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Surrogacy, like forced adoption, institutionalises systemic harm. At the centre of every surrogacy is a relinquishment, just as at the centre of every forced adoption was a coerced surrender. No legal framework can ethically reconcile the commodification of children and women inherent in surrogacy. Protecting children's rights, safeguarding women's dignity and upholding human decency demand surrogacy be categorically rejected in law and policy.

Our submission draws critical parallels between surrogacy and Australia's forced adoption era. In both contexts, the defining act is the relinquishment of a child by the mother—a severance of the natural bond that creates lifelong consequences for both mother and child. Just as forced adoption was driven by stigma, secrecy, institutional authority and lack of support, surrogacy pressures women through contracts, financial need and socialised altruism. In both cases, consent is compromised by systemic inequality and external coercion.

Our key concerns include:

- **Children's rights:** Surrogacy arrangements obscure or sever a child's right to know their origins, replicating the secrecy and denial of identity seen in forced adoption.
- **Women's dignity:** Both practices exploit women, minimise their grief and treat them as vessels rather than autonomous people.
- **Secrecy and harm:** Mothers and children endure disenfranchised grief and children bear the additional burden of secrecy and transactional treatment. Systematised surrogacy legitimates and entrenches the undermining of the mother-child bond and the essential humanity of women.
- **Institutional endorsement:** Legal frameworks risk legitimising systemic exploitation, transforming private harm into socially sanctioned practice.
- **Historical lessons:** All Australian governments have apologised for the lifelong trauma of forced adoption. Surrogacy risks repeating this history, creating another generation of harmed mothers and children who will one day demand recognition and redress.

We oppose surrogacy whether commercial or altruistic because no legal framework can ethically reconcile its inherent commodification of women and children and because making it law confers institutional authority, sending the message that society approves of this harmful practice. Surrogacy arrangements undermine fundamental human rights, compromise the dignity of women and disregard the paramount interests of children. They commodify human life, reduce children to contractual objects and instrumentalise women's bodies, legitimising practices incompatible with international human rights norms.

Please see our attached submission to the ALRC Discussion Paper.

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Submission to the ALRC Review of Surrogacy Laws Discussion Paper 2025 from the Association of Relinquishing Mothers (ARMS)

(Now known as the Association Representing Mothers Separated by adoption)

Policy Statement on Surrogate Motherhood and Surrogate Motherhood Agreements (SMAs)

Our position draws on Australia's own historical reckoning with forced adoption. Policymakers cannot afford to ignore the parallels without risking the repetition of acknowledged past injuries and injustices. This kind of framing speaks to the community's lived memory of harm and requires lawmakers to meet their sense of duty as well as their moral and international obligations. In truth, no one has a right to a child; and no one has the right to expect our governments to facilitate someone else giving them a child.

This paper is divided into four sections:

- We introduce our organisation
- The principles that underpin our approach to all matters pertaining to surrogate mother agreements (SMAs)
- Our lived experience of relinquishing a child at birth
- Our response to the matters raised in the ALRC Discussion Paper 2025

INTRODUCTION TO ARMS

ARMS(Vic) is a not-for-profit organisation founded in 1982 out of a common need to support other women who have lost a child or children to adoption. ARMS is a unique support organisation because it is exclusively for mothers who were separated from their child at birth. 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-three (43) years, provided high quality, insightful, personal support, information and advice to other mothers. ARMS offers support through a 24/7 telephone service, website, email and support group meetings. It has run a monthly in person. 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 undertaking 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 and were highly instrumental in achieving the 1984 legislative reforms to the Adoption Act (Victoria) and in supporting the inclusion in the 1984 Infertility (medical procedures) Act of a clause requiring the welfare and interests of the child to be paramount.

The ALRC states that they have approached surrogacy 'through its own lens' as they do not believe that it can be compared to adoption and gamete donation. We represent an organisation of approximately 300 members in Victoria, with sister organisations in most states. We speak on behalf of more than a quarter of a million women throughout Australia who have lived through relinquishing their babies for adoption by infertile couples. ARMS is strongly of the view that there is indeed an equivalence.

Surrogacy denies the continuity of the mother-child bond, just as adoption does. The planned separation from the child causes emotional and hormonal shock, with measurable impacts. In an Indian study (UN, 2025) of 50 surrogate mothers:

- 35% had difficulty giving up the child at birth
- 39% experienced negative emotions
- 33% are at risk of post-traumatic stress or anxiety and
- 65% experience high stress in the event of IVF failure

It is concerning to us that so much of this Review appears to be focused on the financial cost to commissioning couples, whether through the cost of commissioning a woman to carry the baby, the costs accrued after the baby is born, or how costs can be minimised through changes to Medicare. The focus should be on the rights of the child and on the implications of relinquishment on the surrogate mother that can be drawn from the forced adoption era.

SECTION 1

1. Commitment to Principles and Ethics

We hold a principled and unequivocal opposition to all forms of surrogacy, whether commercial or altruistic. Surrogacy arrangements, by their nature, undermine fundamental human rights, compromise the dignity of women and disregard the paramount interests of children.

2. Human Rights Perspective

Language tells us a great deal about attitude. For the ALRC, a woman agreeing to carry a child to term and give birth – including all the risks that entails - and then relinquishing that child to a commissioning couple, is no longer being called a mother.

She is a thing, a 'surrogate'. Her being as a woman and a mother is expunged. If we were to accept the direction of the ALRC *Issues & Discussion Papers,* that mother would be locked into relinquishing the child she gave birth to, without even the room to reconsider her decision, as she would have signed away that right prior to the pregnancy, by virtue of agreeing to enter the surrogacy arrangement. This is cruel and dehumanising. International law, agreed to by Australia is under challenge from this ALRC committee; and its proposals, if implemented would bring Australia's international reputation into disrepute.

- Surrogacy, whether commercial or altruistic, commodifies human life, reducing children to objects of contractual exchange.
- It legitimises the buying and selling of children, a practice fundamentally incompatible with international human rights norms and a breach of every aspect of decency.
- 'Altruistic' surrogacy is insidious in that it calls on women's socialised compassion, decency, kindness and generosity to provide a 'gift' that has the potential to risk her life. Experience recorded from many surrogate mothers is that the promises made by commissioning couples are not kept, ensuring that the mother is excluded from having any contact with the child to whom she gave birth.
- The experience of many surrogate mothers in contact with us is that altruistic surrogacy is very destructive of family ties and relationships.
- Women's bodies are instrumentalised, treated as vessels rather than women being given the respect of being autonomous people; people who have dignity and equality.

3. Rights of the Child

- Every child has the inherent right to know the truth of their origins as recognised by the UN Hague Convention's Rights of the Child. Surrogacy arrangements deliberately obscure or sever this right. Experience has shown that records can be 'lost', destroyed, incorrectly recorded or simply not provided to the child of these arrangements, ensuring that many will never know the circumstances of their birth or be given the opportunity to know their origins and perhaps meet origin mother or biological family.
- The principle of the **paramount interests of the child** must prevail over adult desires. Surrogacy prioritises adult interests in obtaining a child over the child's lifelong need for identity, truth, and security. Adoption experience from the last 80 years demonstrates the critical nature of the desire for identity, as well as the many ways in which family life can undermine childhood when the child doesn't 'fit' into the adopting family.
- Children born through surrogacy often bear the psychological burden of being "contracted" into existence, with the attendant shame and pain of being bought and sold and raised in a family holding a significant secret about them: a family unable to provide a trustworthy basis to that child's life.

4. Rights of the Child and Rights of Women not to be Exploited or Denigrated

- Surrogacy disproportionately exploits women, both those in vulnerable circumstances particularly, but also those who are moved to act from compassion.

- Legalising surrogacy normalises the denigration of women by endorsing their reproductive capacity as a marketable service. This occurs whether or not there is a straight commercial arrangement. The value of all women is affected when surrogacy is normalised by being systematised.
- It creates systemic pressure for women to view surrogacy as a legitimate path, even when it entails profound physical, emotional and social risks.

5. Social and Ethical Harms

- Surrogacy arrangements fracture natural kinship bonds, creating secrecy, shame, and disenfranchised grief for both children and mothers. There are many lessons available to be known by legislators from adoption practices. Surrogacy arrangements mirror the worst of these. Many commissioning couples will be under no pressure to provide their child with the truth of the circumstances of their birth. While that won't be an option for male couples, the child will have the primal wound identified by Nancy Verrier in her book *The Primal Wound: Understanding the Adopted Child,* of being immediately and permanently removed from the woman who was their mother.
- Surrogacy arrangements institutionalise inequality, where wealthier individuals purchase reproductive services from women with fewer resources.
- By legitimising surrogacy arrangements, society endorses a practice that undermines solidarity, compassion, and respect for human dignity.

6. Policy Conclusion

- Surrogacy and surrogate motherhood agreements (SMAs) must be rejected in law and policy.
- No legal framework can ethically reconcile the commodification of children and women inherent in surrogacy.
- The protection of children's rights, the dignity of women and the integrity of life demand a categorical prohibition.
- Our principled position is clear: surrogacy is incompatible with the paramount interests of the child, human rights and social justice.

Australia is a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As such, it has binding obligations to ensure that women are not subjected to discrimination, exploitation, or practices that undermine our dignity and equality. Surrogacy arrangements, whether commercial or altruistic, are fundamentally incompatible with these obligations. Surrogacy reduces women's reproductive capacity to a contractual service, commodifying our bodies and undermining our dignity. Legal recognition of surrogacy legitimises systemic discrimination by endorsing the treatment of women as means to an end, rather than autonomous persons.

SECTION 2

Parallels Between Surrogate Mother Arrangements and the Forced Adoption Era in Australia

1. Relinquishment as the core act

- In both surrogacy and forced adoption, the defining moment is the relinquishment of a child by the mother.
- This act severs the natural bond between mother and child, often under conditions of pressure, coercion, or systemic expectation.
- The child's identity and kinship ties are disrupted, creating lifelong consequences. This is the case even where the mother is carrying a child who is not her genetic progeny. She is the one known by the child in utero. It is a fundamental bond that creates the vital, connected relationship which is physical, psychological and physiological. It creates secure attachment for the child. Surrogacy severs this bond and the adoption experience demonstrates that this has a lifelong impact on the child.

2. Systemic Pressure and Coercion

- In the *Forced adoption era* in Australia, women were pressured by social stigma, institutional authority and lack of support to surrender their babies.
- With *surrogacy*, women are pressured by contractual obligations, or societal framing of surrogacy as "altruism" or "choice" and for some in Australia, it will be financial need, especially for those experiencing poverty.
- In all cases, consent is compromised by institutionalising it as a service, structural inequality, external pressures and the socialised experience of women as being altruistic.

3. Right of Child to Origins Information

- *Forced adoption*: Children were denied access to their birth records, identities and the truth of their origins. Birth records were lost, destroyed, falsified and denied.
- *Surrogacy*: Children are deliberately conceived into arrangements where their origins are obscured, fragmented and most often held in secret, undermining their right to know the truth of their conception and in many instances their kinship. These problems are significantly worse in surrogate mother arrangements contracted overseas, where there is a litany of appalling, dishonest and illegal actions recorded.
- Both practices disregard the paramount interests of the child in favour of adult desires and social agendas.

4. Secrecy, Shame and Disenfranchised Grief

- *Forced adoption*: Mothers endured lifelong grief, shame and silence, unacknowledged by society through the institutionalised pressure of the system.
- *Surrogacy*: Surrogate mothers tell us of their experiences of disenfranchised grief, with their loss minimised or denied because it was 'contractual' or they had made a 'choice'.
- Children in both contexts carry the burden of secrecy and the pain of being treated as objects of transaction.

5. Institutional Endorsement of Harm

- *Forced adoption*: Institutions (churches, hospitals, governments) legitimised and facilitated practices that harmed women and children.

- *Surrogacy*: Legal frameworks risk legitimising surrogacy as a "family-building option," thereby endorsing systemic exploitation and commodification.
- In both cases, state endorsement transforms private harm into a socially sanctioned practice.

6. Long-Term Social Consequences

- *Forced adoption*: Decades later, both federal and state governments have formally apologised for the harm caused, acknowledging the lifelong trauma inflicted.
- State governments across Australia are now implementing financial redress schemes to acknowledge the harm done to mothers in this system driven relinquishment.
- *Surrogacy*: If legalised, surrogacy risks creating another generation of children and mothers who will one day demand recognition of the harm and call for redress.
- The lesson of history is clear: legitimising practices that centre on relinquishment leads to enduring social and emotional damage to women, children families and society.

7. Policy Implication

- The forced adoption era demonstrates that state-sanctioned relinquishment practices cause profound harm to mothers and children. Surrogacy repeats these patterns under a new guise.
- At the centre of every surrogacy is a relinquishment, just as at the centre of every forced adoption was a coerced relinquishment.
- To avoid repeating history, surrogacy must be categorically rejected in law and policy, to protect both women and children from systemic harm.

SECTION 3

Response to specific Discussion Paper Proposals

Introduction

It is notable that in the Key Terms there is no mention or definition of the Paramount interests of the Child: notable because it is claimed to be a guiding principle. It is hard to see this Discussion Paper as anything more than a blueprint for a specific vested interest – infertile couples and the male gay community who want to facilitate their own interests at the expense of everyone who stands in the way.

It is further notable that women, the group those communities most need, are no longer referred to as being a woman or a mother. She is a 'surrogate' or a 'person' or 'persons'. This absence of acknowledgement speaks of misogyny and erasure of the humanity of women who are most needed to create the child so desired by these couples and individuals..

This document and the previous *Issues Paper* echo a memorable Keating phrase – back the horse called self-interest because it is most likely to run hardest. This ALRC committee has embarrassed the good reputation of the Commission by so overtly pushing a sectional interest. It has done so even to the exclusion of being prepared to

address the original Terms of Reference (ToR). In each of the two documents, it 'refines' the wording of the ToR to the point where it is no longer recognisable. It does not address key aspects of altruistic surrogacy, skimming over all its complexities to the point of denying its existence as being the central component of the current legislation.

Further it makes a significant and unsubstantiated claim that "The lack of available surrogates in Australia appears to be linked, in part, to an overly strict prohibition on reimbursing surrogates, which can leave the surrogate financially out of pocket." No references are provided to support this claim and no other reasons are examined. And from that basis, the Committee launches into developing a blueprint for commercial surrogacy. It claims that "a key objective of the current legislation is to reduce the risk of exploitation" and by agreeing with this, it pursues one remedy – payment for the 'service' of a 'surrogate'. There is no acknowledgement of the dignity and awe of growing a baby for nine months and giving birth - creating the miracle of life. Their frame is to reduce this to a purely commercial interaction – throw in some insurance in case she dies, and ensure the contract expunges her from even being the mother.

ALRC Proposal 1

Surrogacy should be regulated

Surrogacy currently is regulated. Responsibility for surrogacy rests with the States as they have responsibilities for all other children's matters – child protection, adoptions, inter-country adoptions, foster care, and through these, extensive experience in applying the paramountcy principle for children. They also carry all the above responsibilities outlined by the ALRC in relation to the proposed Surrogacy Support Organisations, with extensive experience in delivering these services.

Legal and Constitutional Risks of a referral of powers

- **Complexity of Referral:** Referral of powers requires agreement from all states and territories. Achieving uniform referral is politically and practically difficult, risking fragmentation if some states refuse.
- **Partial Referral Problems:** If states refer only part of their powers, inconsistencies may remain, undermining the goal of national uniformity.
- **Constitutional Challenges**: The scope of referral could be contested in the High Court, especially if Commonwealth legislation is seen to overreach into areas traditionally reserved for states.

Political and Institutional Risks

- **Negotiation Deadlock:** Referral requires high levels of collaboration. States may resist ceding authority, particularly if they have strong policy positions on surrogacy.
- **Policy Dilution:** To secure agreement, compromises may be made that weaken protections or ethical safeguards, resulting in a lowest-common-denominator framework.
- **Institutional Authority:** Centralising surrogacy law at the Commonwealth level risks embedding institutional endorsement of surrogacy, persuading women that it is socially sanctioned and legitimate.

Ethical and Social Risks

- **National Normalisation:** A Commonwealth Surrogacy Act would give surrogacy the weight of federal endorsement, normalising the practice across Australia.
- **Loss of State Safeguards:** States that currently restrict or prohibit surrogacy could lose the ability to maintain stronger protections for women and children.
- **Historical Parallels:** Just as state institutions legitimised forced adoption, a Commonwealth framework risks repeating systemic harms by embedding relinquishment practices in national law.

Practical Risks

- **Implementation Gaps:** Even with referral, states would still administer aspects of surrogacy (courts, health systems). Divergences in practice could persist.
- **Transition Confusion:** Moving from state-based to Commonwealth regulation could create uncertainty for families, surrogates, and children during the transition period.
- **Resource Burden:** Establishing new Commonwealth structures (e.g., Surrogacy Support Organisations) requires significant funding and oversight, with risks of bureaucratic inefficiency or failure.

Policy Implications

Option 1.1 This proposal risks legitimising surrogacy nationally, embedding systemic harms under federal authority and eroding state capacity to protect women and children. The political difficulty of referral may lead to diluted safeguards, while the ethical danger lies in granting surrogacy the imprimatur of Commonwealth law — repeating the historical mistake of institutionalising practices centred on child relinquishment.

There are different but similar risks with all the options proposed in the Discussion Paper. ARMS is strongly against a dilution of the states' responsibilities in this area and any proposal that duplicates, mirrors or applies a federal version of a surrogacy act, especially if it is based on the proposed blueprint.

Proposal 2

A national regulator

A national regulator for surrogacy would centralise oversight across Australia, aiming to create consistency, but it carries significant implications: it would legitimise surrogacy at a federal level, embed institutional authority into the practice, and repeat historical harms by normalising child relinquishment through state-sanctioned structures.

- **Legitimisation of Surrogacy:** Federal endorsement through a regulator would normalise surrogacy as a "family-building option," persuading women that it is socially sanctioned.

- **Risk of Coercion**: Institutional authority can pressure women into viewing surrogacy as legitimate altruism or choice, echoing the coercive dynamics of forced adoption.
- **Children's Rights**: While a regulator may mandate record-keeping, history shows institutional systems often fail to preserve or provide identity records, risking secrecy and denial of origins.
- **Resource Burden:** Establishing and funding a new regulator would require significant investment, with risks of inefficiency or bureaucratic failure.
- **Forced Adoption Lessons**: Just as churches, hospitals, and governments legitimised forced adoption, a national regulator risks embedding systemic harm under federal authority.
- **Future Redress:** If surrogacy is normalised through regulation, Australia may face future demands for apology and redress from harmed mothers and children.

Proposal 3

Surrogacy Support Organisations

The proposal for SSOs is not a safeguard but a contradiction. By legitimising surrogacy through institutional authority, SSOs risk repeating the systemic harms of forced adoption: coercion, secrecy, commodification, and lifelong trauma. To protect women and children, surrogacy must be categorically rejected in law and policy, and SSOs must not be established as vehicles for institutionalising harm. According to the ALRC Discussion Paper the Proposed Functions of SSOs are as follows.

- Information & Education:
- Screening & Assessment:
- Counselling & Support:
- Record-Keeping:
- Oversight & Compliance:
- Reducing Exploitation Risks:

In all services and programs involving children and their families, states and territories have always vested authority and responsibility for the administration and monitoring of these services and programs in independent agencies (state departments, NGOs and churches) to ensure there is no conflict of interest with respect to the management and individuals operating such services. SSOs, as proposed, would be unacceptable, as they involve a major conflict of interest in all aspects of their operation. In our view these are key government functions that should not be outsourced. It would be the equivalent of putting the fox in charge of the hen house.

Analysis of Surrogacy Support Organisations (SSOs)

1. Institutionalising Relinquishment

- By embedding SSOs into law, the state legitimises the act of child relinquishment as a socially sanctioned practice.
- This mirrors the forced adoption era, where institutional authority persuaded women that surrendering their babies was expected and endorsed.
- Far from offering "support," SSOs risk normalising systemic harm under the guise of regulation.

2. Commodification Disguised as Safeguard

- SSOs are presented as ethical intermediaries, yet their core function is to facilitate surrogacy arrangements.
- This institutionalises the commodification of women's reproductive capacity and children's origins, cloaking exploitation in bureaucratic respectability.
- The contradiction is stark: an organisation meant to "protect" women and children is tasked with enabling the very practice that undermines their dignity.

3. Coercion Through Authority

- The authority of SSOs persuades women that surrogacy is a legitimate, socially approved path.
- This echoes the coercive pressures of forced adoption, where institutional endorsement masked the absence of genuine consent.
- Women's altruism and vulnerability are instrumentalised, not safeguarded.

4. Children's Rights at Risk

- While SSOs are tasked with record-keeping, history shows that institutional record systems are prone to secrecy, loss, or deliberate destruction.
- Children's right to know their origins is not guaranteed by bureaucratic oversight; it is undermined by the very framework that conceives them into secrecy.
- The proposal risks repeating adoption's failures, where generations were denied identity and truth.

5. Disenfranchised Grief and Social Harm

- SSOs may provide counselling, but their role in facilitating relinquishment ensures that grief is minimised or reframed as "contractual."
- This perpetuates disenfranchised grief for mothers and secrecy for children, embedding shame and silence into family structures.
- Institutionalising this harm under the banner of "support" compounds its legitimacy.

6. Historical Contradictions

- The Australian Government, along with State Governments have issued formal, public apologies for the forced adoption era, acknowledging the lifelong trauma caused by institutionalised relinquishment.
- Establishing SSOs risks repeating history under a new name, creating another generation of mothers and children who will one day demand recognition and redress.
- The lesson of history is clear: institutional endorsement of practices centred on relinquishment leads to enduring social damage.

Proposals 4 and 5

Approvals of a surrogacy agreement

"Approved surrogacy arrangements can proceed on the administrative pathway and intended parents will be the child's legal parents at birth." This is probably the most contentious and contemptuous proposal of the whole approach by the ALRC implying as it does that the woman who gave birth to her child is not a mother. This proposal indicates that for the ALRC, the 'surrogate' is not a mother and not even

acknowledged as a woman. Her inalienable right to be known as the mother of this child has been expunged.

No consent to relinquish the baby exists and therefore no opportunity for the mother to consider her feelings. This is a complete disregard of the whole process of pregnancy, the essential attachments of the baby to the mother and the mother to the baby in utero: and the birthing of a human being. It requires that this woman is in the same place emotionally at the end of a pregnancy and birth as she was before she was pregnant. There have been no emotional or psychological shifts within her; and regardless of her body now rushing with hormones designed to protect her child, that she will exist in the same space as she was when she first signed a contract. She may well end up there, if given time and acknowledgment. But the ALRC doesn't want to risk that she doesn't, and prefers to enforce a contract, preferably a financial one, so that she is locked into contract law. Nothing to do with the buying and selling of a baby here.

Proposal 6

See comments under Proposal 3

Proposal 7

Publishing and promoting information

Commercial and altruistic surrogacy is a highly contested area. Even if there were agreement about legalising additional aspects, there would be considerable disagreement about what constitutes accurate information that does not constitute an encouragement to undertake a surrogacy contract.

Public campaigns risk normalising surrogacy as a "family-building option," embedding it in social consciousness as legitimate, regardless of the harms identified. Promotion may encourage women—especially those in vulnerable circumstances—to view surrogacy as altruistic or financially necessary, echoing coercive dynamics of forced adoption. It generates historical amnesia by ignoring the lessons of forced adoption and presenting surrogacy as progressive reform rather than repeating systemic harm.

Once promoted, surrogacy becomes harder to roll back politically, even as evidence of harm grows. Communities are likely to lose faith in institutions if promotional materials are later seen as misleading or dismissive of risks. In our current social media environment, misinformation and disinformation about surrogacy create even greater risks to the cohesion of our society and our confidence in governments.

Proposal 8

Compliance and Penalties

"The application of the criminal law to surrogacy arrangements stems from a time when
all forms of surrogacy were considered unethical." The ALRC provides no evidence that the community has changed its views about all forms of surrogacy. This comment smacks of living inside a bubble of their own making where access to babies should be a right. As a consequence of this position, the ALRC then outlines why in their view, there should not be criminal consequences for bad actors in the field. Their proposed 'fix' is "replacing criminal sanctions with a civil penalty regime as

being more likely to deter behaviour and prevent exploitation, while avoiding the problems with using a criminal prohibition" ie that the criminal consequences aren't applied. Our capitalist society hasn't demonstrated that financial sanctions breed better behaviour. A more straight forward and likely to be effective consequence, would be to apply the criminal sanctions already available.

Proposals 9 and 10

When considering bad actors

Once again the ALRC opts for a wet lettuce leaf approach to breaches, proposing only civil penalties. It acknowledges that overseas surrogacy arrangements are often coercive, commercial and exploitative. "Australia has a responsibility to put measures in place aimed at preventing Australians
from engaging in exploitative surrogacy arrangements overseas. Currently, Australia does not
have a 'comprehensive framework to manage the risks associated with offshore surrogacy.'" Rather than recommending the comprehensive framework, its argument is that with or without consequences, these arrangements will occur because couples who can't get what they want in Australia will go overseas.

And their response to the problem to legalise commercial surrogacy in Australia. It would suggest Australia would become the new baby tourist destination from all those countries who have now closed their borders and closed down their commercial surrogacy. More than 30 countries now prohibit commercial surrogacy outright, reflecting growing recognition of its ethical and human rights risks. Countries that initially allowed commercial surrogacy often became hubs for international surrogacy tourism. Over time, scandals, exploitation of vulnerable women, and trafficking concerns led to bans.

Proposal 11

Advertising for the 'services' of a woman

If there was any doubt that surrogacy demeans women, this proposal unarguably puts all surrogacy arrangement in that category. Whether money changes hands or not, surrogacy advertising reduces women to their bodies instead of respecting them as whole human beings. Point 104 makes big claims without any evidence, but a great deal of (unwarranted) confidence that the regulatory framework would provide a balance between the prohibiting the advertising of prohibited conduct while enabling advertising that facilitates lawful surrogacy arrangements because (such actions) would undermine the regulatory framework. This borders on fanciful. We already have prohibition laws that are clearly being flouted by bad actors in social media and by others, and the ALRC acknowledges this (point 103 & 106). No amount of regulation will completely deter a bad actor and usually the issue is revealed after the damage is done.

Proposal 12

Ignoring the difference between gestational and traditional surrogacy

Is this because in the view of the ALRC that there is no difference? Points 111 to 114 suggest that the reason the ALRC holds this view is because it doesn't want any limit on the pool of potential surrogate mothers. They also note that one reason for constraining access is 'principled,
because surrogates should not jeopardise their health if intended parents do not have a need

for surrogacy.' Acknowledging that surrogacy can and does jeopardise a woman's health, one should expect the ALRC would see that this should be a sufficient reason to embrace all relevant constraints, to protect those women and their existing families.

Does it even need to be pointed out? A traditional surrogate mother is relinquishing her own biological child, a child who has a clear relationship to her existing children. A gestational mother is relinquishing her baby, but one without genetic links beyond herself. That is why we would want to see greater prohibitions for the traditional mother, as her decision will affect her existing family and the child born of the arrangement, beyond that of the gestational mother. However in both circumstances, there are significant psychological risks to the surrogate mother's existing children who have been known to be concerned that they too may be 'given away'.

Proposal 13

Who should access surrogacy

In many cases, the commissioning couple want access to medical services to achieve their outcome, namely having another woman bear and relinquish a child for them. However, access to health services requires that a medical need be established. Is the It is appropriate that those wanting to access the services do in fact have a medical need. Is the ALRC suggesting that having another woman provide a child for an infertile couple is meeting a medical need? Or is it in fact that this is satisfying a personal wish of commissioning couple to have a child? It is unreasonable to ask a woman to provide a commissioning couple with a baby, if there is no medical need to do so. It is asking her to take a risk that the couple are unwilling to take.

Proposal 14

The age of the mother and the commissioners

On what basis can a counsellor establish that an 18 year old has the maturity to become the parent of a child born to them of another woman? And can she even have established a secure ongoing relationship that will stand the test of time in a marriage? There can only be very limited circumstances where a girl, not yet 18, knows that she is permanently unable to have children. What can she (and her partner) know of parenting the child of another family? Or even her own biological child? Some of the proposals put forward by the ALRC suggest them live in an entirely different domain to the rest of society. Most often, parents in the 21st century encourage their daughters not to marry young, not to commit long term and certainly not to have children at 18. It was only 5 minutes ago that our society was taking babies from 18 year olds to give to established, older infertile couples!

Similarly, what 18 year old, who we can assume has not had a child (and even if she had), has 'the maturity' to decide to become a surrogate mother? It can be read as a rosy picture; and that girl can want to do something generous for another person, but how can she possibly understand the ramifications for herself, or for her offspring she gives birth to, or for the children she may have subsequently?

Proposal 15

Citizenship and residency requirements

The ALRC raises the concern of reproductive tourism yet want the requirement that least one intended parent must be either an Australian citizen or permanent resident to be able to be dispensed with by a Surrogacy Support Organisation, without any criteria about what circumstances this might occur. How is this logical?

Proposals 16, 17, 18 & 19

Medical, Psychological & Criminal Assessments and their Purpose

On what basis could a psychologist confidently establish that a woman who has not undertaken a pregnancy would not find it a negative and life changing experience? And why would the state want to take that risk? ARMS believes this puts women at risk, is unnecessary, and appears predatory.

Psychological assessments should be undertaken by practitioners who have had experience with mothers who relinquished their children in the forced adoption era and who have engaged with the research and history of this era. Without that background, our experience is that practitioners have very little understanding of the issues and complexities of relinquishment. Ideally it should be a psychiatrist not a psychologist and it would be critical to identify those who can bring an objective view to the matters in front of them. Our experience with fertility clinic psychologists and counsellors is that they are all too willing to ignore red flags and, even when concerns are raised by them, the doctor in charge of the patient has in the past, over-ridden that advice.

Point 126 (Proposal 18 suggests that psychological assessments should not be used to determine whether a person should become a parent. ARMS strongly disagrees with this. The resources of the state are being used in this ALRC model, to facilitate making the commissioning couple, parents. The state therefore has a responsibility to ensure that the child is safe, that the couple, on the balance of probabilities, will not be selling the child into a paedophile ring, are not themselves paedophiles, and are, relative to the population, stable and capable of being good parents. There is already evidence in the Baby Gammy case – appalling at every level - that the male parent had been found guilty of being a paedophile and that they left one twin in the care of the surrogate mother because of his disability. Hardly what anyone would consider an appropriate parent and presumably, not a case where the government would like to be arguing in court that they had exercised an adequate risk assessment sufficient to avoid paying compensation to the children of that arrangement.

Point 131 “Intended parents may feel that these (criminal) checks are invasive and treat them differently to other parents.” This is a surprising comment. The reality is that these people are different to other parents. They are using the resources of the state. They seek the imprimatur of society as the circumstances of them becoming parents, if agreed to, will have changed fundamentally the nature of our society. Society is entrusting them in ways that we don’t have to consider when a fertile couple seek to become pregnant. Perhaps there needs to be an acceptance on the part of the commissioning couples that they are different, and their children will be also. Some will be raised without a mother. Some will not know their genetic history. Some will be raised in secrecy, with parents fearful of the truth being known. They all will be different, for different reasons.

Proposal 20

Legal advice

It is hard to imagine a lawyer advising a woman to accept a contract that requires her to have no say in whether she relinquishes her child, once pregnant. This proposal – a contract for relinquishment before birth - avoids allowing the woman to know and

experience her feelings and views about the child to whom she gives birth. This is high-handed, predatory and designed to lock in situations where there might be some doubt in the mind of the mother. What integrity does this demonstrate on the part of the commissioning couple and in this instance the ALRC?

If there is a situation where relinquishing is unbearable, then surely it is on the parties to establish a way of living the truth of the situation. One option is to include all members in the care and raising of the child. Another is that the commissioning couple do as they want the mother to do, and relinquish their right to the child. Or another alternative is to act as in a divorce, where access arrangements are established. These are matters of trust. Can the parties trust that one or other of them will not move interstate? Surrogacy arrangements are fraught and trying to legislate for certainty is not possible, unless a least one party's rights are extinguished. In these cases, it is the child's right to know and have contact with its birth mother that is at risk.

It is already clear that international law, that Australia is party to, identifies that surrogacy arrangements contravene the rights of children. That should be enough for our governments to deny the expansion of any of the current legislation and go further to apply criminal sanctions to those people who break the law in their hunt for a child 'of their own'.

Proposal 21

No amount of regulation can fully resolve the ethical, psychological, and power-imbalance concerns inherent in surrogacy. Although comprehensive counselling is important, its inclusion implicitly assumes surrogacy is an acceptable practice if sufficiently regulated. Counselling, no matter how extensive, cannot eliminate the risk of emotional pressure, coercion, or regret, particularly for surrogate mothers who may be socially or economically vulnerable. The requirement for ANZICA membership and for psychological independence still does not address the fundamental issue: counselling cannot equalise the imbalance between the person seeking a child and the woman asked to carry it. No "independent" professional can fully shield the surrogate mother from internal or external pressure to continue with an arrangement that may later harm her well-being.

The list of topics—genetic testing, pregnancy termination, lifestyle control, relationship breakdown, post-birth contact, etc.— highlights the extent of the emotional and ethical complexity of surrogacy and risks to the mother. This complexity is itself a reason *not* to permit surrogacy. The fact that laws need to anticipate scenarios such as a surrogate mother being pressured into or out of termination, or commissioning couples, separating mid-pregnancy, underscores how unstable and potentially harmful the arrangement can be. It separates pregnancy from parenthood in ways that can harm both surrogate mothers and children. The surrogate mother must be able to have the choice of continuing the pregnancy if the commissioning couples want it to be aborted, for whatever reason.

While ongoing counselling is valuable, it again assumes the legitimacy of surrogacy rather than questioning whether the arrangement should exist. Once a surrogate mother becomes pregnant, her options narrow dramatically, even with counselling available. Support systems cannot undo the structural power imbalance or the

emotional burden placed on all parties—especially the surrogate mother and the child.
Requiring written confirmation that the parties "appeared to understand" the implications of surrogacy may protect counsellors legally, but it does not guarantee genuine informed consent. The emotional, relational, and social pressures surrounding these decisions often make true consent impossible to verify in practice.

Given the highly emotional nature of surrogacy, legislation should require a comprehensive, multi-session counselling program, delivered over time and available before, during, and after the pregnancy. We have first hand knowledge of the fact that one "counselling" session in IVF is woefully inadequate. No woman knows how the relinquishment of a baby will affect her in the future. ARMS' 43 years of supporting women who have done just this, is testament to the grief, trauma and guilt that women can feel.

The legislation should require that commissioning couples cover the cost of post-birth counselling for the surrogate mother. This includes support specifically aimed at identifying and treating post-natal depression and other postpartum mental-health concerns, which does occur, even when the surrogate mother is not raising the child. This protects the surrogate mother's long-term well-being.

Proposal 22

This proposal attempts to make surrogacy "safe," but it cannot remove the core ethical concerns:

- The inherent power imbalance between commissioning couples and a surrogate mother, regardless of counselling or legal advice.
- The risk of coercion or financial pressure, even when payments are regulated.
- The objectification and commodification of both women's reproductive labour and children.
- The involvement of partners, psychologists, lawyers, and medical professionals does not eliminate the underlying problem that surrogacy turns pregnancy into a contractual service.

Even with counselling, assessments, and regulated payments, surrogacy still involves one person undertaking significant physical and emotional risks for the purpose of delivering a child to another party. This raises deep ethical concerns about consent, commodification and exploitation. Children's interests are not fully protected. Even if the arrangement is regimented, children born via surrogacy originate from a contract rather than an organic family relationship. This raises lifelong questions about identity, origin and whether their birth was conditional on meeting the terms of an agreement.
1.a & b expunge the idea that consent needs to be taken from the surrogate mother *after* the birth and after the mother has had a period of time with the child. This is a critical time for the baby so that the separation immediately after birth is not a complete shock, physically and emotionally. We can sign an agreement when we're in our non-hormonal state (ie before becoming pregnant) but feel quite differently through the experience of the pregnancy.

Proposals 28 & 29

Providing financial incentives such as Medicare rebates

This transforms the act of carrying and bearing a child into a financial transaction, potentially undermining the dignity and autonomy of the surrogate mother. By extending Medicare rebates to services related to surrogacy, the government would be normalising or even encouraging a practice that leads to the commodification of women's bodies and children. It also risks subsequent applications for redress when things go wrong.

The proposal to extend Medicare rebates to surrogacy-related treatments seems to endorse a practice that for many, remains ethically controversial. Public healthcare funding should prioritise services that are universally accepted as being in the best interest of individuals and society. Supporting surrogacy through public funds risks alienating individuals and groups who view surrogacy as an ethically problematic practice.

Proposal 30

This proposed model grants commissioning couples automatic legal status at birth and only marginal rights to the surrogate mother. The surrogate mother *is* the mother of the baby. This right should not be restricted; and should be primary, not secondary. Automatic parentage for commissioning couples is inappropriate. Automatic transfer at birth undermines the surrogate mother's autonomy and creates pressure on her to relinquish the child even if circumstances change. The surrogate mother's right of challenge should not be limited to three months. A short time-frame does not adequately protect her rights or account for post-birth emotional, psychological, or medical realities. The proposal turns the surrogate's right into a narrow, reactive measure rather than a meaningful protection.

The surrogate mother should retain presumptive parentage unless and until a court transfers it, recognising the inherent gravity of permanently transferring parental responsibility for a newborn. Birth mothers form a bond with the baby; any parentage decision must consider this relationship. The child's best interests are not served by an irreversible, automatic legal assignment. A court should confirm parentage only after birth, once all parties' circumstances—and the welfare of the child—can be fully evaluated.

Proposal 34 & 35

Children are entitled to know every aspect of their birth circumstances, including full name and home address of the surrogate mother, date and place of birth, and ethnicity. It is well documented that many adopted people and those born through donor conception have serious identity issues.

Having said this, a central register may legitimise or expand surrogacy practices and it fails to address the root ethical concerns about surrogacy, treating surrogacy as a normal and acceptable practice. This proposal grants commissioning couples automatic legal status at birth and only marginal rights to the surrogate mother.

The surrogate mother should have a right to seek a declaration of parentage, but the right should not be a narrow, time-limited exception to automatic transfer of parentage. Instead, the surrogate mother should remain the legal parent upon birth, and any transfer of parentage to commissioning couples should only occur after independent judicial scrutiny, ensuring that consent remains free, informed, and continuing. History provides us with an important model. For an adoption agreement to be final and valid, it must first be reviewed and confirmed by the court

Surrogacy arrangements typically involve the deliberate separation of a child from their birth mother, which raises serious ethical issues that no registration scheme can adequately resolve. Our experience from the adoption system shows that records are frequently lost, damaged, incomplete, or poorly maintained. In many cases, information is recorded inconsistently or inaccurately, reflecting administrative shortcomings, changing standards over time, or a lack of priority given to long-term record preservation.
As a result, some adoptees have grown up with little to no reliable information about their birth circumstances, including details about their biological parents, medical history, cultural background, or the reasons for their adoption. This absence of information can have lasting consequences, affecting an individual's sense of identity, access to essential health information, and ability to understand their personal history. What should be a safeguarded record of origin instead too often becomes fragmented or inaccessible, leaving adoptees to navigate significant gaps in knowledge about their own lives. We should have little confidence that this might not also be the experience of some children born of surrogate arrangements.

Proposal 37

Normalising overseas surrogacy contradicts the objective of preventing exploitation.
The proposal accepts the existence of overseas surrogacy and instead, focuses on registration and compliance mechanisms. Many jurisdictions that permit commercial surrogacy—particularly low-income countries—have documented histories of exploiting women's economic vulnerability and treating children as commodities. A registration system risks creating the impression that overseas surrogacy is acceptable or ethically sound, rather than challenging the underlying harm.

Many countries that allowed Australian (and other) commissioning couples to pay women to carry babies for them, have closed their borders to commissioning couples from outside their own countries, due to cases of abandoned babies or mistreated surrogate mothers. Many other countries have banned surrogacy altogether, whether altruistic or commercial.

France – French citizens who pursue surrogacy abroad often face legal hurdles when trying to register the child.
Germany - Offering, arranging, or participating in surrogacy can result in up to 3 years in prison or fines.
Italy - Italian courts have ruled against the recognition of children born via surrogacy abroad.
Spain - All surrogacy contracts are invalid. Surrogacy abroad is not recognised under Spanish law, creating legal limbo for many returning couples.
Switzerland - Even seeking surrogacy abroad may create legal issues for Swiss citizens.
Sweden - Surrogacy is not recognised under the Genetic Integrity Act. Surrogacy contracts are unenforceable, and parental rights cannot be transferred through surrogacy.
China - Although a black market exists, surrogacy is banned in all forms, and medical professionals can face disciplinary action.
Nepal - All forms of surrogacy banned since 2015 Supreme Court decision. The ban followed the exploitation of surrogates and lack of regulation during Nepal's brief surrogacy boom.
Pakistan - Surrogacy is not legally recognised and is considered un-Islamic by religious authorities.
Saudi Arabia - Surrogacy is forbidden under Islamic law. Surrogacy is considered a violation of lineage and inheritance principles in Sharia law.
United Arab Emirates - Engaging in surrogacy can result in imprisonment and heavy fines.

The world will be watching Australia to see how we regulate surrogacy. Globally we will be seen in a very poor light if we water down surrogacy legislation.

The proposal avoids addressing the core ethical problem: the commercialisation of reproduction.

By focusing on regulation rather than prohibition, the proposal accepts a market-based model of family formation in which women's reproductive labour and children themselves can be bought across borders. This is fundamentally at odds with principles of human dignity and cannot be justified by procedural safeguards.

It is extremely concerning that #1 under this proposal states "if the intended parent(s) intentionally or recklessly proceed with an arrangement, without registering with the registration entity ('unregistered overseas surrogacy arrangement'), they will be subject to a civil penalty regime", however #2 states "Legislation should provide that proceeding with an unregistered overseas surrogacy arrangement will not prevent an intended parent from applying for: a. Australian citizenship, a passport, or a visa, on behalf of a child born from the unregistered overseas surrogacy arrangement: or b. legal parentage." So it appears that it will be legislated that commissioning couples abide by the rules, but if they don't they will still be able to bring a child born of surrogacy into Australia without any consequence. This makes a mockery of the idea that there are consequences to behaving illegally.

The goal should be to prohibit overseas surrogacy arrangements altogether as there is clear evidence of exploitation of women residing in other countries. Australian law would need to address both the *conduct of citizens abroad* and the *recognition of parentage* when children are born through such arrangements.

Extraterritorial Prohibition

- The ALRC should recommend amending the *Family Law Act* and relevant state surrogacy legislation to make it an offence for Australian citizens or residents to enter into surrogacy arrangements overseas.
- This would mirror existing prohibitions on overseas commercial surrogacy in some states (e.g. Queensland, NSW, ACT), but extend them to *all* surrogacy arrangements abroad, including altruistic ones.
- Penalties should include fines and criminal sanctions, which can be balanced against the best interests of the child through existing other child welfare laws in Australia.

Non-Recognition of Parentage Orders

- Australian should could be barred from recognising parentage orders or contracts arising from overseas surrogacy.
- Parentage would default to the birth mother under Australian law, regardless of foreign documentation.
- This prevents circumvention of domestic prohibitions by seeking recognition through foreign courts.

Immigration and Citizenship Controls

- The Department of Home Affairs should refuse automatic citizenship by descent where the child is born via prohibited overseas surrogacy.

- Instead, children could be admitted only through existing child welfare laws, ensuring scrutiny and safeguarding.
- This aligns with the principle that children's rights must be protected, but without legitimising prohibited arrangements.

Proposal 40

A signed affidavit, especially in international and commercial surrogacy contexts, does not guarantee that the surrogate mother was free from pressure, coercion, or misunderstanding at the time of signing. Removing the requirement for her later consent eliminates one of the few remaining safeguards ensuring that her ongoing wishes are respected. Parental relinquishment is a profound and irreversible decision. Ethical and legal standards normally require that consent be informed, free of pressure and revocable for a period of time. Treating a single affidavit as permanently binding ignores the possibility that the surrogate mother's circumstances, understanding, views or feelings may change. Passport issuance should not override these protections.

Overseas surrogacy often occurs in jurisdictions with weak protections for women, limited oversight of fertility clinics, and documented cases of trafficking or exploitation. By removing the surrogate mother's later consent requirement, the Australian process risks appearing to endorse systems that are known to exploit vulnerable women.
Ensuring that the surrogate mother confirms her consent at the point of a passport application is also a protection for the child. It helps confirm that the child was not taken without proper consent, the transfer of care is lawful and genuine, and there are no unresolved disputes or welfare concerns.

The proposal prioritises administrative convenience over ethical responsibility. While the process may become faster for commissioning couples, speed should not outweigh women's bodily autonomy, clear and verifiable consent, and the protection of children born under complex international arrangements. Ethical integrity and human rights should guide federal legislation, not convenience.

Proposal 41

A requirement that the surrogate mother continue to provide consent for passport renewals is one of the few mechanisms that acknowledges her role as the mother of the child and her potential ongoing interest in their welfare. Eliminating this safeguard treats the surrogate mother as a purely transactional participant with no long-term rights or protections. An affidavit signed during pregnancy or shortly after birth, especially in international arrangements, may be signed under economic pressure, unequal bargaining power, limited understanding of Australian law, or translation or literacy barriers. Relying on a single document to permanently extinguish any need for future consent does not guarantee genuine, informed, and continuing autonomy.

Reducing the surrogate mother's legal involvement reinforces a system that enables exploitation. Instead of weakening controls, Australia should be strengthening them and discouraging international surrogacy altogether.

Surrogacy arrangements are legally complex, especially across borders. Requiring the surrogate mother's involvement in major identity documents helps prevent disputes about

parentage, child trafficking risks and fraudulent or coercive arrangements. These safeguards exist not just to involve the surrogate mother but also to protect the child.
The ALRC has set aside its obligations under the Terms of Reference provided by the Attorney General and has re-written the ToR to suit an agenda of promoting and legislating for commercial surrogacy. The first two Terms require that the recommendations:

"are consistent with Australia's obligations under international law and conventions; and 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."

These obligations are ignored in the 'Proposals' outlined in both the Issues and Discussion Papers provided by the ALRC. It is within the ALRC's remit to point out to government that surrogacy arrangements are in breach of these first two terms and a range of international laws to which Australia is signatory. Further, there is a very significant difference between providing advice about "*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"* and developing a blueprint for the implementation of a full-blown, government implemented system for commercial surrogacy.

Paying women, after encouraging them to engage in a role that is known to cause them harm, (including in instances their death) is a cynical use of the power and money; and not something that any government should consider undertaking. We look forward to your Final Paper, where we understand you will be taking into account the views of those of us who have made submissions.

Yours sincerely,

Marie Meggitt (Founder)
Jo Fraser (Convenor)

on behalf of ARMS(Vic)