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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: Discussion Paper: Review of Surrogacy Laws (Discussion Paper 89, November 2025)

We represent Mothers Adoption Loss Alliance – MALA – an organisation that was founded in 2021 to provide mothers with a national voice and to bring them together to inform the community about the lasting negative impact of being separated by adoption. The MALA committee comprises mothers from Victoria, Queensland, NSW, South Australia, Tasmania, the ACT and Western Australia. All women throughout Australia who have been affected by adoption are invited to join the MALA network.

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

We consent to this submission being made publicly available in full on the Australian Law Reform Commission's website.

Here is the lived experience of two Australian surrogate mothers:

I entered surrogacy out of love, loyalty, and hope—wanting to help a beloved cousin become a mother and to strengthen family bonds. What began as an act of generosity quickly turned into profound emotional trauma. Throughout the pregnancy, I felt isolated, unsupported, and emotionally undermined, enduring constant anxiety, fear, and abandonment at a time when I needed care and reassurance.

The birth itself was devastating. Handing over my baby after enduring hostility and cruelty caused deep grief, shock, and a sense of powerlessness. This grief was compounded by false accusations, court appearances from a hospital bed, and the sudden, total loss of my child—a loss made more

painful by being denied even photographs or contact. The ongoing years brought relentless fear, stress, and emotional exhaustion as I faced stalking, legal harassment, and repeated attempts to erase my identity as my son's mother.

Nearly a decade later, the pain remains unresolved. I live with ongoing sorrow, concern for my child's well-being, and the hope that one day he will seek the truth. My experience left me feeling deeply violated as a woman and mother, leading me to view surrogacy not as altruism, but as an emotionally destructive system that fractures families, silences women, and causes lifelong harm to children.

During counselling, my friends promised to provide the support I needed to act as their surrogate following the breakdown of my marriage. I relied on this promise in good faith at a time when I was emotionally vulnerable and in need of stability and support.

Despite my repeated requests, they refused to formalise the arrangement through a lawyer. I was made to feel guilty for raising the issue, as they claimed the legal costs were excessive. Given my separation from my husband and my need for their support and approval, I agreed to proceed without a contract. I felt pressure to please them and feared losing what support I believed they would provide if I insisted on legal protection.

That support did not eventuate. I was left with significant financial burdens, including unpaid medical expenses and the cost of my hospital stay, which the intended parents refused to cover. Without my knowledge or consent, the direct debit for my private health insurance was cancelled, leaving me with a substantial insurance debt in my name.

Throughout the pregnancy, the intended mother displayed significant unresolved trauma relating to infertility. Her behaviour toward me became increasingly hostile and escalated into sustained verbal abuse and stalking. She publicly posted statements encouraging me to kill myself and made repeated allegations that I had attempted to harm the baby during pregnancy, that I intended to kidnap the child, and that my motivation for being a surrogate was an alleged romantic interest in her husband.

These allegations were false and deeply distressing. She repeatedly sought and obtained intervention orders against me, which compounded the emotional and psychological toll of the situation and further isolated me during an already vulnerable period.

Equivalence between surrogacy and adoption

At the core of adoption and surrogacy is the relinquishment of a child by the mother, severing the natural bond between mother and child. In utero the exchange of cells between the mother and the foetus is a bidirectional process that occurs across the placenta throughout gestation. Foetal micro-chimerism, the movement of foetal cells into the mother and maternal micro-chimerism, the movement of maternal cells into the foetus, begin early in pregnancy, with foetal cells detectable in the maternal circulation as early as seven weeks of gestation.

This results in a human being who is deeply connected and attached to that mother, a baby who is unaware that it may not share its mother's genetic material. When a baby is born and immediately taken away from that mother, it has a traumatic effect on the baby. Research in developmental psychology and neuroscience indicates that infants begin to recognise and bond with their birth mothers while still in the womb. When this connection is disrupted, the nervous system perceives the separation as a loss of safety and security, which has been shown by the adoption experience to have a life-long impact on the child.

Historically, pre-adoption preparation (for the adopters) has concentrated on logistical and legal processes, considerations for trans-racial adoption and general parenting techniques, while the long-term mental health implications of relinquishment have often been overlooked. This is precisely what this Discussion Paper is doing. It appears to focus on the financial aspects of surrogacy, how to "improve" them, how to make surrogacy easier to access, more efficient and more controlled. Nowhere in the Paper is there discussion about how to help the baby's innate need for the body who grew them for 9 months. "The Rights of the Child" is mentioned throughout the Paper, but nowhere does it actually describe what these rights are. Surrogacy prioritises adults' interests over the child's interests. Laws should prioritise the child's right to stability, identity and informed origins, not adult convenience. The UN Hague Convention recognises the rights ***of*** the child, not the right ***to*** a child.

Discussion Paper language

The language in the Discussion Paper is de-humanising and disrespectful, such as the description of surrogacy on p.3: "a practice in which a person carries and gives birth to a child for another person or couple." She is a woman, or a surrogate *mother.* A 'surrogate' is not a thing; she is a woman who gives birth to a baby for a commissioning couple and as such, should be described respectfully as a surrogate mother. Without this woman, there would be no baby.

The pre-birth extinguishment of the birth mother's rights

It is expected in these Proposals (P5#2 and P30) that the mother will forgo her natural and legal right as being the mother of the baby she has just given birth to and agree that the commissioning couple "will be the child's legal parents at birth". In this model entering the surrogacy agreement becomes her consent to relinquish. This is completely unacceptable, expunging her right to be acknowledged as the mother, and providing no revocation period should she feel differently having given birth to the child. Once more demonstrating the equivalence between adoption and surrogacy. Both adoption and surrogacy involve the transfer of parental responsibility from the woman who gives birth to the child to another party.

Health Risks

The Discussion Paper does not discuss the risks to a surrogate mother. There is limited long-term research on surrogacy health outcomes. Many studies focus on child outcomes or commissioning couples, not surrogate mothers. However, multiple

large studies show that IVF pregnancies are riskier than spontaneous pregnancies, even when controlling for age and health.

Surrogacy is *not* a "normal pregnancy" medically. It almost always involves IVF, which changes the risk profile from the start. Compared to natural conception, IVF pregnancies show higher rates of pre-eclampsia, gestational hypertension, placenta abnormalities, preterm birth and postpartum haemorrhage.

Even when surrogates are screened, mental and psychological health risks can include postpartum depression or anxiety, emotional distress from separation from the baby, trauma if pregnancy or delivery is complicated and pressure to undergo medical procedures (e.g., abortion or caesarean section)

Prospective surrogate mothers may be described as "healthy," but IVF itself introduces risk. Health screening does not erase that. Surrogate mothers typically undergo:

- Oestrogen and progesterone suppression and replacement
- Endometrial manipulation
- Cycle control medications

These raise risks of blood clots, severe migraines, mood disorders and cardiovascular stress.

Surrogacy carries higher medical risks than spontaneous pregnancy, and those risks are borne entirely by the surrogate mother. These risks are medically real, not hypothetical, and are a central reason many people oppose surrogacy, not, as the ALRC Paper states, because of an overly strict prohibition on 'reimbursing surrogates'.

Federal vs State oversight

With regard to whether surrogacy legislation should lie with the Federal Government or State and Territory Governments, it is our position that uniform Commonwealth regulation is neither necessary nor desirable. State and territory parliaments are better placed to reflect local moral, cultural, and social views; and decisions about family law exceptions like surrogacy should remain as close as possible to the communities affected. Surrogacy laws reflect deep ethical and social differences across jurisdictions: uniformity risks imposing a single moral framework nationwide. Existing diversity among states allows for democratic experimentation and caution in a morally contested area.

A National Regulator would normalise and entrench surrogacy practices rather than critically regulating them, creating pressure to expand access and commercialise over time, regardless of original safeguards. Regulatory bodies tend to evolve from restrictive oversight to facilitation and promotion. Ethical matters should remain

under direct parliamentary control, not technocratic administration. Placing substantive ethical matters into delegated legislation, guidelines, or standards weakens parliamentary scrutiny, creating a pathway for significant changes to occur without proper democratic debate. In morally sensitive areas, legislatures, not regulators, must retain control over rights, prohibitions and boundaries.

Voluntary Assisted Dying (VAD) is one of the most ethically and morally contested issues in Australia, yet it remains legislated at a state and territory level, not nationally. Each jurisdiction has recognised the importance of local autonomy, community standards and nuanced regulation. Against this backdrop, it is difficult to accept arguments that surrogacy laws must suddenly be elevated to a national framework. If Australia has not pursued national consistency for VAD, a far more controversial and complex issue, it is implausible to suggest surrogacy uniquely requires it. Calls for a national surrogacy law appear driven less by necessity and more by the convenience of certain legal practitioners and a lack of public understanding, rather than by evidence of systemic failure at the state level.
In areas involving human reproduction, caution and restraint are virtues. Jurisdictional variation allows communities to set ethical limits aligned with local values.

Any reform of surrogacy laws should be directed toward strengthening protections for women and children rather than expanding access or normalising surrogacy arrangements by institutionalising them. Given the inherent ethical complexity and risk of exploitation, surrogacy should remain a tightly constrained exception, not a facilitated pathway to parenthood. Reforms should focus on stricter eligibility criteria, stronger prohibitions on financial inducement, robust independent legal and psychological safeguards, and continued judicial oversight. Efforts to streamline processes, broaden eligibility, or shift substantive protections into delegated regulation risk eroding safeguards over time and should be approached with extreme caution.

Sincerely,

Lynne Williamson
Lesley Mitchell

on behalf of MALA