with Down syndrome always come out, like, with health issue.

DEBBIE WHITMONT: It wasn't until Goy was seven months' pregnant that she was told one of the babies had Down syndrome. And then, at seven months, she says she was asked to abort both the babies.

PATTARAMON "GOY" JANBUA (translation): Joy said, "The clients want you to have an abortion. They want to abort both of them." I was angry and I was crying and I said I wouldn't do it. I'd rather die than do that.

DEBBIE WHITMONT: Goy says that when she refused, she was told that if she didn't abort the Down syndrome baby, he'd be put in an institution.

PATTARAMON "GOY" JANBUA (translation): So after that they said, "Just abort one baby, the one that has Down syndrome." They said they were old and couldn't afford to look after a child with Down syndrome. If they had to keep the baby, they would put it in an institution.

DEBBIE WHITMONT: Upset, Goy says she told Joy she needed time to talk to her family. She did. And then she made a suggestion to Joy and the **company**.

PATTARAMON "GOY" JANBUA (translation): So I made an offer to Joy. I said I wanted an extra \$5,000. This was in exchange for the life of the child; so that I wouldn't have to have an abortion. I didn't really know whether \$5,000 was a lot or a little for raising a child with Down syndrome. For the couple, it wasn't a huge amount of money. But for me, it was a lot.

DEBBIE WHITMONT: The agent and the **company** were relieved. But Goy only got half the extra money. The Farnells ran out of cash and said they'd take Gammy instead of paying the rest.

JOY: They had run out of cash. They talked to their family back home a lot about the whole issue. And one day that they also told me that... they asked me to tell her that they... they wanted to take the boy back home and also then they will not pay the rest of the money.

DAVID FARNELL (60 Minutes, Ch. 9, Aug. 10): We never abandoned him...

DEBBIE WHITMONT: The Farnells have denied abandoning Gammy and asking Goy to have an abortion.

DAVID FARNELL (60 Minutes, Ch. 9, Aug. 10): ... see how things go.

DEBBIE WHITMONT: In the end, Gammy has stayed with Goy and a foundation pays his medical expenses from public donations.

But Goy can't hide her feelings about Gammy's sister Piper, who's now in Australia.

PATTARAMON "GOY" JANBUA (crying) (translation): I have to come to terms with the fact that she was someone else's baby. She's not my baby.

I miss my baby terribly. I always open her picture to see her face. I tell my partner all the time I would like to see her. I wonder how she's doing, I wonder how she's living. I pray that she is living well and is happy. And I pray that her parents will love her as much as my family loves Gammy.

DEBBIE WHITMONT: Even Goy's agent, Joy, says she was traumatised and has quit the **company**.

JOY: This journey is not easy. It's not like any other business in the world. I just couldn't even call it a business because it is a lot of emotion. It's not only about money. It's not like you are, all day you are building a TV that they don't want: it's OK, you sell it to another. And then... yeah, because it's a human being.

DEBBIE WHITMONT: After five hours of travel, David, Brendan and the babies have made it to northern Thailand and the courthouse. The babies' surrogate mother, Phatnapha, has had to come too. As their legal mother, she has to consent to them leaving the country.

DAVID MARKOVICH: Do you remember Phatnapha? Yes? You remember? Yes, she's a very special lady.

DEBBIE WHITMONT: Since yesterday, when it looked like David would get his emergency application to leave Thailand, things have taken a turn for the worse. The lawyers tell David the court wants to adjourn his case for a month.

DAVID MARKOVICH (to lawyer): I'm not prepared for the judge to adjourn this hearing. I want the hearing today. I do not agree to this hearing being adjourned. I want it today. No. absolutely not.

I think the court doesn't want to make a decision.

LAWYER: They are scared. It's going to be like a study case, right? If we get through today, it's going to be like another, another. So they worry.

DAVID MARKOVICH (to lawyer): It will set a precedent?

LAWYER: Yes. It's very big news and so they're worried...

DEBBIE WHITMONT: They know they're the first one, the first court to make this decision?

LAWYER: Mm... Yeah, they're worried about that. It's going to be like them. If something wrong, it's going to be them. So...

DEBBIE WHITMONT: As feared, the judges adjourn David's case for a month and refer it to a higher court. But they suggest there might be another way for the babies to leave Thailand.

DAVID MARKOVICH: Just come to Singapore with the babies and then you come back.

DEBBIE WHITMONT: Outside court, David and the lawyers are already working on a new plan. The idea now is for the babies' birth mother, Phatnapha, to fly out of Thailand with them. The problem is that Joe and Liam will need Thai passports - and they don't have them.

DAVID MARKOVICH: When will we find out how quickly the passport can be done; whether it can be done tomorrow?

LAWYER: The lady say: one day, take one day.

DAVID MARKOVICH: So same day?

LAWYER: Yes.

DAVID MARKOVICH: So we should be able to fly out Friday night?

LAWYER: Should.

DAVID MARKOVICH: Should.

LAWYER: But don't book it yet. Because otherwise you have to change on Monday. Friday or Monday, anyway. So, is it good?

DAVID MARKOVICH: It's fabulous. If it works, it's fabulous.

LAWYER (laughs): Good luck.

DAVID MARKOVICH: Thank you.

DAVID MARKOVICH (on phone): OK, this application has been adjourned off.

DEBBIE WHITMONT: David calls Lorraine to change the flight bookings to Australia.

DAVID MARKOVICH (on phone): The passport office in Bangkok should be able to issue a passport on the same day, I'm told.

DEBBIE WHITMONT: Phatnapha seems happy to have been able to spend time with the babies.

PHATNAPHA, SURROGATE MOTHER (translation): At first, just after I gave birth, I felt empty. It felt as if something was physically missing from my body. When I see they are going to go and live with their real father and mother, I'm happy.

DEBBIE WHITMONT: Phatnapha says that Liam and Joe will have a better life in Australia than she could give them in Thailand.

PHATNAPHA (translation): They will have a good future and a good education. If they live with me, they'll have nothing, only a basic standard of living, just like my daughter.

DEBBIE WHITMONT: It's probably true. But it raises uncomfortable questions about why **commercial** surrogacy is OK in Thailand but against the law in Australia.

ANNE GALLAGHER: I think it's probably wise for us to go back to the reasons why we have prohibited, uniformly prohibited surrogacy on a **commercial** basis throughout Australia and why it's prohibited in so many countries all over the world.

My feeling is that exploitation, ah, is an almost inevitable side effect of **commercial** surrogacy. You're always going to have that inequality of power.

DEBBIE WHITMONT: Phatnapha lives in a small town with her mother and her four-year-old daughter. She's using the money from the surrogacy to rent a shop where she plans to sell massages. But she's worried because she's still waiting for the final payment: about \$5,500.

PHATNAPHA (translation): I know that the money needs to come from overseas. The agreement I have with the agent is that once the babies get through customs, the money will be transferred straight away.

DEBBIE WHITMONT: The agency's told Phatnapha that if she does what David's suggesting and leaves Thailand with him and the babies, it won't be able to help her get the rest of the money.

PHATNAPHA (translation): It's like when I called them just now, they said that if I agreed to take the babies overseas, I may or may not get the money because I won't have a middle-man. Because the agency didn't know about any of this.

DEBBIE WHITMONT: The agent doesn't like Phatnapha talking directly to David.

ANNE GALLAGHER: Brokers and middle-men often have a vested interest to keep the intending parents well away from the surrogate. If intending parents actually develop contact with the surrogate, they will become aware, perhaps, of the terms of her contract. They may become aware, for example, that the huge amounts of money they're paying: only a very small amount is trickling down to the surrogate.

DEBBIE WHITMONT: It turns out there is an issue with money. Though most parents pay about \$60,000 for a successful surrogacy, only about one quarter of that goes to the surrogate mother.

DAVID MARKOVICH (to Phatnapha): So we kindly ask that you continue to bear with us and help us with the registration...

DEBBIE WHITMONT: While Phatnapha was pregnant, David and his wife made monthly payments into what they thought was her bank account. But it wasn't hers: the account was controlled by her agent.

PHATNAPHA (translation): I was told to open an account in my name. From the start, they had total access to that account. So what David would do is: he would transfer the money into that account which is in my name and then they would transfer the money into my personal account.

DAVID MARKOVICH (to Phatnapha): I'm concerned that you're getting all of the money that we've been paying and contributing to you.

DEBBIE WHITMONT: When we found out that Phatnapha got much less money than David had paid her, we decided to bring them together with an interpreter.

INTERPRETER: She can't tell the number exactly, otherwise...

DEBBIE WHITMONT: Phatnapha says that during the pregnancy she got 10,000 baht - about \$330 - a month.

DAVID MARKOVICH: So 10,000 baht a month, no more?

DEBBIE WHITMONT: David says he was told the minimum payment was \$350 a month, but he and his wife wanted to look after Phatnapha so they paid more.

DAVID MARKOVICH: My wife was making the payments, but it's my understanding that we were paying \$450 or \$500 a month.

DEBBIE WHITMONT: Phatnapha didn't know about the extra money and the agent didn't tell her. She missed out on nearly \$2,000.

DAVID MARKOVICH: I had no idea that you were not getting all this money. And I'm devastated to find out that you didn't get it.

So they've been assuming that we've been paying an additional \$100 or \$150 a month to the agency because we like the agency?

DEBBIE WHITMONT: What made it worse was that Phatnapha, like many surrogate mothers, says she had to deal with both an agent and a sub-agent.

PHATNAPHA (translation): They tried to stop me from making direct contact with my client. For example, when David tried to give me his email address, the agent kept it.

DEBBIE WHITMONT: If David hadn't had so much trouble leaving the country, it's unlikely that he and Phatnapha would ever have talked about money.

James and Danny Carrington have made getting to know both their egg donor and their babies' surrogate mother a priority.

JAMES CARRINGTON: It's really important that, in creating a family, that we want these people to be part of our children's lives as they grow up. They need to know their story. They need to know what culture they came out of, what culture they're living with. Um, and, ah, like, we have a lovely relationship now that we're home.

JAMES CARRINGTON (smart phone video): So we love our clothes and outfits...

DEBBIE WHITMONT: We met Elijah and Hannah's surrogate mother, Bo, in Thailand.

JAMES CARRINGTON (smart phone video): Big smile for Mummy Bo! Come on, get that big smile out!

DEBBIE WHITMONT: Her phone is full of pictures of the babies.

(To Bo) You got one today?

BO, SURROGATE MOTHER: Today.

JAMES CARRINGTON (smart phone video): Say "Hello, Mummy Bo."

BO (translation): I think about them. I miss them every day. But the family has sent over photographs and video as well, which I guess does help, but I still miss them.

DEBBIE WHITMONT: Bo has sent the babies new outfits.

JAMES CARRINGTON (smart phone video): We love our clothes. Yes, Hannah. That's it. Say, "We love our clothes. We look wonderful in them." Oh, that's beautiful, isn't it?

And look at Eli...

DEBBIE WHITMONT: Danny sees Elijah and Hannah as a gift made possible by modern technology. And if technology can bring happiness, he says, why shouldn't we use it?

DANNY CARRINGTON: Once upon a time: yes, you had to live with whatever was dealt to you naturally, physically. These days, with technology, the world is changing. So do you say the same to a deaf person: you're born deaf, don't wear a hearing aid?

JOHN PASCOE, CHIEF JUDGE, FEDERAL CIRCUIT COURT OF AUSTRALIA: You can't pretend that the technology doesn't exist. The real issue is: how can governments ensure that, to the greatest extent possible, it's used appropriately?

DEBBIE WHITMONT: Chief Judge John Pascoe believes that **commercial** surrogacy should be allowed and regulated in Australia and, if so, Australians should be banned from using it in unregulated countries like Thailand.

JOHN PASCOE: My view is that if **commercial** surrogacy is allowed with proper regulation in Australia to protect the rights of all parties, then we should simply have a law which prevents children born of surrogacy arrangements elsewhere being brought back to Australia.

DEBBIE WHITMONT: In Bangkok, David and the babies are Skype-ing Lorraine in Australia.

DAVID MARKOVICH: Is that Mummy? Is she laughing at you? I think she is.

DEBBIE WHITMONT: Overnight, Lorraine has emailed the agency about Phatnapha's missing money. Miraculously, the final payment of \$5,500 has suddenly appeared on a Sunday morning in Phatnapha's bank account.

DAVID MARKOVICH: Who knows what's going on? But I'm delighted.

DEBBIE WHITMONT: But the money missing from Phatnapha's monthly payments never turns up and Phatnapha doesn't dare chase it.

The surrogacy **company** used by David and his wife, New Life, is considered one of the most reputable. New Life began in Tbilisi, Georgia. Its founder, Dr Mariam Kukunashvili, brings egg donors from Georgia to Thailand.

Last year, Mariam was one of the first to raise concerns about another Thai horror story: a young Japanese man collecting multiple surrogate babies.

MARIAM KUKUNASHVILI, FOUNDER, NEW LIFE GLOBAL NETWORK: The reports it was clear that he was expecting six more - six babies totally. So of course I got very suspicious.

DEBBIE WHITMONT: Mariam contacted the doctor involved, Dr Pisit, a Bangkok doctor popular with many Australians.

MARIAM KUKUNASHVILI: I spoke with doctor and I told him that he was jeopardising his reputation and i-it was not normal to make for someone 15 babies every year. But, um, he told "OK" and then, it seems, he continued.

DEBBIE WHITMONT: And New Life continued to use Dr Pisit. It was Dr Pisit who treated Phatnapha.

PHATNAPHA: So they inserted four embryos into me and I became pregnant with twins. I found out because I overheard the doctor talking about it.

DEBBIE WHITMONT: Four Corners understands that in at least one case, Dr Pisit implanted four embryos and they all succeeded.

MARIAM KUKUNASHVILI: And her doctor was informed only two embryos must be transferred. He transferred - same doctor, he transferred four. Surrogate mother got pregnant on... four babies and then we have to send surrogate mother from Thailand to Georgia, remove, made the embryo reduction.

DEBBIE WHITMONT: Embryo reduction isn't legal in Thailand.

(To Dr Kukunashvili) Do you think that could have been handled better, that case? Did that worry you?

MARIAM KUKUNASHVILI: Ah, yes.

DEBBIE WHITMONT: Two weeks ago, Dr Pisit was questioned about breaching Thailand's medical guidelines. He's denied any wrongdoing.

ANNE GALLAGHER: We're talking about practices that really wouldn't be permitted in Australia; would be considered ethically and probably legally terribly troubling. So I think we need to look at something like that from that perspective. It's not good enough for our country. And why is it good enough somewhere else?

DEBBIE WHITMONT: Since the shutdown in Thailand, New Life has begun moving to one of the poorest countries on earth: Nepal.

Last month in Kathmandu, Dr Kukunashvili was already interviewing agents to begin recruiting Nepalese surrogate mothers.

MARIAM KUKUNASHVILI: In Nepal we are going to set up branch because of current issues in Thailand. We are going to find alternative for single and gay parents.

DEBBIE WHITMONT: Back in Bangkok, David and Brendan and Liam and Joe are still at the serviced apartment. They haven't got a court order. And they don't yet have Thai passports for Joe and Liam.

DAVID MARKOVICH (on phone): Oh, yes. Hello. How are you?

DEBBIE WHITMONT: But suddenly there's a call from the Australian Embassy.

DAVID MARKOVICH (on phone): Fantastic. Look, some- someone will be calling Phatnapha...

DEBBIE WHITMONT: They want to contact Phatnapha.

DAVID MARKOVICH (on phone): Yeah. She, she doesn't speak any English...

DAVID MARKOVICH: They are going to ask her to sign a document which provides her authority for the children to leave with me.

DAVID MARKOVICH (on phone): And if she can do what the consulate says...

DEBBIE WHITMONT: They want David to come to the Embassy.

DAVID MARKOVICH (on phone): The phone number I've got...

DEBBIE WHITMONT: It sounds like there've been some top-level negotiations going on?

DAVID MARKOVICH: Look, that- that is my impression: that there have been some high-level discussions. Um, it- it's all been kept entirely confidential.

DEBBIE WHITMONT: It's little wonder: on the one hand, the embassy can't simply leave Australian surrogate babies in Thailand; on the other hand, taking them home could breach both State laws and international obligations.

ANNE GALLAGHER: I think it's a very difficult position for Australia's consular officials, because their job is to implement the Citizenship Act. But international law also prohibits absolutely the sale of children and that is: transferring a child from one person to another for consideration - for money.

Now, it's very difficult to argue that commercial surrogacy is not sale of children. And Australia has an international legal obligation, in fact, to prevent the sale of children.

DAVID MARKOVICH (bottle-feeding children): Mr Guts will hook into anything. Yes, there we go. (Laughs)

JOHN PASCOE: I think we need a proper national inquiry that looks at all aspects of surrogacy. You have people wanting children for all of the best reasons. And then you have people wanting children for reasons that may not be so good.

And I think it's such a minefield that the politicians have been very reluctant to wade into it.

DEBBIE WHITMONT: In Bangkok, David and Brendan are back from the Embassy with Australian passports for Liam and Joe.

(To David and Brendan) Hi. What happened?

DAVID MARKOVICH: Well, um, there's good news and there's bad news - as, as always. Um, the good news is, um, that the Australian Government appears to have struck some sort of a deal, um, with the Thai authorities. Um, we've been given a new list of documents, um, which we must produce at the airport in order to be able to exit.

DEBBIE WHITMONT: The bad news is that Phatnapha will have to go back to northern Thailand for another document.

(To David Markovich) A different document?

DAVID MARKOVICH: A different document. So...

DEBBIE WHITMONT: OK. And so how do you feel?

DAVID MARKOVICH: Oh well, it's a... (laughs) It's a partial high, a partial low. It's like, I'm here. I'm, I'm, I'm resigned to the fact that I'm going to go and, er, have a Mojito.

DEBBIE WHITMONT: How are you, Brendan?

BRENDAN MADDEN: Oh, well, I'm looking forward to the Mojito. That's it.

DEBBIE WHITMONT: This could be the last time Phatnapha sees Joe and Liam.

It isn't until late the next day that David finally gets the last document.

BRENDAN MADDEN: There we go. Oh, that looks like it. (In Thai, to administrative staff) Thank you.

ADMINISTRATIVE STAFF MEMBER: Thank you. Bye.

DAVID MARKOVICH: OK, I think we're there. I think we're there.

DEBBIE WHITMONT: Congratulations.

DAVID MARKOVICH: I'm not out yet. (Laughs)

DEBBIE WHITMONT: The flight to Australia leaves in a few hours.

(To David Markovich) Well, David, you've cut it fine. How are you feeling?

DAVID MARKOVICH: Um, I'm exhausted. I'm just exhausted. I've been up since four this morning. I've just had a bit of a bite to eat now. I've got all the paperwork I understand will get me there.

DEBBIE WHITMONT: Are you feeling confident about getting through customs?

DAVID MARKOVICH: Cautiously, a- as I've often felt cautiously confident about, um, (laughs) most things throughout this long journey. I feel- I'm feeling cautiously optimistic.

DEBBIE WHITMONT: This could be "Goodbye Bangkok?"

DAVID MARKOVICH: This could be.

DEBBIE WHITMONT: You don't want to say that yet?

DAVID MARKOVICH: Le- let's just wait.

DEBBIE WHITMONT: What about you, Brendan, how are you feeling? Do you think this might be it?

BRENDAN MADDEN: Ah, it's fingers crossed. We could be in with a chance. That's as good as it gets, I think.

DEBBIE WHITMONT: It's supposed to take about an hour to get to the airport, but there's a downpour and a traffic jam and it takes nearly two. David will be the first to test the Thai government's new arrangements.

Two weeks later in Perth, Thailand seems a distant memory.

DAVID MARKOVICH: We got through the initial checkpoint and then we were pulled to one side for further questioning. And they said, "Surrogacy?" And I said, "Yes." And they allowed us through in the end so, you know, we, we were waved off and had... you know, did whatever we had to do and... but yeah.

LORRAINE MADDEN (to Joe): Joe! (Laughs)

DAVID MARKOVICH: Who's that?

LORRAINE MADDEN: Hello!

DEBBIE WHITMONT: David and Lorraine couldn't be happier with their new family. And Joe and Liam couldn't be more loved or wanted.

LORRAINE MADDEN: I think it's just a real shame that the focus has been on baby Gammy and this other case and not on the, all of the positives that are coming out of surrogacy.

DEBBIE WHITMONT: David and Lorraine have tried to do **commercial** surrogacy as fairly as possible. They say they want Joe and Liam to know how they were born and to know their birth mother.

But it's hard to know what **commercial** surrogacy will mean in the future for many other babies who, according to the law, don't have Australian parents and may never know who their real parents are.

JOHN PASCOE: The current situation, I think, leaves children at the risk of literally being marooned, their parents left in limbo and leaves very vulnerable women and children open to the risk of very serious exploitation.

I think Australia as a First World country, ah, and, um, and a leader, er, in human rights, um, has to, um, recognise that, um, your commitment to human rights doesn't end at the Customs barrier.

DEBBIE WHITMONT: There are good reasons for Australia to sort out its position on **commercial** surrogacy - but it won't be easy.

LORRAINE MADDEN: I don't feel that we have exploited anybody. We entered into a **commercial** relationship. We nominated Phatnapha. We didn't approach her.

You can't escape the reality that we come from a rich country and she comes from a poor background. There's no way around that. But I personally don't feel that she was exploited. I can see that the argument is there, but, um... She saw an opportunity to make a better life for herself and she took it and in doing so gave us an enormous gift that that money can't pay for, ever. (Fights tears) Sorry.

KERRY O'BRIEN: Such an emotional journey but such a fine ethical line to tread.

With regard to the claims in the story that baby Gammy's surrogate mother Goy was implanted with three embryos, we approached the clinic involved but they declined to cooperate. Through their Thai solicitors in a letter to the ABC dated yesterday, Superior ART has said such claims are false because **company** policy prohibits implanting more than two embryos.

We're posting two statements on our website that may be of interest. One is from the Attorney-General's Department about the way the Government deals with overseas surrogacy and the other is from Genea, a key Australian investor in Superior ART.

Next on Four Corners: a special two-part investigation. We go inside an industry that sells a legal drug, linked to the deaths of 5,000,000 people each year, to find out how the tobacco industry has continued to survive and prosper.

Until next week, good night.

Background Information

RESPONSES TO FOUR CORNERS

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REPORTS AND RESEARCH MATERIAL

| Third Annual Legalwise International Family Law Conference | 17-20 September | Shanghai **China**

| Family Law Council | Dec 2013 | August 2014

| ABC Fact Check | 18 August, 2014

| A United Nations backed study by the Sama-Resource **Group** for Women and Health | July 2012

| Medical Journal of Australia | 2014

| Medical Journal of Australia | 2014

| A Qualitative Study Exploring Motivations for Gestational Surrogacy in Gujarat, India | Affilia | 2014

| Institute of Health and Welfare | 2010

| Family Law Court of Australia Submission by Professor Mary Keyes and Richard Chisholm | July, 2013

RELEVANT LINKS

| United Nations Office of the High Commissioner for Human Rights | January 2002

| To provide a law on the protection of children born through assisted reproductive technologies | August, 2014

| Families Through Surrogacy | 2014

| Attorney-General's Department | We are responsible for making sure that Australia as a whole meets its obligations under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption

| This fact sheet outlines some of the key issues for Australians considering entering into a surrogacy arrangement with someone outside Australia | Australian Department of Immigration and Border Protection

| Australian Government Smartraveller website

| Supporting Australians using surrogacy overseas and within Australia

MEDIA

| Gammy, the baby with Down syndrome at the centre of a surrogacy dispute last month, was offered to another Australian couple as the surrogacy agency tried to work out what to do with the unwanted child, it has been claimed. | ABC News | 18 September, 2014

| Officials from Australia and Thailand remain locked in talks on a transition process aimed at allowing more than 150 Australian couples who have arrangements with Thai surrogates to take their babies home | Sydney Morning Herald | 14 September, 2014

| A 24-year-old Japanese multimillionaire has fathered a 16th baby via a surrogate in Thailand | ABC News | 10 September, 2014

| In 2010-11, there were just 16 recorded surrogacy births within Australia, while 394 babies were born in India to Australian citizens. Our system isn't working | The Guardian | 2 September, 2014

| Thailand's ruling military has pledged leniency in the cases of babies born to surrogate mothers, as it looks to toughen rules in the lucrative but largely unregulated industry following a series of scandals | ABC News | 28 August, 2014

| Overseas surrogacy arrangements are taking place in an unregulated environment that is exposing babies and the women who carry them to a higher risk of bad health outcomes, a study shows | Sydney Morning Herald | 28 August, 2014

| After the Baby Gammy controversy many have called for international surrogacy laws. But is this possible when countries have such vastly different notions of what constitutes a child and a parent? | The Drum | 21 August, 2014

| 60 Minutes | 8 August, 2014

| Court documents have revealed the Western Australian father at the centre of an international surrogacy controversy has been convicted of more than 20 child sex offences | ABC News | 7 August

| ABC exclusive: Mother of baby Gammy speaks about being abandoned by Australian family | ABC News | 3 August

| International **commercial** surrogacy is booming in places where regulatory frameworks are rickety and consumer protections are next to non-existent | Foreign Correspondent | July, 2014 |

| There are now an estimated 1500 surrogacy centres across India | Foreign Correspondent | April, 2014

NS gethic : Ethical Issues | nitv : Interviews | ntra : Transcripts | gcat : Political/General News | gcom : Society/Community | gsoc : Social Issues | ncat : Content Types | nfact : Factiva Filters | nfce : C&E Exclusion Filter | nfcpx : C&E Executive News Filter | niwe : IWE Filter

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IPD surrogate

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