Professor Sonia Allan OAM

12 December 2025

To the Hon. Justice Mordy Bromberg,

Re DISCUSSION PAPER: REVIEW OF SURROGACY LAW

I wish to register my opposition to the proposed reforms by the ALRC in the Discussion Paper: Review of Surrogacy Law. The ALRC will be aware that I have drawn very different conclusions in reviewing legislation that governs this topic, and I wish to make clear that I do not agree with the stance generally presented by the ALRC in the Discussion Paper. Nor do I agree with many of the proposed reforms.

For example, I disagree with the proposed reforms which

- present what is in effect a model for surrogacy which would allow for profit/reward/compensation above reasonable expenses for the surrogate mother. Such payment has long been rejected at a national and state/territory level and by most countries around the world that regulate surrogacy, not just on grounds of risk of exploitation, but upon more nuanced considerations about the commodification of women, reproductive capabilities, and children, and more broadly upon ethical grounds. These grounds have not changed. I do not agree with the introduction of payments for 'hardship' or however else you might frame such payments.
- would set up a system which serves primarily the interests of the intended parent(s) in the arrangement, while the Discussion Paper is presented as being focused on surrogate mothers and children born as a result of such arrangements. Others involved in surrogacy arrangements – e.g. Lawyers, agents, etc. would also stand to greatly profit by the proposed model.
- would introduce a 'National Surrogacy Regulator' (or similar) – noting this raises questions such as whether this would be one person or many; the cost; the prioritisation of surrogacy over other interests that might require federal government funding.
- would introduce 'Surrogacy Support Organisations', that
    - would operate much like the organisations (agencies) in the United States where 'commercial' 'for-profit', 'for reward', 'compensated' surrogacy occurs.
    - would be able to 'approve' surrogacy agreements.

I am opposed to the proposal for such organisations whether they would operate for 'capped' or 'for-profit' fees.

- would make surrogacy arrangements enforceable.
- would transfer legal parentage at birth.

- would remove extra-territorial prohibitions for engaging in commercial surrogacy.
- would in effect recognise overseas commercial surrogacy arrangements in many circumstances.

I would also note that Australia does not necessarily have 'less exploitation' and is not better at regulation than other countries. Reports on human trafficking increased 10% in the 2024-25 financial year and have more than doubled in the last five years (in a variety of forms). Australians have also regularly featured in cases in which human trafficking and exploitation of women and/or children have been found in surrogacy abroad, and there have been some cases in Australia of child sexual abuse or concerns about risk thereof (amongst other things). I am concerned about a view that adopts the language and emphasises addressing issues of 'supply' and 'demand', while purporting to present a system that will reduce the risk of exploitation because we can better regulate things here.

I am also deeply concerned by the representation that the proposal is upholding the best interests and rights of children born as a result of such arrangements. While acknowledging a right to information, depth of understanding in this area, respectfully, appears lacking. Discussion of legal parentage again favours the intended parent(s).

In addition, the general stance taken in the Discussion Paper largely appears to reflect the views of the Assistant Commissioner, and certain members of the advisory panel, as published prior to the review (and even submitted to the review by one panel member). This is understandable given their research perspectives and practitioner focus. However, there have been many submissions made to the review in opposition. While I acknowledge the different viewpoints of people in this area, I am strongly of the view that the evidence does not support broadening payments to surrogate mothers, allowing surrogacy organisations (agencies) to operate, or broadening the for-profit industry that sits around surrogacy in Australia; such actions would not uphold the human rights of people involved in, or born as a result of, surrogacy arrangements.

Kind regards,

Professor Sonia Allan OAM.

LLB(Hons) BA(Hons) LLM (Dist) MPH (Merit) PhD (Law)