The President, Australian Law Reform Commission

PO Box 209 Flinders Lane Victoria 8009

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Dear President Justice Mordecai Bromberg

This Review should be abandoned immediately as it is based on a series of false assumptions.

I bring experience of being a woman who was almost asked by friends to be a surrogate for them. I experienced the kind and altruistic urge to help. I knew from their tears about being unable to have children how sad they were and I identify as being kind and altruistic.

However, I judged that it would have been intolerable for me to give up my child and for the child to experience forcible and preventable removal from me its mother. I judged that while it was sad for them, sadness is a difficult emotion that we all experience in some ways at different times.

I was then later to find myself unable to carry a child and to realise there are many other ways of experiencing and contributing to the flow of life if I viewed myself more as part of a family, community and the natural environment than as an individual or a part of an 'individual couple'.

With this background forming part of my big picture perspective, the premise asserted in this Discussion Paper, that there is a 'human right' to have a child or to have a family via surrogacy, is surprising to me to say the least.

Indeed, it is shocking to me how the term 'intended parents' has been shoehorned into the discourse replacing the accurate description 'parents who feel they want a child' that would have allowed a more comprehensive review of the issues as required by Australians.

The terminology used in this Review can only be viewed as a tactic designed by vested interests to 'trick' the reader into assuming the Law Reform Commission knows what it's doing and has not been taken over by vested interests.

It immediately reduces the scope of the review to: 'assume surrogacy is desirable and find ways to expand it", regardless of the fact that surrogacy is a breach of women's human rights under CEDAW.

Whereas, The *Australian Law Reform Commission Act 1996* grants the ALRC broad statutory discretion. Section 24(1)(b) states, "In performing its functions, the Commission must aim at ensuring that the laws, proposals and recommendations it reviews, considers or makes are, as far as practicable, consistent with Australia's international obligations that are relevant to the matter." Additionally, section 24(2)(b) of the ALRC Act requires that the Commission, must also "have regard to the effect that the recommendations may have on persons ... who would be affected by the recommendations... ." These are not discretionary guidelines. They are statutory obligations.

So, I have read through with curiosity to try to understand how surrogacy could have been elevated for such framing. As a citizen of Australia who is a critical thinker, social worker and believer in public accountability and democracy, I am disappointed by the quality of the basic argument presented in the Discussion Paper which seeks, by mere assertion and terminology, to pull the wool over the reader's eyes.

Disturbingly, the argument seems to be a re-run of the argument used in previous lobbying by the Assistant Commissioner when a Senior Lecturer at Monash. This leaves me with a perception that there has been a lack of impartiality in the set up and conduct of this Review from the start which may easily account for the composition of the 'Advisory Committee' which is so clearly biased by the weight of inclusion of vested for profit interests.

Some of the false assumptions on which the proposals put forward in this Discussion Paper are based are as follows:

1. The Discussion Paper states on p9 that: "The Terms of Reference ask the ALRC 'to consider Australia's human rights obligations' in undertaking this inquiry."

   The Discussion Paper further states: "*Intended parents also have rights which must be taken into account. Limits on eligibility (for example, based on sex) may amount to discrimination*".

   These statements are based on a false assumption that there are human rights to surrogacy including on the basis of discrimination. However, no such rights exist.

   As such, this 'Review' is akin to looking for a solution (enhance the supply of surrogate mothers) for a problem that has been made up with a legal story that draws a very long bow (that it is discriminatory, and people are entitled under State anti-discrimination law to access women's bodies as though a commercial product / service).

   Australia has zero human rights obligations to reduce barriers to surrogacy to overcome a "*lack of available surrogates in Australia*" that unnecessarily limit access to surrogacy and so cause a perception of discrimination.

   This has never been endorsed by the UN most likely as it is impossible to balance surrogacy with keeping the rights of the child paramount let alone the rights of women as human beings and not slaves. Although it was not mentioned in your Paper, surrogacy has been highlighted at the UN as a manifestation of violence against women and girls, as expanded on below.

   Even the Commonwealth Attorney General's Department made it clear in its submission in response to the Issues Paper that Australia has no binding human rights obligations to grant rights to surrogacy. (p7 of the AG sub)

   It is disappointing that this Discussion Paper has ignored the request of the Attorney General's Department that they should reference binding treaty obligations only from which these 'asserted' rights derive.

   This oversight by the Commission demonstrates the project's reliance on overreach as it highlights that the Department is aware that there are no binding human rights to surrogacy whether in terms of discrimination or other pretext. However, without this argument it would appear that there is no basis for the Review to continue.

   Unfortunately, this oversight by the team turns one's attention to unaddressed conflicts of interest concreted in by the set-up of this project. The Advisory Committee is largely made up of vested interests, and the leading Assistant Commissioner wrote a submission to the Senate Community Affairs Committee Inquiry into the Universal Access to Reproductive Healthcare running this same argument that there are such human rights in 2022 when she was a Senior Law Lecturer.

2. Because surrogacy is exploitative in other countries is not a reason that we should do it too. This kind of argument is akin to the arguments of the fossil fuel industry for why we should continue to mine coal: eg Indonesia will just buy it from someone else.
   The UN United Nations Assembly by the Special Rapporteur on Violence Against Women and Girls July Report to the United Nations Assembly highlighted that surrogacy is implicitly exploitative, and this has been completely ignored.
3. The Discussion Paper assumes that an industry driven project can achieve public policy objectives of reducing exploitation of women and children.

   For example, it states on p5 that "*A key objective of the current legislation is to reduce the risk of exploitation*". Yet the Review Advisory Committee is comprised mainly of medical and legal for-profit industry representatives.

   If the Review was genuine in this key objective, then they Advisory Committee would be comprised of public policy and ethics experts in exploitation of women and children by the for profit industry.
4. The fact that most Australians choose to access surrogacy overseas, where there are more surrogates available and processes that are easier to navigate, does not point to Australia's regulatory ineffectiveness in this space; and,
5. The fact that overseas surrogacy arrangements can be unregulated and exploitative and create other harms — for example, intended parents may not be recognised as the child's legal parents when they return to Australia – does not mean that Australia's current laws are not meeting the important objective of avoiding exploitation overall, and in many instances, are not giving primacy to the rights and best interests of the child.

The proposed ideas in the Discussion Paper for legal and policy reforms in Australia:

1. **Fail to ensure our laws and regulations would be consistent with Australia's obligations under international law and conventions**

   The UN has never endorsed a human right to an opportunity to have a child.

   This Review has come about due to overly powerful, patronising and commercial interests seeking to take advantage of the gender role stereotype that women should be 'kind' and 'altruistic'.

   There have been repeated 'assertions' by lobby groups over 20 years that have created the impression that Australia is obliged to make surrogacy available under international law and conventions. These assertions are based on the Yogyakarta Principles developed by 29 individuals but which have never been endorsed within a democratically accountable body.

   The international community has <u>never</u> recognised the right of persons to surrogacy. The Yogyakarta Principles were a lobbying tool only and they were never endorsed by the UN Assembly.

   Despite its Principle 17, access to surrogacy is <u>not</u> integral to the realisation of equality between men and women, regardless of sex or gender identity and is not a human right.

   Neither women's nor men's rights will ever be assuaged by using our legal and medical systems to encourage women to be kind and altruistic in accordance with gendered stereotypes. Yet this is the basis of the Discussion Paper's proposals.

Surrogacy must not be expanded for use by either females or males to reinforce or challenge stereotyped roles relegating women's and children's rights as collateral for some adults to feel better about themselves and for vested interests to profiteer off our vulnerabilities.

People who feel "*desperate*" to have a child can overcome this as it is just a feeling, one be it nevertheless that society can encourage unwittingly. The Review might turn its mind perhaps to recommend psychotherapy instead to assist such persons to overcome their feelings and know that they will still be OK and worthy human beings if they don't become parents. Not everyone can have children and there is no human right to them.

2. **Fail to ensure our laws and regulations would protect and promote 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.**

Just because it is practice today in Australia under State laws does not mean that reducing barriers can be consistent with protecting the rights of women and the child as paramount.

As a feminist health and inclusion policy expert and social worker, from my perspective, it is clear that surrogacy exploits women and children.

- It exploits the idea of women's 'altruism' and 'kindness'.
- It exploits the idea that women are only worthy if they can have children. There is no community education that you can live a happy life without being a parent as a strategy.
- It takes advantage of and further entrenches women's structural poverty in Australian society. It would extend the current colonisation of women's bodies, currently predominantly overseas, to more Australian women.
- It deliberately robs children of any chance of the security of attachment to their biological parents which is.
- The parallel with the forced adoptions scandal for which governments have been liable to pay compensation is obvious.
- It commodifies women and children in a trajectory that will be unassailable in the current climate where medical evidence and counselling and psychotherapy are so devalued in favour of the 'consumer' for the advantage of the medical industrial and legal industries which are so well represented on this ALRC Advisory Committee.

3. **Fail to ensure our laws and regulations would protect women and girls from surrogacy as it is a manifestation of violence against them.**

The Review Team and Advisory Committee should read and understand the report on the different manifestations of violence against women and girls in the context of surrogacy by the UN Special Rapporteur on violence against women and girls, its causes and consequences, A/80/158, Reem Alsalem, submitted in response to Human Rights Council resolution 50/7. Analysis of the UN Report by Reem Alsalem titled The different manifestations of Violence against Women and Girls in the context of Surrogacy (A/80/158) - Women Speak Tasmania

While the Special Rapporteur advocates abolition, which I note has been ruled out of scope in your current Review, she states that: **If the goal is regulation:** regulators need enforceable cross-border mechanisms, robust data collection, independent legal/medical counselling for surrogates, and strict limits on intermediaries — but the report questions whether regulation alone can remove the structural drivers of exploitation.

In this report she found:

1. **Surrogacy is characterised by exploitation and violence**, it commodifies women's bodies and exposes surrogate mothers and children to serious human-rights violations.
2. **Commercial surrogacy effectively amounts to the sale of children** in many cases, because the child is transferred for payment; this creates criminal and protection issues.
3. **Regulation alone has not been shown to eliminate harms.** The cross-border nature and enforcement gaps mean oversight often fails to protect surrogate mothers and children.
4. **Recommended policy package:** the report urges steps toward *abolition* of surrogacy in all its forms, and pending abolition, proposes: negotiating an international legally binding instrument prohibiting surrogacy; adopting a "Nordic-model" style domestic approach that penalizes buyers/clinics/agencies while decriminalizing surrogate mothers; banning advertising; creating exit/support services for surrogates; and strengthening international cooperation and child-protection measures.
5. **Child-centred safeguards:** recognize the birth mother as legal mother until after birth, restrict recognition of foreign surrogacy parentage, and treat abandoned/left-behind children as unaccompanied minors pending protective placement where needed.

I urge the Review of Surrogacy Laws to abandon this unethical, unsupported and flagrant effort to reduce barriers to surrogacy in Australia.

This Discussion Paper uses tactics of trickery and unfounded assertions expected of for-profit vested interests. This is not what we expect of our Australian Law Reform Commission which should have provided a Discussion Paper that represents 'independent review on behalf of the Australian community' that we can trust.

This Review should be reconstituted with new leaders and Advisory Committee that can protect those most vulnerable in our society being children and women as outlined by the UN Special Rapporteur Reem Alsalem in July and linked above.

Yours sincerely

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Brisbane