Submission to the ALRC re Review of Surrogacy Laws

Surrogacy enables people who desperately want to have children, and have often suffered through years of fertility treatment, and the mental and emotional toll from the disappointment of their inability to conceive, the opportunity to have children of their own.

The irrationality of Australia's surrogacy laws requires proper consideration and rectification.

Allowing altruistic surrogacy but not commercial surrogacy is illogical.

The fertility industry is big business in Australia. Everyone has an opportunity to make money – the clinics, doctors, lawyers, counsellors, nurses, staff. There are brochures in the clinics telling people how to access their superannuation to pay for the treatments. Everyone can make money off the dreams of people who cannot conceive – except for the surrogate.

The intended parents would gladly pay someone to be their surrogate, to make their dream come true. If they don't have someone in Australia willing to be their surrogate, their only option is commercial surrogacy overseas. If the commercial surrogacy took place in Australia, medical care, compensation and enforceability could be strictly regulated, thereby protecting the rights of the surrogate and the child. Instead, with unprecedented numbers of Australians heading overseas to do surrogacy, Australia has no ability to regulate the practice. This results in poor consequences for the children born of surrogacy, not to mention the dangers for the surrogates overseas.

Due to the laws in Australia outlawing commercial surrogacy, the children born through surrogacy overseas often fall into a grey area of the law. If there is a question of parentage, is this child entitled to inheritance or superannuation in the event of their intended parents' death? Is it more difficult to obtain passports or government benefits when the parentage is in question? The laws have resulted in the penalisation of the children born of surrogacy.

I refer to the recent decision of ***Lloyd & Compton*** **[2025] FedCFamC1F 28** where intended parents applying for parental responsibility of their child, in an application supported by the surrogate, were then referred to the Director of Public Prosecutions to consider whether they should be prosecuted. I urge the Commission to consider how this could possibly be in the best interests of that child.

To simply outlaw commercial surrogacy due to the dangers of exploitation of women denies the reality that it is happening, in increasing numbers, and instead causes increased danger for the surrogates and penalises children.

If your concern with surrogacy lies in the dangers that child birth can pose to women, why allow altruistic surrogacy but not commercial surrogacy?

If you are concerned with empowering women, why take away their agency to make decisions about their own body?

Finally, why take away something mutually beneficial where people desperate to have children could have their dreams come true, and women who see commercial surrogacy as a good opportunity for themselves and their family, as well as the greatest gift you could ever give someone, are able to choose this option for themselves.

Shift the focus to the medical care, compensation and enforceability. It is more difficult than simply outlawing commercial surrogacy, however the complexities and the adverse consequences for women and children make it necessary.

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