[redacted] – Individual Submission for Surrogacy Review

Thank you for considering my submission.|

I would like to start with a small essay and then go on to answering your 27 questions individually.

I write as a mother of two who in my much younger years supported surrogacy, but since listening to feminists and becoming a mother myself I now understand that this is a 'luxury belief' with terrible consequences.

First, I note your 'in particular' points do not mention the mother, her rights and her needs at any point. This is a glaring omission that throws the validity of the entire process into question. We are talking about the use of women's bodies, why are the women who are being used not front and centre in your concerns?

Secondly, I must object to the use of “surrogate”, which is an improper term and further displays implicit bias and misogyny. A “surrogate” is a fake, a substitute or a stand-in. The woman who grows and births a baby is not its “surrogate” anything. She is its mother. Its real and only mother. These kind of fluffy euphemisms have been used throughout history to hide grotesque realities and so for the rest of this submission I will refer to the involved parties accurately, as the mother, the baby, and the baby-buyers (or baby-takers, if no money is exchanged). The baby-buyers/takers may or may not have any genetic link to the child at all, that is not a requirement and it makes no tangible difference. Donors of genetic material generally surrender parental rights at the time of donation.

Historically, 'surrogacy' used only the sperm from the male buyer. The mother's own ovum was fertilised naturally. This referred to as 'traditional surrogacy', however we can plainly see its is simply the buying-in-advance of a vulnerable woman's child. Today, a donor ovum is often used, however this is done primarily to muddy the waters and justify why the mother is not the 'real' mother. In this fantastical world, there may be no 'real' mother at all, as two men (or a single man) can buy an ovum. Many mothers use donated ovum to conceive, we do not question their legitimacy as the mother. The exchange of money or contract also does not void the biological reality. The woman who gestates and births the baby is the baby's real mother.

The impact on the baby cannot be overlooked, though the terms of reference have made a real attempt at it. A child is born knowing just one thing in the world – its mother. We now know as a matter of scientific fact that children are not blank slates. They are born knowing their mother's smell and the sound of her voice. They also know the voices of her close relations, and even her favourite songs. Newborn babies have even been proven to cry with the accent of their native tongue. Having two young children of my own, there is no substitute for the mother. Babies will cry relentlessly until she is given to them, no amount of cuddling or soothing by other family will serve as a substitute for that first, primal, visceral experience of love. We know that babies do experience trauma and it does have a long term impact on them. To bring a child into the world with the express intent of denying it access to its one-and-only mother is unthinkably cruel. Any person who would want to do that to a child should never be allowed to have custody of it. The mother-baby dyad is the foundation for everything that comes after, and a healthy society would protect this as the highest priority.

We must consider the impact on the mother, however convenient it might be to overlook it. We know that through micro-chimerism a baby's cells continue to live on inside a mothers body,

potentially forever. The most ideal pregnancy forever alters a woman's body. Anything that makes a pregnancy or birth less than ideal can result in long term pain, nerve damage and pelvic dysfunction, even death. Your term of reference made mention of 'appropriate reimbursement'. What reimbursement could possibly be appropriate for this? There is nothing that can compare. In my youth, long before I had my children I had the naive idea that one day I might volunteer to be an 'altruistic surrogate', but now it is horrifying to consider. To hear your child scream for you and you alone, to reach out to you desperately, the deep instinct to go to them and sooth them, is something that can't be explained. It can't be dulled, suppressed, compensated or legislated away. Has there been any long term study on the experiences, regrets, and mental health ramifications on mothers whose babies were bought or signed away from them? I doubt it. The woman involved is not a real person, merely a 'surrogate'. But this 'surrogate's' breasts will fill with milk tailored for one baby, millions of years of evolution will drive her to go find him, will wake her up in the night in fear for his safety. If there is any altruism in surrogacy, not a single drop of it is spent on the mother. There is no 'altruism' given to the mother or her baby, and the trauma each of them will inevitably experience. We must further consider that mothers in pregnancy and postpartum are in the most vulnerable state they will likely ever experience. Physically, emotionally, mentally, spiritually and indeed financially. It's one of the most common times for abuse against women to begin. Two of the leading causes of deaths in peri-natal women are suicide and homicide. It is profoundly unethical to encourage a woman in this state to permanently sign away custody of her child.

We must consider the medical ethics. Any baby conceived through 'modern surrogacy' (donor eggs) is by definition a high risk pregnancy. Is it ever ethically acceptable to induce this state in a woman who will not even have the right to see that child after it is born? How can genuine, full consent be ensured when they woman is growing a baby that is under contract or expectation to belong to someone else? It simply can't be. No moral society would carve out such exceptions in 'do no harm' and 'free and informed consent' just to allow for another party to take ownership of a mother's child.

I understand that in Australia 'paid surrogacy' (which is simply, literally, human trafficking of babies) is illegal and yet if we expect the buyers to pay the costs, they must still be comparatively wealthy. It's hard to feel much sympathy for their biological limitations when, in this cost of living and housing crisis, so many women I personally know can't afford to have the children that they very much want, with their own healthy bodies. Why are we expending so much effort on overcoming biological limits when economic ones are so much easier and less traumatic to resolve? Do poor women's desires for children matter less? Surely the only 'altruistic' thing to do would be for the childless people to donate to and financially support a mother who wants a child, born naturally of her own body, and needs financial security to do it? There is a class implication in the basic concept of 'surrogacy' and it can't be overlooked or skirted around. If you were to require that all 'surrogates' must be of equal or higher financial status than the 'intended parents', we all know that it would be the end of the practice.

The best possible case for 'surrogacy' is for a woman to bear a child that will be signed over to a sister or other relative, and then maintain a permanent 'auntie' type relationship with the child. But then the question is raised: if that relationship is good enough for the actual mother, why isn't it good enough for the buyer/taker? We are traumatising a baby for no net benefit. We should also be aware that in cases where a relationship already exists between the mother and the baby-taker, there is an almost limitless potential for coercion, intimidation, extortion and other abuses to be involved in the 'altruistic surrogacy'. Even in the best possible scenario, there is no benefit and plenty of harm.

Finally, what of the children who are purchased from overseas? Let's re-frame the question slightly, as the entire language of 'surrogacy' exists to cloud the reality. Lets talk about a woman who bore a child in poverty, and people who bought it from her to ship overseas. Once, of course, they'd

inspected it and ensured it was of a suitable quality. They then return to Australia with their cargo. What is the name for this type of person? They are a human trafficker. If a contract was signed before the baby was born or conceived, it makes no difference, they are buying human beings. Their supposed loving intentions make no difference, they are buying a human and taking it away from its family and home. That it is done to a newborn with lengthy pre-meditation makes the crime more severe, not less. No moral country would allow for this. People who do it should be punished with hefty prison time.

I can understand the lack of empathy towards the mother, the baby, and the mother-baby dyad, as we are all raised in patriarchy, but once you know better, you must do better. It's clear from the framing of this review that the feminist perspective has not been features hevily before now. So I ask you to read this submission, and others by pro-woman organisations, and give them their proper weighting.

To summarise:

1. We understand and accept that the mother-baby dyad is essential to the physical and psychological health of mother and baby, and forms the underpinning of a healthy society
2. Therefore, it is grotesquely unethical to permit or facilitate the creation of a baby with the express purpose of separating it from its mother.
3. Therefore, any contract or arrangement for postpartum transfer of parentage or guardianship, whether compensated or not, must be invalid.
4. The baby-buyers or baby-takers in such a situation are committing a serious crime.
5. Since no such contract or arrangement can ethically exist, no 'compensation' can or should be made or facilitated for a woman gestating her child, regardless of whether she used donated genetic material.
6. We must recommend increasing medicare coverage and social welfare so that women do not have any out of pocket expenses during pregnancy and postpartum, and are not vulnerable to reproductive coercion.
7. It is so biologically abnormal for a mother of a newborn to give up custody of them that some form of coercion must be assumed by default. Thus, for any postpartum adoption or surrender, there should be a 'cooling off' period of no less than 1 year. With instant return of custody up to 3 months old (the '4th trimester') at the mothers will, and a staged return of custody after that, in the child's best interests.
8. We must recommend a maternal UBI, current paid parental leave is insufficient for new mothers from poor backgrounds and leads to exploitation and harm of the most vulnerable.
9. A person who pays for a child overseas and brings it to another country is human trafficking and should face sever penalties. The child should be cared for in the same way any trafficked child would (by return to their own family if possible and foster care and adoption if not).

In answer to your 27 specific questions:

1. N/A

2. The principles which should be prioritised above all else in the context of 'surrogacy' are quite obviously the protection of the woman and the child. I doubt you will include this though, as if you include any consideration for the rights of women and infants then no form of 'surrogacy' can ethically exist.

3. The human rights issues primarily affected are the rights of mothers and babies to protection

from exploitation and unnecessary trauma. Again, once you consider these at all there can be no ethical 'surrogacy'. There is no 'right' to a child that is not your own, and therefore there is no 'balancing' of rights to be discussed, only the rights of the mother and baby can be considered, and therefore surrogacy should be entirely illegal.

4. All children should have a right to know the circumstances of their birth. I would suggest adjusting birth certificates to include as standard;
    - Mother (by birth)
    - Mother's Spouse
    - Genetic Father (if known and different to spouse)
    - Genetic Mother (if known and different to Mother)

   This would cover all relevant information, is inclusive (e.g. of lesbian relationships). The birth certificate should never be changed except in correcting clerical errors, and additional certification (e.g. adoption certificates) can be created as needed.

5. I would ask the educated professional women on your advisory committee why *they* haven't chosen to give away a child to a person who doesn't have one, and lose custody over it? Come on, don't you want to be *nice*? Aren't you an *altruistic* person? The real barriers are ethical and moral and should not be overcome. We should be attempting to 'overcome' any expectation that women owe others access to their reproductive organs, or that children are commodities to be gifted away. This question is morally obscene.
   I note you throw in LGBT, poor people etc as if they were a concern. This is a red herring. No class of people has a right to another woman's baby. No one has a human right to have a child through another person's body, ever. To attempt to balance the desires of one group for a child, against the real human rights and physical costs to a mother and baby, shows the extreme privilege you are affording that first group.

6. “Surrogacy” itself is unethical and should not be encouraged or allowed for under law. However, like most things, it may happen anyway. We should understand that there may be a case where a woman opts to become pregnant with another couple's genetic material, carry that child through pregnancy and birth, then offer it to them for adoption. There is nothing to be done about this hypothetical scenario except to ensure that
    1. No formal or informal arrangement to transfer custody is made at any time prior to the birth
    2. No financial or in-kind compensation of any kind exists in relation to any part of the pregnancy, birth, or postpartum
    3. The mother is afforded a generous 'cooling off' period and plenty of support services
    4. the child's right to knowledge of its parentage is protected.

   This is what I would consider the requirements for any genuinely altruistic surrogacy to exist.

7. As above

8. There should be no such agreement. There should only be voluntary adoption with a lengthy cooling off period.

9. Absolutely not. This is reprehensible, and would reduce a woman to a walking incubator. Surrogacy agreements of any kind must be outlawed in order to protect women's humanity and human rights under the law and in practice. To suggest this is truly dystopian.

10. I will rephrase this question as I've already made my feelings on 'surrogacy' clear by this

point. Any woman who surrenders her baby postpartum, for any reason, should be offered every kind of support we can possibly afford her, in order for her to regain custody of her child. This may include individual counselling, financial and housing support, drug and alcohol support, investigation into potential abuse or coercion, legal support, and continued support throughout the cooling off period.

11. Profiting from the selling or custody transfer of a baby should be a crime.

12. As above

13. Advertising any kind of surrogacy should be outlawed. What a reprehensible thing to suggest! You want billboards up telling impressionable 19 year old women that if they want to be good people (and maybe make some money on the side) they should rent out their wombs? Disgusting. Would men ever be impacted or harmed by such advertising? Would such advertising exist explicitly to extract from a woman's body for money? I'm a bit floored that people today could even write such a thing without stopping to ask “are we the baddies?”

14. 'surrogacy' shouldn't exist as a legal concept under Australian law, but better provisions for postpartum women is needed to protect against the kind of exploitation that might cause them to surrender a child.

15. There is no possibility to adequately 'reimburse' a mother for her child, or a woman for the toll pregnancy can take on a body. Any financial arrangement only facilitates exploitation. All forms of monetary exchange for pregnancy or birth should be illegal.

16. Absolutely no commercial or compensated 'surrogacy' (baby trafficking) should be allowed.

17. N/A, it should never be allowed. As discussed above it's a violation of the rights of women and babies. It allows an avenue for exploitation. Its honestly disgusting and disturbing that this is presented as a suggestion.

18. Mothers are the primary parent for every baby. Her legal parentage should never be removed (except in cases of extreme abuse) for at least the first year. There is no benefit to the mother or her baby by erasing their legal existence and biological relationship. Adoption can be certified by other means.

19. Any person who would buy a child, and cause it the trauma of being separated from its mother and everything it knows, in its most vulnerable state, should never be awarded legal guardianship over that child. Only the most callous and inhumane person could do that to a baby for the sake of their own ego.

20. 'international surrogacy' is just pretty words for 'human trafficking of babies'.

21. As above. No provision should be made to facilitate such a horrendous crime against women and babies.

22. The rights of women and infants should be protected at the federal level, as all other human rights are. There is no right to buy or acquire a baby that is not born to you. Therefore, all forms of surrogacy should be outlawed at the federal level.

23. Surrogacy should be outlawed at the federal level, doctors in IVF clinics should be warned

that they could be legally accomplices, and any monetary exchange for pregnancy or birth should be criminalised. I don't think a specialised agency is needed to monitor this, with severe enough penalties, and no legal enforcement of 'surrogacy' agreements, it is likely to be a very rare occurrence.

24. Yes, the law absolutely has a role in discouraging and preventing surrogacy. Women's bodies are not for rent, they are not public property, and it is not 'nice' or 'altruistic' to allow them to be utilised by others. Women's rights matter. It is important to remember throughout your discussions on this that the ramifications of surrogacy will *only* harm women and their babies. Especially poor and vulnerable women. Wealthy men will never be harmed by the existence of surrogacy. In fact, they are the primary beneficiaries. Sex and Class are unavoidable components of this practice. There is no form of 'surrogacy' which is not sexist and exploitative. And even in the best, most ideal, perfect fantasy version, there is still a baby being harmed and traumatised by being deprived of its mother. There is no form of this practice that can be accepted in a healthy society. There is no right to have a baby from someone else's body. There are unavoidable harms to women and babies. 'Surrogacy' has always been about placing the whims and wants of the privileged above the real rights and needs of mothers and babies. The federal level is the proper place to finally outlaw this practice for good.

25. Yes, there is a need to improve understanding of this practice. It all sounds so nice and kind, so fluffy and progressive to see a gay couple holding a newborn. You don't see the woman bleeding out of frame, or the baby screeching inconsolably for her the moment it wakes up. We, in general, need to bring a feminist lens to practices like this which are viscerally experienced by women. Feminism should be a normal competent of a healthy society where 50% of the population is female. Young girls (at the highschool level) should be introduced to feminist perspectives on 'surrogacy', egg 'donation', 'sex work' etc before they are in a position where they can be groomed by people who may seek to profit from their bodies with little regard to their suffering.

26. As I said above, I was disappointed but not surprised to see so little focus on the experience, right and needs of the woman or the baby in the scenario. All of the questions seem to be focused on the experience of people who would like to purchase a baby. That group may consider themselves disadvantaged or victims, they are in fact perpetrators. The people involved in 'surrogacy' are the mother, her baby, and the people who want to deprive them of each other. To have such a disproportionate focus on the last group is so transparently misogynistic I almost want to laugh, but I can't because it is real women's bodies and real babies on the line here.

27. You've taken no care to consider the further feminist impact of 'surrogacy'. I haven't bothered to explain it in detail because given the overall framing of the review, I'm sure it would be lost on you. Whether I participate in it or not, making it legal to pay me to use my womb and steal my child is an affront to my dignity as a human being and a degradation of my equal rights as a citizen. We should not accept this practice, in any form, ever. Women are people. Women are mothers. Babies are not things to be bought and traded. Women are not “surrogates”, they are the real deal. Language and law which reduces women to the position of 'stand-in' and sidelines their needs in a practice that involves *only their own body* is harmful to the social status of all women has no place in a modern country.

In reply to the terms of reference:

-how to reduce barriers to domestic altruistic surrogacy arrangements in Australia, including by ensuring surrogates are adequately reimbursed for legal, medical and other expenses incurred as a consequence of the surrogacy;

there is no reason to want to do this, nor any ethical way to achieve it. This 'reimbursement' sounds like a backdoor payment. Women should not be encouraged or enticed in any way to engage in a process which such high risks to her health and has, at best, no reward.

•how surrogacy arrangements made outside of Australia should be addressed by Australian law;

It should be considered no different from walking up to an impoverished woman in a market and buying her toddler from her. If anything, it is far worse. We know from studies on orphans that the first three years of life is essential for forming later healthy attachments, so its could be argued it's less damaging to purchase and traffic a 4 year old than it is a newborn.

•what is the appropriate recognition of legal parentage in Australia for children born of surrogacy overseas, and how may citizenship, visa and passport requirements for children born of surrogacy overseas be aligned;

there should be no legal allowance made for the crime of trafficking a baby. It should not be made easier. There should be no legal mechanism. If such a baby arrives in Australia, it should be, where possible, returned to its actual family, and where not it should be fostered or adopted in Australia.

•the information that should be available to children born from surrogacy arrangements, including what information should be included on a child's birth certificate in order to meet Australia's human rights obligations under the Convention on the Rights of the Child.

There is never a good reason to falsify a birth certificate. A birth certificate should be a record of birth and record all relevant information for the child. As IVF becomes more common the parties listed on the birth certificate should be:

- Mother (by birth)
- Mother's Spouse
- Genetic Father (if known and different to spouse)
- Genetic Mother (if known and different to Mother)

This would cover all arrangements for the genetic and physical origin of the baby, while also allowing for the sensible common practice of 'presumed paternity' to continue. The baby buyers or takers have no place on a certificate of birth. If adoption occurs later, an adoption certificate should be provided. Except in cases of error there should be no change or alteration made to a child's birth certificate and a child should have the right to this information as soon as they are old enough to understand it.