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Australian Law Reform Commission (ALRC) Review of Surrogacy Laws, Policies and Practices
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To the Australian Law Reform Commission,

Re: *Issues Paper: Review of Surrogacy Laws* Issues Paper 52, June 2025

ARMS(Vic) is a not for profit organisation founded in 1982 out of a common need to support women who have lost a child or children to adoption. ARMS is a unique support organisation because it is exclusively for mothers. It is governed by a committee of volunteers who have each personally experienced separation from a child through adoption. Committee members are well-trained incidental counsellors based on a self-help model that has, for forty one (41) years, provided high quality, insightful, personal support, information and advice to other mothers. ARMS offers support through a 24/7 telephone service, website and email, has run a monthly peer support group meeting, unbroken for forty three (43) years in Melbourne, and in regional areas either monthly or quarterly for the past ten (10) years as well as a number of yearly commemorative events.

ARMS committee members advocate on behalf of mothers and undertake awareness-raising to promote understanding and compassion in the broader community. ARMS supports mothers to reclaim their dignity and rights, obtain information about their children and manage contact and reunion where it is possible. Committee members also advocate on behalf of members to politicians for legislative reform.

It has been more than 25 years since ARMS first called the community to recognise that surrogacy would produce the new generation of grieving women. Since then we have seen an explosion of prospective commissioning couples desperate to secure a child, especially as the pool of babies available to be adopted has dramatically reduced. Surrogacy is even more attractive than adoption because it offers the possibility of either one or both of the commissioning couple to be genetically connected to the child. It also enables the commissioning couple to negate any meaningful role that the carrying mother plays by dismissing it as the incubation of "their" child. While traditional surrogacy is not a recent phenomenon, fertility clinic assisted surrogacy is, and this brings serious policy ramifications.

Since its inception, ARMS has been extremely concerned with the parallels between adoption and surrogacy. Both are made to appear normal and acceptable within society where one part of the community covets that which another part of the community has ie. a child. Surrogacy reduces children to being created *specifically* as a desired end product.

ARMS women in the late 1980s had the privilege of meeting several of the first women to undertake to carry a child on behalf of a commissioning couple, without payment. Elizabeth Kane became the pin up woman of the pro-surrogacy movement for several years, until she started living the consequences of her act of altruism – deep depression, her previous children suffering profound emotional disturbances and her marriage on the brink of disintegration. Elizabeth, Mary-Beth Whitehead and [redacted] are women ARMS members met who told of their experiences of being a so-called 'surrogate'. In truth, they were mothers – but language is used to diminish status when society is doing something unconscionable.

All three women spoke eloquently of the impact on their families of their decision to relinquish the child they carried to the commissioning couple. It had far reaching and ongoing negative consequences for their children and their marriages. Women who become birth mothers for a commissioning couple are in a nightmare predicament because of the contradictory views of society. Just as it has been for the mother who has apparently relinquished in adoption, on one hand the woman is applauded for giving her child to a 'deserving' couple, who can provide a two parent environment for the child, but on the other she is treated with suspicion because she has 'given away' her child. This irony and nightmare for women is best exemplified by a court case in the late 1980s where a woman who was carrying a child in a surrogacy arrangement lost custody of her previous three children in a divorce proceedings because the Judge was convinced by her husband that she was, as a consequence of the surrogacy, an unfit mother because she was prepared to give away the unborn child. The Judge was convinced by her husband that she was, ***as a consequence of the surrogacy***, an unfit mother.

We appreciate the opportunity to respond to the *Issues Paper* in the context of your current Review of Australian Surrogacy Laws, Policies and Practices.

We would like you to treat this as a public submission.

Former Attorney-General Mark Dreyfus drafted the Terms of Reference in December last year asking the ALRC to review Australian surrogacy laws, policies and practices to identify legal and policy reforms, particularly proposals for uniform or complementary state, territory and Commonwealth laws, that are consistent with Australia's obligations under international law and conventions and protect the human rights of children born as a result of surrogacy arrangements, surrogates and intending parents, noting that the best interests of children are paramount. In particular, the ALRC is asked to consider **how to reduce barriers to domestic altruistic surrogacy arrangements in Australia….** and **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.**

We are greatly concerned that in this Paper the ALRC has failed to address the Terms of Reference provided by former Attorney-General Mark Dreyfus.

Further, we bring to your attention, the extremely short timeline that has been provided (5 weeks) to respond, and your indication that you will not accept late submissions; the very heavy weighting of this committee towards Monash IVF colleagues and pro-surrogacy people where, it appears from the Issues paper, that the whole committee is committed to introducing legalised commercial surrogacy; the

exclusion of a number of parties who are unrepresented on the committee including predominantly those with lived experience - mothers who have 'given' a child to infertile couples; donor gamete adults; adopted people, and organisations representing the experiences of adoption VANISH, ARMS, ARA and non-government organisations concerned with the welfare of children.
The key element of surrogacy is as with adoption, the providing of a child to an infertile couple: the parallels are overwhelming. There is no tangible difference between the impacts of these events, and there is extensive literature that demonstrates in detail the difficulties and negative impacts on both the child who is born of this procedure and the mother who is asked to perform this service that is against not just her hormone filled body but also the biological, psychological and emotional needs of the child.
These are our principal concerns:

1. The Issues paper released by the ALRC does not address the references provided by former Attorney-General Mark Dreyfus through the Terms of Reference, (ToR) and in doing so has ignored the proposed framework for their work.
2. The Issues Paper does not refer to the range of previous reports that it was requested to use to frame its considerations and does not provide any summary, assessment, comment or direction about how these have been taken into account. From the Issues Paper content, it appears these were not used to inform the ALRC's thinking.
3. The Paper ignores completely the reference "how to reduce barriers to **domestic altruistic** surrogacy arrangements in Australia".
4. The questions provided do not address the broader questions that are left unexamined, such as whether commercial surrogacy or institutionalising surrogacy is in the interests of the child born through this means.
5. There is no discussion about **whether** commercial surrogacy should be introduced into Australia – it makes that a presumption and then provides a paper to address how this should be legislated and regulated.
6. It does not consider the impact of the act of surrogacy on the mother, the child, or our society's openness to accepting surrogacy by addressing any current experiences of surrogacy from across the world or in Australia.
7. It doesn't "have regard to the … medical or emotional… nature of surrogacy arrangements" for any of the parties as required by the ToR.

Reason for our Concerns

1. The Issues Paper released by the ALRC does not address critical references provided by former Attorney-General Mark Dreyfus through the Terms of Reference. Amongst other considerations, the Dreyfus Reference requested that the ALRC "have regard to -

- the medically, emotionally, financially and legally complex nature of surrogacy arrangements;
- the human rights of children born of surrogacy, their surrogate mothers and intended parents**, and the risks commercial surrogacy can pose to vulnerable women and children;"**
  "And to consider in particular:
- 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."

Information is provided about financial matters, some legal complexities and the state's legislative responsibilities, but there are key matters that have not been addressed. For example, there is no discussion, or questions, provided about how to respond to matters of informed consent and guidance about situations where a mother ultimately decides she can't hand over the baby to the commissioning couple. In fact, question 19 implies that there not be a consent process, with their request for comment as to: *How could the process for intended parents to become the legal parents of children born through surrogacy be improved?* The Paper suggests that one possibility is for legal parenting to be considered prior to birth. In any of the outcomes the Report suggests, there is no consideration for a time for the taking of a consent from the surrogate mother, or time to consider and revoke the consent if wished.

2. The Issues Paper does not refer to the range of previous reports that it was requested to use to frame its considerations and does not provide any summary, assessment, comment or direction about how these have been taken into account.

The ToR refers the ALRC to a number of papers that articulate the way the issues and concerns have been considered in the past. These are intended to direct considerations for this current reference. There are critical aspects that appear not to have been taken into account. While the principle of the paramountcy of the interests of the child is referenced, no direction is provided to assist in understanding how the committee anticipates taking this into account.

The matter of what should constitute the 'best interests of the child' is given extensive coverage in the many reports about surrogacy that have preceded this ALRC paper over the last 45 to 50 years. All of them acknowledge that the main purpose of reproductive technology is to create a child who would not otherwise have been born; that this requires significant public resources and that there is a clear potential for conflict between the interests of the child and those of the mother, the commissioning couple and fertility clinics. The paramountcy of the interests of the child has been reaffirmed as the guiding principle. Some reports also go to the fundamental question – is it in the welfare and interests of a child to be created in these ways to satisfy the needs of adults? Only some come to a view, but all legislators in Australia and overseas have set down the factors to be taken into account when determining what are the interests, needs and welfare of the child. (Creating Children 6.1.2)[1] **None of this is being considered by this ALRC committee**.

Further, given the Issues Paper focuses on regulation and legislation of commercial or 'compensated' surrogacy, there is an even stronger obligation to state clearly how the paramountcy principle would be applied to a commercialised service. In the Family Law Council report 'Creating Children' the committee recommended that "…reproductive technology procedures only be administered when appropriate conditions exist for ensuring the welfare of the future child thus born." (6.1.9 Rec 2)

3. The Paper ignores completely the reference "how to reduce barriers to domestic altruistic surrogacy arrangements in Australia," and then re-writes this Reference.

The ALRC goes further than simply overlooking this Reference. It re-writes that Reference in the Issues Paper, leaving out the words 'domestic altruistic', allowing it

1 Creating children: a uniform approach to the law and practice of reproductive technology in Australia / report of the Family Law Council, incorporating and adopting the report of the Asche Committee on issues relating to AID, IVF, embryo transfer and related matters.

to read *"In summary, we have been asked to review and make recommendations about how surrogacy is, and should be, regulated in Australia, with a focus on proposals for better aligning state, territory, and Commonwealth laws*." This is a much broader question, and not part of the Terms of Reference provided. This is a major oversight as it is currently the single and only legal way for surrogacy to occur in Australia. By ignoring this Reference, the ALRC does not fulfill the purpose of its task of bringing further light to this complex and significant policy area. It then shapes the rest of the Paper to consider commercial and 'compensated' surrogacy – making some kind of distinction between it and a commercial arrangement. This 'new idea' appears not to have been canvassed within the broader community, nor with a considerable group of relevant stakeholders.

4. The questions provided do not address the broader issues that are left unexamined, such as whether commercial surrogacy or institutionalising surrogacy is in the interests of the child born through this means.

Beyond fertility clinics, commissioning couples and infertile couples, there is a broader Australian community whose values need to be represented in the legislation that impacts the creation of our society. Surrogacy and ART is a contested space and in particular commercialising the creating of children is not yet commonly accepted around the world. There is less than a handful of countries who offer commercial surrogacy and of those, the service is not necessarily offered to non-residents.

Beyond that, providing commercial surrogacy services is costly and is likely to have a significant impact on the health budget. Further, institutionalising surrogacy creates an imprimatur to the community that the commercialisation of children is acceptable and that it is reasonable to ask women to provide this service. These questions are not yet properly considered by the community, or by those scientists and businesses that are hoping to gain recognition and financial benefit from these developments. The risks to women of undertaking surrogacy are not reported in the media – what is reported is the 'happy family' outcome, or the extreme neediness of infertile or same-sex couples who long for a child and presume that they are entitled to one that should be facilitated by the state.

No reference is made of earlier reports into surrogacy undertaken by legal and other committees of inquiry, for example, the Waller, Demack and Warnock committees, amongst many others, all of which reached the conclusion that surrogacy contracts and arrangements should be considered null and void because they are contrary to public policy; and that it should be illegal to advertise to recruit and / or exchange money, for the same reason.[2] It would be helpful to have had the ALRC outline the thinking in these previous reports and to test out whether those views are still efficacious in the society of the 21st century. (See Creating Children 6.6.9 & 6.6.10 for

2 Committee to Consider the Social Ethical and Legal Issues Arising from In Vitro Fertilization chaired by Professor Louis Waller whose reports and recommendations directly influenced the passage of the Infertility (Medical Procedures) Act 1984, which was the first legislation of its kind in the world to address IVF. The Demack Report was the Queensland Government's Inquiry into the status of embryos, and the control of foetal experimentation, storage, and destruction. It was established in 1984, to address ethical and legal issues surrounding assisted reproductive technologies (ART). Baronesse Mary Warnock chaired the British Committee of Inquiry into Human Fertilisation and Embryology, which produced the influential Warnock Report in 1984. This report addressed ethical and legal issues surrounding new reproductive technologies, including surrogacy, in vitro fertilization, and artificial insemination although this committee chose not to support or deny the option of surrogacy.

a fuller discussion of the reasons for this position.)[3] Importantly, the Waller Committee concluded that "*If the sale of human gametes is characterised as inhuman, then these agreements to bear and then convey a child for a fee are the more so. ....it is the buying and selling of a baby which is really the core of the arrangement. The buying and selling of children has been condemned and proscribed for generations. It should not be allowed to reappear and no technological assistance available to couples, should be afforded to any such arrangement."*

5. There is no discussion about whether commercial surrogacy should be introduced into Australia – it makes that a presumption and then provides a paper to address how this should be legislated and regulated. The Paper covers barriers to domestic surrogacy with no mention of altruistic surrogacy.

The Paper's contents look at reimbursing and compensating surrogate mothers either through a commercial or compensated arrangement; legal parentage of children born through surrogacy; citizenship, passports, and visas; the role of the criminal law; and the lack of awareness and education of the laws, policies and practices of establishing commercial surrogacy. It is effectively a blueprint for the legislation and regulation of commercial surrogacy with no consideration of the question put to them in the ToR about altruistic surrogacy, the risks and opportunities, whether the paramount interests of the child should be a guiding principle and what that might entail. No questions are provided or commentary made to give guidance to their thinking about the question put by the Dreyfus reference – how to address the barriers to domestic altruistic surrogacy, within the context of the interests of the child being paramount.

6. It does not consider the impact of the act of surrogacy on the mother, the child, or our society's openness to accepting commercial surrogacy.

This area is a major failing of the Issues Paper. The Paper does not mention any current experiences of surrogacy from across the world or in Australia. There have been many studies done, and research undertaken now about the impact on women of carrying a baby and then relinquishing that child at birth. This has not been referred to in the Issues Paper. This is a key area that informs the central element of a surrogacy arrangement. A woman entering a surrogacy is not able to 'know' what it will be like to give the child she has given birth to, to the commissioning parents. A previous pregnancy will at least mean she knows what it takes to carry a pregnancy. What is known about relinquishment is that most women don't recover psychologically and that it is a lifetime grief. The Fogerty Report records a surrogate mother who offers advice to other women considering offering this gift.

> *'What I would like to explain to any other women contemplating this method of helping others is that, in the cold light of the non-pregnant state, it is easy (as I felt it myself) to believe that this is not my child. But as the baby grows and moves, the attachment is the same as it was for the other children you have borne. .....It will affect my life until I die…. It has certainly affected my family's life in a negative way, for how long we are yet to find out. (Creating Children 6.6.17)*

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3 Paying another human being to reproduce is the ultimate dehumanisation; a child must not be treated as a commodity; the right of any woman to the child she has borne must not be abrogated; any form of profiteering with human life is abhorrent; the child could become nobody's child if rejected by the contracting parties; and poor women could become virtually paid slaves. This has already become the case in countries like India and Thailand.

The Fogerty Committee reports on a comment from the Asche Committee about the view that women should be free to use their bodies as they wish. Asche offers two arguments against that – surrogacy involves a third party – the child, and their interests must be paramount, and secondly, arrangements that institutionalise surrogacy allow for the exploitation of women. (6.6.17) There is a further argument that ARMS would add because of our experiences. By establishing surrogacy as public policy it legitimates the act of women performing this service. We know from the adoption era that 'giving away' a child causes a lifetime of grief and loss for many women; and we know that women undertaking surrogate motherhood will not know what their reaction will be until after they have acted irrevocably. The woman makes the decision in her non-pregnant self/body. Once pregnant, she has hormones and the natural development of the connection that affects and influences her bonding. It is different then to consider 'giving' the child to the commissioning couple. From a public policy perspective, this is a damning approach. On March 21 2013 then Prime Minister Julia Gillard issued a formal apology on behalf of the Australian Government, acknowledging the profound and enduring harm caused to mothers, adopted people, fathers and extended families by the policies and practices of Forced Adoption. Each State and the ACT also acknowledged their part in wrongdoing by issuing apologies. In 2024 the Victorian Government set up a Forced Adoption Redress Scheme, and there is much advocacy to encourage other States to follow suit. Governments will not be able to claim that they didn't know the potential problems. It means that at some point in the future, the State will be required to provide remedy and compensation. The Hon. Nahum Mushin, AM has stated at ARMS events that in his view surrogacy will be the next Apology.

This Reference to the ALRC is an opportunity for the public to be given an opportunity to consider its views on the matter of surrogacy, both altruistic and commercial. The current framework provided by the ARLC does not allow this to occur, in part because of the very short time frame it has given for comment on its Paper. Previous reports have provided 7 to 12 months to both inform, educate and provide opportunity for a full consultation with both the public and those concerned about the issues. The ALRC has chosen not to use the highly relevant adoption experiences, or the current knowledge about the experiences of donor conceived adults to inform their current work, as no questions are framed around those experiences. It is hard to reconcile this as an oversight and ARMS is of the view that it reflects on the nature and makeup of the current committee and the agenda it is promoting.

7. It does not "have regard to the … medical or emotional… nature of surrogacy arrangements" for any of the parties – the mother, the child, the commissioning couple or the wider community - as required by the ToR.

Currently, IVF is available to couples wanting to engage the services of a woman if she is not the donor of required egg. However, if commercial surrogacy is legalised, this would be likely to change bringing with it significantly greater health risks. The process of superovulation and the attendant drugs are known to cause cancers.

Cancer Risk in Women Treated with Fertility Drugs According to Parity status - A Registry-based Cohort Study [2] Cancer Risk in Women Treated with Fertility Drugs According to Parity status - A Registry-based Cohort Study - PMC Whilst this is just one study, it is an indication of the breadth of research that has been done over the last 40 years that attest to similar outcomes. These matters are not commented on in the Issues Paper, effectively leaving out the topic for consideration.

8. The ALRC was asked to have regard to (amongst other things) the medically, emotionally, financially and legally complex nature of surrogacy arrangements.

Questions in the Paper relevant to this note only whether certain aspects of a surrogate mother's health care should be Medicare rebateable. There are far greater matters than this in the balance. Research findings based on a large Canadian cohort study indicate that surrogate mothers experience increased risks of severe health complications during and after pregnancy, including "higher rates of severe maternal morbidity and postpartum haemorrhage, compared to traditional pregnancies. The study included 863,017 singleton (one child) births, 806 of which were from gestational carriers (surrogate mothers using a donor egg). The researchers found that the risk for severe maternal morbidity was 7.8% in gestational carriers, more than 3 times that of unassisted conception and nearly twice that of in vitro fertilisation (IVF) pregnancies. The risk for severe neonatal morbidity was also slightly higher among gestational carriers compared to unassisted conception, with preterm birth more likely among gestational carriers." (The Hidden Dangers of Being a Surrogate Mother Exposed in New Study by American College of Physicians October 6, 2024) The Hidden Dangers of Being a Surrogate Mother Exposed in New Study

There are many studies now on the impacts of being a surrogate mother, but very little of this information is provided through the media, or within the context of fertility clinic advertising or engagement with potential clients. It is unclear what is currently included in the counselling, a place where one might reasonably expect discussion on the matter. The following is from a study that compared birth by the same mothers, of the children who were part of their marriages against the one/s they had as surrogates. "Neonates from surrogacy had birth weights that were, on average, 105 g lower. Surrogate births had significantly higher obstetrical complications, including gestational diabetes, hypertension, use of amniocentesis, placenta previa, antibiotic requirement during labour, and caesarean section." (Perinatal outcomes after natural conception versus in vitro fertilization (IVF) in gestational surrogates: a model to evaluate IVF treatment versus maternal effects - PubMed[4]

'Without a doubt the psychological and emotional states of the surrogate play a pivotal role in the wellbeing of the foetus. Stemming from the behaviour and/or the stress level of the surrogate, her state may translate biologically to deleterious intrinsic factors that affect the wellbeing and development of the foetus. Could it be that the possible lack of acceptance of the surrogate towards recognising the embryo and foetus as her own and the possible lack of positive outlook of the pregnancy may present a risk to the development of the foetus? It is suggested that the gestational mother may contribute to foetal development, through epigenetics, microchimerism (cells are transferred between the foetus and mother through placenta), and transport of both antibodies and nutrients [1]. Foetal consciousness develops from the uterine to breastfeeding period and numerous physiological, emotional, or environmental messages affect its development. *Consequently, maternal acceptance or rejection could be stimuli imprinted in human cells. Medical evidence proves that increased stress hormones in maternal blood, such as adrenalin, penetrate placenta and invade to foetal blood, causing foetal rapid heartbeat or breathing acceleration* [43].'

4 **Conclusion(s):** Neonates born from commissioned embryos and carried by gestational surrogates have increased adverse perinatal outcomes, including preterm birth, low birth weight, hypertension, maternal gestational diabetes, and placenta previa, compared with singletons conceived spontaneously and carried by the same woman. Our data suggest that assisted reproductive procedures may potentially affect embryo quality and that its negative impact cannot be overcome even with a proven healthy uterine environment.

These negative health impacts occur not only for the mother but also for the babies. M. Simopoulou et al note in their paper that “the science of prenatal and perinatal psychology reveals that every stimulus recorded to the child's consciousness significantly determines its behaviour as an adult, both physical health and mental balance. Moreover, it defines the relationships that the child forms throughout life. In addition, many clinical studies assume that the embryo's consciousness is formed during the intrauterine period and that the perception and the feelings of the surrogate during gestation may affect infant development significantly. Medical evidence supports the fact that various neurohormones are transferred from mother to foetus during pregnancy. These are pivotal for foetal brain development, normal neural system's function, and the future child's self-confidence and intelligence. Good communication and feelings of acceptance act catalytically on the communication between mother and foetus and consequently contribute to important developmental aspects extending even to the child's speech ability. *Risks in Surrogacy Considering the Embryo: From the Preimplantation to the Gestational and Neonatal Period* Biomed Res Int. 2018 Jul 17;2018:6287507. doi: **10.1155/2018/6287507**

It is findings of this nature that reinforce the negative impact of surrogate mothers being encouraged not to think of the child as their own, and to limit their emotional connection to the developing foetus. Studies are demonstrating that surrogate mothers and commissioning couples can have widely different ideas about what they want from the relationship they enter. This ranges on a continuum from a purely commercial non-relational agreement to one of deep emotional investment in each other. These differences are not just informed by what role they play but also by cultural, ideological and values-based views. ‘Surrogacy cannot be detached from cultural meanings and ideological ideals concerning motherhood/parenthood, kinship, rights and justice, fairness and equality, and ideas of agency and ‘free choice’. There is simply no ‘neutral’ way of approaching the issue.’ *Surrogacy relationships: a critical interpretative review.* Ups J Med Sci. 2020 Feb 19;125(2):183–191. doi:**10.1080/03009734.2020.1725935**

These relationships are fraught, particularly because of the power imbalances and mismatching of hopes, needs and expectations. There is also the complicating factor that it is in the commissioning couples’ interest to offer and commit to undertakings (such as an ongoing relationship with the surrogate mother) and then find themselves unwilling to fulfil those promises. There will also be mothers who are unable to give the baby to the commissioning couple after their pregnancy, regardless of their non-pregnant undertaking to do so.

It is clear from all the above, that developing public policy that facilitates the procurement of a baby is likely to have deleterious and injurious consequences on one or all of the parties. Further it will have a long-term negative impact on the values and quality of our society if we step back in time to allow for the regulated sale of babies and the known negative impact on women who cannot wittingly enter an arrangement where they agree to give the baby they have nurtured into life, to another couple to parent, particularly when the expectation is that they will have no further contact with that child.

It is distressing to think that once again we are creating a generation of grieving women. As in the adoption era, secrecy is the main frame. Couples are not encouraged to provide the child they are provided with truthful information about their genetic background and the circumstances of their birth. Further they are not given any advice or information to assist them to raise a non-biological child and to understand that, as in adoption, this will be different to parenting their own biological

child. In a surrogacy arrangement, where the gametes are from the commissioning couple, there appears to be no need to tell their offspring that they were born of another woman, because the whole intention of the current model is to pretend that the child is birthed in the same way as all other children. We already know that there are real biological, psychological and emotional implications for the child of a surrogate arrangement. How this will be given expression in any individual child will be, in the future, the source of many studies. For now, secrecy prevails.

Governments are right now reaping the negative impacts of providing the last type of service to infertile couples with all its attendant lies, mistreatments and illegalities that occurred through the public policy approach of adoption. All state and the federal governments have provided public apologies for that public policy and redress schemes for mothers are now coming into effect in Australia. The arrival of a new public policy to introduce commercial or even 'compensated' surrogacy means that financial compensation and public apologies will again be coming towards our governments as this next generation matures, looks back, and comes to understand the enormity of the actions of the state in facilitating this crime against women and children.

We hope that you will reconsider the membership of the current committee to ensure that members of the adoption and artificial insemination community are included, along with representation from non-government organisations and that you extend the deadline for submissions in order to give more interested members of the Australian community the time to express their views.

We attach an account from an Australian surrogate mother who has had to use a pseudonym due to the traumatic nature of her surrogacy experience.

Yours sincerely,

Marie Meggitt (Founder)
Jo Fraser (Convenor)

on behalf of ARMS(Vic)

Dear Committee,

Please find below the ARMS(Vic) response to the questions in the Surrogacy Review Issues Paper 52, June 2025.

Question 1 If you or someone close to you has had personal experience of surrogacy, please describe:
We draw to your attention the fact that the experience of a surrogacy arrangement is not exclusive to the woman who undertakes this agreement. We believe your questions are too narrow. They don't take into account other immediately impacted people connected with that woman who may include her partner, existing children, her broader family and her friendship network. Further, narrowing the sights of this question to what went well or badly and possibilities for improvement leave out a whole raft of other issues that need further consideration.

Question 2 What reform principles should guide this Inquiry?
The Paper outlines some broad principles under three headings. The outline provided gives no indication of how these matters might be considered by the ALRC, and the prompts limit the thinking that the general public might do in relation to a particular heading. For example, the Harm Minimisation heading makes no reference to the physical risks women take when providing this service, particularly as we know that there are poorer outcomes with a surrogacy gestation and birth than with their prior birth experiences. Overall your Reform Principles do not address any aspect of the key Terms of Reference, which was to examine the question of altruistic surrogacy. In fact the only legal form of surrogacy in Australia is not referred to once in your paper. The first and most important principle that should be applied is the paramountcy of the child, and the factors that should be taken into account need to be made specific and explicit. The current principle that the right of the child is to know that their legal parent was at least initially the mother who gave birth to them should not be undermined or overturned. For the surrogate mother to have autonomy in this context is a complex issue, and those complexities are not revealed in the definition provided. The element of altruism which so often is referred to by those women who have agreed to be a surrogate mother can surely not be valued in monetary terms. Surely a child is a gift without price.

Question 3 What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?
Having a baby and all that that entails is not "work" in any ordinary sense of that word. Treating a pregnancy and birth in this way moves it immediately into the commercial world of a task provided for financial reward. It is unhelpful to reduce this to what price a child?

Question 4 What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided or facilitated?

Children born through surrogacy should have comprehensive access to all information from a very early age. It is well documented that adopted and donor conceived people have felt that there is something 'missing' or 'wrong' in their lives, even when they have not been made aware that they are adopted or donor conceived. Those who are not told until they are teenagers or adults often feel that they have been living a lie. Children should be able to access their surrogate mother's details, and if relevant, any gamete donor's details. This should include the medical, social and cultural history of the surrogate mother and any donors; information about any siblings born to the same surrogate or conceived with the same donor; any information that would help the person born of surrogacy in reaching out to the surrogate mother and/or donor, such as name, date of birth and address at the time of the child's birth. A central register needs to be set up and maintained, as well as support services being provided to those born of surrogacy as they learn about the circumstances of their conception and birth.

Question 5 What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia?

The main barrier is that the public is unready and unwilling to accommodate the idea that, just because an individual or couple would like to have a baby, or even want desperately to have a baby, no-one has an intrinsic right to a child.

Question 6 Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

Question 7 Are there any eligibility requirements which should be introduced, changed, or removed?

Question 8 Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?

Question 9 Should surrogacy agreements be enforceable?

Specific eligibility requirements for prospective mothers are:

8. they are at least 25 years of age
9. they have had a previous child who they are raising
10. they have been provided with counselling from an organisation not connected to the fertility clinic
11. they are required to provide a consent, and not before 30 days after the birth
12. a revocation period of at least 30 days is provided
13. the commissioning couple are not present during the birth or immediately after
14. the mother has had a psychological assessment that confirms her understanding and steadiness to undertake this role and that this assessment is done by a psychological service independent of the fertility clinic
15. they are provided with legal advice independent of the commissioning couple and the fertility clinic
16. where the mother has a partner, that the partner is completely aware of and willing to support all aspects of the process, including the possibility that she may be unable to give the child to the commissioning couple and she may wish to raise the child with her partner

- the agreement should be in writing

- any reimbursements agreed to should be paid in full regardless of whether the child is ultimately transferred to the commissioning couple
- no contract can be made enforceable in law beyond the reasonable expenses
- any contract beyond reasonable expenses cannot be entered into until after the birth
- surrogacy arrangements must be subject to independent oversight to ensure surrogate mothers are not subject to coercion.

Question 10 What process requirements should be in place for surrogacy arrangements?

It should be mandatory for mothers, their partners, their children and the commissioning couples to be provided with clear and full written information that outlines the risks that each will be taking, and that for those groups, including the children of the surrogate mother, counselling and legal services must be provided, before conception, during pregnancy and after birth, with counselling continuing for an agreed number of years. We acknowledge that there are few lawyers or counsellors who specialise in this field, which has long been a similar problem in adoption. This service needs to be provided by an approved professional training through an accredited body. The implementation of any specialist agency should be deferred for a period of time until satisfactory counselling and legal professionals have been adequately prepared to provide these critical services. These services must be provided prior to entering an arrangement. Where this is not the case any future arrangement should be considered null and void until these requirements are met. Proof should absolutely be provided that legal advice and counselling services have been provided.

As with the prospective mother, commissioning couples must go through an assessment process as was required for prospective adoptive parents.

Question 11 What are the gaps in professional services for surrogacy in Australia?

Question 12 How should professional services operate in Australia?

It is our experience, and confirmed by research, that the mother/baby separation has lifelong impacts on both the mother and the child/adult.

Where altruistic surrogacy is legal it is essential that counselling services are provided by independent, not for profit organisations to all parties involved in surrogacy arrangements.

Counselling services must be independent of agencies and fertility clinics. This service needs to be provided by an approved professional training through an accredited body.

Counselling should be available for the surrogate mother for a period of 3-5 years after the transfer of the child.

These services should be provided by State Governments within the Department of Health.

The subject matter of the legal advice and counselling sessions must be comprehensive and developed by the Government body over-sighting the service.

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There should be no advertising allowed and there could be a register provided through the Government Department.

Question 14 What entitlements, if any, should be available to surrogates and intended parents?
No medical services should be Medicare rebateable for either the surrogate mother or the commissioning couple unless there is an actual health issue.

Question 15 How could the process for reimbursing surrogates for reasonable expenses be improved?
Reasonable expenses should include medical, legal, counselling and maternity wear. Also funeral services if she dies as a consequence of the agreement. In the instances where the mother dies we believe there should be a significant financial compensation made that includes consideration of child care, education of any children, and a lump sum for loss of income to her partner for the loss of her role in the family. A lump sum should be provided to a trust fund by the commissioning parents at the beginning of the pregnancy, and be topped up as needed.

Question 16 Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?
Question 17 If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?
We believe there is no meaningful difference between compensated and commercial surrogacy and we are adamantly opposed to both. Commercial surrogacy would be a payment for this woman's unique contribution as indicated in the compensation definition that you provide.
It is critically important that Australian legislation ensures that we do not provide any of these services to non-resident applicants.

Question 18 What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?
Question 19 How could the process for intended parents to become the legal parents of children born through surrogacy be improved?
We believe that it is critically important to maintain current legislation, which holds that the mother who gives birth is the legal parent. Time needs to be allowed for a consent to be taken and the revocation period to elapse. The idea of signing over the legal rights to the baby to the commissioning parents before the child is even born is unacceptable. This would entirely undermine the parental rights of the surrogate mother, who in some instances may also be the genetic mother.

Question 20 What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy?
Given the significant difficulties as outlined in your Paper #66 the very best way to manage these problems would be to ensure that couples do not seek these services overseas. In our view surrogacy should not be encouraged in any way.

Question 22 What is the best way to approach differences in surrogacy regulation between or within jurisdictions?
We think that Australia should uniformly continue to ban commercial and compensated surrogacy.

Question 23 Is it appropriate for surrogacy arrangements to be subject to oversight?
As with our previous answer, we believe oversight should occur through a Government Department, in this instance the Health Department, and that they should act as regulator.
All participants in this process need oversight. We believe that the current laws should be applied in all instances.

Question 24 Should the law have a role in discouraging or prohibiting certain forms of surrogacy?
All laws should be upheld in Australia.

Question 25 Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?
We do believe that there should be much better public education about the devastating impact of a public policy that encourages women to undertake an act that is known to be likely to cause significant and long-term harm to her and her family.

Dear Committee,

Please find below the ARMS(Vic) response to the questions in the Surrogacy Review Issues Paper 52, June 2025.

Question 1 If you or someone close to you has had personal experience of surrogacy, please describe:
We draw to your attention the fact that the experience of a surrogacy arrangement is not exclusive to the woman who undertakes this agreement. We believe your questions are too narrow. They don't take into account other immediately impacted people connected with that woman who may include her partner, existing children, her broader family and her friendship network. Further, narrowing the sights of this question to what went well or badly and possibilities for improvement leave out a whole raft of other issues that need further consideration.

Question 2 What reform principles should guide this Inquiry?
The Paper outlines some broad principles under three headings. The outline provided gives no indication of how these matters might be considered by the ALRC, and the prompts limit the thinking that the general public might do in relation to a particular heading. For example, the Harm Minimisation heading makes no reference to the physical risks women take when providing this service, particularly as we know that there are poorer outcomes with a surrogacy gestation and birth than with their prior birth experiences. Overall your Reform Principles do not address any aspect of the key Terms of Reference, which was to examine the question of altruistic surrogacy. In fact the only legal form of surrogacy in Australia is not referred to once in your paper. The first and most important principle that should be applied is the paramountcy of the child, and the factors that should be taken into account need to be made specific and explicit. The current principle that the right of the child is to know that their legal parent was at least initially the mother who gave birth to them should not be undermined or overturned. For the surrogate mother to have autonomy in this context is a complex issue, and those complexities are not revealed in the definition provided. The element of altruism which so often is referred to by those women who have agreed to be a surrogate mother can surely not be valued in monetary terms. Surely a child is a gift without price.

Question 3 What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?
Having a baby and all that that entails is not "work" in any ordinary sense of that word. Treating a pregnancy and birth in this way moves it immediately into the commercial world of a task provided for financial reward. It is unhelpful to reduce this to what price a child?

Question 4 What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided or facilitated?
Children born through surrogacy should have comprehensive access to all information from a very early age. It is well documented that adopted and donor conceived people have felt that there is something 'missing' or 'wrong' in their lives, even when they have not been made aware that they are adopted or donor conceived. Those who are not told until they are teenagers or adults often feel that they have been living a lie. Children should be able to access their surrogate mother's details, and if relevant, any gamete donor's details. This should include the medical, social and cultural

history of the surrogate mother and any donors; information about any siblings born to the same surrogate or conceived with the same donor; any information that would help the person born of surrogacy in reaching out to the surrogate mother and/or donor, such as name, date of birth and address at the time of the child's birth. A central register needs to be set up and maintained, as well as support services being provided to those born of surrogacy as they learn about the circumstances of their conception and birth.

Question 5 What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia?
The main barrier is that the public is unready and unwilling to accommodate the idea that, just because an individual or couple would like to have a baby, or even want desperately to have a baby, no-one has an intrinsic right to a child.

Question 6 Should there be eligibility requirements for surrogacy? If so, what should those requirements be?
Question 7 Are there any eligibility requirements which should be introduced, changed, or removed?
Question 8 Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?
Question 9 Should surrogacy agreements be enforceable?

Specific eligibility requirements for prospective mothers are:

- they are at least 25 years of age
- they have had a previous child who they are raising
- they have been provided with counselling from an organisation not connected to the fertility clinic
- they are required to provide a consent, and not before 30 days after the birth
- a revocation period of at least 30 days is provided
- the commissioning couple are not present during the birth or immediately after
- the mother has had a psychological assessment that confirms her understanding and steadiness to undertake this role and that this assessment is done by a psychological service independent of the fertility clinic
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'Odette Lees' (pseudonym)

Will I ever see my son again?: The nightmare continued

In 2015, my cousin [redacted] approached me asking if I would have a baby for her. Chemotherapy had rendered her infertile. But she had always struggled with being able to fall pregnant and carry a pregnancy. She desperately wanted a child and I wanted to help her become a mother, after being told I would play a special role in the child's life being her or his Aunty.

I always adored my cousin and loved her very much. I thought I could do this, and then, my own boy [redacted] would have a playmate as we don't live too far apart. I saw this as extending our family and growing closer together.

Alas, right from the beginning, my arrangement with [redacted] and her husband turned into a nightmare. She could not cope with me being pregnant, constantly told me I would be having a miscarriage, never attended any medical appointments and stopped paying the medical bills that were associated with the pregnancy. She also had engaged a lawyer which created legal bills for me, which under the Surrogacy Act Queensland were supposed to be at the cost of the intending parents ([redacted] and her husband). I felt completely unsupported by her in every way during this time.

When my son was born, I felt terrible seeing him go into the arms of a woman who had behaved so abysmally towards me. My cousin had made allegations of child abuse against me whilst I was in recovery for the caesarean birth of [redacted] I received a subpoena to appear in the Family Court, so that they could take legal custody of [redacted] and they were forced to pay the outstanding legal and medical bills to date. I was forced to appear in court from my hospital bed. I have documented all of this in my article 'Bitter Family TiesWill I ever see my son again'? in *Broken Bonds: Surrogate Mothers Speak Out* (2019, Lahl et al., Spinifex Press).

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The Family Court Judge ruled that it was up to [redacted] and her husband whether I could meet my son or at least have some photos of him. They decided, I could have no contact with [redacted] at all. To this day – nearly nine years later – I have only seen my son accidentally in 2021 during a street fair. [redacted] was with his father and he ran away with my son as fast as he could. There were a lot of people and it was a big shock for me. The public photos that my cousin posts on the internet are the only pictures of [redacted] I have seen. I never got a photo from [redacted]

But that was not all. In 2019, three years following the birth of my son, [redacted] filed an application for me to have to pay child support for [redacted]. I immediately called my pro bono surrogacy lawyer who had rescued me earlier and handed proceedings over to her. It turned out that my cousin had only provided some of the pages from the court orders in her application. The court orders clearly stated that *"the intending parents would be foolish to file for child support from the birth mother."* Unfortunately for them they did. Thankfully, child support services saw the ridiculousness of [redacted] application and rejected it. It later came out during evidence in a domestic violence hearing in 2021 that my cousin had done this to coerce me into relinquishing my birth rights and remove me from [redacted]'s birth certificate as the birth mother. In other words, it was an attempt to blackmail me.

During the launch of the book *Broken Bonds*, some online taunts were made public about the seminar and speeches. It was later discovered that [redacted] had hired an investigator to follow me for the period that I was visiting Melbourne and talked about my essay in the book at an international surrogacy conference.

In 2020, I became pregnant with my third son. This became a high-risk pregnancy with a rare condition called 'Placenta Accreta' which saw me being airlifted to Townsville at [redacted] weeks' gestation where I was placed on bedrest for the remainder of the pregnancy. I gave birth via caesarean on [redacted] 2020 at [redacted]. My son weighed [redacted].

During this pregnancy, in June 2020, I received a phone call from the police to inform me that they had a subpoena to serve me for an allegation about domestic violence from my cousin filing a civil complaint. A civil complaint can be filed by anyone who you may have a relationship with. This is a personal complaint that does not involve the police and can be filed at any courthouse. This happened four years post birth without any contact to my son. While I was in Townsville Hospital on bed rest [redacted] was filing a subpoena to access my personal medical records as she was trying to say that my hospital stay was not due to a high risk pregnancy. This caused great stress to myself and my unborn son. I once again had to appear in court from a hospital bed.

Following this new legal case brought on by [redacted], I contacted my surrogacy lawyer once more. There was a trial hearing in February 2021, where I had to nurse a 3-month-old newborn whilst on the stand. During this hearing it was revealed that over the last four years, my cousin had gone to great lengths to stalk me which included several fake online social media accounts and investigators following me. I had blocked my cousin on social media during my pregnancy in 2015, which she admitted she had known on the stand.

During the trial it became clear that my cousin was quite sick. The judge stated in her verdict that [redacted] had a clear 'mental infirmity'. This observation went in my favour. My cousin had spent many hours watching me and my little family. Since she had made homicidal threats against me, this had been very worrying. The judge saw the unjust and vexatious harassment that I had endured since I had fallen pregnant and ruled against [redacted]. I had to pay for a barrister, but I had the pro bono support of my surrogacy legal team once more. This was a precedent, a first in Australian legal history. The verdict handed down by the judge gave power and voice to a mistreatment I have suffered over long years.

Meanwhile, I have separated from my youngest son's father due to domestic violence. After another three years of counselling, I have great support networks around me.

My cousin has since gone through a divorce from her husband, and I hear that it has been, and still is, very toxic. Which is not surprising given her erratic and narcissistic behaviour. I think about my son often and so does my eldest boy [redacted] We always hope that [redacted] is ok; however we worry about the care that he is receiving.

I have been fortunate enough to have a beautiful empowering lawyer who saw all of this for what it was, and fought hard for my human rights as a woman and a mother. She has always stood by me and this experience has cost her firm hundreds of thousands in pro bono work. It has also seen me personally out of pocket for approximately $50,000 for medical bills going back to the surrogacy pregnancy and birth, and for ongoing litigation. It's important to remember that at that time I was unemployed and was raising a young child by myself. The only reason that I have had ongoing legal expenses is from my cousin constantly attacking me and harassing me. If she and her husband had just followed the Queensland Surrogacy Act, paid for the legal, medical and other pregnancy associated costs, all of this could have been avoided.

Surrogacy is a terrible violation of women and children, it is literally buying and selling children. I am not the only woman in Australia with a horrible experience. This way of making children is creating another stolen generation, children are growing up not knowing who they are or where they come from. I am fortunate that [redacted] has me listed as his birth mother on his birth certificate and one day, despite the lies that he will be told, he will come searching for us and want to get to know us. Surrogacy needs to be banned worldwide, there is no positive outcome for children or women in this human rights violation.
1429 words